

INSTRUCTIONS FOR MODIFYING VISITATION

Free to download; \$9.00 for a paper copy

A change of visitation is allowed when the parent(s) can prove that there are substantial changes affecting the welfare and best interests of the child(ren). Parents can enter into a Parenting Plan agreement regarding visitation, subject to the court's approval. The Parenting Plan will be effective unless the judge decides that the proposed change is not in the best interests of the child(ren). The Parenting Plan can be made a final order of modification by the trial court at any time after the agreement has been submitted to the court.

A contested case is one in which the parties cannot work out a written agreement regarding visitation. The parties ask the judge to settle arguments between them, and each will have to present evidence at a trial. This process can be quite complicated. You will probably need additional documents in order to conduct discovery, which is a formal process of gathering evidence for use at trial. Discovery can include depositions, interrogatories, requests for production of documents, and other procedures. The law library has form books which contain the discovery documents you might need. Because discovery is a highly individualized process, it is not possible to include those documents in this packet.

YOU MAY NEED AN ATTORNEY IF:

- The case is contested and the other parent has a lawyer.
- You cannot find the other parent to serve him or her with your papers.
- You might lose custody of your children.
- You think you will have difficulty getting information and documents from the other parent regarding income, etc.
- The children and the custodial parent are not in Georgia.

Even if it is a friendly action, you should talk to a lawyer before you sign any settlement papers or file anything in court.

STEP 1: Complete the Filing Information and Final Disposition forms.
STEP 2: Complete the Complaint for Modifying Visitation.
STEP 3: Complete the Verification
STEP 4: Complete the Acknowledgment of Service or Certificate of Service,
STEP 5: Complete the Rule Nisi
STEP 6: Complete the required Plaintiff's Affidavit.
STEP 7: Attach the Parenting Plan (see details later).
STEP 8: Pay the filing fee and file the forms.
STEP 9: Prepare your case for trial, if no signed Parenting Plan.
STEP 10: Receive the Final Judgment.

DETAILED INSTRUCTIONS:

STEP 1: Complete the Filing Information and Final Disposition Forms

These forms are required by Georgia Law, at O.C.G.A. § 9-11-133. They help the Clerk of Court keep statistical information about the number and types of cases decided in our local courts. The clerks use this information to prepare case management reports for the Chief Judge of each circuit and for the Chief Justice of the Georgia Supreme Court. In short, having this information helps us to run the court system more efficiently for you.

The Filing Information form

- a. In the top line, fill in the county where you are filing and the date filed.
- b. In the second line, fill in the names of the Plaintiff and Defendant.
- c. Where it says "Plaintiff/Petitioner's Attorney," check the box which says "☐ Pro Se." This indicates that you are representing yourself without an attorney.
- d. In the left-hand box, check off what kind of case this is. Since this is a visitation modification action, you will check "☐ Modification—Custody and/or Visitation."
- e. In the large box on the upper right-hand side of the page, show whether or not you are asking for relief from family violence by checking yes or no in the appropriate boxes.

The Final Disposition form

The purpose of this form is to tell how your case ends. Since your case is far from over, you should NOT fill in the information in the three big boxes at the bottom of the page. At this point, we do not know how the case will end.

- a. In the top line, fill in only the county where you are filing. We do not yet know the date disposed, since you have not yet received a final order from the judge.
- b. Leave the second line, "Docket #," blank. The clerk will assign this number.
- c. Write your name where it says "Reporting party."
- d. Write down the full names of the Plaintiff and Defendant.
- e. Where it says Plaintiff/Petitioner's Attorney, you will check the box which says "☐ Pro Se." This shows that you are representing yourself. Since you are not a licensed attorney, you do not have a Bar #, so leave those blanks empty.

STEP 2: Complete the Complaint to Modify Visitation.

Fill in the county where you are filing, then your full name as the Plaintiff and the Defendant's full name. **Do not fill in where it says Civil Action File No. until after**

the Clerk of Court assigns the number to your case when you file your complaint.

Just below where it says “Complaint to Modify Visitation,” print your name. Check the box to show whether you are male or female, then print the Defendant’s name.

Paragraph 1: Jurisdiction and Venue

Check box a if the Defendant will sign an Acknowledgement of Service (p. 7). This form lets the court know that the Defendant has read your papers, and that there is no need to have the Defendant served by the Sheriff. Fill in the name of the County in which the Defendant lives.

Check box b if you want the Sheriff to serve the Defendant because he or she will not sign an Acknowledgement of Service (p. 7). Fill in the county where the Defendant lives, as well as the address where the Sheriff should take the Complaint. The Certificate of Service (p. 8) will give the Sheriff’s department the information they need in order to serve the Defendant. The Sheriff’s department charges a \$50 fee for serving the Defendant.

Paragraph 2: Children

Check the box to show whether the Plaintiff is the mother or the father. Write down the name(s) of the child(ren) in the first blank, and the date(s) of birth in the second blank.

Paragraph 3: Current Custody

Check box a if there is a custody order already in place.

