

FILING A MOTION FOR MODIFICATION

M Instruction 2

The court may grant a modification (change) of child custody, visitation, or child support if there has been a substantial and material change in your circumstances and if it is in the best interest of your minor child/ren to do so. However, if there has only been a brief period of time since the entry of the last order, or if the child/ren has/have not lived in Idaho for at least six months, the court may not grant your motion unless there was a clerical mistake in the earlier order or if an emergency exists. The minimum time required may depend on these factors: the individual judge, the type of modification sought, whether the parties are in agreement as to the modification, whether the previous order was entered in Idaho or another jurisdiction and other circumstances. These instructions outline the process for modifying an Idaho Order.

YOU WILL BE SIGNING A SWORN STATEMENT THAT YOU HAVE READ THE MOTION FOR MODIFICATION, KNOW THE CONTENTS AND BELIEVE THE CONTENTS TO BE TRUE. TO AVOID MAKING ANY MISSTATEMENTS, BE SURE TO READ THE ENTIRE FORM.

Step 1. Talk to an Attorney, if Possible.

WARNING: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. Even if you do not hire a lawyer to appear in your case, you may be able to find a lawyer to review your paperwork or give you more information about your rights. Call the Idaho State Bar (208-334-4500) to provide you with the name of an attorney who handles this type of case. Contact the Court Assistance Office for information about resources for low-income people.

Step 2. Complete the Required Forms.

Before you begin to complete the forms, make a copy of the entire set of forms to use as a "working copy". Additional forms cannot be provided without charge. You will complete the forms by typing or neatly printing in **black ink**.

If the other parent agrees to the change and will sign both documents, you may complete and file an Agreed Modification Stipulation and Modification Order (M 6-1 & M 8-2) and the Modification Order may be issued without a hearing and without the twenty (20) day wait.

If the other parent does not agree with the change, or will not sign documents to make the change, you will need to complete and file the following forms to begin the modification procedure:

- Motion to Modify an Order or Decree
- Notice of Modification Motion

If you are asking the judge to change the custody arrangements, you may need to complete a proposed Parenting Plan Agreement which you will attach to the Motion.

If you are modifying child support or you are filing your Motion to Modify Custody and the new custody arrangement will require a modification of child support, you will also need:

- Affidavit Verifying Income
- Child Support Worksheet
- Child Support Transmittal Form

A Court Assistance Officer can help you generate the Affidavit Verifying Income and Child Support Worksheet if you provide the required information.

If you do not know where the other parent lives, you will also need Ci Instruction 7

and

- Motion and Affidavit for Service by Publication
- Order for Service by Publication

Complete the required forms listed above.

- At the top left-hand corner of page 1 of each form fill in your full legal name, address, and telephone number.
- Fill in the county and judicial district in capital letters in the heading (for example, "IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF "BANNOCK") exactly as they appear in the Order/Decree you want to change.
- Fill in your names in the caption exactly as they appear in the Order/Decree you want to change.
- Fill in the case number, exactly as it appears in the Order/Decree you want to change.
- Complete the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

Make 2 copies of the Parenting Plan (if you are using it), so you can attach one to your Motion and still have one to attach to the Order.

The Motion must be signed in the presence of a Notary Public.

Step 3: Make Copies and File with the Clerk.

Make copies of the Motion to Modify an Order or Decree and the Notice of Modification Motion for each party in the case.

Go to the window in the Clerk's Office and give the Deputy Clerk:

- The signed original Motion to Modify and copies for each party (with copies of Parenting Plan and child support documents stapled to each copy)
- The original Notice of Modification Motion and copies for each party
- The appropriate filing fee or Motion and Affidavit for Fee Waiver and two copies of a proposed Order Re: Fee Waiver (FW 1-9 & FW 1-10).

The Clerk will "conform" the copies by stamping and dating them. This will provide proof of the filing of the documents in case they become misplaced from the court file.

Step 4: Obtain Service on the Other Party/s.

