

FAMILY COURT MATTER

REQUEST TO CHANGE CHILD CUSTODY

Outline of Steps:

1. Read the Instructions.
2. Fill out the *Notice of Motion and Motion* form.
3. Fill out, but **do not sign**, the *Affidavit in Support of Motion* form. Attach other Affidavits and documents that support your position.
4. Sign your Affidavit in Support of Motion and get a court date from the Court Administrator's office. Make copies of all papers.
5. Have someone else serve the other party with a copy of the *Notice of Motion and Motion and Affidavit in Support of Motion* (with all Attachments.)
6. Go to Court for your hearing.

IMPORTANT NOTICES

- YOU **CANNOT** USE THESE FORMS UNLESS THERE IS ALREADY A COURT ORDER AWARDING CUSTODY.
- YOU CANNOT ASK THE COURT TO CHANGE THE CHILD'S CUSTODY IF (1) IT HAS BEEN LESS THAN ONE YEAR SINCE THE LAST CUSTODY ORDER OR (2) IF IT HAS BEEN LESS THAN 2 YEARS SINCE THE LAST REQUEST TO CHANGE CUSTODY, UNLESS THE CHILD(REN) IS/ARE CURRENTLY IN DANGER OR UNLESS THERE IS A PERSISTENT AND WILFUL DENIAL OF OR INTERFERENCE WITH PARENTING TIME OR UNLESS THE OTHER PARTY AGREES IN WRITING TO CHANGE CUSTODY.
- IF YOUR CHILD IS THE SUBJECT OF A CHILD IN NEED OF PROTECTION OR SERVICES (CHIPS) PROCEEDING OR CERTAIN DELINQUENCY PROCEEDINGS, THE COURT MAY NOT BE ABLE TO IMMEDIATELY DECIDE YOUR REQUEST TO MODIFY CUSTODY.
- COURT PERSONNEL AND THE COUNTY ATTORNEY'S OFFICE **CANNOT** HELP YOU FILL OUT THESE FORMS.
- YOU SHOULD SEE A LAWYER IF YOU DON'T KNOW HOW TO ANSWER THE QUESTIONS ON THESE FORMS OR IF YOU THINK THE OTHER PARTY WILL HIRE A LAWYER.
- YOU **MUST** FILL OUT BOTH THE NOTICE OF MOTION AND MOTION AND THE AFFIDAVIT IN SUPPORT OF MOTION AND YOU **MUST** FOLLOW THE INSTRUCTIONS INCLUDED WITH THIS PACKET.
- TYPE YOUR ANSWERS OR PRINT NEATLY USING DARK INK.
- IF YOU NEED MORE SPACE TO ANSWER A QUESTION, USE AN ADDITIONAL FULL SHEET OF PAPER.
- THE COURT EXPECTS EVERY PERSON WHO APPEARS IN COURT WITHOUT A LAWYER TO KNOW THE LAW. IF YOU ACT AS YOUR OWN LAWYER, YOU MUST DO WHAT A LAWYER WOULD DO.

INTRODUCTION

This introduction summarizes the process of asking the court to change custody. Steps 1-8 of these Instructions explain the process in detail.

A judge can only change or modify custody if the standards for changing custody are met. The legislature has spelled out those standards in Minnesota Statutes Section 518.18. It is your responsibility to give the judge the information s/he needs to decide if your request meets the legal standards. The forms in this packet are designed to prompt you to provide the necessary information.

First you fill out two forms called *Notice of Motion and Motion* and *Affidavit in Support of Motion to Change Custody*. The information in the Affidavit must be very detailed. It will probably take you 2 or more hours to fill in the paperwork. The Affidavit in Support of Motion is your written testimony explaining why you think there should be a change in custody. You can also get Affidavits from other people to support what you say, and attach them to your Affidavit. (Read Step 2 of these Instructions for important information about Affidavits.)

When your paperwork is complete someone other than you must serve copies of the papers on the other party. You will file the originals with the court, and you may have to pay a court-filing fee. After receiving your papers, the other party might serve you with responsive papers, explaining his or her opposition to your Motion. Then you go to your court hearing.

What happens at the court hearing?

If the other party disagrees with your request to change custody, there will usually be two court hearings. At the first hearing, the judge will only consider the written Affidavits you and the other party filed. The first hearing is short – up to 30 minutes. At this hearing, the judge will decide if you have presented a “prima facie case.”

