

12. Sample Custody Complaints & Sample Consent Answer and Waiver of Service

- a.i. Complaint for Custody (Contested)
- a.ii. Complaint for Custody (Uncontested)
- b. Consent Answer

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT DOMESTIC RELATIONS BRANCH

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AINTIFF,)	
)	DRB-[CASE #
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(deceased))	
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EFENDANTS.)	
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	AINTIFF, AINTIFF, (deceased) EFENDANTS.	AINTIFF,) AINTIFF,) (deceased))

COMPLAINT FOR CUSTODY OF MINOR CHILD

The Plaintiff, [PETITIONER] ("[PETITIONER]"), by and through her counsel, [ATTORNEY] of [FIRM], hereby states to the Court as follows:

1. Jurisdiction for this action is based upon authority granted to the Court by the laws of the District of Columbia, specifically D.C. Code § 11-1101 (4) (2001), the Uniform Child-Custody Jurisdiction and Enforcement Act §§ 16-4602.01 (a)(1) and (2)(A) and (B), and the Safe and Stable Homes for Children and Youth Act §§ 16-831.02 (a)(1)(B)(i) and (C) (2007).

- 2. [PETITIONER] seeks custody of her [BROTHER/SISTER], [CHILD] ("[CHILD]" or "the child"), born [DOB], in [CITY STATE].
- 3. [BIO MOM] ("[BIO MOM]") is the biological mother of the child.
- 4. [BIO DAD] ("[BIO DAD]") is the biological father of the child. He is deceased as of [MONTH YEAR].
- 5. [BIO MOM] and [BIO DAD] were not married at any time.
- 6. The child resided with [HIS/HER] father, [BIO DAD], from [HIS/HER] birth until his death in [YEAR]. During the time [HE/SHE] resided with [HIS/HER] father, [HIS/HER] father was [HIS/HER] primary caregiver and provided all food, clothing and shelter for [CHILD]. [PETITIONER] had a close relationship with [CHILD] and visited [HIM/HER] several times a month during this period in [HIS/HER] life.
- 7. Upon the death of [BIO DAD], [BIO MOM], moved into the apartment where [CHILD] had lived with [HIS/HER] father. As [HIS/HER] sole surviving biological parent, [BIO MOM] automatically obtained sole legal and physical custody of [CHILD]. [PETITIONER] is not aware of a formal custody arrangement between [BIO MOM] and [BIO DAD] when [BIO DAD] was still alive.
- 8. After [CHILD] and [HIS/HER] mother began living together, [PETITIONER] provided support to [CHILD], visiting [HIM/HER] frequently and often bringing [HIM/HER] home with her to stay the night and spend time with her family.
- 9. During the time [CHILD] was living with [BIO MOM], from [MONTH YEAR] until [MONTH YEAR], she continued to use drugs and failed to pay utility bills. On

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information and belief, she was at that time collecting survivor benefits on behalf of [CHILD] in the approximate amount of \$1200 per month, while the total of utility bills was much less than that. She also failed to ensure that [CHILD]'s sickle cell anemia was properly treated and to ensure that [HE/SHE] was able to make up [HIS/HER] schoolwork when [HE/SHE] was absent due to bouts of illness. In [MONTH YEAR], [CHILD] asked [HIS/HER] sister, [PETITIONER], to pick [HIM/HER] up and bring [HIM/HER] to stay with her because the utilities had been shut off in the apartment [HE/SHE] was residing in with [HIS/HER] mother and because [HE/SHE] was frightened by her drug use and erratic behavior.

- 10. The following details where [CHILD] has resided for the past five years. While [HIS/HER] father, [BIO DAD], was alive, [HE/SHE] lived with him at [ADDRESS]. In [MONTH YEAR], [HE/SHE] moved to live with [HIS/HER] sister, [PETITIONER] at [ADDRESS].
- 11. The current names and addresses of everyone with whom the child resides are as follows:

FULL NAME CURRENT ADDRESS

[PETITIONER] [ADDRESS]

Sister [CITY, STATE ZIP]

[BROTHER IN LAW] [ADDRESS]

Brother-in-law [CITY, STATE ZIP]