You now need to serve the Motion to Modify, and Notice of Modification Motion (and Order to Attend Parenting Workshop, if applicable) on the other party/ies. There are three different ways you can do this. You only need to serve the other party/ies one of these ways. To avoid confusion read only the one which applies to your situation.

NOTE: If one of the parties is the State of Idaho, Department of Health and Welfare, you will need to serve a Deputy Attorney General, Department of Health and Welfare

Division, or the attorney of record for the Department in the case. (There is a different form set you can use in these cases.) Your local Court Assistance Office can tell you whom to serve for the Department. See M Instruction 3.

A. If the other party/ies will cooperate by accepting service:

1. Fill out the Acknowledgment of Service, for each party and make two copies.
2. Take or mail to each other party the original and one copy of the Acknowledgment of Service form, a conformed copy of the Motion for Modification (with all appropriate Exhibits attached), and Notice of Modification Motion, and the Order to Attend Workshop if any.
3. Have each other party sign the original Acknowledgment of Service form in the presence of a Notary Public.
4. Have each party return to you the original Acknowledgment of Service form. The other party is to keep the copy of the Acknowledgment of Service, the conformed copies of the Motion to Modify and Notice of Modification Motion, and the Order to Attend Workshop if any.
5. Take the original and your copy of the Acknowledgment/s of Service, plus the original Notice/s of Modification Motion back to the Clerk at the courthouse. Ask to have your copy of the Acknowledgment of Service conformed, the conformed copy will then be returned to you. The Clerk will keep and file the original Notice of Modification Motion and Acknowledgment/s of Service.

B. If the other party will not cooperate:

1. Deliver or mail the original and a copy of the Notice of Modification Motion, a copy of the Motion for Modification and Order to Attend Workshop, plus the original Affidavit/s of Service, if any, to a sheriff, professional process server or other person over eighteen (18) who will serve the papers in the county where the other party/ies live/s. If you are using the sheriff or a professional process server, call first to find out what they charge for serving papers, and include a money order or check for the correct amount when you send the papers. Include a letter stating where the other party/ies can be served, a description or photograph of the other parent, a description of the vehicle the other parent usually drives, and any other information that may help the process server locate and identify the other parent. Don't forget to include your address and a self-addressed postage paid envelope so the Affidavit/s of Service can be returned to you when service is complete. If you are serving outside of Idaho, tell the sheriff or process server that Idaho requires a Notarized Return of Service.
2. The person who serves the forms must send the completed Affidavit/s of Service back to you. You should make a copy of the Affidavit/s of Service for yourself, file the original Affidavit/s of Service and the original Notice/s of Modification Motion with the Court and have your copy of the Affidavit/s conformed.

C. If you do not know where the other parent is: See the separate instructions and forms for Service By Publication, Ci Instruction 7.

Step 5. Wait 20 Days.

The other party/ies has/have twenty (20) days from the date of service to respond to your Motion for Modification. If there is no response filed within that period, you may make an application for “default” to be entered and to have your order signed. For this purpose, the date the other party/ies was/were served was either 1) the date the Notary Public witnessed his/her signature on the Acknowledgment of Service form; or 2) the date the process server delivered the papers to the other party; or 3) the last date the papers were published in a newspaper. You cannot ask for default before the 21st day.

You may need to attend the court’s “Focus on the Children Parenting Workshop” or other parent education class before you can finalize your modification if you are asking the court to modify the Custody Order.

If the other parent indicates agreement and will sign both documents, you may complete and file a Sworn Stipulation for Entry of Order (CMP 6-9X) and Modification Order, and the Modification Order may be issued without a hearing and without the twenty (20) day wait. For cases in which the Department of Health and Welfare is a party, you can use GCS 6-9, Stipulation for Order (HW), and obtain the signatures of the other parent and a Deputy AG for Health and Welfare. See M Instruction 3.

If another party/ies do/es not respond to the court in writing within twenty (20) days of receiving service, you may FINALIZE YOUR MODIFICATION BY DEFAULT.

Step 6. Complete Default paperwork, make Copies and File with the Clerk.

