

FAMILY LAW TEMPORARY HEARING: TIP SHEET

This document, created by the End Domestic Abuse Wisconsin — Wisconsin Coalition Against Domestic Violence — Legal Department, does not constitute legal advice.

NOTE TO READER: the following document contains a sample of issues which may be discussed at the temporary divorce hearing. See the [Wisconsin Courts Family Law Assistant](#) for information specific to your county.

OVERVIEW OF THE HEARING

A Temporary Order is an order entered by a court commissioner that sets the rules the parties must follow until the judge enters a Final Divorce Order. The Temporary Order usually covers important issues such as: custody, physical placement, child support, maintenance, payment of debt or bills, mortgage, insurance, use of the home, vehicle, and some personal property issues.

If the commissioner enters a Temporary Order that you disagree with, you may request a De Novo Hearing in front of the judge assigned to the case. To do this, you must file a Motion for and Notice of De Novo Hearing (form [FA-4130V](#)) within the time limit specified by the county of issuance of the written or oral Temporary Order.

GLOSSARY

Financial Disclosure Statement (FDS): A document that fully and completely describes your income, expenses, assets and debts to the court. Each spouse **MUST** bring a completed FDS to the Temporary Order Hearing.

Legal Custody: In Wisconsin, Legal Custody is a parent's right and responsibility to make MAJOR DECISIONS regarding the children. Major decisions include, but are not limited to: school, religion, authorization for non-emergency health care, if a child can get a driver's license, etc.

Sole Legal Custody: Only one parent has legal custody. The non-custodial parent may still have the right to see and spend time with the children. Having sole legal custody is **NOT** taking away the other parent's parental rights. Parents may agree to one parent having sole custody.

Joint Custody: Both parents share legal custody. Neither parent can override the other parent's decision unless the court otherwise orders (i.e. grants "impasse-breaking authority").

Joint Custody is typically ordered unless you can show one of the following:

- 1) Patterns of abuse *
- 2) Serious incident of abuse or violence *
- 3) One parent is not capable of or does not want an active role in raising the child
- 4) Parties will not be able to cooperate or conditions exist that would interfere with the exercise of joint custody.

(*Was your spouse ever arrested for domestic violence or child abuse? If so, when? Do you have copies of the police reports? Did the District Attorney's Office file criminal charges? If so, when? What were the charges? What was the final outcome of the criminal case? Is the criminal case still pending? If so, are there bail

conditions in place? Do you have a restraining order or injunction against your spouse? When does it expire? Is it Harassment or a Domestic Abuse Injunction? Do you have a copy of the Temporary Restraining Order and a copy of the Injunction Order? Did you ever file Temporary Restraining Orders on behalf of your children against your spouse? Do you have injunctions for your children against your spouse?)

Physical Placement: A parent's right to have the children spend time with them, care for them, and make daily routine decisions for the children (e.g. what a child eats for breakfast, when they can see their friends, etc.).

Overnights: Where the children are to spend the night, each night. The number of overnights each parent has may affect the child support order.

Child Support Guidelines: The court typically orders a set percentage of gross income for child support. As of July 2018, child support guidelines are:

Percentage of Income Standards:

Number of Children	Percentage of Income
One	17%
Two	25%
Three	29%
Four	31%
Five or more	34%

Possible exceptions to the set percentages of child support:

- 1) If you have biological children in more than one family
- 2) If you are a high-income earner (above \$84,000/year gross)
- 3) If you are a low-income earner (less than or equal to \$950/month gross)
- 4) If you have placement of the children at least 25% of the overnights

Current guideline percentages can be found [here](#).

Impasse-Breaking Authority: In certain circumstances, whether by agreement of the parties or by court order following a hearing or trial, joint legal custody may be awarded with one party being granted the authority to make a final decision. In some instances, perhaps where communication between the parents is strained or ineffective, a court may find it appropriate to require the parties to communicate and discuss a major decision in good faith, but may award only one party the ultimate decision-making authority if an impasse remains – essentially giving one party a tiebreaking vote.

