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Family Court Decisions: Temporary Orders

When a couple decides to separate, many issues come up that must be decided. Formal family court decisions can take months or even years, and many issues cannot wait that long. For example, child custody, child and spousal support, possession of the family car, and possession of the marital home are all issues that must be decided quickly, long before the formal divorce or legal separation hearings. Temporary orders serve to address these issues.

Temporary orders are made by family courts at a hearing when couples separate. In some states, a party can request a temporary order from the family court even before separation papers are filed. The hearing will then be scheduled within days or weeks. Decisions on issues that must be resolved quickly are made, and given temporary effect, until family court decisions can be made in a formal divorce hearing or until the parties agree through mediation or negotiation. Despite their temporary legal effect, temporary orders are often considered when making formal family court decisions. Temporary order hearings are far less formal and much shorter than formal family court hearings, so you should be sure that you know exactly what you want before the hearing. The hearing will proceed quickly, not giving you much time to tell the court what you want. The following are family court decisions that are commonly made in temporary order hearings:

- Sale or possession of the marital home
- Possession of the family automobile
- Child support, usually based on the child support guidelines/calculator
- Spousal support
- Child custody and visitation schedule
- Health Insurance
- Uninsured medical expenses
- Restraint of a spouse from contacting or coming near the other spouse (this can have the effect of forcing the other spouse out of the marital home)
- Order either spouse from selling valuable assets and marital possessions

Remember that all of the decisions made through temporary orders are not permanent. They are intended to maintain the family's security and circumstances until more formal and steadfast family court decisions can be made.

Importance of Temporary Orders for Child Custody

Some spouses are able to agree on things on their own. If you find yourself in that situation, that is great and will probably save you some hassle. Just be sure you and your spouse write out the agreement together and sign it so that there is no doubt about the agreement later.

If you and your spouse, like many couples facing separation, cannot agree on these issues, you should seek a temporary order immediately. This is especially important when it comes to the child custody. If you will be maintaining custody of the child(ren), it is important to at least file for custody as soon as possible. If you don't, your spouse could file a kidnapping claim against you. Not only will a judge and/or police officer take this claim seriously, but it could come up against you later in your divorce hearing. If you file for custody and your spouse files a claim of kidnapping against you, the judge will see your custody request and the kidnapping claim can be dropped.

How to Request a Temporary Order

Requesting a temporary order involves filing some paperwork with the family court. Many courts have these forms available online on their courts' websites. Check to see if your court has a self-help law center, where these forms would be available. Sometimes, courts even hire people to help you through the paperwork. States vary on when you can file for

temporary orders. Some states require you to wait until divorce papers have been filed, while other states allow you to file upon separation.

The following are common requirements for filing a request for a temporary order.

- **An Order to Show Cause.** Also called an, "Application for Order to Show Cause," this is a document that requires you to state what you are asking for, like child custody, through the temporary order. This document then calls your spouse to court to "show cause" of why your requested order should not be granted.
- **A supporting declaration.** This written document states the relevant facts that support why your order should be granted. You would set out your financial information, for example, to show the need for temporary child support. Declarations of other people could also be included in a supporting declaration, so long as they have first-hand knowledge of the relevant facts they are asserting. Keep in mind that courts take perjury very seriously, so you want to be careful not to misrepresent or embellish these facts in order to help your cause.
- **A proposed temporary order giving you your requested relief.** This is a document that sets out the terms of the order. It states exactly what is being ordered. You bring this to court and if the family court judge grants your temporary order, he or she will sign the document.
- **A proof of service document.** The court needs this document to prove that all of the necessary court documents have been delivered properly to your spouse. When you obtain your proof of service form, there should be instructions on how to file it with the court. You can also look into your state's law about filing proof of service papers. Some courts list these instructions on their websites.

The Temporary Order Hearing

The hearing is the place for the judge to:

- review the details of your request;
- consider the underlying facts;
- ask any questions of the parties;
- get your spouse's side of the story; and
- consider your financial circumstances and the state guidelines to come to a recommendation on child support.

Often, your temporary order hearing will be sent to what is called "probation." Probation is an opportunity for the separate parties to agree on as much as possible, before they go in front of the judge. This saves the court and judge a lot of time and allows more time to focus on the actual conflicts at hand.

The issues that cannot be resolved in probation are presented before the judge, where each side will present his or her argument. The hearing is not long, usually no longer than twenty minutes, and is held either in a courtroom or the judge's office. The judge will listen to both sides and the declarations of any witnesses. Some judges only accept written evidence. It is not common for the judge to make a decision right then and there from the bench, unless the issue is time sensitive. When the issue is time sensitive, the judge may make an order regarding that issue. Then, the entire temporary order is made within a week of this initial hearing. If granted, the order you fashioned will either be granted in its entirety or modified by the judge as he or she sees appropriate.

Note that if you are seeking a request for temporary child support, you may be required to present income documents and have prepared an outline of your expenses. Some courts have you fill out pre-made forms regarding your income and expenses before or when you file your request for a temporary order. Check with your own state's laws to see what is required. Even if your state has no such requirements, it may be good to prepare these documents anyway to support your claims for financial support.

Sometimes, the judge decides that more information is needed to make an appropriate decision or that your spouse was not given appropriate notice before the hearing. In these cases, the judge might make a decision that is only effective until another temporary order hearing can be held.

The temporary order includes any agreements the parties were able to make before the hearing, including agreements made in probation. If the parties happen to come to a complete agreement during probation, then the judge will review that agreement. Usually, the judge finds these agreements satisfactory, and can order such agreement serve as the temporary order. Temporary orders are only effective until your divorce settlement, or until you and your spouse reach a mutual agreement to settle the divorce. However, the decisions made in temporary order hearings can be influential in divorce proceedings.

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