

INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF CUSTODY AND CHILD SUPPORT

If you are the parent of a child and there is already a court order awarding custody to the other parent and you want to get custody of that child, then you must file a **Petition for Change of Custody and Child Support**. Your petition must be filed in the Superior Court in the county where the legal custodian lives. You must be able to show the court that there has been a material change in circumstances concerning you, the child or the other parent which materially affects the welfare and interest of the child, and that the change happened after the original custody order.

- Step 1.** Complete the Petition for Change of Custody and Child Support.
- Step 2.** Complete the Verification Form.
- Step 3.** Attach other documents to your petition
- Step 4.** Pay the filing fee to the Clerk of Court
- Step 5.** File the forms
- Step 6.** Serve the other side with a copy of your petition and other required documents
- Step 7.** Prepare for Hearing

HERE ARE THE DETAILED INSTRUCTIONS ON HOW TO FILL OUT THE FORMS:

STEP 1- Complete the attached sample form for change of custody

Fill in your name as the Petitioner and the other side's name as the Respondent. Do not fill in the section where it says "Civil Action File No.". The clerk will assign a number to your case when you file your petition. Then write your name in the space provided after the word "I", and then write the other side's name after the word, "against."

Paragraph 1: Subject Matter jurisdiction

In order for a Georgia court to be able to handle your case, there must already be a Georgia Superior Court order awarding custody to the other side, and the child(ren) must have lived in Georgia for at least six months before you file your petition. You must not have illegally removed the children from the legal custodian's home state. If you do not meet these requirements, then you still might be able to file your case in Georgia, but you will need to speak with an attorney to determine whether or not your situation might satisfy those requirements.

In paragraph b, list the child(ren)'s names, gender and date of birth in the lines provided.

Paragraph 2: Venue and Service

"Venue" is another name for county. "Service" is a legal way of making sure that the other side gets a copy of the papers that you are filing with the court. It is very important that you file in the proper county and the other side is served correctly.

The general rule is that you file your Petition for Change of Custody and Child Support in the county where the other side lives. If the other side lives in a different county in Georgia, but will agree to you filing in your county, he/she will need to sign a **Waiver of Venue** form and an **Acknowledgment of Service form**. If the other side lives in another state, but will agree to you filing in your state and county, he/she will need to sign a **Waiver of Jurisdiction** form and an **Acknowledgment of Service form**. *(These forms are available in the Family Law Information Center.)*

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

PERSONAL SERVICE

Check box (a) if the other side lives in _____ County. The sheriff will need to serve the other party with a copy of your petition. Write the other side's address in the space provided.

ACKNOWLEDGMENT OF SERVICE

Check box (b) if the other side agrees to sign a form saying that he/she has received a copy of the petition from you. This form is called an **Acknowledgment of Service**. If the other side lives in another county in Georgia, he/she will also need to sign a **Waiver of Venue** form. If the other side lives in another state, he/she will need to sign a **Waiver of Jurisdiction** form. These forms must then be filed with the Clerk of Court showing that the other side has been served with a copy of your petition. Then put a check (T) mark beside all the forms that the Respondent has signed.

PERSONAL SERVICE BY SECOND ORIGINAL

Check box (c) if the other side lives in another state but has abandoned the child(ren) and the child(ren) has/have lived in Georgia for at least six (6) months before you filed this petition. The other side will need to be served with a copy of your petition by the sheriff where he/she lives. **(For more information, see the "Personal Service by Second Original" section in the Service Packet.)**

SERVICE BY PUBLICATION

Check box (d) if the other side has abandoned the child(ren) with you and the child(ren) has/have lived in Georgia for at least six months before you filed this petition and you do not know where the other side lives now. You can only file your petition in _____ County if either:

- \$ you are a resident of _____ County and
(a) you do not know the county where the other side lives in Georgia **or**
(b) the other side lives in another state and you do not know where in that state;

OR

- \$ you believe the other side lives in _____ County but you do not know the home or work address to have him/her served.

****For more information, see the Service Packet.***

Write the date the other side abandoned the child(ren) with you.

Paragraph 3: Original Custody Order

Write the information concerning the original custody order in the space provided. For example, if custody was awarded in a divorce decree, then put "Final Judgment and Decree". If it was awarded in a Legitimation Order, put "Legitimation Order", etc. Then fill in the case number of the order, the date it was entered, and the county where it was entered. Then check the boxes that apply to the other side. Be sure to make a copy of the original custody order and attach it to the petition.

Paragraph 4: Children's Place of Residence

Write in the space provided the address of where the child(ren) currently live and the person with whom they are living. Then list each address where the child(ren) has/have lived for the past five years and state with whom the child(ren) was/were living for each address.

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Paragraph 5: Other Custody Actions

Check box (a) if there has never been any other custody action concerning your child(ren) other than the original order.

