

## **SAPCR: Custody, visitation and support when you're not divorcing.**

*Susan and Tom lived together, but weren't married. Susan got pregnant and had Tom's baby. After they had one child, they had another. They lived together, with the two kids, for four more years, but never married. One day, Tom decided family life wasn't his thing. He left Susan and the kids to pursue his rock star dreams.*

*Susan had trouble paying for daycare on her salary, alone. Tom felt Susan was punishing him. She wouldn't let him see the kids when he happened to be in town. Now that they've separated, Susan and Tom need help defining their parental rights and responsibilities.*

When people become parents, they automatically have parental rights and responsibilities. If both parents live together, it's usually not necessary for a court to divide those rights. But sometimes parents separate or a relative must care for the children. When this happens, a court needs to establish custody, visitation, and child support. Court orders that divide parental rights are called **Suits Affecting the Parent – Child Relationship (SAPCR orders)**. SAPCR orders can be part of a divorce or paternity case. If paternity is already established and the parties aren't divorcing, the case is simply called a Suit Affecting the Parent-Child Relationship. SAPCR cases are governed by *Subtitle B* of the *Texas Family Code*.

### ***Who can file a SAPCR?***

You may be able to file a SAPCR if you meet one of these requirements:

- You are the child's parent, guardian, conservator, or legal representative.
- You are the child's alleged father.
- You had physical custody of the child for at least six months.
- You have lived with the child and the child's parent, guardian, or conservator for at least six months and the child's parent, guardian, or conservator has died.
- You are the child's foster parent.
- You are the child's close relative and the child's parents have died.
- You are the child's prospective adoptive parent.

### **AGREED CASES**

SAPCR cases can be simple matters when the parties agree on all of the issues. Courts call agreed cases **uncontested** cases.

The following forms are used in an *uncontested* Suit Affecting the Parent-Child Relationship (SAPCR)

- Petition in a Suit Affecting the Parent-Child Relationship
- Waiver or Answer/General Denial
- Order in a Suit Affecting the Parent-Child Relationship
- Parenting Plan Exhibits

## 1. **GETTING STARTED**

### **File the Petition**

As with all other lawsuits, the first step in an agreed SAPCR is to file a petition. The Petition tells the court and the other parties what the Petitioner wants.

Usually, Petitioners file the petition in the county where the children live. If there has already been a court case about the children, the SAPCR needs to be filed in that county, or the Petitioner can ask the court's permission to transfer the case to the county where the children currently live.

The person who files the petition is called the Petitioner. The other party is called the Respondent.

**2. GIVING LEGAL NOTICE** After you file the petition, the Petitioner gives legal notice to the other parties involved in the case.

**Legal notice** is a procedure that tells the court that the other parties know about the case. Usually, a process server must deliver a copy of the petition to the other parties to satisfy legal notice requirements. (For more information about legal notice, see the **Legal Notice** brochure at [www.TexasLawHelp.org](http://www.TexasLawHelp.org).)

### **Waiver of Citation**

Petitioners can avoid serving the other parties with legal notice if the parties agree to sign **Waivers of Citation**. A Waiver of Citation is a paper the Respondent signs that tells the court he or she has received a copy of the petition and doesn't need a process server to deliver another one.

Sometimes the Waiver waives additional rights to receive notice about other things that happen in a case. If someone asks you to sign a waiver, read it carefully. Make sure you understand what you're waiving before you sign it.

For the Waiver to be valid, it must be signed in front of a notary and filed with the court

papers *after* the petition has already been filed.

### **Answer**

If a Respondent wants to receive notice of everything that happens in a court case, he shouldn't sign a Waiver of Citation.

A Respondent is entitled to notice of all court proceedings only if he files an **Answer** or **General Denial**. Filing this paper tells the court the Respondent wants to actively participate in the case.

## 3. **JUDGE SIGNS THE ORDER**

The final step in completing an agreed SAPCR case is to go before the judge with a final **Order in Suit Affecting the Parent-Child Relationship**. Remember, complete the order and attach all of the Parenting Plan Exhibits.

You will have to set your case for a final hearing to see the judge. Contact the courthouse to learn how to set a hearing.



## **CONTESTED CASES, NO AGREEMENT**

When the parties do not agree about custody, visitation or child support, the SAPCR case is *not* a simple matter. Courts call these cases **contested**. A contested case is more complicated because the parties disagree. Additional steps and forms are needed.

The following forms may be used in a contested SAPCR case:

- Petition in a Suit Affecting the Parent-Child Relationship
- Petitioner's Supporting Affidavit
- Temporary Restraining Order (TRO)
- Notice of Hearing
- Answer/General Denial
- Temporary Orders
- Order in a Suit Affecting the Parent-Child Relationship
- Parenting Plan Exhibits

### **1. GETTING STARTED**

#### ***File the Petition***

Even in a contested case, the first step is to file the Petition. As in an agreed SAPCR, the Petition is usually filed in the county where the children live, unless a SAPCR has already been filed in another county.

The person filing the petition is the Petitioner. All other parties are Respondents.

### **2. TRO's & TEMPORARY ORDERS**

#### ***Petitioner's Supporting Affidavit***

A Petitioner files the Petitioner's Supporting Affidavit to explain why special orders are needed to:

1. keep the Respondent away from the child, or
2. Notify the Respondent of the case by a notice in the newspaper.

The affidavit must be signed in front of a notary by the person who personally knows the facts that have been included in the affidavit. (For more information about affidavits, see General Affidavit Instructions on [www.TexasLawHelp.org](http://www.TexasLawHelp.org).)

