

# CHILD CUSTODY PROCEDURES: FORM BY FORM

Achieve the Best Custody Settlement for Children and Parents

INDIANAPOLIS, INDIANA — FEBRUARY 4, 2011

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# Child Custody Procedures: Form by Form

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# **Child Custody Procedures: Form by Form**

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## **Pre-Trial**

**Submitted by Bryan Lee Ciyou and Julie Dixon**

## PRE-TRIAL

co-written by Bryan Ciyou and Julie Dixon

### A. *Petitions for Modification of Preliminary Orders.*

#### 1. **Divorce Statutes.**

Under the Dissolution Act, a trial court's "provisional order may be revoked or modified before the final decree on a showing of the facts appropriate to revocation or modification." Ind.Code § 31-15-4-15.

In fact, in Chapter 4, there are several Code provisions addressing provisional orders in dissolution and legal separation action. Under this, a party may file a motion for any of the following (or to modify same):

- Temporary maintenance.
- Temporary support or custody of a child.
- Possession of property.
- Counseling.
- A protective order under the Indiana Civil Protective Order Act.

Although it is common for these motions to be verified, a technical reading of the statute requires an accompanying affidavit setting forth the factual basis for the motion and the amounts and other relief sought. Ind.Code §§ 31-15-4-1, -2.

#### 2. **Paternity Act.**

In the context of paternity actions, it is somewhat unclear how a preliminary order may be entered without confusion with a final order. Any preliminary order must be carefully identified as such to avoid inviting error and appellate waiver. The controlling statute is enumerated as follows:

"Upon finding that a man is the child's biological father, the court shall, in the initial determination, conduct a hearing to determine the issues of support, custody, and parenting order a matters. time. Upon the request of any party or on the court's own motion, the court may probation officer to prepare a report to assist the court in determining these Ind.Code § 31-14-10-1."

#### 3. **Local Rules.**

Again with burgeoning dockets, many Indiana trial courts have adopted very specific

requirements regarding provisional orders and hearings. Failure to research if local rules exist and follow them may place the client in legal peril.

The Marion County local family law rule is provided as a representative example, as it is quite comprehensive:

“ Rule 504.

A. Provisional Order. A request for provisional orders may be made a part of the petition for dissolution of marriage, legal separation or paternity, in which case the petition shall be titled ‘Petition for Dissolution of Marriage [Legal Separation] [Paternity] and for Provisional Orders.’

B. Time Necessary. In all contested family law matters, the moving party shall advise the court of the time required for hearing and contested issues to be considered in the text of a petition or praecipe for hearing. Parties should petition for time necessary for hearing with the expectation that each side will be allotted one-half of the total time allocated. The court normally allows 15 minutes for preliminary hearings and contempt petitions.

C. Summary of Testimony. By agreement of the parties, all issues and evidence relevant to a domestic relations case may be presented in summary format.

In addition, a careful advocate must be aware of specific provisions of statutory law or local rules, such typically have more specific requirements for temporary maintenance and/or attorney fee awards. The Marion County local rule on provisional fees and costs provides a good example:

“Rule 509.

A. Preliminary Fees. Attorney fees may be awarded based on the evidence presented by affidavit or oral testimony at a preliminary hearing. Affidavits shall be admissible and subject to cross-examination. The following factors may be considered: 1. The number and the complexity of the issues; 2. The nature and extent of discovery; 3. The time reasonably necessary for preparation and conduct of contested hearing; 4. The attorney’s hourly rate; and 5. The amount counsel has received from all sources.

B. Preliminary Costs. An appraisal or accounting fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. The following factors may be considered. 1. An itemized list of property to be appraised or valued; and 2. An estimate of the cost of the appraisals and the retainer required.

C. Contempt Fees. There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit the requested fee by affidavit or oral testimony, which may be accompanied by an itemized statement.”

#### **4. Sample Form.**

In most cases, due to cost, there will not be multiple preliminary orders. However, the court has the authority to so modify. The modification needs a logical reason, must comply with statutory and local provisions, and may be cross in nature. A sample petition for preliminary hearing is provided at Appendix “1”.

**B. Motion for Rule to Show Cause (for Failure to Abide by Preliminary Orders).**

**1. Statutory Authority.**

A motion for rule to show cause (a/k/a “Contempt Petition”) is a tool to enforce a temporary order. The authority to enforce a court’s order is inherent and also set forth by statute. Ind.Code § 34-47-3-1.

**a. Willful Behavior.**

In order to be found in contempt, there must be willful failure to follow the court’s order. However, the appellate courts give great deference to a contempt finding and it is rarely reversed on appeal.

**2. Direct/Indirect Contempt.**

Where advanced considerations are at hand, effective counsel must understand the distinction between direct and indirect contempt. Indirect contempt generally lies for failure to follow the court’s order:

“A person who is guilty of any willful disobedience of any process, or any order lawfully issued: (1) by any court of record, or by the proper officer of the court; (2) under the authority of law, or the direction of the court; and (3) after the process or order has been served upon the person; is guilty of an indirect contempt of the court that issued the process or order.” *Id.*

Direct contempt involves action that occurs in or near the court and/or judge and interferes with its proceedings.