For purposes of deciding if you have presented a “prima facie case”, the judge will assume that all facts stated in your Affidavit are true. If the facts described in your written Affidavit support a change in custody, the Judge/Referee may schedule a second, longer hearing. At the second hearing you and the other party will testify under oath and bring witnesses. The judge will then decide what the facts really are, and will decide if those facts support a change of custody. However, if the judge decides at the first hearing that s/he will not change custody even if you prove that everything in your Affidavit is true, then you do not have a “prima facie case” and your case will be dismissed after the first hearing (you lose.) The judge will evaluate your Affidavit by considering the facts you include, not your conclusions. You must give the judge sufficient information so the

judge can draw his/her own conclusions. It is very important to do a good job writing your Affidavit.

Avoid this Mistake: Often people think they can briefly write what they want in the Motion and Affidavit forms, and supply the details to the judge at the hearing. If you do this, you will lose your case. If your case is dismissed, you may be prohibited from filing another motion to change custody until 2 years later. (See Minnesota Statute Section 518.18 for restrictions on asking for a modification of custody.)

Courts operate by rules and laws, not by what makes sense to you. If you choose to represent yourself, the court rules say that you are responsible for knowing the law and rules, just like an attorney. The judge cannot give you special consideration or help because you are not a lawyer. Your written Affidavits, filed at least 14 days before the first hearing, must present a “prima facie case” or your case will be dismissed. Include facts in your affidavit, not just your conclusions. For example, stating, “the other parent abuses the child” is a conclusion. State the facts so the judicial officer can decide if the actions taken by the other parent constitute abuse.

Custody Evaluations

On many occasions at the end of the first hearing the judge will ask for a custody evaluation in order to have someone gather facts to help The judge make a decision. A custody evaluation from Family Court Services takes at least 120 days, and there is a cost involved. (If a party has an “IFP” the fee is waived. “IFP” is explained at Step 7.) If a custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least several months. The judge may also appoint a guardian ad litem to do a custody evaluation. This person may or may not be a lawyer.

If the Child is in Danger

In extremely rare cases, a judge will change custody on a temporary basis before a full hearing with live testimony has been held. Those rare cases involve situations in which the child is in immediate, significant danger if the existing custody arrangement continues. If your child is in immediate danger, you should request an emergency, expedited hearing. Ask the Court Administrator’s office for forms for requesting an emergency hearing. An Order For Protection might also be available in extreme situations, but an Order for Protection will not permanently change custody. You need to use the Motion papers in this packet to permanently change custody. You can get help with Orders for Protection from the Court Administrator’s office.

DETAILED INSTRUCTIONS

Step 1

Fill Out the *Notice of Motion and Motion for Change of Custody* Form

Fill out the *Notice of Motion and Motion for Change of Custody* form included in this packet. This form tells the court and the other party that you wish to change custody of the child(ren) and the date and time of the hearing.

FILL IN THE TOP PART OF THE FORM (this is known as "the caption"):

NOTE: The information to fill in the top part of the form can be found at the top of your divorce or paternity decree or other existing order. Be sure to copy the information EXACTLY as it is on your current order.

- Write the case number (also called the "court file number") located on your existing order.
- On the line marked "Name of Petitioner/Plaintiff," write the name of the Petitioner/Plaintiff as listed on your current order or divorce or paternity decree.
- On the line marked "Name of Respondent/Defendant," write the name of the Respondent/Defendant as listed on the current order or divorce or paternity decree.
- On the "TO" line, write the full name and street address of the other party.

DO NOT FILL IN THE DATE, TIME, JUDICIAL OFFICER'S NAME OR LOCATION OF THE HEARING YET. YOU WILL DO THAT AS PART OF STEP 3.

FILL OUT THE REST OF THE FORM:

NOTE: The instructions that follow are numbered the same as the questions on the *Notice of Motion and Motion* form.

1. Print the full name and date of birth of each child for whom you wish to change custody.
2. Print the date of the existing custody order or decree.
3. **Legal** custody means which parent or parents have a say in the major decisions regarding the child(ren)'s life, including education, religious upbringing and medical treatment.

If you want to change the **legal** custody of your child(ren), check the box marked "Yes," **and** then check the box for joint legal custody, **or** the box for sole legal custody and write in who should have legal custody.

If you do **not** want to change **legal** custody, check the box marked "No," **and** skip to the next question.

4. **Physical** custody means the person(s) who will be responsible for the routine daily care and control of the child(ren). If you want to change **physical** custody of your child(ren), check the box marked

“Yes,” **and** then the box for joint physical custody, **or** the box for sole physical custody, **and** write in who should have sole physical custody.

