

**CAO M INSTRUCTION 1-1  
MOTION TO MODIFY AN ORDER OR DECREE**

**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, a lawyer can 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/>.

You will be signing a sworn statement that you have read the motion, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

**Instructions.**

Fill in the forms by typing or by printing neatly and legibly in **black ink**. The documents have a boldface "**or**" at the start of optional sections. If the section does not contain a boldface "**or**" it is necessary and you should type in the appropriate information (which might be the word "none"). Always keep a copy of the completed form for your records.

**At the top left-hand corner of page 1**, fill in your full legal name, mailing address and telephone number.

**The Court Heading.** Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ADA") exactly like it is in the Order or Decree you are asking to be changed.

**The Caption.** Fill in the names of the plaintiff and defendant exactly as they appeared in the caption in the original case.

**The Case No.** Fill in the case number from the original court case. This is not the same as your Department of Health and Welfare Child Support case number.

Fill in your full legal name and check the box to indicate if you are the mother or the father.

**1.** Fill in the name and date of birth for each minor child and the city and state where each child has lived for the last five years. If none of the children and no parent still live in Idaho, the Idaho court may lack authority ("jurisdiction") to modify custody. In that event you should consult an attorney to determine whether there may be other grounds for jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, Section 32-11-203, I.C.

**2.** Write in the city, county and state where Mother resides and the city, county and state where Father resides.

### 3. UCCJEA Jurisdiction

You are required to inform the court if there have been any other cases involving your child/ren in any court or if there are any other people claiming custody or visitation rights with the child/ren. In paragraphs 3a, b, c and d, check the appropriate box and provide all requested information.

### 4. Custody

Check the first box if there will be no change.

- Check the second box if you are seeking to have the previous order modified with respect to custody (or “Parenting Plan”) and state the change(s) in circumstance(s) that support your request for modification.
  - **Substantial and material changes.**  
Before asking the court to modify (change) the current terms of your child custody and/or child support order you must give the court enough information proving that there have been “substantial and material,” change(s) in the circumstances of the parties or their child/ren that make the modification necessary.
  - In the space provided, write down specific facts, events and details describing the significant change(s) that have occurred, and explain why those changes are significant. **Note:** If you fail to prove that the changes are “substantial and material,” your motion for modification may be denied by the Judge and/or the Judge may order you to pay the other party’s reasonable expenses and/or attorney’s fees. If you are unsure if the changes are substantial and material you should consult with an attorney.
  - Write in the date of the most recent Custody Order. Consult the court file if you are unsure about the date of the most recent order. **Note:** There may be different orders if you have changed either support or custody before.

**Legal Custody.** “Joint legal custody” means the parents are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will award joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to share the decision-making rights.

- Check the first box if there will be no change. **or**
- Check the second box if both parents are fit persons to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren, **or**
- Check the third box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
  - Write in the name of the parent who should be awarded sole legal custody **and**
  - State why the other parent should NOT be allowed to share legal custody.

**Physical Custody.** “Joint physical custody” means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if there will be no change. **or**
- Check the second box if both parents should be given physical custody of the child/ren **and**
  - Complete the **Parenting Plan**. (Both parents may sign the Parenting Plan, but it is not required). Write **Exhibit A** on the bottom of the first page of the Parenting Plan and

attach (staple) it to the Motion for Modification. **IMPORTANT: The Parenting Plan must be attached to make it a part of the Motion for Modification.** Make an extra copy of the Parenting Plan to attach (staple) to the Modification Order. **or**

- Check the third box if you are asking the court to give sole physical custody of the child/ren to only one parent, **and**
  - Write in the name of the parent should be given sole physical custody **and**
  - State why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision.
  - If you want the court's order to give the other parent restricted or conditional time with the child/ren, write in the parent's name **and**
  - State specifically what you want the court to order; or check the box to refer to the Parenting Plan you will attach (staple) to your Motion.

## **5. Child Support**

**Note:** If the percentage of time the child/ren is with each parent is changed, the amount of child support will probably also need to be changed. Before you complete this section, you will first need to complete an Affidavit Verifying Income and a Child Support Worksheet. A Court Assistance Officer will be able to help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section. If you want the court to enter a support amount that is different from the Idaho Child support Guidelines amount, you must come to court for a court hearing and persuade a judge why that is in the best interests of your children and meets their financial needs.

If there is already an order signed by a judge, for example in a different case filed by the Department of Health & Welfare, that sets child support, check the first box, **and**

- If you want that order to continue and control child support instead of getting a new order, check the second box. Then make a copy of that Order, mark it as **Exhibit B** and attach (staple) it to the Motion to Modify. Do not complete the remaining portions of paragraph 5. **Or**
- Check the third box if you believe there are substantial and material reasons why the child support set in the other case should be changed by an order issued in this case which would control future child support payments.

**Warning:** You should be aware that jurisdiction as to child support is a complicated issue and having a child support order in a separate case can create problems for enforcement and future modifications of the order. If the child support order is in a different case and you want to change it, that case and this case will need to be consolidated so the child support can be modified. Even if you want child support to be controlled by the separate order, your judge may require you to consolidate that case with your Modification, and serve the Motion to Modify on the Department of Health and Welfare.

### **And/Or**

If you want to modify the current child support order in this case, or in a separate case, or if there is no child support order, check the fourth box, **and**

- Write in the name of the parent who will pay child support and from the child support worksheet, insert the basic monthly child support before any adjustments and the day of the month you want the payments to be made.