As with other provisions of these materials, local rules, *supra*, may address contempt issues.

**3. Forms.**

A sample contempt petition is provided at Appendix “2”.

**C. Motion for Injunctive Relief Due to Interference With Parenting Time (Petition for Assistance of Law Enforcement).**

Where there is interference with parenting time, there are several potential bodies of law to provide this equitable relief:

- Trial Rule 65.
- Indiana Civil Order Protection Act.

- Local Rules, Such as Marion County LR 507.
- Temporary or Permanent Injunction Against Custodial Parent. Ind.Code §§ 31-17-4-3,-4.
- Specific Orders for time and make up time.
- Seek jail time/community service.

In the typical case, injunctions are sought by the non-custodial parent to prohibit interference with parenting time. However, there are a wide array of statutory provisions to meet virtually an circumstance counsel may face. In Appendix “3” the Trial Rule 65 injunction was requested for the non-custodial parent’s interference with all aspects of the custodial parents parenting time.

Where law enforcement is typically involved relate to cases where protective orders as issued under the Indiana Civil Order Protection Act.

***D. Hearing Request – Pre-Trial Conference.***

As a general matter, except in cases requiring lengthy trial time, pre-trial conferences are not routinely used in Indiana domestic courts. However, that does not mean this should not be considered by counsel as one of the many tools available to effectively manage a case to the client’s objective.

They are particularly useful for discussion and resolution of evidentiary issues. In addition, a pre-trial conference may be held in accordance with or in lieu of a case management order (“CMO”). Again while atypical in domestic practice, all tools available should be considered. This is covered by Trial Rule 16 and has a component for a pre-trial conference.

***E. Notice of Hearing.***

There are several issues the lawyer must consider relating to any Notice of Hearing, as follows:

- Choice of the Setting or “cattle call.”
- Setting Second to a Criminal Jury Trial.
- Length of Hearing:
  - Completing in Time Allocated: Benefits and Detriments.
- Elected Judge, Commissioner, or Magistrate’s Calendar.



- Service on Pro Se Party.

In addition, a notice of hearing may be of such importance, or required by the tribunal, to be actually received by a litigant. This may occur throughout the state, country, or world. In such cases, a duly noted return of service should be prepared and filed. An example is provided in Appendix “4”.

#### ***F. Witness List/Exhibit List.***

In domestic cases, witness lists may be exchanged and used as a part of the representation. However, the relative budgets of the typical domestic cases may not make this a useful tool. They are not particularly effective where used in these cases because effectively everyone is named who *may be* called.

Nonetheless, they may be useful in the right type of case and should always be in the lawyer’s tool box. The means and authority under which witness (and exhibit) lists may be exchanged are as follows:

- Discovery interrogatories or production requests.
- Case management order under the Trial Rules.
- Local rules.
- Motion practice.

A sample witness and exhibit list is provided in Appendix “5”.

#### ***G. Settlement Proposal.***

Settlement proposals are effective tools to consider at all junctures of domestic litigation. There are four (4) central elements in useful tender of a settlement proposal. Most advocates use some or all of these techniques, but may not have distilled their elements. Understanding these elements allows each to be maximized.

##### **1. Understanding the Facts and Law.**

Every case has pressure points where a settlement proposal may be particularly effective. However, this is maximized by the advocate to the extent he or she fully understands the facts of the case, driving dynamics, the controlling law, and court the case is in.

##### **2. Critical Timing.**

Related, presupposing understanding the facts, law, and operational dynamics, the timing

of any settlement proposal is critical.

### **3. Means of Transmission.**

An important consideration in a settlement proposal is often the means of communication in which it is made. For example, where the proposal has some variants to be worked through, if the timing is critical, a telephone call to opposing counsel may be the best way to strike a deal and immediately reduce it to writing and execute it. Considering a letter outlining the proposal, may also be effective, versus a complete settlement agreement.

On the other hand, some matters are best reduced to writing to avoid ambiguity. Effective advocates consider all angles of each issue. This includes the means of transmission. Some means are as follows:

- Facsimile.
- E-mail.
- Attorney/Party Conference.
- Telephone.

There are several cautions:

- Reduced to Writing and Executed: If a deal is reached, it must be reduced to writing and executed by the parties.
- Identified as Settlement Communication: All settlement proposals should be clearly identified as such to avoid question later and some attempt to get it before a court.  
(I.R.E. 408)
- Facsimile/Multi-Signature Page Clause.

### **4. Language of Settlement Proposal.**

As a general rule of domestic practice, a settlement proposal often succeeds or fails based on language that may not make a difference to substance, but nonetheless allows the case to settle. For example, a case may settle with language “joint legal custody, with \_\_\_\_\_ to decide any matter in the event the parties cannot agree.” This is effectively the same substantive result as “sole legal custody.”

A settlement proposal is confidential. However, it differs from a mediation statement, also common in domestic cases, in who it is sent to. The settlement proposal is usually sent between the litigants and counsel. A mediation statement, on the other hand, is sent to the third-party neutral mediator. A settlement proposal will be provided as a seminar handout.

#### ***H. Settlement Conference Letter/Brief.***

Assuming the context is mediation, a well-written mediation statement may turn the tide of the case. How so? The most skilled mediator will likely be unable to resolve a domestic case if one party is litigating an emotional case with the other a legal matter.

The short time of mediation is often insufficient to allow the mediator to sort this out. In addition, in cases where there are complex or novel financial matters, usually focused on valuation, the mediation statement should set this out.

In addition, the mediator should understand who any experts or consultants are and their role explained. Related, experts should be available the day of mediation by phone and potential resolutions evaluated, who include, but are not limited to the following:

- Tax advisors.
- Financial planners.
- Custody evaluators.
- Attorneys for companion matters. ( Bankruptcy Attorney)

A settlement conference letter or brief is typically a mediation statement. These are of great important to a successful mediation. The mediator must be able to distill the operational dynamic of the case and issues of contention in order to reach a resolution. A mediation statement will be provided as a seminar handout.

#### ***I. Memorandum of Agreement.***

In any case where there is a settlement reached, it must be reduced to writing and signed by the parties to be enforceable. In addition, any custody, support, and parenting time must be approved by the Court as in the child's best interests and in accord with the Indiana Child Support Rules and Guidelines.

#### ***J. Pre-Trial Conference Brief.***

In cases that are going to proceed to trial, a pre-trial conference brief is quite effective where issues involve unresolved law, legal tenets in conflict, or the like under the facts of a particular case at hand. This provides the court in advance with a template on how it may view the evidence it will receive.

Some areas to consider preparing a Pre-Trial Brief, would include the following topics:

- Dissipation of assets.
- Deviation from presumption of division of assets/debts.

- Determination of include able income for child support purposes.
- Inheritance Issues.
- Maintenance Issues.

A combined motion and pre-trial (conference) brief will be provided as a handout. These may be used before hearing, pre-trial, or trials.

**APPENDIX 1: MOTION FOR PRELIMINARY HEARING**

STATE OF INDIANA                    )        **IN THE HENDRICKS SUPERIOR COURT**  
   )SS:     **NO. \_\_**  
 COUNTY OF HENDRICKS            )        **CAUSE NO.: \_\_\_\_\_**

\_\_\_\_\_,                                    )  
       **Petitioner,**                            )  
   )  
**and**                                        )  
   )  
 \_\_\_\_\_,                                )  
       **Respondent.**                        )

**MOTION FOR PRELIMINARY HEARING**

Comes now the Respondent, \_\_\_\_\_, by counsel, Bryan Lee Ciyou, and files her Motion for a Preliminary Hearing, and in support thereof, would state as follows:

1. That a Petition for Dissolution of Marriage has been filed in this cause.
  2. That a preliminary hearing is necessary to address the issues of temporary child custody, parenting time, and child support.
3. That the Respondent has had the primary care and custody of the parties' children since the parties separated.
4. That the Respondent does not have sufficient funds with which to support herself and the children fully, and is unable to pay all of the expenses without assistance from Respondent.
5. That the Petitioner is fully employed and is capable of sufficiently providing for the parties needs.
6. That the parties have joint debt and liabilities for which payment must be made in the interim on the mortgage, credit cards, and boat.
7. That Respondent is presently in possession of the marital residence and requests to remain in sole possession thereof pending the final dissolution of the parties; as the Petitioner has obtained his own apartment.
8. That the parties oldest child is in collage and a division of the collage expenses between the parties for the fall term is necessary.
9. That Respondent is without sufficient funds to pay for her Counsel, and requests a preliminary fee award for attorney fees and expenses.
10. That Counsel believes that this matter will take one (1) hour and Counsel requests that this is set at the

**APPENDIX 1: MOTION FOR PRELIMINARY HEARING**

STATE OF INDIANA ) IN THE HENDRICKS SUPERIOR COURT  
 )SS: NO. \_\_\_  
 COUNTY OF HENDRICKS ) CAUSE NO.: \_\_\_\_\_

\_\_\_\_\_, )  
 Petitioner, )  
 )  
 and )  
 )  
 \_\_\_\_\_, )  
 Respondent. )

**MOTION FOR PRELIMINARY HEARING**

Comes now the Respondent, \_\_\_\_\_, by counsel, Bryan Lee Ciyou, and files her Motion for a Preliminary Hearing, and in support thereof, would state as follows:

