

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. The form below is a **Motion to Modify Visitation Order** and is to be used when the court has ordered and awarded visitation and you want the court to modify visitation order. For example, if you want more visitation or want the court to give less visitation to the other party. This form can also be used to ask for supervised visitation or no visitation of the circumstances warrant it.

FORMS INVOLVED. The form in this packet is a **Motion for Modification of Visitation**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. Remember you need to mail a copy to the opposing party and fill out the certificate of service showing that you did mail a copy of the motion to the opposing party.

How to file a Motion for Modification of Visitation. You must file your Motion for Modification of Visitation by filing the original with the court and by mailing a copy to the opposing party if they are not represented by legal counsel or to their attorney if the opposing party is represented. The clerk will find a hearing date and send notice of hearing to all parties.

BURDEN OF PROOF. If you file a Motion for Modification of Visitation, you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your claim by a preponderance of the evidence. This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the moving party have the burden of showing the following to the court:

If there was an agreement between the parties regarding visitation the person seeking modification (the moving party) only has to show the court that modification of the visitation order would be in the best interest of child(ren). Best interest of the child for visitation modification could include the safety and well-being of the child, whether regular school attendance is affected by visitation, the child's wishes if the child is of sufficient age to decide, any evidence of neglect or abuse, when a party is interfering with the other party's relationship with the child, failure to properly parent the child, any substance abuse, mental health issues, alienation of child's by the other parent of the child, failure to allow visitation contrary to the visitation order, or failure to exercise visitation rights.

If the issues of custody and visitation were contested and the court made these decisions after a trial then the person seeking modification must show two (2) things in order for the court to modify a custody or visitation order. First, the moving party must also show that modification would be in the best interest of the child(ren). Second, the moving party must show that there has been substantial and material change of circumstances since the visitation order was entered. A substantial and material change of circumstances could include one of the parents moving some distance from the other party and child, when a party with visitation rights is failing to exercise those rights or when the custodial parent is denying those visitation rights, or the

visitation as ordered is creating hardship on the child or a party, evidence of neglect or abuse, a party is interfering with the other party's relationship with the child, failure to properly parent the child, any substance abuse, mental health issues, if one of the party's is alienating of child's affections from other the parent, failure to allow visitation contrary to the visitation order, or failure to exercise visitation rights.

What this means is that the moving party and their witnesses need to testify to any circumstances and facts that would warrant modification of the visitation order.

If you feel that the child would be in danger during visitation or by being in the other party's care you need witnesses and evidence to prove those allegations. In that case you can ask the court for supervised visitation or in extreme cases no visitation.

If you have visitation rights and want the visitation order modified for more visitation, you must prove why it would be in the child's best interest.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert the name of the plaintiff from the order you are seeking to modify.
- (2) on this line insert the name of the defendant from the order you are seeking to modify.
- (3) insert your name
- (4) insert the date of the order you want to have modified.
- (5) state whether you are the custodial parent or the non-custodial parent with visitation rights under the Court's order.
- (6) insert the reasons you want the prior order modified. Look at the burden of proof section above to see whether you need to show a substantial and material change of circumstances or what is in the best interest of the child(ren) or both. Also state if you are asking for supervised visitation or no visitation and why.
- (7) on this line insert the day.
- (8) on this line insert the month.
- (9) on this line insert the year.
- (10) on this line insert your name by signing.
- (11) on this line insert where you mailed your motion for change of custody. It will be either the opposing party if they are not representing by legal counsel or to their attorney if the opposing party is represented.

Wherefore, the undersigned prays this court to issue an order:

- A. Modifying its previous visitation order.
- B. Setting this matter for hearing;
- C. For any other relief the court finds just and equitable.

Dated this (7)_____ day of (8)_____, (9)_____.

(10)_____
 Plaintiff/Defendant

CERTIFICATE OF SERVICE

Te undersigned certifies that I mailed a true and correct copy of this Motion for Change of Custody upon the opposing party or their attorney by first class mail at (11)_____

Dated this (7)_____ day of (8)_____, (9)_____.

(10)_____
 Plaintiff/Defendant