

MODIFY VISITATION (31)
Common Pleas Court

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MOTION TO MODIFY VISITATION RIGHTS
(Parents Divorced)
INSTRUCTIONS

This packet contains three (3) legal forms and samples of each that you can use to request a modification in your visitation rights. The forms enclosed are: (1) Motion to Modify Visitation and Order, (2) Poverty Affidavit, and (3) Affidavit Containing Child Custody Information. These instructions are intended to be a general guide to help you get the forms filled out, filed with the court, served on the opposing party and to get your request properly before the judge. These instructions are not intended to be a legal analysis of your request or whether you should win your motion but merely to assist you in preparing and presenting your request. PLEASE READ ALL THE INSTRUCTIONS BEFORE YOU BEGIN TO COMPLETE THE FORMS.

A. FILLING OUT THE FORMS

1. Except for the blanks under the words "Notice of Hearing", you should fill out the form before you go to the courthouse to file it. Other than telling you the time and date of the hearing and telling you the proper case number, the Clerk of Courts' staff will not help you in completing the forms.

2. At the top, fill in the name of the plaintiff, the defendant, and the case number as written on your divorce or dissolution papers or other court documents giving your visitation rights. If you do not have the case number you can get it from the Clerk of Courts when you go to file the motion.

3. In the first paragraph of the motion there is a space for you to list the reason(s) you have for wanting the visitation rights changed. You should be specific. You must write down what has happened since the visitation rights were made that entitles you to have visitation changed. For example, if the visitation rights were originally limited to your ex-spouse's home because the child was very young, and the child is now old enough to go elsewhere and stay, you could say that. If you have moved away since the visitation rights were determined and the order originally provided that the child visit every weekend and now you cannot afford to do that and want half of the summer and time at Christmas instead of every weekend, you should say that.

4. In the second part of the first paragraph, you need to write down what visitation rights you want the judge to grant you.

5. You must sign the form and print your current address. Do this on the three lines under the words "Respectfully submitted."

6. Under the words "Instructions for Service" print the name of the person who has custody of the child(ren) in the first blank and the street address, city, state and zip code in the second blank. You must have a valid address of the absent parent for the Clerk's office to mail the motion to. If you do not have a valid address for the absent parent, don't bother filing the motion. The judge has no authority to grant your motion unless the other person has been served with a copy of the papers and has been given an opportunity to be heard on the motion.

7. Leave the "Notice of Hearing" blank until you are at the courthouse and ready to file the motion. The Clerk's office may give you the date and time of the hearing. If they do, fill in the blank on each copy while at the Clerk's office.

8. Fill out the top portion of the "Order" by putting in the name of the county, the Plaintiff's name, and the Defendant's name.

9. To complete the "Affidavit of Inability to Prepay" and "Affidavit Containing Child Custody Information", you should fill out the top part of the forms exactly like you filled out the top part of the motion form. All you have to do on the rest of the forms is answer the questions to the best of your ability. Once the forms are completed, they need to be signed by you, in front of a Notary Public. **DO NOT SIGN THE POVERTY AFFIDAVIT UNLESS YOU ARE BEFORE A NOTARY PUBLIC.** You may be able to get the Clerk of Court to notarize the form for you when you file the motion.

B. FILING THE MOTION

1. After the forms are filled out, make two (2) xerox copies of it and go to the Clerk of Courts office of the Common Pleas Court at the county courthouse where the last order for visitation was made. This is the only place you can file the motion.

2. There will be a filing fee. This is to be paid in cash or by money order. The Clerk's office will not accept your personal check. If you do not have the money to pay the filing fee, you can use the poverty affidavit form enclosed in this packet to file your motion.

3. The Clerk of Court staff will tell you the time and date of the hearing. It will be scheduled approximately one (1) month from the date you file your motion. You should fill in the date and time on all three (3) copies of the motion. That way, the copy that the other person receives will have the correct time and date on it and so will your copy.

4. The Clerk of Court staff will take the original and one(1) copy of the motion. You should ask the Clerk to time-stamp your copy of the motion. This is your proof that you filed it.