1. That a Petition for Dissolution of Marriage has been filed in this cause.
  2. That a preliminary hearing is necessary to address the issues of temporary child custody, parenting time, and child support.
3. That the Respondent has had the primary care and custody of the parties' children since the parties separated.
4. That the Respondent does not have sufficient funds with which to support herself and the children fully, and is unable to pay all of the expenses without assistance from Respondent.
5. That the Petitioner is fully employed and is capable of sufficiently providing for the parties needs.
6. That the parties have joint debt and liabilities for which payment must be made in the interim on the mortgage, credit cards, and boat.
7. That Respondent is presently in possession of the marital residence and requests to remain in sole possession thereof pending the final dissolution of the parties; as the Petitioner has obtained his own apartment.
8. That the parties oldest child is in collage and a division of the collage expenses between the parties for the fall term is necessary.
9. That Respondent is without sufficient funds to pay for her Counsel, and requests a preliminary fee award for attorney fees and expenses.
10. That Counsel believes that this matter will take one (1) hour and Counsel requests that this is set at the

Court's earliest convenience.

WHEREFORE, the Respondent, \_\_\_\_\_, by counsel, Bryan Lee Ciyou, respectfully prays for a preliminary hearing for one (1) hour at the Court's earliest convenience and for all other relief just and proper in the premises.

Respectfully submitted,

**CIYOU & DIXON, P.C.**

\_\_\_\_\_  
Bryan Lee Ciyou (#17906-49)

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
320 North Meridian Street  
Suite 600  
Indianapolis, Indiana 46204-1719

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been duly served upon all parties of record by mail, by depositing same in the United States Mail, first-class, postage prepaid, this the \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Bryan Lee Ciyou

STATE OF INDIANA )  
 )SS: ) IN THE HENDRICKS SUPERIOR COURT  
COUNTY OF HENDRICKS ) NO. \_\_\_  
 CAUSE NO.: \_\_\_\_\_

\_\_\_\_\_, )  
 Petitioner, )  
 )  
and )  
 )  
\_\_\_\_\_, )  
 Respondent. )

**ORDER GRANTING PRELIMINARY HEARING**

Comes now the Court, and after being duly advised in the premises, grants the Respondent's request for a

Preliminary hearing to be set for the \_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_ a.m./p.m. for hour.

**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that the parties are ordered to attend the

Preliminary hearing set for the above captioned matter.

Dated: \_\_\_\_\_ Judge, Hendricks County Court

Distribution:

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
320 North Meridian Street  
Suite 600  
Indianapolis, Indiana 46204-1719

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**APPENDIX 2: CONTEMPT PETITION**

STATE OF INDIANA )  
COUNTY OF MARION ) IN THE MARION COUNTY CIRCUIT COURT  
)SS: PATERNITY DIVISION  
CAUSE NO.: \_\_\_\_\_

IN RE THE MATTER OF: )  
)  
)  
Child by Next Friend \_\_\_\_\_ )  
)  
\_\_\_\_\_, )  
Petitioner, )  
)  
vs. )  
)  
\_\_\_\_\_, )  
Respondent. )

**VERIFIED PETITION FOR CONTEMPT FOR WILLFUL FAILURE TO PAY CHILD SUPPORT,  
BIRTH EXPENSES, AND REQUEST FOR HEARING**

Comes now the Petitioner, \_\_\_\_\_ (herein "Mother"), in person and by counsel, Bryan Lee Ciyou, pursuant to Ind.Code § 31-16-12-1, and submits her Verified Petition for Contempt for Willful Failure to Pay Child Support to the Court, Birth Expenses and Request for Hearing, and requests it to find Respondent, \_\_\_\_\_, in contempt of Court for failure to pay child support, craft a remedy to collect past-due support, and ensure future support, and in support thereof states:

1. That on or about \_\_\_\_\_, the Court Ordered the Respondent to pay child support to the Petitioner in the amount of \$350.00 per week, plus reimbursement of the pre-natal costs and cost of labor and delivery in the amount of \$23,000; and a non-refundable sum of \$200,000.00 as child support in four (4) equal monthly installments of \$50,000.00 each commencing on the date of the Agreed Entry.

2. That from April 19, 1999, through February 17, 2010, or over a decade, Petitioner has received only \$3,000.00 +/- of these ordered expenses and child support.

3. That the Respondent has the means and ability to pay this delinquent support and birth expenses, in full, in the amount of Two Hundred and Twenty Thousand Dollars (\$220,000.00) but has chosen not to do so to the detriment of his child, working an extreme financial hardship on Mother.

4. That to mid February, 2010, the Respondent has made no effort to make payment on approximately One Hundred Ninety-five Thousand Dollars (\$195,000.00) of child support owed post-judgment based upon a calculation of \$350.00 of child support per week, and that this is a wilful violation of the Court Order.

5. That the Petitioner has incurred attorney's fees for bringing this matter before the Court and requests that the Respondent pay the expenses associated therewith.

6. That this hearing should be set at least sixty (60) days out for the undersigned counsel to have \_\_\_\_\_ located by a private investigator and personally served, and he will notify the Court when service is effectuated.

