

## CUSTODY AND CHILD SUPPORT MODIFICATION INFORMATION AND INSTRUCTIONS

**CONFIDENTIALITY:** If you have concerns about keeping information confidential, such as your address and/or social security number, please consult an attorney. You should also know that Domestic Violence Protection Orders or Stalking Orders are available free of charge at the circuit court clerks' offices. You may request assistance in obtaining Domestic Violence Protection or Stalking Orders from your local domestic violence or sexual assault program or you may call the Wyoming Coalition Against Domestic Violence & Sexual Assault (844) 264-8080 (toll free) or (307) 755-0992. There are also private attorneys who may be willing to assist clients in these matters. If you have ever obtained a Protection Order against the other party, this information should be indicated in the *Petition to Modify Custody and Support* or the *Counterclaim*.

**Read through the following information and instructions before completing the forms to ensure that you qualify to file for a modification of custody and child support in Wyoming. You must fill out all forms as completely as possible. If your forms are not complete, the Judge may reject your packet.**

**This packet is to modify custody and child support.** If you wish to modify child support only, a separate packet is available.

- 1. Qualifying for a modification of custody:** In order to modify/adjust your current custody arrangement, you must show the Court that there has been a material change in circumstances.
  - a. **Material change in circumstances:** A court may modify an order concerning the care, custody and visitation of the children if there is a showing by either parent of a material change in circumstances since the entry of the order in question and that the modification would be in the best interests of the children pursuant to Wyoming law. (Wyo. Stat. §20-2-201(a)). A condition which existed when the custody order was entered is not a material change of circumstances.
  - b. **Burden of proof:** It is up to the person trying to modify or change the custody arrangement of the earlier order/decreed to establish that a material change in circumstances has occurred, following the entry of the previous order.
  - c. **Judges have broad decision-making authority:** Custody, visitation, child support, and alimony are all committed to the sound discretion of the district court. The welfare and needs of the children are to be given paramount consideration. The determination of the best interests of the child is a question for the Judge. A Judge's decision is very hard to overturn.
- 2. Modifying child support:** Often when a person seeks to modify child custody, child support will also be affected. If that is the situation in your case, this packet includes information to modify child support too.

- **If you believe there has been a material change in circumstances warranting a change in custody, you may move forward with this packet.**

**Step 1. Getting Started.** If you qualify to file for a modification of your current custody order, the following forms are necessary in all uncontested modification cases. It is recommended that you complete all of these forms before you file the *Petition to Modify Custody and Support* so that they will be ready to file at the appropriate time:

1. Petition to Modify Custody and Support (Attach a certified copy of the prior custody order)
2. Summons
3. Confidential Statement of the Parties for Child Support Order
4. Acknowledgement and Acceptance of Service
5. Confidential Financial Affidavit (both parties must file a financial affidavit)
6. Order Modifying Custody and Support
7. Order for Income Withholding
8. Income Withholding for Support (or, you can also open up a case with your local child support enforcement agency and they will prepare this form for you)

\*\*Other forms may be required depending on the Court and on your situation. If additional forms are needed, they will be discussed below where applicable.

\*\*\*You will need to obtain a certified copy of your prior order granting custody. This can be obtained from the Clerk of District Court where the prior custody order was filed.

***Remember, your packet contains many forms that will not be required in all situations. Be sure to follow these instructions carefully to ensure you have completed the correct forms for your situation.***

**Step 2. File the Petition.** In order to advise the Court that you wish to modify your current custody and child support order, you must file the *Petition to Modify Custody and Support* (“Petition”). If you are filing the *Petition*, you are the “Petitioner” regardless of whether you were the Plaintiff or the Defendant when the custody and child support order was first entered. The other party will be referred to as the “Respondent.”

**Notarizing Signatures.** Some forms will require you to have your signature notarized. Notarial Officers may administer the oath and witness your signature, or in many cases, Clerks of Court will be willing to administer the necessary oath. Each Clerk’s office has their own policy so check with them first before seeking notarization of your signature on the forms.

You will file the *Petition* with the Clerk of District Court where the original custody and child support order was issued. Ask the Clerk for your case number. Delivering the *Petition* to the Clerk’s office is called **filing** a case. A **filing fee** is required. Ask the Clerk what the amount of the filing fee is and what forms of payment are accepted. You will also need to attach a

certified copy of your prior custody order to the *Petition*. The Clerk can assist you with obtaining a certified copy. There will be a charge for providing copies of your prior order. You will also need to file the ***Confidential Statement of the Parties for Child Support Order*** and have the Clerk issue the ***Summons***.

