

INSTRUCTIONS FOR MODIFYING VISITATION

Free to download; \$2.00 for a paper copy

A change of visitation 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 visitation, 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 visitation. 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, 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.
STEP 2: Complete the Complaint for Modifying Visitation.
STEP 3: Complete the Verification form.
STEP 4: Complete the required Plaintiff's Affidavit.
STEP 5: Attach other necessary documents (see details later).
STEP 6: Complete the Amendment of Visitation, if possible.
STEP 7: Pay the Filing Fee
STEP 8: File the forms.
STEP 9: Prepare your case for trial, if no Amendment of Visitation.
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—Custody and/or Visitation.”
- 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 2: Complete the Complaint to Modify Visitation.

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

1. Check box a) if you want the Sheriff to serve the Defendant because he or she will not sign an Acknowledgement of Service (p. 9). The Certificate of Service (p. 10) gives the Sheriff's department the information they need in order to serve the Defendant. The Sheriff's department charges a \$25 fee for serving the Defendant.

Check box b) if the Defendant will sign an Acknowledgement of Service (p. 9). This form lets the court know that the Defendant has read your papers, and that there is no need to have the Defendant served by the Sheriff. Fill in the name of the County in which the Defendant lives.

Paragraph 2: Children

Check box a) if the Defendant's order of custody was made in a divorce case. Check the box to indicate whether the Plaintiff or the Defendant is the custodial parent. List the names of the children in the first blank, and their ages in the second blank. Write down the Civil Action File Number from the divorce case in the third blank. Next, write down the month, day, and year when the divorce order was entered. Finally, write down the name of the county and state where the divorce took place.

Check box b) if the Defendant's order of custody was made in a Legitimation case. Check the box to indicate whether the Plaintiff or the Defendant is the custodial parent. List the names of the children in the first blank, and their ages in the second blank. Write down the Civil Action File Number from the divorce case in the third blank. Next, write down the month, day, and year when the divorce order was entered. Finally, write down the name of the county and state where the divorce took place.

Paragraph 3: Reason for Modification

Check all of the boxes that apply, and explain the situation in the blanks provided. You may attach additional pages if necessary.

Paragraph 4: Amendment to Current Agreement

Check box a) if both parties are willing to sign a written Agreement regarding your future visitation schedule. Fill in the date that you signed the new Agreement in the blanks provided.

Check box b) if one or both of the parties are unwilling to sign a written Agreement regarding your future visitation schedule.

Signature & Contact Information for Complaint

Sign your name in the space provided at the bottom of page four (4). There is no need to have this signature witnessed by a notary. Fill in your address and telephone numbers(s) in the spaces provided.

STEP 3: Verification

Complete the Verification form. Insert your name as Plaintiff and the other parent'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 required Plaintiff's Affidavit.

The Plaintiff's Affidavit is REQUIRED by O.C.G.A. § 19-9-69.

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.

Paragraph 1:

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

Paragraph 2:

Write down the name of the person with whom the child(ren) live(s). Write down that person's relationship to the child (mother, father, grandmother, grandfather, aunt, uncle, etc.). Write down the address where the child(ren) currently live.

Paragraph 3:

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 4:

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 5: 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 FRONT OF a notary public. The notary public will sign and date the Affidavit after watching 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 and the Law Library charge \$2 per signature.

STEP 5: Attach other necessary documents.

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

2. **Acknowledgement of Service and Summons (p. 9).** If the Defendant signs this document, you will not need to have him or her served by the Sheriff. This will save you \$25.
[OR]
3. **Certificate of Service (p. 10).** Use this form if you want the Sheriff to serve the Defendant because he or she will not sign an Acknowledgement of Service. This document gives the Sheriff's department the information they need in order to serve the Defendant. The Sheriff's department charges a \$25 fee for serving the Defendant.
[AND]
4. **Rule Nisi (p. 11).**
[AND]
5. **Visitation Schedule (p. 14).** This form lays out a specific visitation schedule in order to reduce conflicts later on. You can use this schedule or write one of your own.
[AND]

- 6. Final Judgment and Decree (p. 15).** This document will be filled out and signed by the Judge in order to show what the outcome of the case is.

STEP 6: Complete the Amendment to Visitation (pages 12-13), if possible.

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.

Introductory Paragraphs:

Fill in the date on which you signed the Amendment to Visitation. Fill in the names of the Plaintiff and Defendant in the blanks provided.

Fill in the County where the previous visitation order was made. Check the box to show whether the previous order was made in a Divorce, Legitimation or other type of action. If you check the box beside "Other," write down what type of case it was.

Paragraph 1: Amendment of the Previous Visitation Order

Write down how you want to change the Visitation Order. You may use additional sheets of paper if necessary, or you may use the visitation schedule on page 14 of the forms packet.

Paragraph 2: The Previous Order Remains the Same Except for Visitation

Check the box beside paragraph 2. This shows that only the visitation schedule from the previous Order will change.

Signatures

Each party must sign the Agreement **in front of** a notary public. The parties do not have to sign at the same time, and they do not have to use the same notary public.

STEP 7: Pay the filing fee and service of process fee.

There is an \$75.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Modification of Visitation. There is an additional fee of \$25.00 to have the Defendant served by the Sheriff. If you are cannot afford these fees, you may ask for an Affidavit of Poverty (also called Pauper's Affidavit). If the Judge accepts your Affidavit, then you do not need to pay these fees.

STEP 8: File the forms.

You should make two copies of all of your documents after they are filled out completely. 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. If you need more information about serving the Defendant, there is an excellent article at the following web address:

<http://sca.fultoncourt.org/family/service.php>

STEP 9: Prepare your case for trial.

Most contested 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://sca.fultoncourt.org/family/trialprep.php>

Tips on representing yourself in court, <http://sca.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, the judge will issue a final order regarding custody. Your Modification of Visitation is not final until the judge signs the final order in the case. You may sign an Amendment of Visitation Agreement with the other parent any time before a final order is entered. Most cases do settle before trial.

IF THERE IS ANY QUESTION in your mind concerning these forms, the use of these forms, or your legal rights, it is strongly recommended that the services of an attorney be obtained. If you do not know an attorney, you may find one by searching

http://www.gabar.org/directories/member_directory_search/.

DUE TO THE CHANGING NATURE OF THE LAW, the forms and information contained in these packets may become outdated. Therefore, you should review and research statutes and rules of procedure referenced in the instructions to ensure that the forms are accurate and current.

IN NO EVENT will the Office of the Court Administrator, Clerk of Court, the Law Librarian or anyone contributing to the production of these forms, commentary, instructions, and appendices be liable for any indirect or consequential damages resulting from the use of this packet.

USE THESE FORMS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED.

IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE.