

FAMILY COURT MATTER

RESPONSE TO OTHER PARTY'S REQUEST TO CHANGE CHILD CUSTODY

This packet contains the following documents:

- *Instructions for Response To Other Party's Request to Change Child Custody*
- *Responsive Notice of Motion and Motion for Change of Child Custody*
- *Affidavit in Response to Motion to Change Custody*
- *Affidavit of Service by Mail*

Fill in, but DO NOT SIGN and DO NOT SERVE the:

Responsive Notice of Motion and Motion to Change Custody
Affidavit in Response to Motion to Change Custody

IMPORTANT NOTICES

- You **cannot** use these forms unless there is already a court *order* awarding custody.
- Use these forms to change physical or legal custody, or to change the primary residence of the child(ren) as specified in the parenting plan.
- You cannot ask the court to change the child's custody or to change the child's primary residence as specified in the parenting plan 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 willful 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 be not 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

You have been served with a motion in which the other party is asking the court to change something about the existing custody order. This packet, starting at Step 1, tells you how to respond to that motion. Read the instructions carefully, paying particular attention to the time deadlines.

The *Notice of Motion and Motion* you received tell you the date and time of the hearing at which the judge will consider the motion. This introduction summarizes what happens at the hearings.

What happens at the court hearing?

There will probably be two court appearances **if** you are opposing the other party's request for modification. The first court appearance usually involves a short hearing of up to 30 minutes. At the first hearing, the judge will only consider the written Affidavits you and the other party filed.

The judge will use the first hearing to decide if the other party presented a "prima facie case." For purposes of deciding if the other party presented a prima facie case, the judge will assume that all facts stated in the other person's Affidavit are true. If the facts in the Affidavit legally support a change of custody, the judge may schedule a second, longer hearing. At the first hearing the judge does NOT decide whether the Affidavits presented by the person seeking to change custody are in fact true. The judge will decide which fact allegations are true and which fact allegations are not true only after the second hearing. At the second hearing, you and the other party will testify under oath and bring witnesses.

If the other party's Affidavit *in Support of Motion to Change Custody* does not state a "prima facie case," the judge may dismiss the case without taking any sworn testimony. The judge will dismiss the case because, even if the party asking for a change in custody and his or her witnesses testify and prove that everything in the *Affidavit* is the truth, the standards under Minnesota law for making a change or modification to custody would not be met. If the case is dismissed, the existing order will remain in effect.

Custody Evaluations

On many occasions 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. (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 five months. The judge may also appoint a guardian ad litem to do a custody evaluation. This person may or may not be a lawyer.

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. This is a big mistake. Do not assume you can talk about something that is not in your papers. You should write everything you want the judge to know in your Affidavit in Response to Motion to Change Custody. Another common mistake is to state conclusions, not facts, in the Affidavit filed with the Responsive Motion. An example of a conclusion is: the other parent abuses my child. Do not state conclusions without supporting facts. Give the judge detailed information so that the judge can draw his own conclusions. Write down the actions the other party has taken, or evidence of actions that you believe supports the conclusion. Remember, 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.

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 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 can get help with Orders for Protection from the Court Administrator's office.

Step 1

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

Fill out the *Responsive Notice of Motion and Motion for Change of Custody* form included in this packet. This form tells the court and the other party your response to the other party's *Motion* to change custody of the child(ren).

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 the other party's *Notice of Motion and Motion* or 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.
- On the line marked "Please Take Notice," print in the date, time, name of judicial officer and location of the hearing the same as in the other party's *Notice of Motion and Motion*.

FILL OUT THE REST OF THE FORM:

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

1. Print the full name and date of birth of each child for whom the other party has asked 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.

Check box (a) if the other party wants to change legal custody and you want the court to deny the other party's request to change legal custody. Check box (b) if you want legal custody of your child(ren) changed and check the box for joint legal custody or the box for sole legal custody. If you checked the box for sole legal custody write in who should have sole legal custody.

4. **Physical** custody means who will be responsible for the routine daily care and control of the child(ren). Check box (a) if the other party wants to change physical custody and you do not want to change physical custody. Check box (b) if you want to change physical custody and then check the box for joint physical custody or sole physical custody. If you checked the box for sole physical custody write in who should have sole physical custody.
5. You do not need to write anything for this question.
6. Check whether you want the court to change the existing child support order if the Court changes physical custody.
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. Check box (a) if you want the court to change the existing order for medical support and determine each party's obligation for medical support. Check box (b) if you do not want the court to change the existing order for medical support.
9. Check box (a) if you want the court to change the existing order for paying medical and dental expenses not covered by insurance. Check box (b) if you do not want the court to change the existing order for medical and dental expenses not covered by insurance.
10. Check box (a) if you want the court to change the existing order for paying work- or school related child care costs. Check box (b) if you do not want the Court to change the existing order.
11. You do not have to write anything for this question, but you should read and understand it.

- Read the Verification and Acknowledgements 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 or impose other sanctions.

DATE AND SIGN THE *RESPONSIVE NOTICE OF MOTION AND MOTION FORM*.

Step 2

Fill Out the *Affidavit in Response to Motion to Change Custody* Form

Fill out the *Affidavit in Response to Motion to Change Custody* form that 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 (caption) the same way you did on the *Responsive 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.

Read the questions on the *Affidavit* carefully and answer each question with detailed, specific information. Attach all copies of day care, school, medical and other records and documents that help support the statements in your *Affidavit*. In your *Affidavit in Response to Motion to Change Custody*, you will:

- a) Write your response to the changes the other party is requesting and why you think the changes are not in the best interests of the child(ren);
- b) Explain to the court why **you** are asking for changes in custody, if any.