1. Check the box in front of “plaintiff” or “defendant” to show which party has custody of the child(ren) now.
2. In the first blank, write “divorce” or “legitimation” to show which kind of case created the current custody order.
3. In the second blank, write down the date on which the court order was entered.
4. In the third blank, write down the Civil Action File Number for the Defendant’s order of custody was made in a divorce case.
5. Finally, write down what the current court order says about visitation.

Check box b if the Defendant’s order of custody was made in a Legitimation case.

1. Check the box to indicate whether the Plaintiff or the Defendant is the custodial parent.
2. List the names of the children in the first blank
3. Write down the child(ren)’s age(s) in the second blank.

4. Write down the Civil Action File Number from the divorce case in the third blank.
5. Write down the month, day, and year when the divorce order was entered.
6. Finally, write down the name of the county and state where the divorce took place.

Check box c if the child was born to parents who were not married to one another, and if the father signed a Voluntary Acknowledgement of Legitimation during the child's first year of life. In this situation, there will not yet be a court order of visitation or custody. You can see what a Voluntary Acknowledgement of Legitimation looks like by visiting:

http://dhs.georgia.gov/DHR/DHR_CommonFiles/PA_Nov_Form.pdf.

Paragraph 4: Material Change in Circumstances

Write down the changes that make it now in the child(ren)'s best interest to change visitation. What has changed in the lives of the parents and child(ren)?

Paragraph 5: Reason for Modification

In the blanks provided, explain why a change in visitation is needed. You may attach additional pages if necessary.

Paragraph 6: Parenting Plan Agreement

Check the box to show whether the parties have or have not signed a Parenting Plan Agreement together.

Signature & Contact Information for Complaint

Sign your name in the space provided on page four (4). There is no need to have this signature witnessed by a notary. Fill in your address and telephone numbers(s) in the spaces provided.

STEP 3: Verification

Complete the Verification form (p. 5). Insert your name as Plaintiff and the other parent's name as Defendant. Do not fill in where it says Civil Action File No. until after the Clerk of Court assigns the number to your case (when you file your complaint). You will need to sign this Verification in the presence of a Notary Public. Most banks and many libraries have a notary on staff and will notarize your documents for a small fee.

STEP 4: Acknowledgment of Service (p. 6) or Certificate of Service (p. 7)

Acknowledgment of Service

If the Defendant signs this document, you will not need to have him or her served by the Sheriff. This will save you \$50.

1. Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty until the Clerk of Court assigns the number to the case (when you file it).
2. Have the Defendant sign the form in front of a Notary public (the Defendant will need to show a picture I.D. to the Notary).
3. Write down the date on which the form was signed.

Certificate of Service

Use this form if you want the Sheriff to serve the Defendant because he or she will not sign an Acknowledgement of Service. This document gives the Sheriff's department the information they need in order to serve the Defendant. The Sheriff's department charges a \$50 fee for serving the Defendant.

1. Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty until the Clerk of Court assigns the number to the case (when you file it).
2. Write down the address where the sheriff should take the Complaint to serve it.
3. Write down the date on which you filled out the form
4. Sign your name.
5. Write down your address and telephone number(s).

If you need more information about serving the Defendant, there is an excellent article at the following web address:

http://famdiv.fultoncourt.org/index.php?option=com_content&task=view&id=28&Itemid=71.

STEP 5: Complete the Rule Nisi

The purpose of the Rule Nisi (p. 8) is to ask the Judge to assign a court date for a hearing.

1. Caption: Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty until the Clerk of Court assigns the number to the case (when you file it).
2. Leave the rest of the form blank so that the Judge can fill it out.

STEP 6: required Plaintiff's Affidavit.

The Plaintiff's Affidavit is REQUIRED by O.C.G.A. § 19-9-69.

The Caption:

Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty until the Clerk of Court assigns the number to the case (when you file it).

Paragraph 1:

List the name of the Plaintiff, who is also the Affiant (the person filling out the Affidavit).

Paragraph 2:

List the name, birth date, and gender of each child.

Paragraph 3:

Write down the address where the child lives now.

Paragraph 4:

Write down the child(ren)'s past addresses for the previous five years. Indicate the dates when the child(ren) lived at those addresses, and the names of the people with whom the child(ren) lived.

Paragraph 5:

Write down the name of the person with whom the child(ren) live(s). Write down that person's relationship to the child (mother, father, grandmother, grandfather, aunt, uncle, etc.).

Paragraph 6:

Choose paragraph a) if there have been no other court cases concerning the custody of the child(ren). The court wants to know about the following types of actions: custody, visitation, family violence, protective orders, termination of parental rights, and adoption.

Choose paragraph b) if there have been cases in court that involve the child(ren). The court wants to know about the following types of actions: custody, legitimation, paternity, visitation, family violence, protective orders, termination of parental rights, and adoption. Fill in the county, state and court, as well as the type of action, the date filed, and the current status of the case.