When twenty (20) days have ended, if there has been no response from the other party complete the following forms, make one copy for your records and file the original with the court:

- Motion and Affidavit for Entry of Default (signed by you before a Notary Public)
- Default

Step 7. Complete the Final Forms, Have Them Reviewed, Make Copies and Prepare Envelopes.

- Modification Order with all necessary supporting documents attached (Parenting Plan or Child Support Order). Make copies for each party.
- Stamped envelopes addressed to yourself and the other party(s) for the Clerk to mail a copy of the Modification Order with all attachments.
- Child Support Order Transmittal Form (this is required only if child support is modified).
- Make an appointment with the Court Assistance Office to have all of your paperwork reviewed before it is presented to the judge.

The Clerk will submit your Modification Order to the judge for signature and the clerk will “conform” the extra copies you provide. The judge will not sign these copies, but the Clerk will stamp the judge’s name on them. One of the copies is for you. One copy is/are for the other party(s) and will be mailed to him/her/them by the court in the envelope(s) you provide. A copy will also be mailed by the court to the Department of Health and Welfare, Child Support Services, so they will be aware of any changes in the Child Support Order.

Some judges will want you to attend a hearing to have your Order signed. The court clerk or Court Assistance Officer will be able to tell you if a hearing is required. On the day of the hearing, make sure you go to the correct courtroom. Dress appropriately and address the judge as “Your Honor.” (See “Guidelines for Courtroom Behavior”, Ci Instruction 2 for more information). The judge will call the name and the number of your case. Go to the clerk's table by the judge's bench. Then the clerk will swear you in and you will take a seat at

the witness stand and give your testimony which is an outline of the things you asked for in the Motion for Modification. If what you are asking the judge to give you is in any way different from what you've asked for in your Motion, then you must have a signed agreement with the other party (see the Court Assistance Officer or see a private attorney to amend your Motion). If the judge has no further questions, you are finished. The judge will sign the Order for Modification.

If another party do/es respond in writing, follow the steps below:

Step 8. Read the Response.

Read the other party's response carefully. If the other party's response is a statement of agreement, you will not have to prepare for a contested hearing. But if the other party disagrees with your motion or you are unsure about any of the allegations or terms in the response, you should talk to an attorney as soon as possible to learn what your rights are and what course of action to take.

Step 9: Follow all Court Orders.

Ordinarily, you will have a hearing if the other party files a document in response to your Motion. You may need to set the hearing (Notice of Hearing). You may receive various notices and/or orders from the court concerning your modification, e.g., Notice of Status Conference or Pre-trial Conference, Scheduling Order, or a Notice of Hearing. Read all court notices and orders carefully, and note the deadlines and hearing dates contained in them. Failure to meet court deadlines or to appear at scheduled conferences, hearings or at trial may result in punishment for contempt of court or in other sanctions. Such failure may also cause you to lose some or all of your case.

Step 10: Consider Negotiation, Mediation, or Other Means to Settle Your Case.

The overwhelming majority of civil cases settle before trial. You should attempt to settle your case with the other parent. You can discuss settlement in person with the other parent or his/her attorney, or you may submit a written settlement offer. You might also consider mediation to resolve your dispute. Mediation is a process in which a neutral third party (called a mediator) assists the parties in their settlement negotiations. Mediation is often successful in resolving disputes concerning parenting schedules or child support. Your attorney, the court clerk or court assistance officer can give you a list of local mediators and more information about the mediation process. There are other alternative means to settle your case without trial. These include arbitration and appointment of a special master. If negotiation or mediation does not resolve your case, you should consult an attorney about these alternative dispute resolution mechanisms.

If you do settle your case before trial, fill out form SWORN STIPULATION FOR ENTRY OF AN ORDER (CMP 6-9X) (or Stipulation for Order HW CSE, GCS 6-9), and an appropriate MODIFICATION ORDER. See D Instruction 5.

If your case does not settle before trial, see "Guidelines for Courtroom Behavior", Ci Instruction 2, for general information on how to proceed. The hearing will be conducted according to formal rules of evidence and procedure. You should talk to an attorney to learn how to comply with those evidentiary and procedural rules and requirements.