

AGREED MODIFICATION OF CHILD CUSTODY, VISITATION OR SUPPORT

M Instruction 1

This procedure should be followed if you and the other parent are in agreement that an existing court order for child custody or child support should be changed, and as to how it should be changed. The court will grant a modification of child custody, visitation, or child support if there has been a substantial and material change in the circumstances that justified the earlier order, and if it is in the best interests 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 children 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. Otherwise, the minimum time before a modification will be entered may vary from six months to two years between the entry of the original order and the filing of the stipulation to modify. 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 original order was entered in Idaho or another jurisdiction, and other circumstances.

For more information regarding family law matters, please view the video “The Idaho Court System: Family Law” at the court assistance office or your local public library.

Summary of Steps

- Step 1: Talk to an Attorney, if Possible
- Step 2: Obtain and Complete the Required Forms
- Step 3: Make Copies and File With the Clerk
- Step 4: Obtain a Court Date to Finalize Your Modification
- Step 6: Finalize Your Modification

Step 1: Talk to an Attorney, if Possible.

These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial consultation for no more than \$35. Also contact the Idaho State Bar or your Court Assistance Office for information about limited services representation. If you cannot afford these costs, there are limited free legal services available to low income people. Contact the Court Assistance Office for their "Legal Services Directory" for information about resources for low-income people. Even if you do not hire a lawyer to represent you throughout the proceeding, a lawyer can look over your paperwork, give you advice on how to present your evidence, and tell you whether this type of action is right for you.

Step 2: Obtain and Complete the Required Forms

You will need to obtain the following forms:

- Stipulation for Modification, M 6-1
- Order Modifying Child Custody, Visitation, or Support, M 8-2
- Family Law Case Information Sheet FL 1-16

If you are seeking to modify child custody, you will **also** need:

- Parenting Plan, DCMP 3**

If you are seeking to modify child support, you will **also** need:

- Affidavit Verifying Income, DCP 1-11
- Child Support Worksheet, DCP 1-12 or DCP 1-13
- Child Support Transmittal form, CSS 809

**Make 2 copies of the Parenting Plan so you can use one as your proposed plan attached to your stipulation, and one as your final plan attached to the order.

Complete the forms by typing or printing neatly and legibly in **black ink**. At the top left-hand corner of page 1 of the court forms, fill in each of your names, addresses, and telephone numbers, followed by “Petitioners. Fill in the county and judicial district in the heading (for example, “In the District Court of the Fourth Judicial District in and for the county of Ada”). You will be filing in the same county as the Order you are modifying. Fill in your names in the caption (In re the Marriage of : John Doe and Mary Doe, Petitioners”) Fill out the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

The Affidavit Verifying Income and appropriate child support worksheet can be generated for you, if you use the “Support” software at the Court Assistance Office, Divorce Parenting Workshop, or elsewhere, if you bring your income information with you.

Both you and your spouse should sign the Stipulation, Parenting Plan, Affidavit Verifying income and Child Support Worksheet; plus the Order Modifying Child Custody, Visitation, or Support. Some of the forms must be signed in the presence of a notary public.

Step 3: Make Copies and File With the Clerk.

Make two copies of the entire packet of forms for the Stipulation. Make three copies of the entire packet of forms for the Order. (The Stipulation plus Parenting Plan plus Affidavit Verifying Income plus Child Support Worksheet makes one packet.. The Order plus Parenting Plan makes another packet.)

To file, give the Court Clerk the following:

- a. Filing fee or a “Motion and Affidavit for Fee Waiver”, FW 1-9, and a proposed “Order for Fee Waiver”, FW 1-10 .
- b. The completed original of the Stipulation for Modification with any attachments. (If you want to change child custody or visitation you will attach the Parenting Plan to the Stipulation. If you want to change child support you will attach the Child Support Income Affidavit, and Worksheet to the Stipulation.)
- c. The Family Law Case Information Sheet.

The Clerk may give you and your spouse an Order to Attend a parenting program, which may be called “Divorce Orientation”, “Mediation Orientation” or “Focus on the Children”, depending on the district you are in. If your spouse is not present, you will need to supply a stamped, addressed envelope for the clerk to mail the Order to Attend to your spouse.

The Clerk will “conform” your copies by stamping and dating them. This will save you paying \$1.00 per page for copies of these documents from the court file later on, and will provide proof of the filing of the documents in case they become misplaced from the court file.

Step 4: Obtain a Court Date to Finalize Your Modification.

Find out from the court assistance officer or court clerk whether the judge will require a hearing on your Stipulation. If so, obtain a court date from the clerk to finalize your modification. Only one spouse needs to come to court to finalize your modification. However, if both spouses are available it would be best to have both present to answer any questions the judge may have, especially if the modification involves a proposed change in custody.

If you have minor children, you may need to attend the court’s Parenting Workshop (called “Divorce Orientation” “Focus on the Children” or “Mediation Orientation” in some districts) before the hearing date. The parenting workshop attendance (if applicable) is required even though you **and your** spouse agree on all the issues, unless you already attended the workshop in the past, or unless the judge grants you an exemption from this requirement.

Step 5: Finalize Your Modification.

Check with the Court Clerk to see if you should deliver the original and copies of the Order (with the attachments) before the hearing or bring them to the hearing.

On the day of the hearing, make sure you go to the correct courtroom. Dress appropriately. Bring paper and pen so you can take notes. Address the judge as "Your Honor." The judge will call the name and the number of your case. Go to the clerk's table by the judge's bench. If you were told to bring your original Order to the hearing ask if you may give it to the judge. 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 stipulation. If what you are asking the judge to give you is in any way different from what you've asked for in your stipulation, then you must have a signed agreement with your spouse to amend your stipulation. The judge may ask you some questions after you have given your testimony. The judge will tell you if the modification is granted.

If for some reason you cannot make your court date or if you will be late, call the court clerk and the judge's secretary to ask for an extension of time and a new court date.

The Clerk will “conform” the extra copies you provide after the hearing. The judge will not sign these copies, but the Clerk will stamp the judge’s name on them. One of the conformed copies is for you. One is for your spouse. If your spouse is not present, you will need to supply a stamped, addressed envelope for the clerk to mail the conformed copy to your spouse. The third copy is for Child Support Receipting if you are changing child support.

If you need additional copies, you can purchase regular or certified copies of your final documents any time after your final hearing from the Clerk's Office. However, there is a charge of \$1.00 per page for such additional copies. That is why it is important for you to supply copies to be conformed by the clerk after the hearing.

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