


Agreement for Payment of Litigation Costs In To Establish Child Custody Orders

	Missouri Department of Social Services Division of Finance & Administrative Services 615 Howerton Court P.O. Box 1643 Jefferson City, MO 65102	Parents(s): <i>Parent 1:</i> <i>Parent 2:</i> <i>Address:</i> <i>City, State Zip:</i> <i>Lawyer:</i> <i>Firm:</i> <i>Address:</i> <i>City, State, Zip:</i>
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The Missouri Department of Social Services desires to enter into an agreement, with the parent(s) and lawyer listed above, to assist the parent in obtaining a custody order to facilitate the reunification of the parent's child and the termination of pending juvenile court proceedings. This agreement relates solely to the establishment of a custody order(s) for the following child/children: (name(s) and birthdate(s))

All terms, conditions, and prices contained herein shall govern the performance of this agreement.

I / We hereby agree to the requirements of this document and further agree that when this document is countersigned by an authorized official of the Missouri Department of Social Services a binding agreement shall exist between the lawyer, the parent(s) and the Department Social Services.

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***In witness thereof, the parties below hereby execute this agreement.***

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|---------------------------------------------------------------------|------|-------|
| _____<br>Parent 1                                                   | Date | _____ |
| _____<br>Parent 2                                                   | Date | _____ |
| _____<br>Lawyer                                                     | Date | _____ |
| _____<br>Authorized Signature for the Department of Social Services | Date | _____ |

## **1.0 Introduction/Purpose**

- 1.1. The purpose of this agreement is to assist the Children's Division to achieve final permanency for children who have been placed in the legal custody of the Children's Division by a Juvenile or Family Court when the lack of a permanent custody order is the main impediment to termination of juvenile court jurisdiction. The Missouri Department of Social Services, Children's Division, ("Department") will accomplish this purpose by providing payments to the lawyer on behalf of the parent to cover some of the costs necessary to obtain a final custody order.
  - a. The ideal outcome is an action designed to establish or modify custody without the need to establish paternity, dissolve a marriage, or legally separate parents, and the legal requirements accompanying those particular proceedings. The Department understands that may not be possible in some jurisdictions and in front of some Judges, but that is the ultimate goal of the Department. The terms set forth in this agreement specifically delineates what expenses and costs will and will not be covered.
  - b. For the purposes of this agreement the term child or children shall refer to the following minor child/ren [List name and date of birth for all]:
    1. \_\_\_\_\_
    2. \_\_\_\_\_
    3. \_\_\_\_\_
  - c. This agreement expressly pertains only to the payment of attorney fees and litigation costs incurred by the parent(s) necessary to obtain a custody order from a court of appropriate jurisdiction within the state of Missouri.
  - d. This agreement expressly does not pertain to the payment or reimbursement for any attorney fees or costs incurred by the parent(s) in any litigation or portion of any litigation in any other matter, issue or proceeding. The Department will **not** pay for or reimburse any costs, fees and expenses directly or indirectly for any other issues, including, but not limited to: juvenile court proceedings, division of property, allocation of assets, and spousal support. Any payment of attorney fees or litigation costs incurred by the parent(s) for these collateral issues shall be by a separate agreement between the parent(s) and the Lawyer.
- 1.2 The mission of the Department is to "Lead the nation in building the capacity of individuals, families, and communities to secure and sustain healthy, safe and productive lives." The Children's Division ("Division") is responsible for providing services which promote, safeguard and protect the social well-being and general welfare of children and help to maintain and strengthen family life. Efforts to re-unify children with their parents is a critical child welfare service provided by the Division.
- 1.3 This agreement is established under the authority of an Expenditure Register (ER100) issued to the Department by the State Office of Administration.
- 1.4 The Department and the parent(s) hereby acknowledge:
  - a. The court approved permanency plan for the child(ren), who is/are currently in the legal custody of the Division, is reunification with the parent who is attempting to obtain or modify custody;

- b. The parent(s) are ready, willing and able to perform all of the responsibilities of a custodial parent;
- c. The Juvenile or Family Court has entered an order making findings of fact and conclusions of law approving the parent as the appropriate custodian of the child.