**Case Number:** You will need to use the same case number assigned to the original custody and child support order. You must include that case number on all further paperwork in the “**caption**.” The caption is the top section of a pleading, motion, or petition stating the name of the Petitioner, Respondent, Court and the case number.

Take the original and two (2) copies of each document to the Clerk’s office. The Clerk will give you copies of each document back after stamping them with the date they were filed. This is called a “file stamp.” You should keep one copy of each document for your records. The other set of documents will need to be served upon the Respondent.

**RECAP for Step 2:** Start the modification action by filing the following documents with the Clerk of the District Court’s office located in the county courthouse where your original child support order was established:

- A. ***Petition to Modify Custody and Support (attach certified copy of prior custody order)***;
- B. ***Summons; and***
- C. ***Confidential Statement of the Parties for Child Support Order***
- D. Pay the ***filing fee***
- E. Take the original and two (2) copies of each document to the Clerk’s office
  - a. The Clerk will give you both copies back after file-stamping them
  - b. You should keep one copy for your records.
  - c. The other set of documents will need to be served upon the Respondent.

**Step 3. Serve the Respondent.** Once the *Petition* and *Confidential Statement of the Parties for Child Support Order* are filed, a file-stamped copy of each must be formally given to (a/k/a **served** on) the Respondent. **Personal service** of the *Petition*, *Confidential Statement of the Parties* and *Summons* on the Respondent by a **Sheriff** is required **unless** the Respondent completes an ***Acknowledgment and Acceptance of Service*** form. Formal service is required for the *Petition* and the *Confidential Statement of the Parties for Child Support Order* so the Court has proof that the other party actually received the paperwork. Other forms of service exist, but these are the easiest methods that meet the formal service requirement for a *Petition*. If you cannot serve the Respondent by either of these methods, ask the Clerk for additional forms for alternative methods of service.

You **MUST** give the Respondent official notice that you have filed a *Petition* and *Confidential Statement of the Parties for Child Support Order* **within 90 days** from the date that you filed them. This is done by serving a file-stamped copy of the *Summons*, the *Petition*, and the *Confidential Statement of the Parties for Child Support Order* upon the Respondent or by having the Respondent sign an *Acknowledgment and Acceptance of Service* form stating that

copies of those documents were received. If you do not serve the Respondent within 90 days, your case can be dismissed by the Court.

A. **How to Serve the Respondent.** Choose **ONLY ONE** of the following options to serve the Respondent:

**Option 1– Service by Sheriff**

***Summons.*** It is recommended to have a Sheriff in the county where the Respondent can be found serve him or her with the papers. There will be a separate **service fee** (usually fifty (\$50.00) dollars in Wyoming). You can contact the Sheriff’s department in the county where the Respondent lives to determine the fee charged by the Sheriff. This is also true if the Respondent is going to be served out of state. **You will need to provide the Sheriff with a file-stamped copy of the *Summons, Petition and Confidential Statement of the Parties for Child Support Order* to be served on the Respondent.**

**Proof of Service.** The Sheriff’s office will complete the last page of the *Summons* called the “***Return***” (or they may have their own form - an “***Affidavit of Service***”) and will usually file the original with the Clerk’s office and send you a copy. If you receive what looks like the original “***Return***” or “***Affidavit of Service***” from the Sheriff, call the Clerk’s office to ensure the original has been filed. If it has not, then file the original with the Clerk’s office and keep a copy for yourself. This is the proof that the Respondent was given proper notice.

**Note:** Once the Respondent has been served, you **MUST** file the original *Summons* and the original *Return* (or *Affidavit of Service*) with the Clerk’s office so that the Judge knows that proper service was made.

**OR:**

**Option 2 – Acknowledgement and Acceptance of Service.** If the Respondent agrees, he or she may sign a form stating that a file-stamped copy of the *Summons, Petition and Confidential Statement of the Parties for Child Support Order* were received. If the Respondent agrees, you will need to fill out an *Acknowledgement and Acceptance of Service* form. The Respondent must sign this document in front of a Notarial Officer.

**Proof of Service.** Once the *Acknowledgement and Acceptance of Service* form is signed, take the original and two (2) copies of the signed form to the Clerk’s office for filing. You should keep one copy for your records and provide the other copy to the Respondent.

**Note:** You must file the signed *Acknowledgement and Acceptance of Service* form and the original *Summons* with the Clerk’s office so that the Judge knows that proper service on the Respondent was made.

