

MOTION TO CHANGE LEGAL CUSTODY, PHYSICAL PLACEMENT, CHILD SUPPORT, FAMILY SUPPORT OR SPOUSAL MAINTENANCE

This form may be used to request that the court increase or decrease a court ordered support payment such as child support, family support, or spousal maintenance or you may use the form to determine use of the dependency exemption or to address the payment of uninsured medical expenses of the children, as well as changes to legal custody or physical placement. Filing the motion does not guarantee that you will succeed in your request for a modification. It provides you the opportunity to present your case to the Court.

NOTE: Do not use this form if there is an agreement to change custody, placement, support or other financial provisions. Instead, complete and sign the form called "Stipulation & Order to Amend Judgment for Support/Maintenance/Custody/Placement," available in the Legal Resource Center, Room L1007 Dane County Courthouse for a small fee, or online at <http://www.wicourts.gov>.

STEP 1: FILL OUT THE MOTION FORMS

Use the instructions included down the side of the form. Keep the Decision/Order forms and bring them to your hearing. You must also obtain two, "Income & Expense Statements," from the Legal Resource Center or on-line. One must be attached to the Motion copy to be served on the other party and the other must be filled out by you to bring to the hearing.

STEP 2: PAY FILING FEE AT CLERK OF COURTS OFFICE

Pay the appropriate filing fee to the Clerk of Courts, Room 1000, Dane County Courthouse, 215 S Hamilton Street, Madison, WI 53703.

The filing fee is \$30.00 if changing child support, family support or spousal maintenance

The filing fee is \$50.00 if changing legal custody or physical placement.

If you believe you are entitled to a waiver of this fee because of poverty, complete a Petition for Waiver of Filing and Service Fees, available in the Court Commissioner Center, Room 2000, Dane County Courthouse or on-line. The Court Commissioner will determine if the fee can be waived. If you ask for a waiver, do so before paying any fees, not after.

If you are seeking to modify an order from another county or state, you will need to complete and file additional forms and pay other fees.

STEP 3: OBTAIN A COURT DATE

FOR CHILD SUPPORT, FAMILY SUPPORT OR SPOUSAL MAINTENANCE MOTIONS:

After you have paid the fee or had it waived, take the forms to the Court Commissioner Center, Room 2000, Dane County Courthouse to obtain a time and date for a hearing. The Clerk will give you a date and time which will be written on the original document. Do not make the 3 copies of the form until after you receive a court date. There is a public photocopier in the Legal Resource Center, Room L1007, for \$.25 per copy

FOR LEGAL CUSTODY / PHYSICAL PLACEMENT MOTIONS:

Make 3 copies of the forms. There is a public photocopier in the Legal Resource Center, Room L1007, for \$.25 per copy.

IF FEES HAVE BEEN WAIVED:

If the fees have been waived by a Commissioner, CCC staff will take your original form to be reviewed by the Commissioner. You will receive a response to your motion or a court date by notice in the mail. The copies will be returned to you for service. Staff will write "to be set" on the hearing date line.

IF FEES HAVE NOT BEEN WAIVED:

If the fee waiver was denied, you will be sent to the Clerk of Courts main windows in Room 1000 to pay the filing fee. The Clerk will take your fee and the original documents which will be forwarded to a Commissioner to review and respond. The Clerk will also write on your 3 copies of the documents, "To be set," and will return the copies to you for service.

The Commissioner will review the forms to make sure that your motion is appropriate under the law.

When the motion is reviewed, the commissioner will fill out a "Preliminary Order on Review of Post Judgment Custody/Physical Placement Motion" and may do any of the following:

- a. Schedule the matter for a 1-2 hour hearing to consider the motion;
- b. Schedule the matter for a 20-40 minute status hearing
- c. Refer you to the FCCS for mediation, or
- d. Forward the papers to the assigned judge for further scheduling.

STEP 4: SERVE THE MOTION AND STATEMENT IN SUPPORT OF MOTION

Serve the Motion on the other party whether you have received a court date or whether "To Be Scheduled" has been printed on the copies. The motion being served on the other party must have the Income and Expense Statement attached. If the other party had an attorney at the last hearing, you must mail an additional copy of the forms to the attorney.