## **2 Term of Agreement/Modifications**

- 2.1 This agreement shall be effective upon execution by all parties and shall remain in effect until a final judgment has been entered, or otherwise terminated as provided in this contract.
- 2.2 This agreement constitutes the entire agreement of the parties.
- 2.3 Any changes to this agreement shall be by formal amendment which shall be reviewed, approved, and signed by the parties. No other documents, correspondence, acts, and oral communications by or from any person shall be construed as an amendment to this agreement.
- 2.4 This agreement shall terminate immediately upon receipt of written notification by the Division or the parent(s) of:
  - a. A change in the permanency plan; or
  - b. Removal of the child from the parent;
  - c. Change in circumstances of the child or parent that would indicate that the parent is not fit, suitable or able to be the legal custodian of the child; or
  - d. Failure to file the required court petition within the required time frame.
- e. Failure to obtain a final judgment and order within 12 months of the date of the entry of the contract.

## **3 Responsibilities of the Parent(s)**

### **3.1 Eligibility to Serve as Legal Custodian**

- 3.1.1 The parent(s) shall at all times cooperate with the Children's Division in implementing the permanency plan for reunification with the parent. This includes, but is not limited to, providing any and all information that the Children's Division determines is necessary to ensure that the parent is a fit, suitable and appropriate person to exercise custody of the child.
- 3.1.2 In the event that the parent(s), becomes aware of any facts, or circumstances that render the parent unable, unfit or unwilling to exercise custody of the child, or the existence of any circumstances that would warrant the termination of this contract under paragraph 2.4 or other provisions of this agreement the parent(s) shall immediately notify the Division in writing.

### **3.2 Court Filing**

- 3.2.1 The parent(s) have retained *Lawyer*, an attorney licensed in good standing to practice law in the state of Missouri to file a Petition or Motion in the appropriate circuit court or family court of the state of Missouri of competent venue to establish a final order placing the child/ren in the custody of the parent.

- 3.2.2 The Lawyer shall file the Petition or Motion within sixty (60) days of the effective date of this agreement.
- a. The Lawyer shall submit a file-stamped copy of the Petition or Motion to the Division within ten (10) business days of filing.
- 3.2.3 The parent(s) and the Lawyer shall exercise due diligence in litigating Petition or Motion to final judgment and shall not engage in any unnecessary delay in advancing the case.

### 3.3 Invoicing

- 3.3.1 In order for the Lawyer to receive payment for attorney's fees and litigation costs incurred under this agreement, the parent(s) and the Lawyer must comply with the invoicing requirements stated herein.
- 3.3.2 All attorney fees and costs shall be reimbursed at the conclusion of the litigation unless otherwise specified herein.
- 3.3.3 Upon receipt and approval of a properly prepared invoice, the Department will reimburse to the lawyer on behalf of the parent(s) for reasonable attorney fees and costs, and authorized litigation costs incurred in the authorized proceedings, subject to and not to exceed the limitations set forth in this agreement.
- 3.3.4 Lawyer shall prepare the invoice and certify that the attorney's fees and litigation costs included in the invoice were reasonable, necessary, and incurred exclusively for the litigation of the matter. The attorney certification shall be signed by the attorney.
- 3.3.5 The maximum attorney's fees to be reimbursed to the parent(s) shall be as listed below:
- a. For uncontested cases, the maximum rate for attorney fees the Department will reimburse shall be \$100.00 per hour with a maximum total reimbursement of \$1,000.00.
- 1) For purposes of this agreement, an "uncontested" case shall mean a case in which a judgment was entered by default or in which the final order of custody was entered pursuant to a stipulation executed prior to the filing of the case.
- b. For contested cases, the maximum rate for attorney fees the Department will reimburse shall be \$100.00 per hour, with a maximum total reimbursement of \$5,000.00.
- 1) For purposes of this agreement, a "contested" case shall mean a case in which the parent(s) who was not the approved custodial resource enters an appearance and contests the entry of an order in favor of the parent.
- c. This agreement does not cover attorney fees, costs and expenses for the case to be appealed. The Department will not pay any fees, costs or expenses for the case to be appealed.
- d. All other attorney fees, costs and litigation expenses incurred by the parent(s), and not specifically listed herein shall be the sole and exclusive responsibility of the parent(s).
- 3.3.6 The Department shall pay the following costs and litigation expenses not to exceed \$2000 in total to include the following a through e combined:
- a. The court imposed filing fee, but only if the parent is not approved to file in forma pauperis.
- b. Legally necessary service of process fees, including fees for service of process by publication.