- In paragraph 5a, if you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is no longer eligible for support under Idaho law. These calculations are provided if you have used a computer program to calculate child support. A Court Assistance Officer can help you with these calculations if you do not have them.
- write in the name of the parent who will pay child support **and**
- the total monthly amount (the base amount of support plus or minus any adjustments for work-related child care expenses, health insurance premiums and/or the tax dependency).
- Fill in the Base Amount of child support
- If your child support calculation includes adjustments for sharing work-related child care costs, health insurance premiums and/or tax benefits,
- Check the boxes that apply and fill in the amounts.
- If you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is emancipated (no longer eligible for support under Idaho law). Fill in the total amount of child support from the child support worksheet.
- Attach your Affidavit Verifying Income and Support Worksheet(s) to the Motion, marking each as **Exhibit B**.

**Warning:** If you are the parent paying child support (the “obligor”) you should be aware the decree will provide for collection of unpaid child support from your wages and from your real estate or personal property. The decree will also provide that if you move to another state, the child support award (and any spousal maintenance award) can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

### **Extended Visits**

In paragraph 5b, check the first box if the child/ren will be living in the home of one parent at least 75% of the time under your proposed parenting plan. If you do not check this box, go directly to paragraph 5c. Otherwise,

- Check the second box in paragraph 6b if you want the court to order a reduction in child support when the parent paying child support has physical custody of the child/ren for 14 or more overnights in a row. Next, check the appropriate box to indicate if the reduction should be 50% or some other percentage.
- Check the next box if you have more than one child, but the parent paying child support will have some, but not all of the children for a period of 14 overnights in a row. If this box is selected, the reduction of support will be applied only to the child/ren who are actually with the parent paying child support during those 14 overnights in a row.

**Note:** If the child/ren resides with each parent more than 25% of the time (overnights), this is considered shared physical custody and certain adjustments are made in the calculation of child support. Section (J)(5) of the Idaho Child Support Guidelines, Rule 126 of the Idaho Rules of Family Law Procedure, describe “Shared Physical Custody” and computation of child support

with that parenting arrangement. The reduction of child support for extended visits is not permitted if child support has been calculated with a shared physical custody adjustment. You can get a copy of the Child Support Guidelines from a Court Assistance Office or the Internet at <http://www.courtselfhelp.idaho.gov/>.

### **Work-Related Child Care Costs**

Work related child care costs are separate from the basic monthly child support amount contribute to the payment of work related child care costs.

- Check the first box if there will be no change, **or**
- Check the second box in paragraph 5c you want the court to order the parent paying child support to also contribute to work related child care costs, **and**
- Fill in the percentages each parent will pay.
- Note: Under this section you are asking the court to require each parent to pay their share directly to the care provider if permitted by the provider, otherwise, the parent who pays the costs must be reimbursed within ten days after the other parent receives a copy of the bill and proof of payment.

### **Medical Insurance**

The cost of medical, dental and/or optical insurance for the child/ren is separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income.

- Check the first if there will be no change. **Or**
- Check the second, third, fourth or fifth box to indicate how health insurance coverage for the child/ren is now being provided. If you select the second box, write in the name of the parent(s) currently providing health insurance.

**Warning:** The Order will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

### **Health Care Costs Not Paid by Insurance**

The actual cost incurred for health care expenses for the child/ren not paid in full by insurance is separate from the basic monthly child support amount and is also prorated between the parents in proportion to their Guidelines income.

- Check the first box if there will no change, **Or**
- Insert the correct percentages for the division of these costs. (Refer to the child support worksheets for these percentages)
- Next, check the appropriate box indicating how insurance and health care costs should be paid.

### **Income Tax Exemption**

Both parents are entitled to share in the benefits of income tax credits and exemptions for the child/ren regardless of which parent actually claims those benefits in a tax return.

- Check the first box if there will be no change, **Or**
- Check the second box in paragraph 5f to divide the value of tax benefits and exemptions for the child/ren according to the Child Support Guidelines. Insert the name of the parent who will

claim each child as a dependent on their income tax return(s). (If you do not agree otherwise, the parent with the most income will claim the children.) Note: The child support calculation must reflect the same designation.

- Check the third box if both parents want to agree to a different division of these benefits. Note: If you select this option you will be required to provide the judge a written document signed by both parties showing your agreement. Do not select this option unless you have, or are sure you can obtain that written document. If you select the first check box option, you may always agree later to a different division by filing a written stipulation with the court.

### **Summary of Basic Child Support and Adjustments**

Paragraph 5g is a summary of all of the choices on child support you have selected in the prior sections. Refer to all of the sections of paragraph 5 and your Affidavit Verifying Income and Child Support Worksheets, then insert the correct percentages and amounts in the summary. The options, amounts and percentages you insert in the summary, must be exactly the same as those you selected or inserted in the prior sections. Attach (staple) a copy of your Affidavit Verifying Income and Child Support Worksheets to the Motion to Modify, marking each as **Exhibit B**.

**Signature** Leave the spaces for the State and County blank. Go to an office where there's a Notary. Have the notary fill in the spaces. Sign the Motion to Modify in front of the Notary and have your signature notarized.

**Exhibits:** Mark your Parenting Plan as **Exhibit A** and your Child Support Affidavit and Worksheet(s) or Child Support Order from another case as **Exhibit B**. Make an extra copy of the Parenting Plan for use with the Modification Order, before attaching (stapling) to the Motion. Attach (staple) Exhibits to the Motion with a staple. Make additional copies of the Motion with Exhibits attached (stapled) so there is a copy for each party. Take the original and copies to the clerk of the court for filing and conforming.

**Refer to CAO M Instruction 1 – Filing for Modification – for complete instructions.**