**RECAP for Step 3:** You MUST give the Respondent official notice that you have filed a *Petition* within 90 days from the date you filed the *Petition*. Choose one of the following methods:

**Option 1 – Service by Sheriff**

- A. Provide a copy of the *Summons*, *Petition* and *Confidential Statement of the Parties for Child Support Order* to the Sheriff where the Respondent lives;
- B. Pay the *service fee*; and
- C. Once the Respondent is served, be sure the original *Summons* and the original *Return or Affidavit of Service* are filed with the Clerk’s office; **OR**

**Option 2 – Acknowledgement and Acceptance of Service**

- A. Provide a copy of the *Summons*, *Petition* and *Confidential Statement of the Parties for Child Support Order* to the Respondent;
- B. Have the Respondent sign the *Acknowledgment and Acceptance of Service* form in front of a Notarial Officer; and
- C. File the original *Acknowledgment and Acceptance of Service* form and the original *Summons* with the Clerk’s office.

**Step 4. Wait for the Respondent’s time to respond to expire.** Once the Respondent is served, he or she has 20 days (if served in the State of Wyoming) or 30 days (if served out-of-state) to file a **Response** to the *Petition*. You must wait for the appropriate time period to expire before you can proceed with the case. You must wait the 20 days (or 30 days if served out-of-state) even if the Respondent tells you that he or she is not going to file a *Response*.

- **Computation of Time Limits.** In computing most time limits, unless otherwise stated, the day the document is served shall not be included. The last day of the time period is included, unless it lands on a Saturday, a Sunday, or a legal holiday, or, if the Courthouse is closed then the time limit will be on the very next day that the Courthouse is open. **If you have questions about time limits, you should seek the advice of an attorney.**
- While waiting, move on to **Step 5**. You can also use this time to continue to work on the other required forms to be sure they are filled out completely and correctly.

**RECAP for Step 4:** You MUST wait for the Respondent’s time to file a *Response* to expire before you can proceed with your case. In the meantime:

- A. Mark on the calendar when the time to *Response* expires;
- B. Move on to **Step 5** while waiting; and
- C. Use this time to ensure the required forms are filled out completely and correctly.

**Step 5. Initial Disclosures.** The law requires certain information be made available to the other party within thirty (30) days after the Respondent’s *Response* is required to be served on the Petitioner (use the table in 5.A. below to determine date). The information consists of a schedule of financial assets; schedule of non-financial assets; schedule of all debts

owed individually or jointly; location(s) of safety deposit box(es); employment information; information regarding other income and retirement accounts; and a summary of the facts believed to support the claim of superior entitlement to custody where child custody is at issue. Both parties are required to provide this information in order to fully disclose finances of the parties relating to the calculation of child support.

Please note that “A party must make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.”

A. **WHEN TO PROVIDE:** You must provide your Initial Disclosures to the Respondent (or his/her attorney) WITHIN 30 DAYS AFTER THE RESPONDENT’S *RESPONSE* IS REQUIRED TO BE SERVED ON YOU (use table below). **Be sure to keep a copy of your Initial Disclosures form for your records.** Use the following to determine the date when you and the Respondent are required to provide initial disclosures to one another.

1. Begin with the date the Respondent was served with the Petition:  
\_\_\_\_\_
2. Next, determine when the Respondent is required to file a *Response*:
  - a. If the Respondent was served in Wyoming, add 20 days to the date in #1:  
\_\_\_\_\_
  - OR
  - b. If Respondent signed an Acknowledgement and Acceptance of Service, add 20 days to the date in #1: \_\_\_\_\_
  - OR
  - c. If the Respondent was served out-of-state, add 30 days to the date in #1:  
\_\_\_\_\_
3. Add 30 days to the date in #2(a), (b), or (c): \_\_\_\_\_

**The date set forth in #3 is the date by which you and the Respondent must provide your completed Initial Disclosures forms to one another.**

B. **DO NOT FILE THE INITIAL DISCLOSURES WITH THE COURT.** This form is only given to the Respondent (or his/her attorney).

**RECAP for Step 5:** You MUST provide your *Initial Disclosures* to the Respondent within 30 days after the Respondent’s *Response* is required to be served on you (use table in 5.A. above to determine date). Mark on the calendar the deadline to provide your *Initial Disclosures*; and

- A. Provide your *Initial Disclosures* to the Respondent by the deadline.
- B. DO NOT file the *Initial Disclosures* with the Clerk’s office.

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**Step 6.** Once the time for the Respondent to file a *Response* has expired and you sent your *Initial Disclosures* to the Respondent, then several options exist to move your case forward to get a modification of your custody and child support order. Pick the option that best describes your situation:

**Option A.** If the Respondent filed a *Response* or *Response and Counterclaim* and you both agree on all of the issues of your case, follow **Option A** below.