7. That while \_\_\_\_\_ whereabouts are unknown, it is believed he is out of the State of Indiana, and therefore, given travel, the gravity of non-support over time and the significant amount of the arrearage, Counsel Ciyou believes one (1) hour will be necessary to address this matter.

**WHEREFORE**, Petitioner, \_\_\_\_\_, prays the Court find \_\_\_\_\_ to be in contempt of the Court's Order, and specifically to order \_\_\_\_\_ to appear and show cause why he should not be held in contempt, for attorney's fees, for payment of child support and birth expenses, and for all other relief just and proper in the premises.

Respectfully submitted,

**CIYOU & DIXON, P.C.**

\_\_\_\_\_  
Bryan Lee Ciyou

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
320 North Meridian Street  
Suite 600  
Indianapolis, Indiana 46204  
Telephone: (317) 972-8000  
Fax: (317) 955-7100  
E-mail: bciyou@ciyoudixonlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed via commercial carrier, this 15<sup>th</sup> day of March, 2010, to be served upon \_\_\_\_\_ with a return of service, or other proof of receipt filed with this Court, at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Bryan Lee Ciyou

STATE OF INDIANA ) IN THE MARION COUNTY CIRCUIT COURT  
 )SS: PATERNITY DIVISION  
COUNTY OF MARION ) CAUSE NO.: \_\_\_\_\_

IN RE THE MATTER OF: )  
 \_\_\_\_\_ (Child) )  
 )  
Child by Next Friend \_\_\_\_\_ )  
 )  
 \_\_\_\_\_, )  
 Petitioner, )  
 vs. )  
 )  
 \_\_\_\_\_, )  
 Respondent. )

**ORDER GRANTING HEARING ON PETITION FOR CONTEMPT  
FOR FAILURE TO PAY CHILD SUPPORT**

Comes now the Court, and after being duly advised in the premises, grants the Petitioner's request for a hearing on Contempt for Failure to Pay Child Support and Birth Expenses and fees.

**This matter is to be set on the \_\_\_ day of \_\_\_\_\_, 2010, at \_\_\_ a.m., which is sixty (60) or more days from the entry of this order, 1 hour allocated.**

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the parties are ordered to appear the hearing which has been set for the above-captioned matter before the Honorable, Judge \_\_\_\_\_, located at 200 East Washington Street, 1<sup>st</sup> Floor, City-County Building, Indianapolis, Indiana.

IT IS FURTHER directed that Counsel Ciyou notify this Court of a return of service of the Motion and Order

Dated: \_\_\_\_\_ Judge, Marion County Court

Distribution:  
Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
(Service on \_\_\_\_\_ by personal service, return to be tendered to the Court)

**APPENDIX 3: TRIAL RULE 65 INJUNCTION**

STATE OF INDIANA )		IN THE MARION SUPERIOR COURT
	)SS;	
COUNTY OF MARION )		CAUSE NO. _____
)		
_____ )		
Petitioner (Mother)	)	
)		
and	)	
)		
_____ )		
Respondent (Father).	)	

**VERIFIED MOTION FOR PERMANENT INJUNCTION**

Comes now \_\_\_\_\_, by counsel, Bryan Lee Ciyou, pursuant to Indiana Trial Rule 60, and files her Verified Motion for Permanent Injunction Prohibiting Mr. Smith from Interfering with Mrs. Smart’s Legal Custody, Physical Custody, Parenting, and the Parenting Coordination process, with Legal Fees (herein “Motion”), and in support thereof, shows this Court, as follows:

1. That Mrs. Smart requests this Motion be heard at the final hearing set on \_\_\_\_\_, presupposing the matter can wait until that time.
2. That at this time, Mrs. Smart will establish in the evidence a severe personality, under which Mr. Smith has such a sense of entitlement to custody, whereby he equates his own needs and desires with what is in the best interests of the Children.
3. That Mr. Smith does not accept that what is in the best interests of the Children is what is ordered by this Court, namely physical and legal custody in Mrs. Smart, with whom the Children are primarily attached, and subverts and thwarts all aspect of Mrs. Smart’s custody to such an extent it has had, and is continuing to have (at an exponential rate), a profound negative impact and harm on the Children and will impair their on-going needs and carry over into their adulthood without a permanent injunction.
4. That by way of representative example, Mr. Smith’s current request for sole “legal” custody modification is a bald attempt at a physical custody modification by seeking to have the Children, under the guise of “legal” custody, attend a distant school from Mother’s residence, which would only work with physical custody modified to him (the actual unstated objective); and this matter is an end-run to this legal objective.

5. That Mr. Smith's current pending *de facto physical custody* action under the mere semantic label of "legal custody", consistent with the above-noted severe personality, is nothing more than Mr. Smith's prior custody modification actions recast, whereby he equates his needs and changes, which he manufactures in his life, with substantial changes in circumstances in the Children's lives.