If you do **not** want to change **physical** custody, check the box marked “No,” **and** skip to the next question.

5. You do not need to write anything for this question.
 6. You do not need to write anything for this question.
 7. Check box 7 only if you have been ordered to pay child support, you stopped paying child support because the children were living with you, and you want the court to forgive your child support for the time you were not paying it when the child(ren) were with you.
 8. You do not need to write anything for this question.
 9. You do not need to write anything for this question.
 10. You do not need to write anything for this question.
 11. You do not have to write anything for this question, but you should read and understand it.
- **Read the Verification and Acknowledgement carefully. By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the court or if you are serving or filing this document for an improper purpose, the court can order you to pay money to the other party.**

Step 2

Fill Out the *Affidavit in Support of Motion* Form

Fill out the *Affidavit in Support of Motion* form, which tells the Court and the other party what you are asking for from the Court and **why** you are asking for it.

FILL IN THE TOP PART OF THE FORM (KNOWN AS THE “CAPTION”)

- Fill in the top part of the form (caption) the same way you did on the *Notice of Motion and Motion* form.
- Print the name of the county where you sign the affidavit on the line that reads: “STATE OF MINNESOTA, COUNTY OF _____”
- Print your name on the blank above Paragraph/Question #1.

Fill in Paragraphs/ questions 1-21**

**Note: If you are asking to change legal custody only, answer only paragraphs/questions 1 through 11,

20 and 21 on the Affidavit. The other questions are only necessary for a change in physical custody.

Read the questions on the Affidavit carefully and answer each question with detailed, specific information. **Attach all copies of day care, school, medical or other documents that help support the statements in your Affidavit.** These copies should be in Affidavit form, if possible. An Affidavit is a sworn statement and it must be notarized. The Affidavit should start with this sentence: “ , being duly sworn, says:” The name of the person giving the information goes into the blank space; for example, the name of the doctor or daycare provider. Both the notary/court deputy and the person making the Affidavit must sign the Affidavit. The notary/court deputy must actually see the other person sign the Affidavit.

The Introduction section of this pamphlet explains that the judge will read your *Affidavit in Support of Motion to Change Custody* and determine if you have presented a prima facie case. Questions/paragraphs 1-20 prompt you to give information that the Judge must have in order to decide if you have presented a prima facie case. Question/paragraph 21 is a place to write anything else you think is important in your case. Generally, you will not be allowed to expand upon your affidavit at the first hearing. **If you want the judge to know something, put it in writing in your Affidavit.**

Instructions for answering Questions 17 and 18

Questions 17 and 18 ask for gross and net income. Gross income is your pay before deductions or taxes. To calculate net monthly income, subtract the following from gross monthly income:

- (1) Federal Income Tax (standard deductions apply – use tax table)
- (2) State Income Tax (standard deductions apply – use tax table)
- (3) Social Security Deductions
- (4) Reasonable Pension Deductions
- (5) Cost of Dependent Health Insurance Coverage
- (6) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for actual medical expenses
- (7) Union dues
- (8) A Child Support or Maintenance Order that is currently being paid.

Step 3

Signing Papers and Obtaining from Court Administrator Hearing Date, Time and Location

DO NOT DATE AND SIGN YOUR AFFIDAVIT UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR THE COURT ADMINISTRATOR. MAKE SURE TO BRING IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC/COURT ADMINISTRATOR.

When your *Notice of Motion and Motion and Affidavit in Support of Motion to Change Custody* have been completed, take the papers to the Court Administrator’s office. The deputies in the Court Administrator’s office can notarize your signature. **DO NOT** sign the *Affidavit* until the court deputy is

watching you sign. The court deputy will assist you in obtaining the court date for your hearing.

Fill in the date, time, location, name of the judge and room number of the hearing on the first page of the *Notice of Motion and Motion* form.

Step 4

Make Copies of Forms

- Make two copies of the *Notice of Motion and Motion* form and all attachments, and two copies of your *Affidavit in Support of Motion* form and all attachments.
- Keep one copy of each form for yourself (make sure to bring your copies with you to court on the day of your hearing).
- Give one copy of each form and any attachments to the other party, following the “service” instructions at Step 5.
- You will file the **originals** of each form and any attachments with the Court Administrator following the instructions at Step 7.

Step 5

Serve Notice on the Other Party

You must arrange for the other party to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called "service of process." **YOU** may **NOT** serve the papers. You **MUST** have the papers served by someone else over the age of 18.