**Option B.** If the Respondent did not file a *Response* or *Response and Counterclaim*, follow **Option B** below.

**Option C.** If the Respondent filed a *Response* or *Response and Counterclaim* and you do NOT agree on all of the issues of your case, follow **Option C**.

**Option A. The following instructions apply if the Respondent filed a Response, or Response and Counterclaim, and you both agree on all the issues of your case.** If you and the Respondent agree on the issues involved in your case, then you will need to complete the following:

A. **Fill out a *Confidential Financial Affidavit* and attach all required documents.**

- Both parties are required to file a *Confidential Financial Affidavit* including the required attachments with the Court. If the Respondent does NOT file a *Confidential Financial Affidavit*, you will need to complete an *Affidavit of Imputed Income* to show the Court how much money the Respondent makes. This is an additional form contained in your packet.
- **Required Attachments.** The *Confidential Financial Affidavits* of the parties must be supported with documentation of both current and past earnings. Proper documentation of current earnings includes, but is not limited to pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Include copies of income tax returns for the previous two years and your most recent pay stub(s) to show how much you have made so far this year.

B. Fill out an *Order Modifying Custody and Support* (“Order”). This form will need to be filled out completely, signed by both you and the Respondent and both of your signatures notarized. **In addition to signing the Order, you should also initial each page of the Order to verify that each page contains the terms you agreed upon.** Here are some relevant laws and helpful hints in completing the *Order*:

## Important Child Support Laws:

- a. **Recipients of certain public benefits.** Recipients of certain public benefits, such as POWER, are required to assign their rights to support to, and cooperate with, the department of family services in the establishment of parentage and the establishment, enforcement and modification of support obligations. If you or your children receive public benefits, contact your Department of Family Services Caseworker or local child support enforcement office as a modification of child support may have an impact on your benefits. **Wyo. Stat. §20-6-105.**
- b. **Military Personnel:** Military regulations specify that military duty will not be used as a basis for avoiding family support obligations, but setting the level of support is a civilian matter. It is most common to set the support obligation based on basic military pay. You can go to [www.dfas.mil](http://www.dfas.mil) for updates on military pay and many other issues. If military pay and benefits are an issue in your child support case, you may want to contact an attorney for assistance. The following is also a helpful website:  
<https://www.acf.hhs.gov/css/resource/a-handbook-for-military-families>
- c. **Overtime compensation:** Overtime compensation is not counted in the “net income” unless the court, after considering all overtime earnings derived in the preceding twenty-four (24) month period, determines the overtime earnings can reasonably be expected to continue on a consistent basis.
- d. **Entry of income withholding order.** An income withholding order (IWO) enables an employer to take child support out of the pay of the parent obligated to pay. The court always enters an IWO which takes effect immediately, unless the parties agree otherwise, or unless one (1) of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. When the parties agree to an alternative arrangement, the arrangement must be in writing, signed by the parties and reviewed and entered in the record by the court. The court shall include in the record its findings of good cause, including a statement explaining why implementation of immediate income withholding would not be in the best interests of the child and, in cases involving modification of child support, proof of timely payments.  
  
An income withholding order, which did not become effective immediately upon entry, becomes effective upon the earliest of the following: (i) the date the parent paying requests withholding commence; or (ii) child support becomes delinquent in payment of an amount equal to one (1) month's support obligation under the support order.
- e. **Limits on amounts withheld:** The total amount that can be withheld from any employee's paycheck is limited by the Consumer Credit Protection Act (CCPA). The limits provided in the CCPA are fifty percent (50%) of disposable earnings if the

parent who pays child support has a second family and sixty percent (60%) if there is no second family. These limits are each increased by five percent (5%) if payments are in arrears for a period equal to twelve (12) weeks or more. See definition of disposable income in paragraph 4 below.

