

## INSTRUCTIONS FOR FILING YOUR MODIFICATION OF CHILD SUPPORT

A modification of child support is allowed if the parties can show a change in income or financial status. If the parties agreed on child support in their divorce Settlement Agreement, they may modify the terms of the Agreement. The Department of Human resources has the power to periodically review and modify child support orders which were agency decisions (but not ones made by court order).

An uncontested case is one in which the parties can work out and sign an agreement regarding child support. A contested case is one in which the parties cannot work out an agreement regarding issues such as child support. The parties ask the judge to settle arguments between them, and each will have to present evidence at a trial. This process can be quite complicated. You will probably need additional documents in order to conduct discovery, which is a formal process of gathering evidence for use at trial. Discovery can include depositions, interrogatories, requests for production of documents, and other procedures. The law library has form books which contain discovery documents you might need. Because discovery is a highly individualized process, it is not possible to include those documents in this packet.

### YOU MAY NEED AN ATTORNEY IF:

- The case is contested and your opponent has a lawyer.
- You cannot find your opponent to serve him or her with your papers.
- You might lose custody of your children.
- You think you will have difficulty getting information and documents from your ex-spouse regarding income, retirement funds, etc.
- The children and the custodial parent are not in Georgia.

**Even if it is a friendly action, you should talk to a lawyer before you sign any settlement papers or file anything in court.**

### BROAD OVERVIEW OF INSTRUCTIONS:

- |   |
|---|
| <p>STEP 1: Complete the Filing Information and Final Disposition forms.<br/>STEP 2: Complete the Complaint for Modification of Child Support.<br/>STEP 3: Complete the Verification form.<br/>STEP 4: Complete the Settlement Agreement, if possible.<br/>STEP 5: Attach other necessary documents (see details later).<br/>STEP 6: Produce the required financial documents.<br/>STEP 7: Pay the Filing Fee<br/>STEP 8: File the forms.<br/>STEP 9: Prepare your case for trial, if necessary.<br/>STEP 10: Receive the Final Judgment</p> |
|---|

## DETAILED INSTRUCTIONS:

### STEP 1: Complete the Filing Information and Final Disposition Forms

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

#### The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says “Plaintiff/Petitioner’s Attorney,” check the box which says  Pro Se. This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a custody modification action, you will check “ Modification—Child Support.” In the right hand box, indicate whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

#### The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the judge.
- b. Leave the second line, “Docket #,” blank. The clerk will assign this number.
- c. Write your name where it says “Reporting party.”
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner’s Attorney, you will check the box which says  Pro Se. This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

### STEP 1: Complete the Complaint for Modification of Child Support.

Fill in your full name as the Plaintiff and the Defendant’s full name. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name and the Defendant’s names in the space provided just before paragraph one (1).

Paragraph 1: Jurisdiction and Venue

**If your child support order was made in Georgia**, you must follow O.C.G.A. § 19-6-26(c), which provides that “A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a child support order issued by a court of this state if the child or children named in the child support order or any party to the action resides in this state.”

**If your child support order was made in another state**, you must follow O.C.G.A. § 19-6-26 (d), which is quite complicated. You are strongly encouraged to consult with an attorney in this situation.

---

Check box a) if the Defendant lives in the county where you are filing and can be served with the complaint at his or her street address.

Check box b) if the Defendant lives in the county where you are filing and has signed an Acknowledgement of Service.

Check box c) if the Defendant is not a resident of Georgia, but can be served via second original at his street address.

Paragraph 2: Prior Child Support Order

Check the box beside paragraph 2. Enter the date on which the prior child support order was issued. Enter the name of the County in which the order was issued. In the blanks provided, enter the name of the custodial parent who receives child support payments. Give details about the amount and frequency of the payments, as well as information about exactly how the payments are received (through income deduction order, garnishment, paid directly by the non-custodial parent, etc.).

Paragraph 3: Financial Change in Circumstances

Check the box beside paragraph three. Fill in the date on which the financial change in circumstances occurred. Check the boxes to indicate whether the financial change is down or up.

Paragraph 4: Financial Change in Circumstances--specifics

Check box a) if the financial change in circumstances is related to an increase or decrease in earnings. In the blanks provided, fill in the previous and current amounts.

Check box b) if the financial change in circumstances is related to an increase or decrease in net worth. In the blanks provided, fill in the previous and current amounts.

Paragraph 5: Other Change in Circumstances

Check the box beside paragraph 5. Use the blanks provided to give information about other changes in circumstances which make a modification of child support necessary.

Paragraph 6: Proposed Modification

Check the boxes beside each change you wish to make, and fill in the details in the blanks provided.