[NEPHEW 1] [ADDRESS]

Nephew [CITY, STATE ZIP]

[NEPHEW 2] [ADDRESS]

Nephew [CITY, STATE ZIP]

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[NIECE] [ADDRESS] Niece [CITY, STATE ZIP]

- 12. [PETITIONER] has not participated as a party, witness, or in any other capacity, in any other litigation concerning the custody of this child in the District or any other state.
- 13. Pursuant to D.C. Code § 16-831.02 (a), a third party may file a complaint for custody of a child under certain circumstances described in the Code. Under D.C. Code § 16-831.02 (a)(1)(C), the third party may file if he or she is living with the child and some exceptional circumstance exists such that relief under this chapter is necessary to prevent harm to the child; provided, that the complaint or motion shall specify in detail why the relief is necessary to prevent harm to the child.
- 14. Under D.C. Code § 16-831.06 (a), the Court shall award custody of the child to the third party upon determining: (1) the presumption in favor of parental custody has been rebutted; and (2) custody with the third party is in the child's best interests.
- 15. Pursuant to D.C. Code § 16-831.07(a), to determine that the presumption favoring parental custody has been rebutted, the court must find, by clear and convincing evidence, one or more of the following factors: (1) that the parents have abandoned the child or unwilling or unable to care for the child; (2) that custody with a parent would be detrimental to the physical or emotional well-being of the child; (3) that exceptional circumstances, detailed in writing by the court, support the rebuttal of the presumption favoring parental custody.

- 16. Because the biological father is deceased and the biological mother is currently using drugs and failing to provide medical care and attention to her [SON/DAUGHTER], all the criteria for rebutting the presumption favoring parental custody have been satisfied. Specifically, rebuttal of the presumption favoring parental custody is proper because of [BIO MOM]'s neglect of [CHILD]'s health and her failure to ensure that [HE/SHE] receive proper medical attention for [HIS/HER] very serious health condition, sickle cell anemia. [BIO MOM] failed to renew prescriptions that were needed to treat [CHILD]'s sickle cell anemia. On information and belief, she failed to complete necessary paperwork to ensure that [HE/SHE] continued to receive Medicaid to cover [HIS/HER] health care costs. Lastly, she failed to keep appointments for treatment of [HIS/HER] sickle cell anemia at [HOSPITAL]. Her failure to attend to her [SON/DAUGHTER]'s needs demonstrates that she is unwilling to care for [HIM/HER] and that custody with her is detrimental to [CHILD]'s physical and emotional well-being. Exceptional circumstances, namely the death of [CHILD]'s father and her failure to attend to [HIS/HER] medical needs, also exist to rebut the parental presumption and establish [PETITIONER]'s standing to file for custody as a third party.
- 17. To make a determination of best interests of the child in regard to custody, pursuant to D.C. Code § 16-831.08, the Court shall consider: the child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages; the physical, mental and emotional health of all individuals involved to the

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degree that each affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child; the quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives and caretakers, including the third-party complainant or movant; and to the extent feasible, the child's opinion of his or her own best interests in the matter.

- 18. For the last three (3) months, [PETITIONER] has been the primary caregiver for [CHILD]. She has provided for [HIS/HER] food and shelter and requires legal custody in order to properly care for [HIS/HER] medical and educational needs. She is committed to providing all material, emotional and physical care for [CHILD] and desires the formal legal right to do so. Accordingly, custody with [PETITIONER] fulfills [CHILD]'s need for continuity of care and caretakers, as required by D.C. Code § 16-831.08 (a)(1).
- 19. Custody with [PETITIONER] is in the child's best interest because she can timely integrate [HIM/HER] into a permanent home, pursuant to § 16-831.08 (a)(1). [CHILD] has experienced the tragic losses of [HIS/HER] father and the trauma of living with [HIS/HER] mother while she was a substance abuser. [PETITIONER] wants to provide [HIM/HER] with stability and consistency. [CHILD] enjoys a good relationship with [PETITIONER], her husband and her children, [CHILD 1], [CHILD 2], and [CHILD 3], who are close to [CHILD]'s age and who treat [HIM/HER] as they would a biological sibling. Granting [PETITIONER] custody would allow [CHILD] to be seamlessly legally integrated into her family.