In the last action (which the evidence will demonstrate is just as is the pattern in this action), Mr. Smith believed a substantial change occurred with the Children by him meeting his new girlfriend, her children (a collective family with the Children), building a new home, in what he perceived the best school system, Hamilton Heights, on the southwest side of Indianapolis (Johnson County), whereupon the Children would be transplanted into this "best interests" scenario. Fortunately, that modification failed because Mr. Smith's situation rapidly degraded and that fiance, children, family, home, and school system went by the wayside.

6. That Mr. Smith's current *de facto physical custody* action substitutes a new wife, her Child, and different home in Southport, Indiana, as his collective family with the Children and the best Southport Schools, but now on the northeast side of Indianapolis (Hamilton County), into which he wants the Children to be transplanted into in his "best interests" scenario.

7. That again, this is nothing more than a thinly veiled and/or transparent attempt by legal posturing to mask the foregoing; and that the precise tool by which Mr. Smith seeks to accomplish this is by taking one of many childhood issues parents face in their children's normal maturation, the fact that the Bobary is off-scale for weight, despite being closely monitored by Mrs. Smart and the child's pediatrician, and instead of working with Mrs. Smart to also monitor this, he is brainwashing the Child to believe he is "fat" and obsessively weighs him, making an issue where there is not one. Mr. Smith hinges Bobary and Todd's ability to eat dessert on making weight.

This is the central, albeit manufactured, theory of Mr. Smith's case. Despite the fact Mrs. Smart has sole legal custody, Mr. Smith so interferes with doctor's appointments that it wholly eviscerates Mrs. Smart's ability to manage this medical matter (and all other issues). This creates so much tension in the air at the doctor's office that it makes the doctor uncomfortable and prevents her from focusing on the Children. Ultimately, these behaviors are inflicting what will be long-lasting harms on the Children.

8. That Mr. Smith's refusal to acknowledge Mrs. Smart's ability to manage the Children's medical care is reflective of *every aspect* of Mr. Smith's interaction with Mrs. Smart and the Children.

9. That Mrs. Smart has *exhausted all methods* to mitigate or eliminate Mr. Smith's acts and inactions consistently and is severely harming the Children with his refusal to accept what is in the Children's best interests and reflected in the orders of the Court.

Precisely, Mrs. Smart has sought and involved two (2) parenting coordinators over the years, Janet Smith and PC Doe, but once Mr. Smith meets with them, he then refuses to continue because he does not and will not accept what is in the Children's best interests.

With regard to the last parenting coordinator, when Todd had a championship game, Mr. Smith took son out of state when this game was scheduled and failed to notify Mrs. Smart he was removing the Children from the State. When tracked down and directed to bring Todd to this milestone event (which he missed and the team won the Championship), Mr. Smith refused to participate.

Inasmuch, Mr. Smith's pattern is he refuses to cooperate with the parenting coordinator. Then he complains about issues for which the parenting coordinator could easily work through and uses this as a basis for modification. This is a never-ending cycle.

Mrs. Smart's trial evidence will clearly establish this, along with all other matters alleged in this injunction request.

10. That by way of example of what Mr. Smith does that is so harmful to the Children, (and Mrs. Smart), she provides a recent representative example of each:

- With respect to medical care, Mr. Smith obtains medical care, lists himself as the "guardian," does not identify Mrs. Smart, or consistently notify her prior to any treatment he seeks, again despite Mrs. Smart's sole legal custody. As it relates to Bobary's recent ADD diagnosis, he disagreed with Dr. Mike's recommended treatment, and then demanded an addendum to the medical report, effectively equating Bobary's medical condition with outside factors/issues that do effect this diagnosis and which are untrue. There are many such examples.
- As it relates to sports, Mr. Smith attempts to un-enroll the Children from sports if he does not like that activity, despite what the Children's interests may be. Alternatively, Mr. Smith will recommend and interest the Children in a sport and then not follow up, putting Mrs. Smart in the situation of disappointing the Children who have developed the interest by not following through, or bearing the costs and logistics of the sport.
- Regarding schooling, aside from desiring to move the Children to another school, Mr. Smith, in lieu of following the doctor's recommendation for Bobary's ADD treatment, instead proposed his mother sit with Bobary in class routinely, rejected by the principal of the school and in all other ways impedes normal school modes of operation, even with divorce families, such as demanding a separate parent teacher conference.
- As the foundation for Mr. Smith's current *de facto physical custody modification action* he began with seeking a protective order under the ICPOA against Mr. Smart, which Mr. Smart received on a Friday evening, after the courts were closed. This thus put Mr. Smart, who

was involved in the Children's sport activity the next day (because Mr. Smith will not be involved, even with Mrs. Smart's request and the stated desire of leaders to accommodate Mr. Smith's schedule), who was unable to determine if an ex parte order was issued, to not attend and allow Mr. Smith to impact the Children's activities or, attend, and risk arrest in front of the Children. In addition, Mr. Smith filed this in another county and failed to note this pending post-decree action, preventing consolidation.