Paragraph 7: No Modification in the Last Two Years

This is an important paragraph, since you are only allowed to file a modification every two years. For more detailed information on this requirement, see O.C.G.A. § 19-6-19.

Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.

1. Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about a decision, one parent will be the “tie-breaker.”
2. Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

Paragraph 5: Plaintiff’s Ability to be Custodial Parent

Check the box beside paragraph 5 to show that the Plaintiff is a fit parent who is able to assume full custody of the minor child(ren).

Prayer for Relief

In paragraph (a), state how you are asking the Judge to modify custody. Then sign your name and write down your address and telephone number(s) in the blanks provided.

**STEP 3: Verification**

Complete the Verification form. Insert your name as Plaintiff and your spouse’s name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint. You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

**STEP 4: Complete the Affidavit(s).**

This packet includes two affidavits. The Plaintiff's Affidavit is REQUIRED by O.C.G.A. § 19-9-69. The second affidavit, entitled "Election of \_\_\_\_\_," is designed to allow a minor child between the ages of eleven (11) and seventeen (17) to select the parent with whom s/he wants to live.

### Plaintiff's Affidavit

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

The introductory paragraph: Fill in the name of the County in which you are filing. Fill in the Plaintiff's name.

Paragraph 1: Insert the Plaintiff's name into the blank.

Paragraph 2: List the name, birth date, and gender of each child.

Paragraph 3: Write down the address where the child(ren) currently live(s).

Paragraph 4: Write down the child(ren)'s past addresses for the previous five years. Indicate the dates when the child(ren) lived at those addresses, and the names of the people with whom the child(ren) lived.

Paragraph 5: Write down the name of the person(s) with whom the children currently live(s).

Paragraph 6: Other Cases Concerning the Child(ren)

Choose paragraph a) if there have been no other court cases concerning the custody of the child(ren). The court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption.

Choose paragraph b) if there have been previous court cases concerning the custody of the child(ren). The court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption. Fill in the county, state and court, as well as the type of action, the date filed, and the current status of the case.

Paragraph 7: Others with a Custody/Visitation Claim

Choose paragraph a) if the parties in this case are the only people who have a custody and/or visitation claim with respect to the minor child(ren).

Choose paragraph b) if there are others who have custody and/or visitation claims. List each person's name as well as the type of claim they have.

Signature Block: Sign the Affidavit **IN THE PRESENCE OF** a notary public. The notary public will sign and date the Affidavit after s/he watches you sign.

Election of \_\_\_\_\_

The Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty; the Clerk of Court will assign a number to the case.

Title: Fill in the name of the minor child who is giving this affidavit.

Introductory paragraph: Fill in the name of the minor child who is giving this affidavit.

Paragraph 1: Fill in the name of the child who is giving the affidavit. Check the appropriate sex, and insert the names of the parents. Write down the date of birth and the current age of the child.

Paragraph 2: Check the boxes to indicate whether the child is choosing his or her mother, father, or other relative. Insert that person's name in the blanks provided.

Paragraph 3: This paragraph shows that the child intends for the non-custodial parent to have reasonable visitation. Check the box beside the paragraph. Write down whether the non-custodial parent will be your mother or father.

Paragraph 4: Check the box beside this paragraph to show that you are making this statement honestly and under oath.

Paragraph 5: Check the box beside this paragraph to show that you are making this choice of your own free will, with no pressure from anyone else.

Signature Block: Sign the Affidavit **IN THE PRESENCE OF** a notary public. The notary public will sign and date the Affidavit after s/he watches you sign.

## **STEP 5: Attach other necessary documents.**

In addition to the Complaint for Divorce, Verification, and Affidavit(s), you will need to fill out and attach the following forms to your complaint (they are in the packet):

1. **Certificate of Service** This document is used to help the Sheriff's department serve the Defendant.
2. **Rule Nisi with Temporary Restraining Order** This document is used to let the Defendant know the time and place for a hearing. In addition, this form orders the parties not to harass or harm one another.
3. **Custody Investigation Forms (motion, certificate of service, order,** These forms are used when an investigation would be helpful to explore allegations of neglect, abuse, or other acts harmful to the child(ren). Custody investigations are NOT routinely done. Please do not ask for one unless you have a good reason to do so.
4. **Visitation Schedule** This form lays out a specific visitation schedule in order to reduce conflicts down the road.
5. **Final Judgment and Decree** This document will be filled out and signed by the Judge in order to show what the outcome of the case is.
6. **Income Deduction Order** This document orders the employer of the non-custodial parent to withhold the child support amount and pay it directly to the custodial parent.

## **STEP 6: Produce the required financial documents.**

Along with the Change of Custody packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.
2. Domestic Relations Financial Affidavit (included in this packet)
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.





