

MOTION TO ESTABLISH/MODIFY VISITATION

INSTRUCTIONS

NOTES: IN 1991, OHIO DOMESTIC RELATIONS LAW CHANGED SIGNIFICANTLY. USE THE ATTACHED FORMS. (AUGUST, 1991)

This packet contains five (5) legal forms that you may need to request a modification of visitation. The forms enclosed are: (1) Motion to Establish/Modify Visitation, (2) Information for Parenting Proceeding (U.C.C.J.A.), (3) Affidavit of Inability to Prepay or give Security for Costs, (4) Affidavit of Indigency, and (5) Motion for Court Appointed Counsel. In every parenting proceeding, an Information for Parenting Proceeding Affidavit (U.C.C.J.A.) **MUST** be included with the Motion. 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/Magistrate. These instructions are not intended to be a legal analysis of your request but are merely to assist you in preparing and presenting your request.

PLEASE READ ALL THE INSTRUCTIONS BEFORE YOU BEGIN TO COMPLETE THE FORMS. PLEASE PRINT ALL INFORMATION CLEARLY.

A. **FILLING OUT THE FORMS:**

1. You should fill out these forms before you go to the Courthouse to file them. **THE COURT STAFF WILL NOT HELP YOU IN COMPLETING THESE FORMS.** They can only provide you with general information concerning your case number, and the date and time of your hearing. **PLEASE PRINT ALL INFORMATION CLEARLY.**

2. **MOTION TO ESTABLISH/MODIFY VISITATION** - In the #1 blank, fill in the county that previously ordered visitation or established paternity. In the #1A blank, fill in the Case Number. In the #2 blank, fill in the Plaintiff's name. In the #3 blank, fill in the Defendant's name. In the #4 blank, fill in your name. In the #5 blank, fill in the reason for the request. In the #6 blank, fill in the requested visitation schedule. In the #7 blank fill in the reason this will be in the child(ren)s best interest and the reason that you think the Motion should be granted. In the #8 blank, you should sign your name and fill in your address.

3. You will also need an **INFORMATION IN PARENTING PROCEEDING AFFIDAVIT (U.C.C.J.A.)** which is enclosed.

4. The Child Custody Affidavit ***MUST*** be filled out completely and notarized. If this document is not filed, the Court has no jurisdiction over this matter and the Court cannot hear your case. **THE COURT STAFF WILL NOT NOTARIZE THESE DOCUMENTS FOR YOU.** *A Notary Public can be found by looking into the yellow pages or can often be found at your local bank.*

5. Leave the **MAGISTRATE'S ORDER/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 while at the Clerk's office.

6. You will also need to file a **REQUEST FOR SERVICE**. Fill in the names of the children and case number on the Request for Service just as you did on the Motion. You should probably check the box for certified mail service, though you have other options. In the spaces provided, write in the names and address of the people you want served with these papers. In general, the natural parents and the caretaker of the child(ren) will need to be served.

7. You must have a valid address of the other party for the Clerk's office to mail the Motion. ***IF YOU DO NOT HAVE A VALID ADDRESS FOR THE OTHER PARTY, DO NOT FILE THE MOTION.*** The Judge/Magistrate 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.

8. Also enclosed you will find a **MOTION FOR COURT APPOINTED COUNSEL**. If you would like an attorney to represent you but feel you cannot afford one, fill out this Motion and accompanying **AFFIDAVIT OF INDIGENCY**. It is then up to the Judge/Magistrate to determine if you qualify for counsel to be appointed to represent you in this matter.

B. FILING THE MOTION:

1. After you have filled all the forms out, go to the Clerk of Juvenile Court's office at the County Courthouse in the county where the last order for custody was made. This is the only place you can file the Motion.
2. All cases require the payment of Court costs. When you file your case, you should be prepared to pay a deposit of \$40.00. This is an initial deposit. If your costs exceed this amount, you will be billed for the balance.
3. If you are unable to prepay these Court costs, you must fill out the enclosed **AFFIDAVIT OF INABILITY TO PREPAY OR GIVE SECURITY FOR COSTS**. ***DO NOT*** sign this Affidavit unless you are in front of a Notary Public. **THIS MUST BE DONE BEFORE YOU TAKE THE PAPERS TO THE COURT FOR FILING.** The Judge/Magistrate will review this Affidavit and decide whether or not you are permitted to file your documents without prepaying the Court costs. *Remember, this does not mean that you will never have to pay Court costs.* It means that you will not have to *prepay* the costs. It is up to the Court to decide who pays Court costs. As a general rule, **ANYONE WHO IS EMPLOYED MUST PAY THEIR COSTS AT THE TIME OF FILING.**