To serve the papers by mail, follow these instructions:

1. The server (**not you**) places one copy of the completed *Notice of Motion and Motion* form, one copy of your completed *Affidavit in Support of Motion*, including one copy of any and all attachments, and one copy of your Memorandum of Law (if you wrote one) in an envelope. Then the server writes your return address and the last known address of the other party on the front of the envelope. The server places the correct amount of postage on the envelope (the server may want to take the envelope to the post office to be weighed to make sure (s)he put on the right amount of postage).
2. The server must mail the envelope containing the forms to the other party (or his/her attorney if there is one) **at least 17 days before the hearing date**. For example, if the hearing date is January 20, the envelope must be postmarked on or before January 3.

WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR HIS/HER ATTORNEY) AT LEAST 17 DAYS BEFORE THE HEARING DATE, OR HANDED TO THE OTHER PARTY AT LEAST 14 DAYS BEFORE THE HEARING DATE,

YOUR MOTION WILL NOT BE HEARD BY THE COURT.

Note: Motion papers may be served by methods other than mail. See Minnesota Rules of Civil Procedure Rule 5.02, 5.04 and General Rules of Practice for the District Courts, Title IV. Rules of Family Court Procedure Rule 303.03.

Step 6

The Person that Served the Papers on the Other Party Must Fill Out the *Affidavit of Service Form*

The person who mailed the forms to the other party **must** fill out the *Affidavit of Service by Mail* form included in this packet. This form proves to the Court that the other party received a copy of the *Notice of Motion and Motion and Affidavit in Support of Motion*.

The person who mailed the envelope containing the forms must fill in the top part of the form just as was done on all the other forms. Fill in the following:

- The name of the person who mailed the envelope.
- The date of birth of the person who mailed the envelope.
- The date on which the person put the envelope in the mail.
- The last known address of the other party.
- The City where the envelope was put in the mail.
- The State where the envelope was put in the mail.
- Attach a copy of all of the papers served to the *Affidavit of Service by Mail*.

THE SERVER (PERSON WHO MAILED THE ENVELOPE) MUST NOT SIGN THE AFFIDAVIT OF SERVICE BY MAIL UNTIL (S)HE IS IN THE PRESENCE OF A NOTARY PUBLIC OR A COURT ADMINISTRATOR/DPUTY. MAKE SURE THE SERVER BRINGS IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR COURT ADMINSTRATOR/DEPUTY. A notary public can usually be found at a bank.

- After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records.

Note: If the papers were served by some means other than mail, an appropriate affidavit of service must be completed and filed with the court.

Step 7

File the Forms with the Court

The following original documents must be filed with the Court **at least 14 days before the date of the hearing:**

- The **original** of the *Notice of Motion and Motion to Change Custody*;
- The **original** of your *Affidavit in Support of Motion to Change Custody*;
- The **original** of the *Affidavit of Service by Mail*; and
- A filing fee, if you did not pay a filing fee when this case was first begun.

You can bring the papers to Court Administrator's office. You can also mail the papers to the Court Administrator, but you will need to allow 3 extra days for mailing (mail at least 17 days before the hearing date. The court must receive the papers 14 days before the hearing.)

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask Court Administration for an In forma Pauperis (IFP) application. Fill out this application and sign it in front of a Notary Public/Court Administrator. Court Administration will take your Affidavit to a judge for review.

The judge will review your application and decide if you must pay the filing fee. If a filing fee is due, the Court Administrator cannot accept your legal papers without either the payment of the filing fee or an order from a judge waiving the fee.

Step 8

Appear in Court

The Introduction section of this pamphlet explained the purpose of the first hearing, and explained that you may need to have a custody evaluation and second evidentiary hearing before the judge makes a decision.

For your hearing, plan to arrive 15 minutes before your court time. Bring your copies of all the papers you filed with the court.

Call the Court Administrator's office and ask if you should bring your witnesses and evidence to the hearing. Usually the judge will not listen to live testimony at the first hearing. If you have requested an emergency hearing and claim the child is in immediate danger, you may have to testify at the first hearing.

Do not bring children to the first hearing, unless the judge requests you to. Bringing a boyfriend or girlfriend to the hearing is not a good idea.

The hearing is very formal. You are expected to know and follow the court rules of procedure. You should be respectful to the other party and to everyone in the courtroom. Do not interrupt the judge or other party. Try to stay calm, and avoid unnecessarily criticizing the other party. Answer any questions from the judge honestly. Direct all your comments to the judge, not the other party.

