

INSTRUCTIONS FOR FILING YOUR CONTESTED CHANGE OF CUSTODY

Free to download; \$9.00 for a paper copy

A change of custody is allowed when the parent(s) can prove that there are substantial changes affecting the welfare and best interests of the child(ren). Parents can enter into an agreement regarding custody, subject to the court's approval. The parental agreement will be effective unless the judge decides that the proposed change is not in the best interests of the child(ren). The parents' agreement can be made a final order of modification by the trial court at any time after the agreement has been submitted to the court.

A contested case is one in which the parties cannot work out an agreement regarding issues such as child custody, child support, visitation, and the like. 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 ex-spouse has a lawyer.
- You cannot find your spouse 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:

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| <p>STEP 1: Complete the Filing Information and Final Disposition forms.
STEP 2: Complete the Complaint for Change of Custody.
STEP 3: Complete the Verification form.
STEP 4: Complete the Affidavit(s).
STEP 5: Attach other necessary documents (see details later).
STEP 6: Produce the required financial documents.
STEP 7: Pay the Filing Fee
STEP 8: File the forms.
STEP 9: Prepare your case for trial.
STEP 10: Receive the Final Judgment</p> |
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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—Custody and/or Visitation.” If you are also changing the amount of child support, you will also check “Modification—Child Support.”
- e. 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 Change of Custody.

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

Check box a) if the Defendant is the Custodial parent. In this situation, you will file the action in the county of his or her residence.

Check box b) if the Defendant is the non-custodial parent. In this situation, you will file the action in the county of his or her residence.

If the custodial parent and the children live in another state, the rules of jurisdiction and venue are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is quite complicated. The UCCJEA has been adopted by forty-four states. You may read Georgia's version of this law at O.C.G.A. § 19-9-40 through § 19-9-104, available online at <http://w3.lexis-nexis.com/hottopics/gacode/Default.asp?loggedIn=done>. In this situation, you are strongly encouraged to get an attorney.

Paragraph 2: Current Custody Arrangement

Check box a) if the previous custody order came out of a divorce case. List the names and ages of the children, the Civil Action File Number of the original custody order, the date on which the original custody order was signed, and the name of the county in which the original custody order was signed.

Check box b) if the previous custody order came out of a Legitimation action. Fill in the children's names and ages, as well as the Civil Action File number of the Legitimation order, the date on which the order of Legitimation was signed, and the county in which the order of Legitimation was signed.

Paragraph 3: Change in Circumstances

Check the box beside paragraph three. In the blanks provided, explain how a) a change of condition affecting the welfare of the child exists and b) the welfare of the child requires a modification of the original award. To find more information about what kinds of changes meet these criteria, consult West's Georgia Digest, volume 5b, heading "Child Custody," key number 555.

Paragraph 4: Proposed New Custody Arrangement

Check the box beside paragraph four. In this paragraph, state how you want custody to be arranged. There are two types of custody: legal custody and physical custody. Legal custody means the authority to make decisions about the children. Physical custody means the physical care of the children—who are the children living with. There are three ways to divide up custody:

1. 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.
2. 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.”
3. 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).

Paragraph 6: Visitation

Check box a) if you want to use the visitation schedule you created in the attached Parenting Plan.

Check box b) if you want to use the attached visitation schedule in as part of the attached Parenting Plan.

Paragraph 7: Child Support Amount

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 8: 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 9: Health Insurance

Check the box beside paragraph 9. 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.

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. You can find a notary public in your local bank, office supply store, or the Probate Court. Call before you go to inquire about any fee that may be required. The Probate Court charges \$2 per signature.

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. You can find a notary public in your local bank, office supply store, or the Probate Court. Call before you go to inquire about any fee that may be required. The Probate Court charges \$2 per signature.

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 (p. 7).** This document is used to help the Sheriff's department serve the Defendant.
- 2. Rule Nisi with Temporary Restraining Order (p. 8).** 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, pp. 14-16).** 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 (p. 17).** This form lays out a specific visitation schedule in order to reduce conflicts down the road.
- 5. Final Judgment and Decree (25-29).** 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 (30-31).** 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.

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 which 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/>

Professional Academy of Custody Evaluators, <http://www.pace-custody.org>

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.