

INSTRUCTIONS FOR FILING YOUR MODIFICATION OF CHILD SUPPORT

Free to download; \$8.00 if purchased at the Law Library

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.

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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. You may read the Georgia Code either at the Law Library or online at <http://w3.lexis-nexis.com/hottopics/gacode/default.asp>.

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.

Prayer for Relief

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

STEP 3: Verification

Complete the Verification form, which is on page five (5) of the forms packet. 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 Modification Agreement, if possible.

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.

Insert the names of the parties in the introductory paragraph. Then list the name(s) and date(s) of birth of the child(ren).

Paragraph 1: Child support

Go to <http://www.georgiacourts.org/csc/> and complete the child support worksheet and schedules. For instructions on how to complete the worksheet, go to <http://www.albany.ga.us/content/1800/2889/3011/3518/4781/4938.aspx> and click on "Child Support Worksheet Instructions." These same instructions are available in print at

the Law Library. If you cannot complete the Worksheet even with these instructions, you have three other options: 1) hire an attorney to help you; 2) hire a bookkeeper to help you; or 3) file a case with Child Support Enforcement and turn in the schedules that they create for you.

Check the box beside paragraph one. Enter in the amount of child support which you calculated using the worksheets and schedules. Check the boxes to indicate how often the payments will be made. In the blank provided, specify how the child support amount will be reduced as each child is no longer eligible for child support.

Paragraph 2: Child support during extended periods of visitation

Check the box beside the paragraph if you intend to change child support during extended periods of visitation. Enter in the amount and frequency of child support.

Paragraph 3: Child support method of payment

Check box a) if you intend for child support to be paid directly to the custodial parent. Check the box to indicate who is obligated to pay child support.

Check box b) if you intend for child support to be paid by the non-custodial parent's employer using an income deduction order.

Check box c) if you intend for child support payments to be collected and distributed by Georgia's Office of Child Support Enforcement.

Paragraph 4: Health Insurance

Check the box beside paragraph 4. Check the boxes to indicate which parent is responsible for maintaining health insurance coverage for the child(ren). In the blanks provided, explain how you intend to divide up expenses not covered by health insurance. Check the boxes to indicate which parent is responsible for providing health insurance cards and for cooperating when submitting claims.

Paragraph 5: Voluntariness of Agreement

Check the box to indicate that this Agreement was entered into voluntarily and not as a result of external pressure.

Paragraph 6: Agreement as entire understanding

Check the box to show that this Agreement contains all of your mutual promises, and that there are no verbal promises not contained in this Agreement.

Notarized Signatures

Each party must sign this Modification Agreement 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 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 some of the following forms to your complaint (they are in the packet):

1. **Certificate of Service** (p. 5). This document is used to help the Sheriff's department serve the Defendant.
2. **Acknowledgement of Service and Summons** (p. 6). This document is used when the Defendant agrees not to be served by the Sheriff because s/he has already been given the legal papers.
3. **Rule Nisi** (p. 7). This document is used to let the Defendant know the time and place for a hearing.
4. **Final Order** (pp. 12-15). This document will be filled out and signed by the Judge in order to show what the outcome of the case is.
5. **Income Deduction Order** (pp. 16-17). 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.

7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

STEP 7: Pay the filing fee.

Unless you are able to have your filing fee waived, there is an \$75.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit.

STEP 8: File the forms.

You should make two copies of all of your documents. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to your spouse.

STEP 9: Prepare your case for trial, if necessary.

Most civil cases use **pretrial discovery**. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery that a party can use.

Interrogatories are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30

days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the court.

Depositions are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be “impeached,” or discredited by referring back to the deposition testimony.

Requests for Production of Documents are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party’s tax returns, bank statements, or other important documents.

Physical and Mental Examinations may be used only with the court’s permission, when a party’s physical or mental condition is an issue in the trial, and when the requesting party can show “good cause,” i.e., the information is extremely important and cannot be otherwise obtained.

Requests for Admissions are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

Forms for all of the above discovery tools are available at the law library upon request.

For more information about trial preparation, see the following informative websites:

How to prepare your case for trial, <http://www.fultoncourt.org/family/trialprep.php>

Tips on representing yourself in court, <http://www.fultoncourt.org/family/self-representation.php>

Georgia Self-Help website, <http://www.georgiacourts.org/aoc/selfhelp/>

General custody information, http://www.divorcenet.com/custody_visitation

STEP 10: Receive the Final Judgment.

After trial, if you have not settled the case, the judge will issue a final order regarding custody. Your change of custody is not final until the judge signs the final order in the case.