C. PREPARATION FOR THE HEARING

1. It helps a lot if you are ready for the hearing. You should be neat and clean and must have

with you at the time of the hearing any witnesses that you want to verify why the visitation should be changed. You should also have with you any papers or other documents or evidence (such as work schedules, etc.) that you want the judge/referee to see during your case.

2. You should have in front of you at the start of the hearing the specific part of the court's prior visitation order that you want to have changed. You should tell the judge/referee in clear and simple terms why you want the change and why it is in the best interest of your child(ren) to have the visitation changed. The hearing is the only opportunity you will have to present your side of the story, so make sure that you include everything in your testimony. It may be helpful if you sit down before the hearing and make a written outline of everything that has happened that you believe entitles you to a change in visitation so that you will have something you can use to remind yourself of what it is you want to say when you testify.

3. **VERY IMPORTANT!** This is not the time to tell the judge/referee things other than the visitation problems. The judge/referee will only want to hear the evidence that you have that shows or supports the specific change that you want. Your motion is only directed at a modification of visitation rights. If you try to tell the judge/referee about other things in your testimony, the judge/referee won't hear the motion and may dismiss it. So, be prepared to limit your testimony to those issues raised in your written motion.

4. At the hearing you may be asked questions by the judge/referee, or by the absent parent or the absent parent's attorney, if there is one. You should try to answer the questions and should answer them truthfully, but you don't need to volunteer information if you believe that information is not helpful to you. Listen to the question and make sure that you are providing the information that you were asked. If you do not understand a question, or are not sure what you are being asked, you have the right to have the question explained to you before answering it.

5. The judge/referee may not make the decision to grant your motion at the end of this hearing. Listen closely to what the judge/referee has to say at the end of the hearing to know if the matter will be taken "under advisement" or if the motion is granted immediately that day.

GOOD LUCK!

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

Plaintiff,

vs.

Defendant

CASE NO. _____

JUDGE _____

MOTION TO MODIFY
VISITATION RIGHTS
(Oral Hearing Requested)

I, _____, move this Court to modify the visitation rights previously granted by this Court. A change in visitation rights is required because:

_____.

I would like visitation changed to:

_____.

Respectfully submitted,

(signature)

(address)

NOTICE OF HEARING

Take notice that a hearing will be held on the foregoing motion in the _____
County Court of Common Pleas before the Judge, whose name is set forth above, on _____,
the ____ day of _____, 19__ at _____ o'clock __.M.

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please serve _____, at _____
_____, with a copy of the motion and notice of hearing by CERTIFIED
MAIL, RETURN RECEIPT REQUESTED. Should service fail, please notify me so a better address
may be found.

Thank you.

PRINT OR TYPE ONLY

INSTRUCTIONS FOR AFFIDAVIT-CHILD CUSTODY INFORMATION

In the #1 blank, fill in the county where your divorce was finalized. In the #2 blank, fill in the name of the person who was the Plaintiff in the divorce. In the #3 blank, fill in the name of the person who was the Defendant in the divorce. In the #4 blank, fill in the case number which you can find on your divorce papers. In the #5 blank, fill in the county where you will have this notarized (this will not necessarily be the same county as the one in which you were divorced.) In the #6 blank, you should put in your name. In the #7 blank, you should put in the name or names of the children you have had by your ex-spouse.

In the #8 blank, you should put in the address where the children are currently residing. In the #9 blank, you should put in the names of the adults that the children are residing with other than you or your ex-spouse. In the #10 blank, put the date on which the children began living at the address, and on the #11 blank, put the date when the child(ren) stopped living there. (If child(ren) is/are still there, put PRESENT.) The rest of the blanks are for previous addresses filled out in basically the same way until you have listed all the places the children have lived in within the past five years.

