

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 custody modification action, you will check “ Modification—Child Support.” In the right hand box, indicate 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 1: Complete the Complaint for Modification of Child Support.

Fill in your full name as the Plaintiff and the Defendant’s full name. **Do not fill in where it says Civil Action File No. The clerk will assign a number to your case when you file your complaint.** Then insert your name and the Defendant’s names in the space provided just before paragraph one (1).

Paragraph 1: Jurisdiction and Venue

If your child support order was made in Georgia, you must follow O.C.G.A. § 19-6-26(c), which provides that “A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a child support order issued by a court of this state if the child or children named in the child support order or any party to the action resides in this state.”

If your child support order was made in another state, you must follow O.C.G.A. § 19-6-26 (d), which is quite complicated. You are strongly encouraged to consult with an attorney in this situation. You may read the Georgia Code either at the Law Library or online at <http://w3.lexis-nexis.com/hottopics/gacode/default.asp>.

Check box a) if the Defendant lives in the county where you are filing and can be served with the complaint at his or her street address.

Check box b) if the Defendant lives in the county where you are filing and has signed an Acknowledgement of Service.

Check box c) if the Defendant is not a resident of Georgia, but can be served via second original at his street address.

Paragraph 2: Prior Child Support Order

Check the box beside paragraph 2. Enter the date on which the prior child support order was issued. Enter the name of the County in which the order was issued. In the blanks provided, enter the name of the custodial parent who receives child support payments. Give details about the amount and frequency of the payments, as well as information about exactly how the payments are received (through income deduction order, garnishment, paid directly by the non-custodial parent, etc.).

Paragraph 3: Financial Change in Circumstances

Check the box beside paragraph three. Fill in the date on which the financial change in circumstances occurred. Check the boxes to indicate whether the financial change is down or up.

Paragraph 4: Financial Change in Circumstances--specifics

Check box a) if the financial change in circumstances is related to an increase or decrease in earnings. In the blanks provided, fill in the previous and current amounts.

Check box b) if the financial change in circumstances is related to an increase or decrease in net worth. In the blanks provided, fill in the previous and current amounts.

Paragraph 5: Other Change in Circumstances

Check the box beside paragraph 5. Use the blanks provided to give information about other changes in circumstances which make a modification of child support necessary.

Paragraph 6: Proposed Modification

Check the boxes beside each change you wish to make, and fill in the details in the blanks provided.

Paragraph 7: No Modification in the Last Two Years

This is an important paragraph, since you are only allowed to file a modification every two years. For more detailed information on this requirement, see O.C.G.A. § 19-6-19.

Sole legal and physical custody. In this arrangement, one parent assumes the decision-making responsibility, and the children spend most of their time with that parent.

1. Shared legal custody and sole physical custody. Parents share decision-making authority, but the children spend most of their time with only one parent. There is often a provision that in the event of a disagreement about a decision, one parent will be the “tie-breaker.”
2. Shared legal custody and shared physical custody. Parents share decision-making authority, and the children divide their time equally between their parents.

Paragraph 5: Plaintiff’s Ability to be Custodial Parent

Check the box beside paragraph 5 to show that the Plaintiff is a fit parent who is able to assume full custody of the minor child(ren).

Prayer for Relief

In paragraph (a), state how you are asking the Judge to modify custody. Then sign your name and write down your address and telephone number(s) in the blanks provided.

STEP 3: Verification

Complete the Verification form. Insert your name as Plaintiff and your spouse’s name as Defendant. Do not fill in where it says Civil Action File No. The clerk will assign a 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: Complete the Affidavit(s).

This packet includes two affidavits. The Plaintiff's Affidavit is REQUIRED by O.C.G.A. § 19-9-69. The second affidavit, entitled "Election of _____," is designed to allow a minor child between the ages of eleven (11) and seventeen (17) to select the parent with whom s/he wants to live.

Plaintiff's Affidavit

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; the Clerk of Court will assign a number to the case.

The introductory paragraph: Fill in the name of the County in which you are filing. Fill in the Plaintiff's name.

Paragraph 1: Insert the Plaintiff's name into the blank.

Paragraph 2: List the name, birth date, and gender of each child.

Paragraph 3: Write down the address where the child(ren) currently live(s).

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(s) with whom the children currently live(s).

Paragraph 6: Other Cases Concerning the Child(ren)

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 previous 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. 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 type of claim they have.

Signature Block: Sign the Affidavit **IN THE PRESENCE OF** a notary public. The notary public will sign and date the Affidavit after s/he watches 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 required. The Probate Court charges \$2 per signature.

Election of _____

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; the Clerk of Court will assign a number to the case.

Title: Fill in the name of the minor child who is giving this affidavit.

Introductory paragraph: Fill in the name of the minor child who is giving this affidavit.