- f. **Social security or veteran's benefits.** If your children receive part of a parent's social security or veteran benefits, you might want to contact an attorney or legal services program for assistance with child support calculation. If a proportion of a support obligor's (person who is supposed to pay child support) social security or veteran's benefit is paid directly to the custodian (parent or guardian with custody of the children) of the obligor's children who are the subject of the child support order, the total amount of the social security or veteran's benefit, including the amounts paid to the obligor and custodian under the child support order, will be counted as gross income to the obligor (count the amount the children receive as income to the parent who has to pay support). You will need to calculate the child support due and subtract the amount of the social security or veteran's benefit sent directly to the custodial parent from the noncustodial (obligor's) parent's share of presumptive support. If the subtraction of the social security or veteran's benefit sent directly to the custodian results in a negative dollar amount, the support amount shall be set at zero. The child support obligation shall be offset by the amount of the social security or veteran's benefit sent directly to the custodian, beginning from the time the custodian began receiving the social security or veteran's benefit. **Wyo. Stat. §20-2-304(e).**
  
- g. **Date new amount of child support begins.** An order for child support is not subject to retroactive modification except: (i) Upon agreement of the parties; or (ii) The order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was served on the Respondent. **Wyo. Stat. §20-2-311(d).**
  
- h. **When the child support obligation ends.** An on-going child support obligation terminates when the:
  - (i) Parents marry or remarry *each other* (After the remarriage of the parents to each other, the court may eliminate all child support arrearage existing between the parents except those assigned to the state of Wyoming);
  - (ii) Child dies;
  - (iii) Child is legally emancipated; or
  - (iv) Child attains the age of majority. (See "age of majority" definition below.)

## **IMPORTANT DEFINITIONS:**

- a. **"Obligor"** means a person who owes a duty of support for a child;
  
- b. **"Payor"** means any employer or other person who pays income to an obligor and who has or provides health care coverage to employees;

c. **"Arrearage"** means past due child support, past due medical support, past due spousal support, attorneys fees, guardian *ad litem* fees, costs, interest and penalties, but, does not include property settlements.

d. **"Income"** means *any* form of payment or return in money or in kind to an individual, regardless of source. Income includes, but is not limited to wages, earnings, salary, commission, compensation as an independent contractor, temporary total disability, permanent partial disability, permanent total disability, worker's compensation payments, unemployment compensation, disability, annuity and retirement benefits and any other payments made by any payor.

e. **The following is not "income":** Means tested sources of income such as Pell Grants, aid under the Personal Opportunities With Employment Responsibilities (POWER) Program, food stamps and Supplemental Security Income (SSI) shall not be considered as income.

f. **"Net" or "Disposable" income** is the gross income minus total mandatory deductions. **Mandatory deductions:** federal income tax withheld, social security tax (FICA) withheld, state income tax withheld, and other deductions required by law, such as required disability contributions and/or required retirement contributions. The cost of dependant health care coverage for dependent children may be deducted too.

g. **"Imputed income"** can be used when either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent. In making that determination the court shall consider:

- 1) Prior employment experience and history;
- 2) Educational level and whether additional education would make the parent more self-sufficient or significantly increase the parent's income;
- 3) The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
- 4) Availability of employment for which the parent is qualified;
- 5) Prevailing wage rates in the local area;
- 6) Special skills or training; and
- 7) Whether the parent is realistically able to earn imputed income.

h. **"Age of majority"** means a person eighteen (18) years of age, *except* for purposes of child support obligations, a parent's legal obligation for the support of his or her children, whether natural or adopted, continues past the age of majority in cases where the children are: (i) mentally or physically disabled and thereby incapable of self support; or (ii) between the age of majority and twenty (20) years and attending high school or an equivalent program as full-time participants.

## ADDITIONAL INFORMATION FOR CALCULATING CHILD SUPPORT:

- **Child Support Payments.** You will need to determine the amount of child support due based upon the *Confidential Financial Affidavits* you and the Respondent completed (or by the *Affidavit of Imputed Income* if the Respondent did not complete his/her own *Confidential Financial Affidavit*). You may use the *Child Support Computation Form* as a guide to help you calculate the support due. Another option is to go online to:

<https://childsupport.wyoming.gov/calculator/index.html>

- **You CANNOT agree that no support will be paid.** The statutes allow for a reduced amount of support when you agree on joint physical custody and each parent keeps the child(ren) overnight for more than twenty-five percent (25%) of the year and both parents contribute substantially to the expenses of the children in addition to the payment of child support.
  - If the difference between the noncustodial parent's net income and the self-support reserve is less than the support obligation as calculated from the tables in 20-2-304(a), the support obligation shall be set using the difference between the noncustodial parent's net income and the self-support reserve. "Self-support reserve" means the current poverty line for one (1) person as specified by the poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2). See W.S. § 20-2-304(f).
  - There are NO DEVIATIONS from the presumed support allowed UNLESS the Court CHOOSES to deviate from the set amount because the amount was unjust or inappropriate in the particular case. The Court must include the specific reasons for deviation in the *Order*.
  - **NO AGREEMENTS FOR LESS THAN THE PRESUMED SUPPORT CAN BE APPROVED IF GOVERNMENT OR STATE BENEFITS (SUCH AS TITLE 19, KID CARE, FOOD STAMPS, POWER, ETC.) ARE BEING PROVIDED ON BEHALF OF ANY CHILD.** This means the Court cannot lower the amount of child support calculated by using the net income of you and the Respondent even if you and the Respondent agree to a lower amount of support.
- **Medical Support.** The law requires that medical support for the child(ren) be included as part of any child support order. The Court shall order either or both of the parents to provide medical support, if insurance can be obtained at a reasonable cost and the benefits under the insurance policy are accessible to the children. This may include dental, optical or other health care needs for the

