



## **Judicial District 1**

# **MODIFICATION OF CUSTODY OR VISITATION**

**DUE TO THE CHANGING NATURE OF THE LAW, the forms and instructions contained in this packet may become outdated. 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 Clerk of Court or anyone contributing to the production of these forms, instructions or guidelines be liable for any indirect or consequential damages resulting from use of the forms or information provided to you.

IF THERE ARE ANY QUESTIONS in your mind concerning these forms, or your legal rights, it is strongly recommended that you consult with an attorney.

**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! NO ONE AT THE JUDICIAL CENTER, CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE, MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!**

**PLEASE CAREFULLY READ THE FORMS AND INSTRUCTIONS CONTAINED IN THIS PACKET. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT WITH AN ATTORNEY.**



THESE ARE EDUCATIONAL FORMS AND INSTRUCTIONS DESIGNED TO ASSIST YOU, BUT YOU ARE REPRESENTING YOURSELF. PLEASE REVIEW AND FOLLOW THE DIRECTIONS TO IMPROVE YOUR PERFORMANCE IN YOUR CASE. FAILURE TO READ AND FOLLOW THE INSTRUCTIONS MAY ADVERSELY IMPACT YOUR CLAIM.

**NO ONE AT THE CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!**

## Steps for Filing a Motion for Modification of Custody/Visitation

### **STEP 1**

#### **Filing Out the Documents**

You must complete the following documents:

- **Motion for Modification of Custody or Visitation Order**. The plaintiff and defendant stay the same throughout the entire case. Look on the previous order to see who the plaintiff and defendant are. Note you must sign this motion in the presence of a **Notary Public**.
- **Domestic Civil Action Cover Sheet (AOC-CV-750)**. Forms may be accessed and filled out on line at [www.nccourts.gov](http://www.nccourts.gov)
- **Certificate of Service of Process**.
- **Affidavit of Status of Minor Child (AOC-CV-609)**. Forms may be accessed and filled out on line at [www.nccourts.gov](http://www.nccourts.gov) Please complete one form for each child.
- **Custody Mediation Cover Sheet and Notice for Custody Mediation Orientation**. All parties in custody/visitation cases are required to attend Custody Mediation. If you have previously attended mediation, you do not have to attend orientation again. However, you must call Deborah James, Custody Mediator, 252-340-3752, to schedule a mediation appointment.

### **STEP 2**

#### **Filing the Documents**

There is a \$20.00 fee to file the Motion. Take the completed Domestic Civil Action Cover Sheet (AOC-CV-750), the original and two (2) copies of the Motion along with the completed Affidavit of Status of Minor Child (AOC-CV-609) attached thereto, to the Civil Division of the Clerk of Superior Court's office in the county where your case is filed. The Clerk will stamp each Motion "filed," place the original in the Court file and return two (2) copies of the "filed" document to you. Keep one copy of the "filed" Motion for your records. You will serve the second copy on the other party.

### **STEP 3**

#### **Mandatory Custody Mediation**

All cases filed in North Carolina which involve custody must go through the **Custody Mediation Program**. If you have not yet participated in Custody Mediation with regards this particular custody case, you will be required to participate before your case can be heard before a District Court Judge. Even if you have participated in Custody Mediation, you may be required to return for another mediation session upon filing a motion to modify the current custody order.

Mediation is a process in which a professionally trained neutral third party assists parents in developing an agreement that provides for the care of their children during and after separation. The goal of the mediation process is to provide the litigant a forum to discuss parenting issues that involve both parents in the continuing care of their children. The agreement focuses on the children's needs as well as the on the rights and responsibilities of both parents. The parties are not required to reach an agreement, but they are required to attend at least one orientation session and one mediation session. Because participation is mandatory, there is no cost to you. Upon filing your Motion with the Clerk of Court, you will be given a "Custody Mediation Cover Sheet and Notice for Custody Mediation Orientation" which will notify you of the date, time and place that you must attend an orientation. It is **YOUR RESPONSIBILITY** to serve this Notice of orientation on the other party. The orientation is an information exchange between the parties and the Custody Mediator and serves to educate you about the mediation process. At the orientation, the Custody Mediator will schedule your mediation session.

If your mediation does not result in an agreement, the Custody Mediator will send an Order to Calendar to both parties. A calendaring request must be made within 90 days thereafter. The form for the calendar request will be provided to you with your copy of the Order to Calendar.

## **STEP 4**

### **Service of Process**

North Carolina General Statutes require that you give notice to the other party about the filing of your motion. This is known as “Service of Process.” The correct way to serve the other party is determined by law. If the documents are not correctly served on the other party, the court will not hear your case. All papers and documents that you file in your case must be served on the other party. If the other party has an attorney, you must send copies of all of the paperwork to the attorney.

You are now ready to serve the document. You may have the Sheriff’s Department serve the documents for a service fee. You may also serve your documents by using First Class Mail, personal delivery, certified or registered mail with a return receipt requested, or by fax with the confirmation receipt attached. NOTE: If you serve the documents by certified or registered mail, you MUST file an affidavit of service of process by mail, (copy attached).

**IT IS YOUR RESPONSIBILITY TO ENSURE  
THAT ALL OF THE ABOVE STEPS HAVE BEEN DONE PROPERLY.**

**IT IS RECOMMENDED THAT YOU SEEK LEGAL ADVICE.  
REMEMBER, THE CLERK OF COURT CANNOT GIVE YOU LEGAL ADVICE.**

## **STEP 5**

### **Attendance**

Be sure to attend all scheduled court events on time and dress appropriately (as if you were going to a job interview). This is very important.

**SERVICE OF PROCESS**  
**PLEASE READ THIS SECTION VERY CAREFULLY**  
**If you have concerns or are confused, consult with an attorney immediately!**

In order for your case to be binding against the other party, they must be given notice of the case, or *served* in a manner that is recognized by the court. **PLEASE NOTE that service of process must be completed successfully for your case to proceed and avoid dismissal. IT IS YOUR RESPONSIBILITY.** Service of the motion may be served by Sheriff, First Class Mail, personal delivery, facsimile, registered or certified mail with a return receipt requested. Then complete the Certificate of Service of Process form.

**If you do not know where the other party lives,** you will need to serve them by “publication”. This is a complex process using the newspaper to run notice of the case. You should speak with an attorney regarding this type of service. If you need an attorney, you can contact the **North Carolina Lawyer Referral Service** at **1-800-662-7660**. If you cannot afford an attorney, you may be eligible for representation or assistance from **Legal Aid of North Carolina** at **1-800-682-0010**.

**PLEASE NOTE:** Service by publication should be used only as a last resort. If you know where the other party is, or if you can find out where they are, you should never attempt this type of service.