STEPS YOU CAN TAKE TO PREPARE FOR THE TEMPORARY ORDER HEARING

1. Complete the Financial Disclosure Statement. Make two copies of the completed form—one for the commissioner and one for your spouse.
2. Consider the following issues carefully:
 - a) **Custody (Decision-Making Authority) of the Minor Children** Which parent should be responsible for making major decisions for the children such as school, non-emergency medical attention, religion, etc.?
Should both parents share custody of the children (i.e. *joint custody*)?

If not, are there compelling reasons to order *sole custody* (e.g. domestic violence, etc.)?

- b) **Physical Placement of the Minor Children** How should the children share time with each parent? Who should the children primarily live with? When would they see the other parent? Prepare a specific schedule on how you propose the children split their time with each parent, including where they will sleep each night and *when, where, and how* the children will be exchanged.
Who do the children spend most of their time with now?
How often do the children see the other parent?
How do you propose to divide up the children's time between parents?
- c) **Property**. Do you own a home together? Who should continue to live in the home? Why? Does your spouse have any of your personal property that you need immediate access to? What specific property? Do you share a vehicle or need access to one?
Which party is more self-sufficient? Who can pay the mortgage?
Which party has primary placement of the children?
Does your spouse have any of your personal property that you need the immediate use of?
If you rent your home, who will continue to pay rent?
- d) **Maintenance** (Formerly known as a "alimony," or can be thought of as "spousal support.")
How much money do you earn?
Can you support yourself or do you need financial support from your spouse?
How much maintenance are you requesting from your spouse? For how long?
- e) **Child Support** Do you receive any public benefits such as FoodShare, BadgerCare, WIC, SSI/SSDI, etc.?
How much does each spouse earn?
Are there any special costs for the children (e.g. child care, medical expense, school, etc.)?
Does either spouse pay child support for any other children?
- f) **Payment of Debts and Bills** Who took out the debts? What debts and bills do you owe? Can you set up a payment plan for debts you are behind on?
Who is currently paying the debts and the bills? Who should continue to pay them and why?
- g) **Taxes** Do you anticipate that this divorce case will be open during tax season? Or is it *currently* tax season? If so, who should be able to claim the children? Does this effect health insurance?
How will the taxes be filed? Married? Married, filing separately?
****If it is not currently tax season, this may be an issue that is NOT addressed at this hearing, but could be addressed at the Final Divorce Hearing in front of the judge.****
- h) **Gather Evidence** What do you want to be able to prove to the Commissioner? What documents support your case? (Is there a TRO or injunction in place? Was your spouse ever arrested? Was your spouse ever charged with a crime? Is there a criminal case currently open against your spouse? Are there bail conditions in place? Is there an open case with Child Protective Services? Etc.)
****You must bring 12 weeks of ALL of your most recent pay stubs, tax returns or W-2s for the past two years, and if you are unable to work, you must bring medical documentation to prove that.****
- i) **Prepare and Organize** Organize your documents so that you can easily find them during the hearing.
Have prepared ahead of time your position on each issue. Bring paper and a pen so that you can write down questions and concerns as you think of them.

REMEMBER: This is not your final divorce hearing. It is designed to address issues that need to be dealt with before the final hearing. The order is TEMPORARY, it can be changed throughout the divorce process, and the judge assigned to the case will make the FINAL Divorce Order. Final property and debt division, long-term child support, long-term custody, and long-term placement will be dealt with later.

TIPS FOR WHILE YOU ARE IN HEARING

1. Be respectful of the court commissioner, witnesses, attorneys, and your spouse during the hearing.
2. Do **NOT** interrupt anyone during the hearing. If you disagree with anything that your spouse or the commissioner says, write down your concerns so that you may address them when it is *your turn* to talk.
3. Do **NOT** yell at the court commissioner, witnesses, attorneys, or your spouse.
4. Be organized and prepared.

WHAT HAPPENS AT THE HEARING

Plan with your advocate or attorney to meet at the courthouse prior to the hearing time. Locate the courtroom and find out whether there is a location to wait and prepare yourselves prior to the hearing. The bailiff will allow you to enter the courtroom to situate yourselves when it is time for the hearing.

