

## **ALLOWING YOUR WIFE TO VISIT YOUR CHILD**

Southeastern Ohio Legal Services

You have contacted us because you are separated from your wife and would like advice about allowing her to visit with your child. The advice that follows would only cover a child that you and your wife have in common or have adopted. It would not cover any child of whom your wife is not the mother. Some of the advice that follows also may not apply if a court has already issued a custody order covering the child.

### **YOU BOTH HAVE CUSTODY**

Unless a court has said otherwise, a husband and wife both have legal custody of their child. This can work well as long as the husband and wife live together. However, there can be trouble if they separate and cannot agree on where the child should live or on when each parent can see the child.

Because you both have legal custody of the child, you do not legally have to let your wife see the child at all. On the other hand, because you both have legal custody, she does not have to return the child to you or let you see the child either. Whoever has the child can legally keep the child from the other parent unless there is a court order.

### **GET A CUSTODY ORDER**

The only way to change this situation is for a court to issue an Order giving custody of the child to one of the parents. This usually happens through a divorce, dissolution, or legal separation. Another way it can happen is if one of the parents files for custody in the Juvenile Court. Generally, when one parent has custody (is designated the “residential parent and legal custodian”), the other parent gets visitation or companionship rights.

### **IF IN DOUBT, KEEP THE CHILD**

It is usually a good idea to encourage a child to have regular contact with his or her mother. However, if you do not have a custody order and you believe your wife will not return the child, you have the right to keep the child from her until a court issues a custody order.

When spouses are separated, the wife will often file for divorce. If she has the child on the day she files, she may be able to obtain an immediate temporary custody order. Even though the court will later hold a hearing to determine whether the temporary custody order was correct, you are on the defensive if your wife has already obtained temporary custody.

### **LEAVING THE CHILD WITH OTHERS**

If you believe that your wife would take the child and not return him or her to you, it is a very good idea to stay with the child at all times until you can get a custody order. This makes it harder for your wife to take the child because the police will not help her take the

child from you. However, the police might help your wife take the child from a relative or babysitter if you are not present.

If you must leave the child with someone else, it would be best if your wife did not know with whom you were leaving the child or where the child was, so long as you are sure that the child will be safe and well cared for. Advise the person with whom you leave the child to keep the door locked and not to let your wife in. Leave a telephone number where you can be reached. If your wife shows up and asks for the child, the person watching your child should immediately call you. You should then go get the child right away.

### **HOW TO HANDLE THE SCHOOL**

Once you have a custody order, you should have no trouble with your wife taking the child from school. If you do not have a custody order yet, you should talk to the principal and ask that he or she not let the child go with your wife. If the principal will not agree to this, ask him or her to at least call you if the mother shows up and wait until you arrive before permitting the child to go with anyone. When you do get a custody order, make sure that you give a copy of it to the school.

Southeastern Ohio Legal Services does not usually file divorces, though we often defend them. If your wife makes serious threats to take the child, won't return the child, or takes legal action to obtain custody of the child, you should immediately contact our office and apply for services and get copies of any court papers to us right away. If none of these things occur, we have forms that you can use to go into the Juvenile Court on your own to get a custody order. The forms come with detailed instructions on how to fill them out and what to do with them. You can also contact a private attorney for representation.