A. By Sheriff

If the other party lives in Dane County, you may have the Notice of Motion and Motion to Change served on the other party by the Civil Process Division of the Dane County Sheriff's Department, Rm. 2002, Public Safety Building, 115 W. Doty Street, Madison, 53703. The Sheriff will need two copies of the forms you filed. There is a \$40 charge for every service or attempted service, plus 37¢ per mile, round trip that the deputy travels. There will be no fee if you qualify for a fee waiver. Once the Sheriff has served the forms, you will be sent a Proof of Service form. **Bring it with you to the hearing.**

If the person to be served lives outside of Dane County, call the Sheriff in the county where the person lives for instructions on serving the papers.

B. By Private Process Server

You may use a private process server to serve the Notice of Motion and Motion to Change on the other party. To locate a private process server, look in the phone book yellow pages under "Process Servers." Once the forms have been served, you will be sent a Proof of Service form. **Bring it with you to the hearing.**

C. By Mail (Not recommended for parties without lawyers)

You may have a third party use regular mail or certified mail with return receipt requested to serve the Notice of Motion and Motion to Change forms on the other party. If you use certified mail with return receipt, bring the receipt to the hearing. **If you serve by mail, you must submit an Affidavit of Mailing so that it will be kept with your court file.** An Affidavit of Mailing form can be obtained for a small fee from the Legal Resource Center, Room L1007, in the Dane County Courthouse, or online.

STEP 5: ATTEND THE HEARING OR REFERRAL TO MEDIATION

FOR CHILD SUPPORT, FAMILY SUPPORT OR SPOUSAL MAINTENANCE MOTIONS:

You must be prepared to present your case to the Court Commissioner if you do not have an attorney. The Court Commissioner cannot represent you. The Commissioner is an impartial decision maker. Bring a completed copy of the Income Expense Statement, the other items you are ordered to bring from the "Notice of Motion and Motion to Change" and any other documentation of your income or other verification of financial information you believe is relevant to your case. You should have an original and two copies of any document you wish the Commissioner to look at in support of your case.

The Court Commissioner can change the order only if there has been a substantial change in circumstances. The Wisconsin Child Support Guidelines are usually used in revising child support orders unless one of the parties shows that use of the guidelines would be unfair to one of the parties or to the children. The Court will usually consider the economic circumstances of both the parties including the incomes of other household members such as current spouses or partners.

Bring the Decision/Order forms included in this packet to your hearing.

FOR LEGAL CUSTODY/PHYSICAL PLACEMENT MOTIONS:

If the motion is:

- a. Scheduled for a 1-2 hour hearing to consider the motion; parties will receive notice of the court date in the mail and must attend the hearing.
- b. Scheduled for a 20-40 minute status hearing, if both parties are represented by counsel, the status conference can be conducted by phone with counsel only.

Both the Status Conference Notice and the Hearing Notice will provide information regarding what you are to bring to the hearing.

- c. Referred to the FCCS, the parties will be notified by FCCS of a Parent Education Session date.
- d. Forwarded to the assigned judge for further scheduling, parties will receive mailed notice from the Judge's office of a court date.

If you are referred to the FCCS, and after both parties have attended the Parent Education Session, FCCS will schedule a mediation session for both parties. Mediation may be waived by the Judge or Commissioner if there are concerns about domestic violence or other significant factors. There is a fee for the parent education session, but not for the first mediation session. There is a fee if additional mediation sessions are needed.

If mediation results in an agreement between the parties, the mediator will draft and forward the proposed agreement to the Judge. The Judge will hold the agreement for 30 days to see if anyone objects to it. If no one objects, the Judge will usually make the agreement a court order. The Judge will send a copy of the order to each of the parties, and the Family Court Counseling Service.

If mediation does not result in an agreement, a custody evaluation will be conducted, and a fee will be charged.

The Judge may appoint a guardian ad litem, an attorney who represents the best interests of your child(ren). You will be required to pay for all or part of the guardian ad litem services, unless the Court decides that you are indigent.

After the custody evaluation is complete, the Judge will schedule a hearing on the motion and will notify all parties. At the hearing, the party who filed the motion to change custody or physical placement must prove their reasons for changing custody or physical placement as described on the motion form. If this is done, custody or placement may be changed. If the reasons for changing the order are not supported by enough evidence, the motion will be denied and the last Order will remain in effect. In most cases, affidavits or written statements by those supporting your case, such as friends or family members, will not be admitted into evidence; you must bring your witnesses to the hearing to testify. Documents such as police reports, medical bills, or employment records may not be considered as evidence unless there is an exception to the evidence rules. You may want to consult with an attorney if you are unsure.

Bring the Decision/Order forms included in this packet to your hearing.