- c. Court ordered guardian ad litem fees, and any guardian ad litem fees in addition to this sum shall be the responsibility of the parent(s).
- d. One parenting class if ordered by the court, and;
- e. Mediation if ordered by the court.

3.3.7 The Lawyer shall submit an itemized invoice, along with a copy of the final court judgment, to the Department no later than thirty (30) days from the date of the entry of the final judgment in favor of the parent(s).

- a. The invoice must clearly identify, document and itemize, specific litigation costs and attorney fees incurred for which reimbursement is requested. The lawyer shall submit an itemized receipt for each item presented for payment.
- b. Attorney fees and costs invoiced must:
  - 1) Include the name(s) of the individuals who completed the work;
  - 2) Include the date and time of service, and a detailed description of service activities;
  - 3) Be itemized in tenths (.1) of an hour units for actual services provided;
  - 4) Clearly separate and explain any attorney time billed and costs incurred between the paternity/custody issues and any other counts or issues in the litigation. Any fees or charges that are not clearly and specifically allocated, shall not be reimbursable and shall be disallowed; and
  - 5) Identify the specific child/ren for which the work was completed.

3.3.8 All litigation costs shall be paid at the conclusion of the litigation unless otherwise previously agreed in a writing specifically referring to this agreement between the parent(s) and the Division. All other litigation costs shall be the sole and exclusive responsibility of the parent(s).

3.3.9 The parent(s) and Lawyer shall provide any additional information and/or supporting documentation require by the Department to verify services provided.

3.3.10 Attorney fees shall not include billing for multiple children included in the same case. The Department shall not reimburse for any time or expenses that are double billed. (Example: If the attorney represents the parent(s) in a custody case involving two children and a related divorce proceeding. The Lawyer appears in court for an hour on the custody hearing and spends 2 hours litigating a property division issue. The Division will reimburse the parent(s) for one hour of attorney time (\$100), not one hour for each child (\$200), and not for the 2 hours spent litigating the property division issue).

3.3.11 The Department shall not be obligated to pay any late invoice submitted.

3.3.12 Any and all attorney fees and costs incurred by the parent(s) in excess of the maximum amounts specified herein shall be the sole and exclusive responsibility of the prospective parents(s).

- 3.3.13 In the event that circumstances change, and the parent is no longer able, fit or appropriate to serve as the custodian of the child the Division, at its sole option, reserves the right to pay or reject attorney fees and costs for the parent(s) for fees and costs incurred up to the time the case is dismissed. For example: If a new petition or motion to modify is filed in the juvenile court asking for the removal of the children.

#### **4 Other Terms and Conditions**

- 4.1 This agreement must be fully executed prior to the filing of the Petition or Motion to Modify in order for the Division to issue payment of attorney fees and/or litigation costs incurred. The Division will not pay any costs or attorney fees incurred prior to the execution of this agreement.
- 4.2 This agreement shall be construed according to the laws of the State of Missouri. To the extent that a provision of the agreement is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the agreement shall remain in force between the parties unless terminated by consent of both parties.
- 4.3 The exclusive venue for any legal proceeding relating to or arising out of the agreement shall be in the Circuit Court of Cole County, Missouri.
- 4.4 The agreement shall not be binding upon the Department and the Division for any period in which funds have not been appropriated, and the Department shall not be liable for any damages or costs, including attorney's fees, associated with termination caused by lack of appropriated funds.
- a. The Department reserves the right to terminate the agreement, without penalty or termination costs, if such funds are not appropriated or available.
  - b. In the event that an appropriation is not available the Department or the Division will notify the parent(s) and Lawyer in writing and this agreement shall terminate.
- 4.5 Nothing in this agreement is intended to, or shall be construed to, obligate the Division to pay attorney fees or other costs for any other party to the proceeding or any other person.
- a. Nothing in this agreement is intended to or shall confer any benefits, rights, or remedies upon any person who is not a party to this agreement. This agreement is not transferrable.
  - b. Nothing in this agreement shall be construed to obligate the Department to pay guardian ad litem fees and costs except as expressly stated by language herein.
- 4.6 The parent(s) shall pay, indemnify, and hold the Department harmless from any and all other attorney's fees, costs, damages, sanctions, or litigation costs that the parent(s) may incur in any case filed under or based on this agreement.
- 4.7 Nothing in this agreement is, or shall otherwise be, construed to be a waiver of the State of Missouri's sovereign immunity from suit, nor be construed to be a consent to be sued in any other court except as otherwise provided herein.