Generally, you will not be allowed to expand upon your *Affidavit* at the first hearing. **If there is something that you want the judge to know, put it in writing in your *Affidavit*.**

INSTRUCTIONS FOR QUESTIONS/PARAGRAPHS 19 & 20

19. Print the other party’s current monthly gross income and net income and the source of that income. If the other party has income from more than one source, print the additional source(s) and the amount received each month. 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.
20. Print your current gross income per month and the source of that income. Do the same for your net income as well.

Do Not sign your *Affidavit* at this time.

Step 3

Signing Papers

SIGN YOUR *AFFIDAVIT* IN THE PRESENCE OF A NOTARY PUBLIC or a Court Administrator/Deputy. MAKE SURE TO BRING IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC/Court Administrator/Deputy.

Step 4

Make Copies of Forms

- Make **two** copies of the *Responsive Notice of Motion and Motion* form and all attachments, and **two** copies of your *Affidavit in Response to Motion to Change Custody* 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 to the other party, following the instructions at Step 5.
- You will file the **originals** of each form 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 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. Papers may be served either personally or by mail.

TO SERVE THE PAPERS PERSONALLY, FOLLOW THESE INSTRUCTIONS:

1. **The server (not you) hands to the Petitioner one copy of the completed *Responsive Notice of Motion and Motion* form, one copy of the completed *Affidavit in Response to Motion to Change Custody* and one copy of any attachment(s).**
3. **The server must give the papers to the Petitioner at least five (5) days before the hearing date. Papers cannot be served on a Sunday or a legal holiday. For example, if the hearing date is January 15, the server must give the papers to the other party on or before January. If January 10 is a Sunday, the papers must be served on or before January 9. Note: If your responsive *Motion* raises new issues not addressed by the other party's *Notice of Motion and Motion*, your responsive papers must be served at least ten (10) days before the hearing.**

TO SERVE THE PAPERS BY MAIL, FOLLOW THESE INSTRUCTIONS:

1. The server (**not you**) places **one copy** of the completed Responsive *Notice of Motion and Motion* form, **one copy** of your completed *Affidavit in Response to Motion To Change Custody*, and **one copy** of any attachment(s). 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 8 days before the hearing date**. For example, if the hearing date is January 15, the envelope must be postmarked on or before January 7. **Note:** If your *Responsive Motion* raises new issues not addressed in the other party's *Notice of Motion and Motion*, the Responsive papers must be mailed at least **13 days before** the hearing.

WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR HIS/HER ATTORNEY) ON TIME, THE COURT MAY DISREGARD YOUR RESPONSE.

Step 6

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

If your server personally handed the legal papers to the other party, see "A" below. If your server mailed your legal papers to the other party, see "B" below.

A. FOLLOW THESE INSTRUCTIONS ONLY IF THE SERVER PERSONALLY HANDED THE PAPERS TO THE OTHER PARTY

The person who handed the papers to the other party must fill out the *Affidavit of Personal Service* form included in this packet. This proves to the Court that the other party received a copy of the *Responsive Notice of Motion and Motion* and *Affidavit in Response to Motion to Change Custody*.

Print the names of the parties and the case number (the same as on the *Notice of Motion and Motion*).

Print the date that the papers were personally served (handed to the other party) and the name of the person to whom the papers were given.

The person who served the papers must sign the *Affidavit of Personal Service* in front of a Notary Public or Court Administrator/Deputy. The server must have identification to show to the Notary or the Court Administrator/Deputy.

After the *Affidavit of Personal Service* has been signed and notarized, make a copy of it for your records.

B. FOLLOW THESE INSTRUCTIONS ONLY IF THE PAPERS WERE MAILED

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 *Responsive Notice of Motion and Motion* and *Affidavit in Response to Motion To Change Custody*.

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 and 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 and State where the envelope was put in the mail.
- Attach a copy 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/DEPUTY. MAKE SURE THE SERVER BRINGS IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR COURT ADMINISTRATOR/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.

Step 7

File the Forms with the Court

Hand deliver the following original documents to Court Administrator's office **at least 5 days before** the date of the hearing, (or **at least 10 days before** the hearing if the response raises new issues.) You can mail them to the court, but you must put them in the mail **at least 8 days before** the hearing (or 13 days before the hearing if the response raises new issues.)

File the following documents:

- The **original** of the *Responsive Notice of Motion and Motion*;
- The **original** of your *Affidavit in Response to Motion to Change Custody*;
- The **original** of the *Affidavit of Service by Mail* or *Affidavit of Personal Service*; and
- A filing fee, if applicable.

If you did not pay a filing fee when this case was first begun, you will need to pay it now. You can find out how much the filing fee is by contacting the Court Administrator's office. Make checks payable to "Court Administrator".

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

A 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

You must go to court on the date set for the 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 before the hearing and ask if you should bring your witnesses and all of your evidence to the first hearing. Usually the judge will not listen to live testimony at the first hearing. If either party requested an emergency hearing and claims that the child is in immediate danger, you may have to testify at the first hearing. The judge may set a second hearing for listening to testimony and reviewing your evidence.

Do not bring children to the first hearing, unless the judge's clerk tells you to. 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.

After the final hearing the judge will issue an order. The judge may issue the order at the end of the hearing or may send a copy of the order to you in the mail.