- 20. [PETITIONER] is in good physical and mental health and is able to care for [CHILD]. Importantly, she is committed to ensuring that [CHILD] receives regular and appropriate medical care for [HIS/HER] health needs and has advocated with the school system to obtain appropriate educational services for [HIM/HER]. Her actions demonstrate her ability to care for [CHILD]'s physical, mental and emotional health, which the Court is asked to consider under D.C. Code § 16-831.08 (a)(2). In contrast, [BIO MOM], as a substance abuser, is in poor physical and mental health and has shown herself to be incapable of caring for [CHILD]'s physical, mental and emotional health by allowing [HIS/HER] medical needs to go unattended, frightening [HIM/HER] with her erratic behavior due to her drug use, and failing to pay the utility bills.
- 21. [PETITIONER] and [CHILD] have a loving relationship and strong bond and [HE/SHE] also enjoys an excellent relationship with her children and her husband, satisfying another factor under § 16-831.08 (a)(3).
- 22. Lastly, [CHILD], who is over fourteen years old, wishes to continue living with her, which are the remaining factors to be taken into consideration under§ 16-831.08 (a)(4).
- 23. [CHILD] is currently living with [PETITIONER] but because she does not have legal custody, she is not able to access health care for [HIM/HER]. In the past, [HE/SHE] has been prescribed folic acid and pain medication to alleviate the symptoms of [HIS/HER] sickle cell anemia. These prescriptions were paid for using Medicaid. [HIS/HER] mother has failed to renew the prescriptions. In [MONTH YEAR], [CHILD] had a medical crisis and had to be hospitalized at [HOSPITAL]. Following [HIS/HER]

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hospitalization, [BIO MOM] was asked by the staff who treated [HIM/HER] to complete paperwork to keep [HIS/HER] Medicaid current, to fill [HIS/HER] prescriptions, and continue to bring [CHILD] for appointments at the hospital. On [DATE], a staff member of [HOSPITAL] contacted [PETITIONER] to tell her that [BIO MOM] had not followed through on any of these tasks and that if she could not be reached by [DATE], a report would be made to Child Protective Services.

- 24. [PETITIONER] contacted [BIO MOM] to let her know that it was necessary that she call [HOSPITAL] immediately. However, when she called the staff member there back to see if [BIO MOM] had contacted [HOSPITAL], she was told that [BIO MOM] had not. [HOSPITAL] declined to share any more information about the nature of the missed appointments and paperwork, citing privacy law and that [PETITIONER] was not [CHILD]'s legal guardian at the present time.
- 25. Without [BIO MOM]'s cooperation or an award of legal custody from the Court, [PETITIONER] is not able to secure adequate health care for [CHILD].
- 26. [PETITIONER] respectfully requests that the Court grant her sole legal and physical custody of her [BROTHER/SISTER] on an emergency basis so that she can prevent the potential harm that may come to [HIM/HER] if he continues to be without health insurance or access to [HIS/HER] prescriptions and so that she may immediately attend to [HIS/HER] medical needs by securing health insurance and medication for [HIM/HER].

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27. Upon information and belief, there are no other family members who are prepared to assume the primary parental duties and obligations required for [CHILD].

WHEREFORE, the Plaintiff, [PETITIONER], respectfully requests the Court to:

- 1. Award her sole legal and sole physical custody of her [BROTHER/SISTER], [CHILD].
- 2. Provide such other and further relief as the Court finds just and proper.

Respectfully submitted,

[ATTORNEY]
Attorney for [PETITIONER]
[FIRM]
[ADDRESS]
[CITY, STATE ZIP]

Phone: [###-###-###] Fax: [###-###-###]

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VERIFICATION

I, [PETITIONER], solemnly swear or affirm under	r criminal penalties for the making of a false							
statement that I have read the foregoing complaint for custody and that the factual statements								
made in it are true to the best of my personal knowledge, information, and belief.								
[DETITIONED]	Dut							
Plaintiff	Date							
made in it are true to the best of my personal knowledge, information, and belief. [PETITIONER] Date								