child(ren). In addition, the Court will order that any medical expenses not covered by insurance and any deductible amount on the required insurance coverage be paid by one or both parents. If both parents are ordered to pay for expenses not covered by insurance, the Court will specify the proportion for which each parent is responsible (for example, 50% to Plaintiff and 50% to Defendant).

C. Fill out an ***Order for Income Withholding***. The Court is required by statute to enter an *Order for Income Withholding* in every case where child support has been ordered.

D. Fill out an ***Income Withholding for Support***. This form is required if you need to have the child support paid directly from a non-custodial parent's employer. If you need assistance in filling out this form, or if you need assistance in collecting child support, you should contact the child support enforcement agency in your district. The Clerk can provide you with the agency's contact information.

E. **Other Forms**: The Court may also require other forms depending on the county where your case is filed. Ask the Clerk if additional forms are required.

F. **Copies and Envelopes**. Take an original and two (2) copies of each of the above documents for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order* to you and the Respondent). A copy of any documents that you file (other than the *Order*) must be sent to the Respondent on the date that you filled out on the *Certificate of Service* on each document.

- If a hearing is not required by your Court, the Clerk will mail a copy of your *Order* if accepted by the Court.
- If a hearing is required by your Court, follow the next steps:

G. **Hearing**. In some Courts, a hearing is required before the Judge will sign the *Order*. If this is the case, you will need to request a hearing by completing the **Request for Setting**. If you have reached an agreement, check the first box in paragraph 2 that states that the parties have both signed the *Order*. Indicate how much time you will need for the hearing (usually 15 minutes if there is an agreement). You will file the **Order Setting Hearing** with the Clerk's office, and the Court will fill in the hearing date and time and mail a copy to you and the Respondent. You will need to provide an addressed, stamped envelope for you and the Respondent to the Clerk. These documents are additional forms contained in your packet.

H. **Evidence**. At the hearing, you will need to inform the Judge that you meet the requirements for a modification of a custody and child support order, that you have calculated child support based on the net income of the parties, and whether or not the children are receiving public benefits. You will also give the *Order* signed by both you and the Respondent to the Judge. The Judge may ask you additional questions. The Judge will not guide you

through the hearing, tell you how to proceed or advise you on the law. Following the hearing, the Judge will make any necessary changes to the *Order* and will sign it.

I. **When will your custody and child support order be modified?** Your order modifying custody and child support will not be effective until the Judge signs the *Order* and it is filed with the Clerk. This process may take time if the Judge requires changes to the proposed *Order*. You must verify with the Clerk that the *Order* has been file-stamped before you can be sure your custody and child support order has been modified.

**RECAP for Option A:** If you and the Respondent agree on all issues in the case and the Respondent filed a *Response* or *Response and Counterclaim*, complete the following:

Remember: Take an original and two copies of each document to file with the Clerk's office. You will need to send a copy of any filed document to the Respondent unless otherwise stated below.

1. *Confidential Financial Affidavit*
2. *Order for Income Withholding*
3. *Income Withholding for Support* (or, you can open up a case with your local child support enforcement agency)
4. *Order Modifying Custody and Support*
  - Take an original and two (2) copies of the *Order* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order* to you and the Respondent).
5. Complete and file any additional documents required by your Court.
6. If your Court requires a hearing before entering a *Order*, then, you will also need to file and do the following:
  - *Request for Setting*
  - *Order Setting Hearing*
  - Take an original and two (2) copies of the *Order Setting Hearing* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order Setting Hearing* to you and the Respondent).
  - Attend the Hearing

**Your custody and child support order has been modified when the *Order* has been signed by the Judge and filed by the Clerk.**

## **Option B. If the Respondent does NOT file a *Response* or *Response and Counterclaim*, obtain a default *Order* by following these steps:**

A. **Default Order.** After the required waiting period has expired, you may obtain what is referred to as a default order if the Respondent does NOT file a *Response* or *Response and Counterclaim* to the *Petition*.