Once you are in the hearing room, you and your spouse will be seated at separate tables in front of the court commissioner. If you have an attorney or a legal advocate with you at the hearing, they may sit at the table with you. Please note that sometimes commissioners do not allow extra people to be present in the hearing room during the hearings (e.g. friends, relatives, etc.) and they may be asked to wait for you in the main reception area, especially if they are present to provide testimony during the hearing.

- 1) Each spouse will have the opportunity to present their case to the commissioner. The petitioner (the spouse who filed a motion for the Temporary Order Hearing) will go first.
- 2) Be prepared to present your case. What are you asking for and why? What evidence do you have to support your case?
- 3) Be prepared to answer questions from the commissioner.
When you are answering their questions:
 - a) LISTEN to the questions carefully.
 - b) Be SPECIFIC in your responses.
- 4) Let the Commissioner know **specifically** what you are looking for with **each issue**, one issue at a time.

After the commissioner has heard from both sides, he or she will either make an order then or “take it under advisement” and send you the order in the mail. Either way, you will receive a written copy of the Temporary Order. This order must be followed by both parties, or the other spouse may file a motion for contempt.

If either party does not agree with the Temporary Order, they can request to have a new hearing in front of the judge assigned to the case. To do this, you must file a Motion for and Notice of De Novo Hearing (form FA-4130) within the time allowed by the county of issuance of the Temporary Order Hearing.

MEDIATION & CUSTODY STUDIES

If the issues of legal custody and physical placement of the children are contested, the court commissioner may refer your case to a mediator or order a custody study.

Parents will also receive a letter ordering attendance at a mandatory Parental Education Program. The location and frequency of availability will vary by county. Parents do not need to attend the class together and may stagger participation to avoid interaction.

If you are referred for mediation, the mediation session provides parents with the opportunity to resolve their issues in a confidential session with a neutral third party who mediates the agreement. If a party has a concern about his/her safety at mediation, the court should be contacted immediately to request a *waiver of mediation*. By law, the court has the option of waiving mediation for purposes of maintaining the safety of the parties when domestic violence is an issue. Often a request in writing, along with any documentation of the abuse that may exist, is sufficient for the court's consideration.

If mediation takes place and the parties reach an agreement regarding custody and placement, the mediator can draft a stipulation and submit it to a judge for court approval. When signed by a judge, the stipulation becomes an enforceable court order. Mediation can ONLY address issues of custody and placement – property division, debt allocation and other monetary issues (including child support) cannot be addressed through court ordered and paid for mediation.

If mediation does not resolve the issues, the parties may be ordered to undergo family court counseling or a custody study. The terms for this practice and what services can be provided vary widely between counties. Some counties do not have established programs for family court counseling or custody studies while others use one or both regularly. If a study takes place, the evaluator may talk to significant others, teachers, other family members, therapists, daycare providers, etc. A family study can take four to five months to complete. Information gathered in a family study is not confidential and can be shared with your spouse.

TEMPORARY ORDER WORKSHEET

My Temporary Order Hearing is scheduled on _____ at _____ am/pm in room _____ of the _____ County courthouse in front of commissioner _____.

I am meeting an advocate at _____ am/pm, in (location) _____ before my Temporary Order Hearing.

If I have any questions for my advocate before my hearing, I should call them to make sure my questions are answered.

ISSUES THAT I WANT ADDRESSED AT THE TEMPORARY ORDER HEARING (check all boxes that apply, and fill in all of the applicable information)

☐ I filled out the Financial Disclosure Statement and have two copies of it with me.

☐ **LEGAL CUSTODY**

- I want (circle) SOLE/JOINT legal custody of our child(ren).

☐ If I am requesting sole custody, the reasons for this request are:

☐ My spouse has engaged in a pattern of domestic violence toward me.

☐ I have a (circle) **Harassment/Domestic Abuse Injunction** against my spouse.