Paragraph 1: Fill in the name of the child who is giving the affidavit. Check the appropriate sex, and insert the names of the parents. Write down the date of birth and the current age of the child.

Paragraph 2: Check the boxes to indicate whether the child is choosing his or her mother, father, or other relative. Insert that person's name in the blanks provided.

Paragraph 3: This paragraph shows that the child intends for the non-custodial parent to have reasonable visitation. Check the box beside the paragraph. Write down whether the non-custodial parent will be your mother or father.

Paragraph 4: Check the box beside this paragraph to show that you are making this statement honestly and under oath.

Paragraph 5: Check the box beside this paragraph to show that you are making this choice of your own free will, with no pressure from anyone else.

Signature Block: Sign the Affidavit **IN THE PRESENCE OF** a notary public. The notary public will sign and date the Affidavit after s/he watches 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 required. The Probate Court charges \$2 per signature.

STEP 5: Attach other necessary documents.

In addition to the Complaint for Divorce, Verification, and Affidavit(s), you will need to fill out and attach the following forms to your complaint (they are in the packet):

1. **Certificate of Service (p. 7).** This document is used to help the Sheriff's department serve the Defendant.
2. **Rule Nisi with Temporary Restraining Order (p. 8).** This document is used to let the Defendant know the time and place for a hearing. In addition, this form orders the parties not to harass or harm one another.
3. **Custody Investigation Forms (motion, certificate of service, order, pp. 14-16).** These forms are used when an investigation would be helpful to explore allegations of neglect, abuse, or other acts harmful to the child(ren). Custody investigations are NOT routinely done. Please do not ask for one unless you have a good reason to do so.
4. **Visitation Schedule (p. 17).** This form lays out a specific visitation schedule in order to reduce conflicts down the road.
5. **Final Judgment and Decree (25-29).** This document will be filled out and signed by the Judge in order to show what the outcome of the case is.
6. **Income Deduction Order (30-31).** This document orders the employer of the non-custodial parent to withhold the child support amount and pay it directly to the custodial parent.

STEP 6: Produce the required financial documents.

Along with the Change of Custody packet, you must simultaneously file the following listed documents, as well as a certificate of service showing that the documents were properly served on the other party, and indicating the date on which the documents were served:

1. Complete the required Child Support Worksheets and Schedules by going to <http://www.georgiacourts.org/csc/>. If you need help with data entry on the Excel spreadsheet, you might want to find a bookkeeper to help you.
2. Domestic Relations Financial Affidavit (included in this packet)
3. All federal and state income tax returns, gift tax returns and intangible and personal property tax returns filed by the party or on the party's behalf for the past three (3) years.
4. IRS forms, W-2, 1099 and K-1 forms for the past year, if the income tax return for that year has not been prepared. Also, if such income tax return has not been prepared, a year-ending pay stub received from the party's employer should be provided.
5. Pay stubs or other evidence of earned income for the twelve (12) months prior to the filing of the action.
6. A statement by the producing party identifying the amount and source of all income received from all sources during the twelve (12) months preceding the filing of this action if same is not reflected on the pay stubs produced.

7. All loan applications and financial statements prepared or used within the three (3) years preceding the filing date of this action, whether used for the purpose of obtaining or attempting to obtain credit for any other purpose.
8. The most recent statement for any liquid fund assets, including, but not limited to, profit-sharing, 401-K, money market, stock and securities, bonds, accounts, retirement and pension plan.
9. Corporate, partnership and trust tax returns for the last three (3) years, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to thirty (30%) percent.
10. All written pre-marital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.
11. Any court orders directing a party to pay or receive spousal or child support, even if received from a third party.

ANY MATERIALLY FALSE STATEMENT KNOWINGLY MADE IN THESE DOCUMENTS WITH THE INTENT TO DEFRAUD OR MISLEAD SHALL SUBJECT ME TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT.

STEP 7: Pay the filing fee.

Unless you are able to have your filing fee waived, there is an \$75.00 filing fee in Dougherty County. You must pay this fee when you file your Complaint for Divorce unless you also file a Poverty Affidavit.

STEP 8: File the forms.

You should make two copies of all of your documents. 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 your spouse.

STEP 9: Prepare your case for trial.

Most 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, see the following informative websites:

How to prepare your case for trial, <http://www.fultoncourt.org/family/trialprep.php>

Tips on representing yourself in court, <http://www.fultoncourt.org/family/self-representation.php>

Georgia Self-Help website, <http://www.georgiacourts.org/aoc/selfhelp/>

Professional Academy of Custody Evaluators, <http://www.pace-custody.org>

General custody information, http://www.divorcenet.com/custody_visitation

STEP 10: Receive the Final Judgment.

After trial, if you have not settled the case, the judge will issue a final order regarding custody. Your change of custody is not final until the judge signs the final order in the case.