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT DOMESTIC RELATIONS BRANCH

[PETITIONER])	
[ADDRESS])				
[CITY, STATE	E ZIP])			
)		
]	PLAINTIFF,)		
	,		í		
v.)	DRB	
)		
[BIO MOM])	,		
2921 Second St	t. NE, Apt 2)		
Washington, D	C 20001)		
)		
and)		
)		
[BIO DAD]	(deceased))		
)		
]	DEFENDANTS.)		
)		
			,		

ORDER

Upon consideration of the Plaintiff's Motion for Temporary Custody and the Complaint for Custody of the Minor Child, it is this [DATE] day of [MONTH, YEAR], hereby:

ORDERED that Plaintiff's Motion for Temporary Custody is GRANTED; it is further

ORDERED that [PETITIONER] be awarded sole physical and legal custody of [CHILD] (DOB [CHILD'S DOB]) pending further order of the Court; and

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FURTHER ORDERED that Defendant [BIO MOM] shall have reasonable visitation with [CHILD] at the home of the Plaintiff, provided that the minor child consents to the visitation;

SO ORDERED.

Associate Judge	

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT DOMESTIC RELATIONS BRANCH

[PLAINTIFF],)	
.,	Plaintiff)	Case No. [YEAR] DRB [####]
V.)	Judge [NAME]
[DEFENDANT 1])	Next bearing, [DATE]
and)	Next hearing: [DATE]
[DEFENDANT 2])	
	Defendants.)))	

[PLAINTIFF] COMPLAINT FOR CUSTODY OF [CHILD]

[PLAINTIFF], [MATERNAL/PATERNAL] [GRAND(MOTHER/FATHER)] of [CHILD] ("[CHILD]"), through undersigned counsel, [PLAINTIFF ATTY] of [FIRM NAME], hereby requests that the Court grant [HIS/HER] request for sole physical and legal custody of [CHILD].

In support of [HIS/HER] complaint, [PLAINTIFF] states:

- 1. The Court has jurisdiction of this matter pursuant to D.C. Code §§ 11-1101, 16-4602.01, et seq., and 16-831.13.
- 2. [PLAINTIFF] seeks custody of [CHILD], born [DOB] in [CITY, STATE].
- 3. [PLAINTIFF] is [CHILD]'s [MATERNAL/PATERNAL] [GRAND(MOTHER/FATHER)].

- 4. Defendant [DEFENDANT 1] is [CHILD]'s biological mother. [DEFENDANT] has consented orally to [PLAINTIFF]'s complaint for custody of [CHILD], and her written consent is anticipated.
- 5. Defendant [DEFENDANT 2] is [CHILD]'s biological father. [DEFENDANT 2] consents to [PLAINTIFF]'s complaint for custody of [CHILD]. After consultation with his lawyer, he executed a notarized consent on [DATE].
- 6. Because both biological parents consent to [PLAINTIFF]'s complaint for custody of [CHILD], § 16-831.06 (d)(3) requires that custody be with [PLAINTIFF] "unless clear and convincing evidence indicates that the arrangement is not in the best interests of the child."
- 7. As a result of § 16-831.06 (d)(3)'s requirements, the Court has the authority to adjudicate this matter pursuant to its equitable jurisdiction articulated in § 16-831.13, and [PLAINTIFF] has standing to file this complaint for custody.
- 8. [CHILD] is currently committed to the custody of the [STATE] Child and Family Services Agency ("CFSA"). This Court has jurisdiction to decide child custody because [STATE] is [CHILD]'s home state, where [HE/SHE] currently lives and has lived for more than six months.
- 9. The child is a Respondent in neglect case [YEAR]-NEG-[####], The Honorable [JUDGE NAME] presiding.
- 10. On [DATE], the Court ordered that [CHILD]'s Permanency Goal be changed to Custody with [PLAINTIFF].