The case number is: _____ and the Injunction expires: _____

☐ I have filed for a **Temporary Restraining Order** against my spouse.

The case number is: _____ and the hearing will be on: _____

☐ My spouse has been **arrested** for domestic violence toward me.

The _____ date(s) _____ of _____ arrest _____ were: _____

☐ The **District Attorney's Office** charged my spouse with a domestic violence crime.

The _____ case _____ number(s) _____ is/are: _____

The case(s) is/are currently (circle) **open/closed**.

☐ There are **current bail conditions** in place through the criminal case.

Those _____ conditions _____ are: _____

☐ My spouse has engaged in child abuse and/or neglect against our child(ren).

☐ I have filed for **TRO(s)** on behalf of my child(ren) against my spouse.

The case number(s) is/are:

The final outcome was:

☐ My spouse has been **arrested** for child abuse and/or neglect against our child(ren).

The date(s) of arrest were:

☐ The **District Attorney's Office** charged my spouse with a child abuse/neglect crime.

The case number(s) is/are:

The case(s) is/are currently (circle) **open/closed**.

☐ There are **current bail conditions** in place through the criminal case.

Those conditions are:

☐ My spouse is not capable of or does not want to maintain an active role in raising our child(ren).

My reasons for stating this are:

☐ Other reasons that I am requesting sole legal custody of our child(ren):

☐ See attached document(s) for more information.

☐ **PHYSICAL PLACEMENT**

- I want (circle) PRIMARY/SHARED placement of our child(ren).

☐ Currently, our child(ren) reside with (circle) ME/MY SPOUSE.

The _____ reason _____ for _____ that _____ is:

☐ See the attached document for my proposed specific schedule for placement, including when, where, and how the child(ren) will be exchanged.

☐ **PROPERTY**

- ☐ My spouse and I **OWN** a home together or are **ON A LEASE** together.

☐ My spouse and I own a home together and (circle) I/MY SPOUSE currently reside(s) in the home.

☐ My spouse and I own a home together, and I propose that (circle) I/MY SPOUSE have temporary possession of the home during the pendency of this divorce.

- My _____ reasons _____ for _____ this _____ proposal _____ are _____ the _____ following:
- _____

☐ My spouse and I do **NOT** own a home together. ☐ I/MY SPOUSE will remain in our rental unit and I/MY SPOUSE will continue to pay rent.

☐ My spouse currently has possession of personal property of mine that I need immediate access to:
Specific items: _____

☐ My spouse has possession of a vehicle that I need temporary possession and use of.

• Vehicle:

• Specific reason that I need temporary use and possession of this vehicle:

☐ Other property that needs to be divided:

☐ **DEBT**

☐ I completely and accurately filled out the Financial Disclosure Statement.

☐ My spouse and I do **NOT** have any marital debt to be divided.

☐ My spouse and I **DO** have marital debt that needs to be divided.

• **My proposed division of marital debt:**

I will pay/be responsible for the following bills/debt:

My spouse will pay/be responsible for the following bills/debt:

☐ **MAINTENANCE**

☐ I am requesting that my spouse be ordered to pay maintenance.

• My reasons:

☐ I am NOT requesting that my spouse be ordered to pay maintenance.

☐ **CHILD SUPPORT**

☐ I am NOT requesting that my spouse be ordered to pay child support.

☐ I am requesting that my spouse be ordered to pay child support.

☐ I currently receive public benefits from the State of Wisconsin.

• Benefits that I currently receive:

☐ **TAXES**

☐ I do not require a Temporary Order with regards to taxes at this time.

☐ I will file (circle) JOINTLY/MARRIED, FILING JOINTLY.

☐ **It is tax season or I anticipate this will be an issue**, and I need a Temporary Order regarding taxes.

• My proposed order for taxes:

I will claim (which children?):

My spouse will claim:

☐ **OTHER**

☐ Other issues that I wish to be addressed in the Temporary Order:

☐ See attached sheet for more information.

My proposed schedule for physical placement

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

Details: _____

[illegible]

Additional Information:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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