B. **Necessary forms.** Fill out and sign the *Application for Entry of Default* and *Affidavit in Support of Default*. Take an original and two (2) copies of these documents to the Clerk and the blank *Entry of Default*. If your paperwork is correct, the Clerk will sign the *Entry of Default*. These are additional forms located in your packet.

C. **Additional Documents.** After the *Entry of Default* is signed by the Clerk, complete **Step 6, Option A, items A through F** above. **MAKE SURE TO MARK “DEFAULT” ON ORDER.** Also, be sure to complete an *Affidavit of Imputed Income* to provide evidence of the Respondent’s income to the Court.

D. **Default Hearing.** Some Courts will not enter a *Default Order Modifying Custody and Support* unless there is a hearing. Ask the Clerk if this is required for your Court. If it is, fill out a ***Request for Setting*** and request 15 minutes for the hearing. You will file the ***Order Setting Hearing*** with the Clerk’s office, and the Court will fill in the hearing date and time and mail a copy to you and the Respondent. You will need to provide an addressed, stamped envelope for you and the Respondent to the Clerk.

E. **Evidence.** At the hearing, you will need to inform the Judge that you meet the requirements for a modification of a custody and child support order, that you have calculated child support based on the net income of the parties, and whether or not the children are receiving public benefits. You will also give the *Order* to the Judge. The Judge may ask you additional questions. The Judge will not guide you through the hearing, tell you how to proceed or advise you on the law. Following the hearing, the Judge will make any necessary changes to the *Order* and will sign it.

F. **When will your custody and child support order be modified?** Your custody and child support order will not be modified until the Judge signs the *Order* and it is filed with the Clerk. This may take time if the Judge requires changes to the proposed *Order*. You must verify with the Clerk that the *Order* has been file-stamped before you can be sure your child support has been modified. The time limit to appeal an *Order* begins to run from the day the *Order* is filed with the Clerk’s office.

**RECAP for Option B:** If the Respondent did NOT file a *Response* or *Response and Counterclaim*, complete the following:

Remember: Take an original and two copies of each document to file with the Clerk’s office. You will need to send a copy of any filed document to the Respondent unless otherwise stated below.

1. *Application for Entry of Default*
2. *Affidavit in Support of Default*
3. *Entry of Default* (Clerk will sign if your paperwork is correct)
4. *Confidential Financial Affidavit*
5. *Affidavit of Imputed Income*
6. *Order for Income Withholding*
7. *Income Withholding for Support* (or, you can open up a case with your local child support enforcement agency)
8. *Order Modifying Custody and Support.* **MAKE SURE TO MARK “DEFAULT” ON DECREE.**
  - Take an original and two (2) copies of the *Order* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order* to you and the Respondent).
9. Complete and file any additional documents required by your Court.
10. If your Court requires a hearing before entering a *Order*, then, you will also need to file and do the following:
  - *Request for Setting*
  - *Order Setting Hearing*

- Take an original and two (2) copies of the *Order Setting Hearing* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order Setting Hearing* to you and the Respondent).
- Attend the Hearing

Your custody and child support order has been modified when the *Order* has been signed by the Judge and filed by the Clerk.

**Option C. If the Respondent filed a Response, or a *Response and Counterclaim*, and you and the Respondent do NOT agree on all issues of your case, you will need to have a trial:**

A. **You must file a *Reply to the Counterclaim*.** If the Respondent has filed a *Response and Counterclaim*, you will have a time limit (usually 20 days) to file a written response (***Reply to Counterclaim***) to the counterclaim. The original, signed copy of your reply must be filed with the Clerk and a copy must be sent to the Respondent (or his/her attorney).

- **Caution:** If you do not file the original *Reply to Counterclaim* with the Clerk within the time allowed, the Respondent can seek a default order against you and may get what he/she asked for in his/her counterclaim.

B. **Trial.** If there is no agreement, your case will have to be heard and decided by a Judge at a trial.

- **Caution:** It is strongly recommended that you hire or find an attorney to represent you at trial, though you may represent yourself. You proceed at your own risk and will be expected to know the laws.

C. **Request a trial date.** You will need to request a hearing by completing a *Request for Setting*. Write in “trial” where it asks the type of hearing. Indicate how much time you think it will take for you and the other party to present your evidence and write that in (usually one (1) to three (3) hours). You also need to decide whether or not you want a Court reporter to record the proceeding. SEE BELOW FOR DETAILS ON GETTING A COURT REPORTER. If a hearing is not recorded by an official court reporter, a transcript of the hearing will not be available. It is very difficult to appeal the Judge’s decision if you do not get a court reporter to take down everything that is said at the trial.