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- 11. [PLAINTIFF] does not know of anyone else who is seeking custody of [CHILD].
- 12. [PLAINTIFF] does not know of anyone, other than [CHILD]'s biological parents, who claims to have rights to visitation with [CHILD].
- 13. [PLAINTIFF] is a fit and proper person to have legal custody of [CHILD] and to make decisions regarding his wellbeing. [PLAINTIFF] believes it is in [CHILD]'s best interests to award him sole legal custody of [CHILD].
- 14. [PLAINTIFF] is a fit and proper person to have physical custody of [CHILD] and to have parental responsibility and control of [CHILD]. [PLAINTIFF] believes it is in [CHILD]'s best interests to award [HIM/HER] sole physical custody of [CHILD].
- 15. Both of [CHILD]'s biological parents consent to [PLAINTIFF]'s complaint for guardianship, thus there is no need to rebut the parental presumption. *See* D.C. Code § 16-831.05.
- 16. [PLAINTIFF] does not have information about any previous or pending action regarding this claim or subject matter. [HE/SHE] has not participated as a party, witness, or in any other capacity, in any litigation other than the above-referenced neglect case concerning the custody of this child in the District or in any other state.

WHEREFORE, in light of the foregoing, the Plaintiff [PLAINTIFF] asks this Court to:

- 1. Award [PLAINTIFF] sole physical and legal custody of [HIS/HER] grandchild, [CHILD]; and
- 2. Set forth a reasonable visitation schedule with the defendants that is agreed to by the parties and is in [CHILD]'s best interest; and
- 3. Provide such other and further relief as the Court finds just and proper.

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Respectfully submitted,

[ATTORNEY NAME] (DC Bar No. [#####])
[FIRM NAME]
Counsel for [PLAINTIFF]
[ADDRESS]

Phone: [###-####], ext. [###]

Fax: [###-####]

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VERIFICATION

I solemnly swear or affirm u	nder criminal penalties for the making of a false state	ement
that I have read the foregoing Compla	int for Custody, and that the factual statements I mad	de in it
are true to the best of my personal kno	wledge, information, and belief.	
[PLAINTIFF] (signature)	Date	
[PLAINTIFF] (printed name)		

[ATTORNEY NAME] (DC Bar No. [######])
[FIRM NAME]

Counsel for [PLAINTIFF]
[ADDRESS]

Phone: [###-###], ext. [###]

Fax: [###-###]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT DOMESTIC RELATIONS BRANCH

[Plaintiff's full name], Plaintiff))	
v.)	[Case number]
FD 61 (2-6-111)	
[Defendant's full name],)	
And)	
)	
[Defendant's full name],)	
)	
Defendants)	
·)	
)	

CONSENT ANSWER

- I, [Defendant's full name], state to the Court as follows:
- 1. I am the Defendant in the above-captioned matter.
- 2. I am the biological [mother/father] of [child's full name], who was born on [child's date of birth], and I understand that [child's full name] is the subject of this custody complaint.
- 3. The biological [mother/father] of [child's full name] is [insert other parent's full name if known].
- 4. I am not under the influence of any drugs or medication.
- I do not have any physical or mental disability impairing my ability to understand this document.
- 6. I have reviewed this consent with my attorney.

Commented [RG1]: If possible.

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- 7. The child is currently living with [his/her] [insert relationship, e.g., maternal grandmother], Plaintiff [Plaintiff's full name].
- 8. I consent to the relief sought by [plaintiff]. It is my desire that the Plaintiff [Plaintiff's full name] be awarded [sole/joint] legal and [sole/joint] physical custody of the subject child, [child's full name].
- 9. I understand that by signing this consent I am giving up my right to a custody trial to determine who should have the legal rights and responsibilities to care for [child's full name] and that at that trial there would be a presumption in my favor that custody of [child's full name] should be with me.
- 10. I understand that if custody is given to [Plaintiff's full name], then for me to be able to change the custody arrangement, I will have to file a motion to modify custody with the court and show that there has been a substantial and material change in circumstances and that the change in custody would be in the [child's full name] best interests. I understand that, in future proceedings for a modification of custody, there would not be a presumption in my favor that custody of [child's full name] should be with me.

1	1	I	reserve	mv i	rioht to	all	reasonable	visitation	with	the s	uhiect	child

[Defendant's full name]

[DATE]

VERIFICATION

I, [Defendant's full name], solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing Consent Answer and that the factual statements made in it are true to the best of my personal knowledge, information, and belief.

[Defendant's full name]

[DATE]