

CAO M INSTRUCTION 1 FILING A PETITION FOR MODIFICATION

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, judgment or decree, or if the child/ren has/have not lived in Idaho for at least six months, the court may not grant your Petition unless there was a clerical mistake in the earlier order, judgment or decree, 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, judgment or decree was entered in Idaho or another jurisdiction and other circumstances. These instructions outline the process for modifying an Idaho order, judgment or decree.

YOU WILL BE SIGNING A STATEMENT THAT YOU HAVE READ THE PETITION 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, or visit the Idaho Supreme Court's Self-Help Center at <http://www.courtselfhelp.idaho.gov/>.

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 a Stipulation for Modification, CAO M 6-1, and the Judgment of Modification, CAO 8-2, may be issued without a hearing and without the twenty-one (21) day wait. (See CAO M Instruction 2, Agreed Modification of Child Custody, Visitation or Support.)

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:

- Petition to Modify an Order, Judgment or Decree, CAO M 1-1
- Summons with Orders, CAO FL 1-3

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 Petition.

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

- Affidavit Verifying Income, CAO FL 1-11
- Child Support Worksheet, CAO FL 1-12 **or** FL 1-13
- Child Support Transmittal Form, CSS 809
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 CAO Cv Instruction 7 **and**
- Motion and Affidavit for Service by Publication, CAO FLPi 1-5
- Order for Service by Publication, CAO FLPi 1-6
- Summons by Publication, CAO FLPi 1-4
- Affidavit of Mailing per Order for Publication, CAO FLPi 2-3
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, telephone number, and email address (if you have one).
- 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, Judgment or Decree you want to change.
- Fill in your names in the caption exactly as they appear in the Order, Judgment or Decree you want to change.
- Fill in the case number, exactly as it appears in the Order, Judgment or 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 Petition and still have one to attach to the Judgment.
- Sign and date the form certifying that the information is true and accurate, subject to the penalty of perjury if it is not.

Step 3: Make Copies and File with the Clerk.

- Make copies of the Petition to Modify an Order, Judgment or Decree and the Summons with Orders for each party in the case.
Go to the window in the Clerk's Office and give the Deputy Clerk:
- The signed original Petition to Modify and copies for each party (with copies of Parenting Plan and child support documents stapled to each copy)
- The original Summons with Orders and copies for each party
- The appropriate filing fee or Motion and Affidavit for Fee Waiver and two copies of a proposed Judgment Re: Fee Waiver (CAO FW 1-9 & CAO 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 Petition to Modify, and Summons with Orders (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.

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 CAO GCSM Instruction 1, Filing a Modification (H&W)

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 Petition for Modification (with all appropriate Exhibits attached), and Summons with Orders, and the Order to Attend Workshop if any.
3. Have each other party sign the original Acknowledgment of Service form.
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 Petition to Modify and Summons with Orders, and the Order to Attend Workshop if any.
5. Take the original and your copy of the Acknowledgment/s of Service, plus the original Summons with Orders 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 Summons with Orders and Acknowledgment/s of Service.

B. If the other party will not cooperate:

1. Deliver or mail the original and a copy of the Summons with Orders, a copy of the Petition 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 profession 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 Summons with Orders 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, CAO FL Instruction 1-4.

Step 5. Wait 21 Days.

The other party/ies has/have twenty-one (21) days from the date of service to respond to your Petition 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 Judgment signed. For this purpose, the date the other party/ies was/were served was either 1) the date he/she signed 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 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 Decree.

If the other parent indicates agreement and will sign both documents, you may complete and file a Sworn Stipulation for Entry of Order, Judgment or Decree (CAO FLPi 6-1) and Judgment of Modification (CAO M-8-1), and the Modification Judgment may be issued without a hearing and without the twenty-one (21) day wait. For cases in which the Department of Health and Welfare is a party, you can use CAO GCS 6-9, Stipulation for Order, Judgment or Decree (HW), and obtain the signatures of the other parent and a Deputy AG for Health and Welfare. See CAO GCSM Instruction 1.

If another party/ies do/es not respond to the court in writing within twenty-one (21) 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-one (21) 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
- Default

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

- Judgment of Modification 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 Judgment of Modification 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 Judgment of Modification 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 Judgment 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", CAO Cv Instruction 4-1 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 Petition 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 Petition, then you must have a signed agreement with the other party (see the Court Assistance Officer or see a private attorney to amend your Petition). If the judge has no further questions, you are finished. The judge will sign the Judgment of 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 Petition 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: Comply with Mandatory Disclosures of Information

If either party has requested a change to child support, you have to provide income information to the other party within 35 days from the day they filed the response. This will include tax returns, W-2 forms, and many other forms, see Instruction CAO FL Inst 5-1 for further details and use forms CAO FL Pi 5-1 Petitioner's/Respondent's Mandatory Child Support Disclosures and CAO Cv Pi 4-5 Certificate of Service.

Step 10: Follow all Court Orders.

Ordinarily, you will have a hearing if the other party files a document in response to your Petition. 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 11: 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, Judgment or Decree (CAO FL Pi 6-1) (or Stipulation for Order, Judgment or Decree CAO GCS 6-9 H&W), and an appropriate Judgment of Modification. See CAO GCSM Instruction 8-2.

If your case does not settle before trial, see "Guidelines for Courtroom Behavior", CAO Cv Instruction 4-1, 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.