C. HEARING:

1. You should be prepared for the hearing. You should be neat, clean and appropriately dressed. You must have with you at the time of the hearing any witnesses that you want to verify why the Motion should be granted. You should also have with you any papers or other documents or evidence (such as work schedules, etc.) that you want the Judge/Magistrate to see during your case. Because the Court may ask you about your financial information, you should bring with you proof of your income (i.e. letter from the Welfare Office [Department of Jobs and Family Services], letter from employer, check stubs, letter from Social Security, etc.).
2. You should have in front of you at the start of the hearing the specific part of the Court's prior Order that you want to have changed. You should tell the Judge/Magistrate 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 Motion granted. The hearing is your opportunity to present your side of the story, so make certain 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 and the current circumstances that support your Motion 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! Time is limited. Restrict yourself to the issue before the Court and the factors involved with that issue. The Judge/Magistrate will only want to hear the evidence that you have that shows or supports the specific Motion before the Court.
4. At the hearing you may be asked questions by the Judge/Magistrate, or the other party in this case or the attorney of the other party, if there is one. You must answer the questions truthfully, but you don't need to volunteer information. 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/Magistrate may not make the decision to grant your Motion at the end of this hearing. Listen closely to what the Judge/Magistrate has to say at the end of the hearing to know if the matter will be taken "under advisement" or if the Motion was granted or denied.

STATE OF OHIO, (1) _____ COUNTY, SS:
IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION

(2) _____
Plaintiff

CASE NO.: (1A) _____

vs.

**MOTION TO ESTABLISH/
MODIFY VISITATION**
(Oral Hearing Requested)

(3) _____
Defendant

I, (4) _____, move this Court to establish and/or modify
visitation with my child(ren). A court ordered visitation schedule is requested because:

(5) _____

I am requesting the following visitation schedule be ordered by the Court:

(6) _____

It is in the best interest of the child(ren) that this be granted because:

(7) _____

Respectfully submitted,

(8) _____
Signature

Address

Phone Number

IN THE COURT OF COMMON PLEAS
 JUVENILE DIVISION
 _____ COUNTY, OHIO

DECLARATION UNDER UNIFORM CHILD CUSTODY

Case No. _____

JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

Division: Domestic Relations/Juvenile

I, (full legal name) _____, being sworn according to law, certify that these proceedings involve the custody of a child, or children and the following statements are true:

1. [] I am requesting the court to not disclose my address or that of the child(ren). My address is confidential pursuant to ORC 3127.23(D) and should be placed under seal in that the health, safety, or liberty of myself and/or the child(ren) would be jeopardized by the disclosure of the identifying information.

2. (Number): _____ Minor Child(ren) are subject to this proceeding as follows:
 (insert the information requested below. The residence information must be given for the last FIVE years.)

a. Child's name		Place of birth	
Date of birth		Sex	
Period of residence To Present	Address <input type="checkbox"/> Confidential	Person child lived with (name & address)	Relationship
to			
to			
to			
to			

a. Child's name		Place of birth	
Date of birth		Sex	
Period of residence To Present	Address <input type="checkbox"/> Confidential	Person child lived with (name & address)	Relationship
to			
to			
to			
to			

a. Child's name		Place of birth	
Date of birth		Sex	
Period of residence To Present	Address <input type="checkbox"/> Confidential	Person child lived with (name & address)	Relationship
to			
to			
to			
to			

Additional children are listed on Attachment 2e. (Provide requested information for additional children on an attachment.)

3. Participation in custody proceeding(s): (✓ only one)

_____ I **HAVE NOT** participated as a party, witness, or in any capacity in any other litigation, in this or another state, concerning the custody of or visitation (parenting time) with any child subject to this proceeding.

_____ I **HAVE** participated as a party, witness, or in any capacity in any other litigation, in this or any other state, concerning the custody of or visitation (parenting time) with any child subject to this proceeding.
Explain:

- a. Name of each child _____
- b. Type of proceeding _____
- c. Court and state _____
- d. Date of court order or judgment (if any): _____

4. Information about custody proceeding(s): (✓ only one)

_____ I **HAVE NO INFORMATION** of any proceedings that could affect the current proceeding, including any proceedings relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning any child subject to this proceeding.

_____ I **HAVE THE FOLLOWING INFORMATION** concerning proceedings that could affect the current proceeding, including any proceedings relating to custody, domestic violence or protection orders, dependency, neglect or abuse allegations or adoptions concerning any child subject to this proceeding, other than set out in Item 3. Explain:

- a. Name of each child _____
- b. Type of proceeding _____
- c. Court and state _____
- d. Date of court order or judgment (if any): _____

5. Persons not a party to this proceeding: (✓ only one)

_____ I **DO NOT KNOW OF ANY PERSON** not a party to this proceeding who has physical custody or claims to have custody or visitation rights with respect to any child subject to this proceeding.