11. That based on the foregoing, when established in the evidence, Mrs. Smart submits there is only one remaining available legal remedy to mitigate Mr. Smith's self-absorbed behavior, in the absence of supervised or restricted parenting.

This is a permanent injunction to enforce the current orders of the Court. The anticipated terms of the remedy, including injunction, would be as follows, in concrete and black and white terms:

- Reappointment of PC Doe, who has the most recent knowledge of this case as recent parenting coordinator, and enjoining Mr. Smith from trying to not attend, cooperate, follow the directions of, or removing the parenting coordinator and failing to pay the parenting coordinator.
  - Setting quarterly status conferences in the Court to ensure his compliance with the process.
- Enjoining Mr. Smith from all administrative aspects of parenting that do not relate to his parenting time, including, but not limited to:
  - Attending doctor, dental, vision, appointments unless invited by Mrs. Smart, or until the parenting coordinator reports this can be done in a way that is not detrimental to the Children's care and communicating with the doctors.
  - Communicating with the Children's teachers or administrative officials at their respective schools unless invited by Mrs. Smart, or until the parenting coordinator reports this can be done in a way that is not detrimental to the Children's care. Interfering with Children's school drop-off and pick-ups, or executing same without approval by Mrs. Smart, or until the parenting coordinator reports this can be done in a way that is not detrimental to the Children's care.
  - Showing up at the schools or scheduling appointments, save for scheduled activities, without advance notice to Mrs. Smart, or until the parenting coordinator reports this can be done in a way that is not detrimental to the Children's care.
  - Communicating with the Children's sports' coaches, leaders, and otherwise about any administrative aspects of said activity, such as enrollment or de-enrollment, save for scheduled activities, without advance notice to Mrs. Smart, or until the parenting coordinator reports this can be done in a way that is not detrimental to the Children's care.
  - Advising the Children that they are going to be changing to his school and/or his custody. In at least the last two (2) custody actions Mr. Smith has brought, and by way of example, Mr. Smith provided the Children with so much preparation for the custody evaluation of Dr. Duncan they are confused to the extent the undersigned counsel had to send cease and desist letters. Ultimately, the order should reach to any court-related matter, legal custody decision/matter, or otherwise preparing/discussing/advising the Children of matters that should be handled by the parents, parenting coordinator, or Court.

- Providing the Children with any information or literature of any kind, including, but not limited to, any involving activities, without first obtaining consent of Mrs. Smart or the parenting coordinator.
- Filing any action in any Court or with any legal entity or otherwise seeking third party involvement, such as a protective order filing, without first notifying this Court.

12. That Mr. Smith's constant legal attack or posturing for legal attack (over years now) for baseless custody motions against Mrs. Smart, including this one which is an end-run to physical custody, has caused and continues to cause Mrs. Smart financial hardship and this Court should award her attorney fees.

13. That Mrs. Smart is of the strongest belief Mr. Smith will not abide by such an injunction issued by this Court, as he has not followed this Court's order in the past, and this Court should order a bond to be posted by Mr. Smith to cover future attorney's fees for failure to comply.

14. That in addition, Mrs. Smart believes the Court should also set out penalties for intentional violation of the injunction, including executed jail sentence for each such violation, reserving the right to order supervised parenting time, if this is unsuccessful.

15. That this is consistent with the Children's best interests in that it allows free and unfettered parenting time with the Children, but provides a specific order by which Mrs. Smart can provide to care-givers, teachers, and coaches to stop the on-going war Mr. Smith is waging due to his personality and refusal to acknowledge, accept, or comply the orders of this Court.

**WHEREFORE**, Kimberly Smart, by counsel, Bryan Lee Ciyou, prays this Court issue an injunction on Mr. Smith's parenting behaviors that undermine her physical and legal custody, parenting, and otherwise to the detriment of the Children's best interests in that they are emotionally harmful to the Children, order an attorney fee award, require Mr. Smith to post a bond to fund Mrs. Smart's legal expenses for future violations, set out specific executed jail sentences for intentional violations, reserve supervised parenting time as a remedy for future non-compliance and harms to the Children<sup>3</sup>, and for all other relief just and proper in the premises.

Respectfully submitted,

**CIYOU & DIXON, P.C.**



\_\_\_\_\_  
Bryan Lee Ciyou

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been duly served upon the following counsel of record, via hand delivery, postage prepaid, this the 10th day of \_\_\_\_\_

\_\_\_\_\_  
Attorney at Law  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Bryan Lee Ciyou

**APPENDIX 4: RETURN OF SERVICE**

I, \_\_\_\_\_, a \_\_\_\_\_, acting as a civil service Officer, in Cause No. \_\_\_\_\_, a Marion County Case, did personally serve or attempted to serve upon John Doe, the following documents:

- a. Verified Petition for Contempt for Willful Failure to Pay Child Support, Birth Expenses, and Request for Hearing.
- b. Order Granting Hearing on Petition for Contempt for Failure to Pay Child Support.

personally on this day of March \_\_\_\_, 2010 at \_\_\_\_ \_\_. m. at 1 North Green Street, Los Angeles, California 90210 location or \_\_\_\_\_. That I further inquired as to the person's identity and or verified same.