- You must file the *Request for Setting* and the *Order Setting Modification Trial and Requesting Pretrial Statements* with the Clerk’s office, and the Court will fill in the hearing date and time and mail a copy to you and the other party. You will need to provide an addressed, stamped envelope for you and the Respondent to the Clerk. Both the *Request for Setting* and the *Order Setting Modification Trial and Requiring Pretrial Statements* are additional forms contained in your packet.

D. **Pretrial Disclosures.** Both parties must provide to other party AND PROMPTLY FILE WITH THE COURT the *Pretrial Disclosures* regarding the evidence that it may present at trial. If you have questions, you should contact an attorney.

- When are the *Pretrial Disclosures* due? Unless otherwise directed by the Court, these disclosures must be made at least **30 days before trial.**
- Take the original and two (2) copies to the Clerk for filing. Keep one copy for your records and send the other copy to the Respondent (or his/her attorney).

E. **Settlement before trial.** In the event that your case settles before the trial, you must present the Court with the completed and signed *Order Modifying Custody and Child Support* in writing before the Court will take the trial off of the schedule. There will be no continuances or canceling of the trial date based on telephone calls. If you need a continuance, you should contact an attorney for assistance in seeking one.

F. **Court reporter.** If you wish to have a court reporter, you shall provide notice to the official court reporter as soon as possible, but no later than **three (3) working days** before the matter is set for hearing. You can provide notice to the court reporter by phone or by submitting a written request. Please note that if providing notice through the mail, the request must be received by the court reporter no later than three working days prior to the hearing. The Clerk will be able to inform you which court reporter to contact. The three-day notice requirement will not be waived by the Court. The notice is required for all civil matters including jury trials.

G. **Evidence and witnesses.** At the hearing, you will need to present your evidence and witnesses. If the *Order Setting Modification Trial and Requesting Pretrial Statements* is entered (signed by the Judge), you must follow the terms and provide the Court with the information requested in that document, including copies of exhibits you want to introduce at the trial and a list of your proposed witnesses and what their testimony is going to be about within the time frame ordered (usually 3 to 5 days prior to the trial). Under the law, the Judge cannot help you or assist you at trial. You are on your own without an attorney.

H. **Final Decision (Order).** Following the trial, the Judge will make a decision or may take the matter under advisement, meaning he or she will need to think further before making a determination. If the Judge instructs you, you must take that decision and type it into the *Order Modifying Custody and Child Support* incorporating the Judge's decision.

- **You are again reminded that, if you choose to continue without an attorney, you are expected to know what to do and how to do it. The Judge will not guide you through the trial/hearing, tell you how to proceed or advise you on the law.**
- **You MUST also file the documents outlined in Step 6, Option A, items C through F above.**

I. **When will your custody and child support order be modified?** Your custody and child support order will not be modified until the Judge signs the *Order* and it is filed with the Clerk of Court. This process may take time if the Judge requires changes to the proposed *Order*. You must verify with the Clerk's office that the *Order* has been file-stamped before you can be sure your custody and child support order has been modified. The time limit to appeal the *Order* begins to run from the day the *Order* is filed with the Clerk's office.

**RECAP for Option C:** If the Respondent filed a *Response* or *Response and Counterclaim* and you do NOT agree on the issues, complete the following:

Remember: Take an original and two copies of each document to file with the Clerk's office. You will need to send a copy of any filed document to the Respondent unless otherwise stated below.

1. If the Respondent filed a *Response and Counterclaim*, file a *Reply to the Counterclaim* within 20 days after you receive the *Response and Counterclaim*.
2. Request a trial date
  - a. *Request for Setting*
  - b. *Order Setting Modification Trial and Requiring Pretrial Statements*
  - c. Take an original and two (2) copies of the *Order Setting Modification Trial and Requiring Pretrial Statements* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order Setting Modification Trial and Requiring Pretrial Statements* to you and the Respondent).
3. File your *Pretrial Disclosures* and *Pretrial Memorandum*
4. No later than 3 working days before the trial, request a court reporter, if desired.
5. Attend the Trial
6. *Order Modifying Custody and Support*
  - a. Take an original and two (2) copies of the *Order* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the Respondent with enough postage to cover the cost of mailing the *Order* to you and the Respondent).
7. *Order for Income Withholding*
8. *Income Withholding for Support* (or, you can open up a case with your local child support enforcement agency)
9. Complete and file any additional documents required by your Court.

**Your custody and child support order is modified when the *Order* has been signed by the Judge and filed by the Clerk.**