Blanks #12, #13, #14 and #15 are to answer the questions asked. The #12 blank should be a yes or no answer. The #13 blank should be a NONE KNOWN answer or the case number and court of any known case currently pending concerning custody of the children. In #14 you list the name and address of anyone who is not a party who might have a claim to custody or visitation. If there is no one, you should simply put NONE. The #15 blank should be a yes or no answer. The #16 blank is for your signature when you sign it in front of a Notary. REMEMBER - DO NOT SIGN YOUR NAME UNLESS YOU ARE IN FRONT OF A NOTARY.

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

Plaintiffs,

CASE NO. _____

vs.

Defendant.

AFFIDAVIT CONTAINING
CHILD CUSTODY INFORMATION

STATE OF OHIO)
) SS:
COUNTY OF _____)

_____, being duly sworn, states as follows pursuant to
O.R.C. 3109.27 relevant to the custody of the minor child(ren) in this action, who are:

1. Beginning with the child(ren)'s present address, state the places where the child(ren) lived within the last five years, the names and present addresses of the persons with whom the child(ren) lived during that period, and the dates the children lived at each place.

Address:

Persons and Duration of Stay:

AT: _____

WITH: _____

FROM: _____ TO: _____

AT: _____

WITH: _____

FROM: _____ TO: _____

AT: _____

WITH: _____

FROM: _____ TO: _____

AT: _____

WITH: _____

FROM: _____ TO: _____

2. Have you participated as a party, witness, or in any other capacity in any other litigation concerning the custody of the child(ren) in this or any other state? _____

3. State any information you have about any custody proceeding concerning the child(ren) pending in a court of this or any other state. Include the case number, the name of the court and the address of the court. _____

4. State the name and address of any person not a party to the proceeding, who has physical custody of the child(ren) or who claims to have custody or visitation rights with respect to the child(ren). _____

5. Have you ever been convicted of or pled guilty to any criminal offense involving child abuse or neglect, or ever been determined to be the perpetrator of any neglectful or abusive act, in any adjudication concerning children? _____

NAME

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public, this _____
day of _____, 19__.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO
(#1 - Your county name here)

Plaintiff,

CASE NO. _____
(#5 - List case number unless unknown)

vs.

Defendant.

AFFIDAVIT OF INABILITY TO
PREPAY OR GIVE SECURITY
FOR COSTS
(Sec. 2323.31 Revised Code)

STATE OF OHIO

_____ COUNTY, SS:

I, the undersigned, a party in the above captioned case, being first duly sworn, represent to the Court that I am unable either to prepay or give security for costs in this action and request the Clerk to accept the attached pleading herein without prepaying or giving security for costs as provided by Sec. 2323.31 of the Revised Code.

In support of this request, I submit answers to the following questions:

1. What is your age? _____ years old.
2. Do you have any children? _____, If so, give names and ages: _____

3. What is your occupation or business? _____
4. Are you employed? _____. If so, give name and address of your employer: _____

5. What did you earn during the past year? \$ _____
6. What are your parents' names and ages? _____

7. Do you own any real estate? _____. If so, give its value \$ _____

- Is it mortgaged? _____. If so, give the amount of mortgage \$ _____
8. Do you own an automobile? _____. If so, what is the value \$ _____
9. What other items of personal property do you own? _____
 What debts are against it? _____
10. Have you made an advance payment to your attorney for his/her services in this case?
 Yes ___ or No ___ If yes, how much \$ _____
 Who paid it? _____
11. Do you have any securities or bank accounts? _____. If so, please list the total value of
 all accounts: \$ _____
12. Are you receiving public assistance? _____. If so, what kind? _____
 _____ How much? \$ _____

 (#6 - Your Signature - SIGN IN FRONT OF NOTARY)

STATE OF OHIO

_____ COUNTY, SS:

Before me, a notary public, in and for said county and state, personally appeared
 _____ who being first duly cautioned and sworn, says that the facts
 in the foregoing affidavit are true.

 NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

_____,
Plaintiff

CASE NO. _____

vs.

JUDGE:

_____,
Defendant.

ORDER

Upon motion of _____, and for good cause shown, the herein
matter is set for hearing on the ____ day of _____, 19____.

JUDGE