I made the following attempts to serve John Doe at locations he was believed to have been sighted at or located:

Date \_\_\_\_\_ Time \_\_\_\_\_ Location:

Date \_\_\_\_\_ Time \_\_\_\_\_ Location:

Date \_\_\_\_\_ Time \_\_\_\_\_ Location:

And not locating John Doe, left process at \_\_\_\_\_ by affixing same to \_\_\_\_\_.

DATED: \_\_\_\_\_, \_\_\_\_\_  
Officer with , ID \_\_\_\_\_

I, \_\_\_\_\_, under penalty of perjury that the foregoing statement is true and accurate to the best of my belief and knowledge.

DATED: \_\_\_\_\_, \_\_\_\_\_  
, Officer with , ID \_\_\_\_\_

**APPENDIX 5: WITNESS & EXHIBIT LIST**

STATE OF INDIANA ) IN THE \_\_\_\_\_ SUPERIOR COURT  
                                  ) )SS:  
COUNTY OF \_\_\_\_\_ ) CAUSE NO.: \_\_\_\_\_  
  
\_\_\_\_\_, )  
          Petitioner, )  
                                  ) )  
vs. ) The Honorable \_\_\_\_\_, Special Judge.  
                                  ) )  
\_\_\_\_\_, )  
          Respondent. )

**WITNESS AND EXHIBIT LIST FOR FINAL HEARING**

Comes now the Respondent, \_\_\_\_\_, by counsel, Bryan Lee Ciyou , and submits the following witness and exhibit list in accordance with the Court Order, as follows:

**WITNESSES**

The witnesses that may be called by \_\_\_\_\_ at final hearing are enumerated as follows:

1. \_\_\_\_\_, Mother
2. Dr. \_\_\_\_\_
3. Dr. \_\_\_\_\_
4. Attorney \_\_\_\_\_
5. CASA, \_\_\_\_\_
6. Any rebuttal witness
7. Any or all witnesses listed or identified on Petitioner’s witness list
8. The Respondent reserves the right to add additional witness as necessary based

upon discovery of \_\_\_\_\_ current health records and impairment that may demonstrate on custodial status..

9. The Respondent retains the right to amend or supplement this witness list in the event additional witnesses are disclosed during trial.

### EXHIBITS

The exhibits that \_\_\_\_\_ may seek to admit at final hearing are enumerated as follows:

1. All documents sent or received through discovery, subpoena, or otherwise obtained at any hearing herein.
2. Any document prepared for and reflecting a summary of the testimony.
3. Financial declaration of \_\_\_\_\_.
4. Child Support Worksheet(s) reflecting alternative positions under the Indiana Child Support Rules and Guidelines.
5. Summary graph of Child Support payments made as reflected in official records or through other testimony or documentary evidence.
6. Child Support Clerk Docket of child support payments.
7. Income information or pay stubs of the parties reflecting weekly gross income for the time periods from filing to trial.
8. Pictures of marital residence.
9. Any documents with current information that have previously been provided at any hearing, or discovery including the statements and any updated statement of current debt.
10. Any documents utilized or relied upon by the custody evaluator, appraisers, or bankruptcy trustee.
11. Market Comparisons on marital residence.
12. Medical (mental, physical) records and EOBs, of the Children.
13. Medical expenses of the Children.
14. Medical claims of the Children;
15. Health Care reimbursement checks and any explanation of same related to the Children's insurance claims.
16. Medical records of \_\_\_\_\_.
17. Patient Progress Notes by Dr. \_\_\_\_\_.
18. Custody Evaluation of Dr. \_\_\_\_\_.
19. Any state or federal tax documents of either party.
20. Any Banking statement of either party.
21. Facebook pages.
22. Any credit card statement of either party.
23. APA Guidelines.
24. Social worker guidelines/ethics.
25. Transcripts from any hearing in this cause.
26. Letters regarding tax refund and division or possession of same.
27. Documents of any legal proceedings, or pleadings from any other case involving Mother.
28. Any personal property appraisals or identifying documents.
29. Any exhibit that is necessary for rebuttal.
30. Any documents relied upon or cited to any witness in their reports or testimony.

Respectfully submitted,  
**CIYOU & DIXON, P.C.**

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Bryan L. Ciyou

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
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Indianapolis, Indiana 46204  
Telephone (317)972-8000  
Facsimile (317)955-7100

I hereby certify that a copy of the foregoing has been duly served upon all parties of record by depositing same in the United States mail, first-class, postage prepaid, this the 25th day of \_\_\_\_\_.

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Bryan L. Ciyou