#### ***Temporary Restraining Order***

If the Petitioner asks for special orders restricting the Respondent or keeping the Respondent away from the children, the

Petitioner needs to ask a judge to issue a Temporary Restraining Order (TRO).

The judge can grant a TRO without the Respondent being present only if the judge believes the Respondent will commit the restricted acts before he or she can be served with notice and a hearing can be held.

When the judge grants an emergency TRO without the Respondent being present, the emergency TRO expires in 14 days. To keep the restrictions on the Respondent, the Petitioner must serve the Respondent with notice and have a hearing on the TRO before it expires.

### **3. NOTICE of Hearing for Temporary Orders**

If the Petitioner wants to continue the TRO or establish child support, visitation, or custody while waiting for the final hearing, the Petitioner needs to set a Temporary Orders hearing. Contact the courthouse to learn how to set a Temporary Orders hearing.

After setting the hearing, the Petitioner needs to notify the Respondent. The Respondent can be served with the **Notice of Hearing for Temporary Orders** when he is served with the petition. (For more

information, see **Legal Notice** brochure at [www.TexasLawHelp.org](http://www.TexasLawHelp.org))

If the Petitioner sets the case for a temporary orders hearing to determine custody, visitation, or child support - or to continue a Temporary Restraining Order, the Petitioner should prepare the **Temporary Orders** form so the judge will have an order to sign.

#### **4. FINAL HEARING**

The final step in a contested SAPCR case is to set the case for a final hearing. Contact the courthouse to learn how to set the final hearing in a contested SAPCR case. Remember to give the other parties at least 45 days notice of the Final Hearing. Be prepared to complete the Order in Suit Affecting the Parent-Child Relationship along with all of the Parenting Plan Exhibits, so the judge will have an order to sign.



#### **FREQUENTLY ASKED QUESTIONS**

##### ***Can a grandparent file a SAPCR to be named the Home-Parent?***

Yes, when the child's parents have died or the court believes the present circumstances may harm the child's health or emotional development, or if the parents

or managing conservator agree to the grandparents filing the SAPCR.

##### ***Can grandparents file a SAPCR to get visitation?***

No. A grandparent can't file an original SAPCR just to get visitation. But the court may allow a grandparent to intervene in a case filed by someone else who is able to file the SAPCR if the court believes the present circumstances may harm the child's health or emotional development.

##### ***Can a child's brother or sister file a SAPCR to get visitation?***

Yes. A child's adult brother or sister can file a SAPCR for visitation.

##### ***My parental rights have been terminated. Can I file a SAPCR to have visitation with my child?***

No. A biological parent whose parental rights have been terminated can't file a SAPCR, unless the child's managing conservator, guardian, or legal custodian agrees to it.

##### ***If my parental rights have been terminated, can my family members file a SAPCR to get visitation with my child?***

No, not unless the child's managing conservator, guardian or adoptive parent agrees to let them file suit.

##### ***What are the basic steps in a SAPCR case?***

First, you need to file a Petition. After you file the petition, you need to give legal notice to the other parties. If necessary, you can request temporary orders that temporarily determine custody, child support, and visitation while your case pends. The final step in a SAPCR is to go to court to get final orders in the case, an Order in Suit Affecting the Parent-Child Relationship.

##### ***Where do I file the SAPCR?***

File the SAPCR in the county where the child lives, unless another court already has

jurisdiction. A court has jurisdiction if a case concerning the child has been filed in it before. If a case was filed in a county but the child no longer lives there, either party can ask the court to transfer the case to the child's new county of residence.

***Are there special rules about SAPCR's and divorces?***

Yes. If you are filing a divorce in a marriage that includes children, the children must be included in the divorce. Even if the divorce is filed in a county where the children don't live, they must be included in the divorce.

***Are there exceptions to including the children in a divorce proceeding?***

If a final SAPCR order has already determined custody, child support, and visitation, some courts may allow the divorce petition to be filed without including the children in the case. If your court will allow this, it's still a good idea to mention the children and county and cause number of the final order in your petition. You may even want to file a copy of the final order with the Final Decree of Divorce. *If your SAPCR case is pending, and you don't have a final order, the court **must** transfer the SAPCR to the court that's hearing the divorce case.*

***Who do I have to give legal notice to?***

- managing conservators
- possessory conservators
- a person with court-ordered visitation
- a person who is court-ordered to pay child support
- a child's legal guardian
- any parent whose parental rights have not been terminated
- an alleged father who hasn't filed a Waiver of Interest
- a man who has registered with the Paternity Registry
- any government agency who has an interest in the child
- a prospective adoptive parent

- a person designated managing conservator in an Affidavit of Relinquishment

***Is there a waiting period before I can get final orders in a SAPCR?***

No. There is no minimum waiting period in a SAPCR case. If all parties agree, you can get a final SAPCR order as soon as the court can accommodate you.

***Are adoptions SAPCR cases?***

Yes. An adoption is a suit affecting the parent-child relationship. But adoptions are special cases that have special rules about confidentiality. For example, a child's name is not used in the adoption petition. Adoptions have special requirements like home studies and a Health, Social, Educational, and Genetic History Report. In an adoption, a biological parent's parental rights must be terminated and an adoptive parent's legal relationship to a child is created. Termination and Adoption cases are governed by Chapter 161 and 162 of the Texas Family Code.

***I already have a SAPCR order but I need to change it. How do I do that?***

You'll need to file a Petition to Modify in a Suit Affecting the Parent-Child Relationship. Modification cases are governed by Chapter 156 of the Texas Family Code. See the **Modification** brochure on [www.TexasLawhelp](http://www.TexasLawhelp) for information on this procedure.