Paragraph 7: Others with a Custody/Visitation Claim

Choose paragraph a) if the parties in this case are the only people who have a custody and/or visitation claim with respect to the minor child(ren).

Choose paragraph b) if there are others who have custody and/or visitation claims. List each person's name as well as the claim they have.

Signature Block

Sign the Affidavit IN FRONT OF a notary public. The notary public will sign and date the Affidavit after watching you sign. You can find a notary public in your local bank, office supply store, or the Probate Court. Call before you go to inquire about any fee that may be charged.

STEP 5: Fill out and attach the Visitation Schedule Summary and Parenting Plan

The visitation schedule summary can be used to summarize the Parenting Plan. You do not have to use the summary if you do not want to. The Parenting Plan is used to reduce conflicts later on by dealing with the specifics of visitation now. The Parenting Plan is required by Uniform Superior Court Rule 24.10. You can get a copy of the Parenting Plan at this website:

http://www.georgiacourts.org/forms/Parenting%20PlanForm_08.pdf

STEP 6: Complete the Order (page 13).

Fill in the name of the county in which you are filing. Fill in the names of the Plaintiff and the Defendant. Leave the Civil Action No. blank empty until the Clerk of Court assigns the number to the case (when you file it).

Paragraph 1: Fill in the name of the Plaintiff and the name(s) of the minor child(ren). Check the box to show whether the Plaintiff is a "him" or a "her."

Paragraph 2: Check the box to show whether the Plaintiff is a "him" or a "her."

Paragraph 3: Check the box to show whether the Plaintiff is a "he" or a "she."

STEP 7: Pay the filing fee and service of process fee, and file the forms.

You should make two copies of all of your documents after they are filled out completely. Give the clerk your original and the two copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp the documents to show that your complaint has been filed and will give you your copy for your records. The original will remain with the court. The other copy will be given to the other party in your case.

There is a \$200.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Modification of Visitation. There is an additional fee of \$50.00 to have the Defendant served by the Sheriff. If you are cannot afford these fees, you may ask for an Affidavit of Poverty (also called Pauper's Affidavit). If the Judge accepts your Affidavit, then you do not need to pay these fees. You can purchase the Affidavit of Poverty at the Law Library for \$5.00.

STEP 8: Prepare your case for trial if there is no signed Parenting Plan.

Most contested civil cases use **pretrial discovery**. **Discovery** refers to the formal procedures and laws which enable each party to find out more about the other side's case. Discovery serves several important purposes. It preserves evidence of witnesses who may not be available at trial. It reveals facts which might have been previously unknown. It helps refine the issues. It "freezes" testimony in order to prevent later perjury. It promotes settlements because it allows each party to test the strength of his or her opponent's case. Even if the case does not settle, discovery increases the fairness and justice of the trial outcome. There are several methods of discovery which a party can use.

Interrogatories are written questions which one party sends to another. The answering party must write down answers under oath and file them with the clerk of court within 30 days. Georgia law usually limits the number of interrogatories to 50. Failure to respond can result in sanctions and penalties by the court.

Depositions are like a mini-trial. A plaintiff, defendant, or other witness is asked oral questions which must be answered orally while under oath. Depositions are recorded by a court reporter who types everything up into one long document. Each party who is questioned may be cross examined. At trial, a witness who has either changed or forgotten his or her previous testimony can be "impeached," or discredited by referring back to the deposition testimony.

Requests for Production of Documents are used by a party to gain access to a document which is not in his or her possession. For example, a request for production of documents may be used to get a copy of the other party's tax returns, bank statements, or other important documents.

Physical and Mental Examinations may be used only with the court's permission, when a party's physical or mental condition is an issue in the trial, and when the requesting party can show "good cause," i.e., the information is extremely important and cannot be otherwise obtained.

Requests for Admissions are used to determine which issues are actually in controversy. A party is asked to admit or deny the truth of a series of statements.

Forms for all of the above discovery tools are available at the law library upon request.

For more information about trial preparation, go to www.albany.ga.us/lawlibrary. Click on “representing yourself.”

STEP 10: Receive the Final Judgment.

After trial, the judge will issue a final order regarding visitation. Your Modification of Visitation is not final until the judge signs the final order in the case. You may sign an Amendment of Visitation Agreement with the other parent any time before a final order is entered. Most cases do settle before trial.

IF THERE IS ANY QUESTION in your mind concerning these forms, the use of these forms, or your legal rights, it is strongly recommended that the services of an attorney be obtained. If you do not know an attorney, you may find one by searching http://www.gabar.org/directories/member_directory_search/.

DUE TO THE CHANGING NATURE OF THE LAW, the forms and information contained in these packets may become outdated. Therefore, you should review and research statutes and rules of procedure referenced in the instructions to ensure that the forms are accurate and current.

IN NO EVENT will the Office of the Court Administrator, Clerk of Court, the Law Librarian or anyone contributing to the production of these forms, commentary, instructions, and appendices be liable for any indirect or consequential damages resulting from the use of this packet.

USE THESE FORMS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED.

**IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL
ADVICE.**