_____ I **KNOW THAT THE FOLLOWING NAMED PERSON(S)** not a party to this proceeding has/have physical custody or claim(s) to have custody or visitation rights with respect to any child subject to this

proceeding:

(See next page)

a. Name and address of person _____

() has physical custody () claims custody rights () claims visitation rights

Name of each child _____

b. Name and address of person _____

() has physical custody () claims custody rights () claims visitation rights

Name of each child _____

c. Name and address of person _____

() has physical custody () claims custody rights () claims visitation rights

Name of each child _____

6. Knowledge of prior child support proceedings: (✓ only one)

_____ The child(ren) described in this affidavit are NOT subject to existing child support order(s) in this or any state or territory.

_____ The child(ren) described in this affidavit ARE subject to the following existing child support order(s):

a. Name of each child _____

b. Type of proceeding _____

c. Court and address _____

d. Date of court order or judgment (if any): _____

e. Amount of child support paid and by whom: _____

7. I acknowledge that I have a continuing duty to advise this Court of any custody, visitation, child support, or guardianship proceeding (including dissolution of marriage, child neglect, or dependency) concerning the child(ren) in this state or any other state about which information is obtained during this proceeding.

I certify that a copy of this document was (✓ only one) () mailed () faxed and mailed () hand delivered to the person(s) listed below on (date) _____

Other party or his/her attorney:

Name: _____

Address: _____

City, State, Zip: _____

Fax Number: _____

I understand that I am swearing or affirming under oath to the truthfulness of the statements made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Party _____

Printed name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Fax: _____

STATE OF OHIO

COUNTY OF _____

Sworn to or affirmed and signed before me on this _____ day of _____

Notary Public

My commission expires _____

STATE OF OHIO, _____ COUNTY, SS:
IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION

CASE NO.: _____

Plaintiff

vs.

REQUEST FOR SERVICE

Defendant

TO THE CLERK OF SAID COURT:

Make service on the following parties:

(Names and Adresses Shown)

- by () Certified Mail, Return Receipt Requested
() Addressee Only, Certified Mail, Return Receipt Requested
() Ordinary Mail
() Issuance to Sheriff of _____ County, Ohio
For (Personal) or (Residence) service
() \$15.00 additional Deposit attached for costs of issuance to foreign
Sheriff
() Other: Specify _____

SPECIAL INSTRUCTIONS TO SHERIFF: _____

RIGHT TO COUNSEL

JUVENILE RULE 4

Assistance of counsel:

- (A) Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

If you believe you are indigent, and cannot hire a private attorney, you must complete the enclosed MOTION FOR COURT APPOINTED COUNSEL and the accompanying AFFIDAVIT OF INDIGENCY. The Judge/Magistrate will review this document and appoint an attorney to represent you if you qualify under the law.

This request for an attorney must be filed within three (3) business days after you receive this notice.

The court may refuse to grant a continuance at the time of the hearing for the purpose of obtaining counsel if you fail to make a good faith effort to follow these instructions.

STATE OF OHIO, _____ COUNTY, SS:
IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION

CASE NO.: _____

Plaintiff

vs.

**MOTION FOR COURT
APPOINTED COUNSEL**

Defendant

I, _____, do hereby solemnly swear that I have no means of financial support and no assets of any value and therefore cannot afford to pay for any legal services in my behalf. I request that the Court appoint an attorney to represent me in this matter.

AFFIANT

BE IT REMEMBERED that on this _____ day of _____, 20____, before me the subscriber, personally came _____, and acknowledged that the facts contained in the foregoing statement are true as he/she verily believes.

IN TESTIMONY WHEREOF, I have heretofore subscribed my name and affixed my official seal on the day and year aforesaid.

NOTARY PUBLIC

STATE OF OHIO, _____ COUNTY, SS:
IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION

CASE NO. _____

Plaintiff

vs.

**AFFIDAVIT OF INABILITY TO PREPAY
OR GIVE SECURITY FOR COSTS**

Defendant

STATE OF OHIO)
)
_____ COUNTY)

SEC. 2323.31 REVISED CODE

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. 2323.21 of the Revised Code.

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

1. What is your age? _____ years.
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 names and addresses of your employer(s). _____

5. What did you earn during the past year? _____
6. What are your parent's names and ages? _____

7. Do you own any real estate? _____ If so, give its value _____
 Is it mortgaged? _____ If so, give the mortgage _____
8. Do you own an automobile? _____ If so, what is the value? _____
9. What other thing(s) do you own? _____
 What debts are against it (them)? _____
10. Have you made an advance payment to your attorney for his services in this case? _____
 If so, how much? _____ Who paid it? _____
11. Do you have any securities or bank accounts? _____
 If so, give its value _____
 Are you receiving public assistance? _____
 If so, what kind? _____ How much? _____

STATE OF OHIO)
)
 _____ COUNTY)

 Signature

Before me a Notary Public personally appeared _____, who
 being first duly cautioned and sworn, says the facts in the foregoing affidavit are true.

 NOTARY PUBLIC