Check box (b) if there has ever been or is presently another custody action concerning your child(ren) other than the original custody action. Write in the space provided the location of the custody action, the type of action, and what happened in that custody action.

Paragraph 6: Other Persons with Claims to Child(ren)

Check box (a) if no other person or entity than you or the other party has a court order stating what legal rights they have to your child(ren). This means that there is no court order granting anyone else custody or guardianship of your child.

Check box (b) if someone other than you or the other party has any legal rights to your child(ren). Write in the space provided the name of the person or entity, and what legal rights that person or entity has to your child(ren). If your child(ren) is/are in the physical custody of another person, then you should list that person also.

Paragraph 7: Material Change in Circumstances

Since the granting of the original custody order, there must have been a material change in circumstances substantially affecting the welfare and interest of the child(ren) in order to file for a change of custody. In the space provided, state what the material change in circumstances is.

Paragraph 8: Fit and Qualified Parent

You must be fit and capable in order to have custody awarded to you.

Paragraph 9: Custody Modified as Follows:

Write how you want custody to be changed from the original custody order.

Paragraph 10: Current Child Support Order

Check box (a) if you are currently under an order to pay child support and you want to stop paying child support. Then write in the space provided the amount of child support that you are currently ordered to pay.

Check box (b) if you are currently under a court order to pay child support and want the child support to stay the same. Then write in the space provided the amount of child support that you are currently ordered to pay.

Check box (c) if you want the amount of child support you are currently ordered to pay to be reduced.

Check box (d) if you are not under a court order to pay child support.

Paragraph 11: Request for Child Support

Check box (a) if the other side is a resident of _____ County and will be personally served with a copy of this petition. Then write in the space provided the name of your employer, your gross **(before taxes)** monthly income, the name of the other side’s employer and gross **(before taxes)** monthly income.

Check (b) if you are not requesting a change in child support.

Check (c) if this petition will be served by publication.

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

Check (d) if the other side is not a resident of Georgia.

Check (e) if none of the above apply and state in the blank lines any other options.

Requests

Check everything that you want the court to grant you.

If your case has been assigned to the Family Division of _____ County, you will be assigned a 30-day conference date with the court, and the issue of temporary custody and child support may be resolved there. A mediator will be available to help you and the other side come to an agreement. If you cannot agree, you may want to request a hearing at that time.

If your case **is not** assigned to the Family Division, you must request a RULE NISI (temporary) hearing if you are seeking an award of temporary custody and support prior to any final determination. ***(The Clerk's Office will let you know if your case has been assigned to the Family Division.)***

You should check box (a) to cover yourself just in case the other side does not agree.

You will need to prepare to present your case before the judge before you attend any hearing.

Signature

Date and sign the petition. Then write your name, address and telephone number in the spaces provided.

STEP 2 VERIFICATION

Complete the **Verification** form. **By signing this form you are swearing under oath that what you wrote in the petition is true and correct.** Write your name as the Petitioner and the opposing party's name as the Respondent. Do not fill in the section where it says "Civil Action File No.". The clerk will assign a number to your case when you file your petition. Then write your name in the blank space on the first line. Fill in the date where indicated. Then write your name, address and telephone number in the spaces provided. **WAIT TO SIGN THE VERIFICATION FORM IN FRONT OF A NOTARY PUBLIC.** Most libraries and banks have a notary on staff and will notarize your document for a fee. There is a Notary Public in the Family Law Information Center who will notarize your documents for free.

STEP 3-OTHER COURT DOCUMENTS

In addition to the **Petition for Change of Custody and Child Support** and **Verification** form, you will need to attach additional forms to your petition which are provided in The Family Law Information Center such as:

1. Two (2) original summons
2. Automatic Domestic Standing Order *(provided by the clerk at the time of filing)*
3. Sheriff's Entry of Service Form
4. Case Initiation Form
5. Domestic Intake Worksheet
6. Financial Affidavit
7. A copy of the original custody order

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

You may also have these forms attached to your Petition for Change of Custody and Child Support:

1. Poverty Affidavit (*if you are low income and eligible to have your filing fee waived because you cannot afford it*)
2. Notice of Publication (*if your petition must be served by publication*)
3. Waiver of Venue or Waiver of Jurisdiction (*if the other side agrees to sign it*)
4. Acknowledgment of Service (*if the other side agrees to sign it*)
5. Financial Affidavit (*you must have these forms attached to your petition if the other side is not agreeing to you having custody*)

STEP 4-FEES

The filing fee is **\$65.00***. You also have to pay to have the other side served. The cost for a sheriff to serve your petition on the other side is **\$25.00*** for each address where the sheriff attempts service. If you must serve the other side by publication, the cost is approximately **\$80.00*** in addition to the \$65.00 filing fee. You must pay the fees to the clerk when you file your petition. If you cannot pay these fees, you may file a **Poverty Affidavit** asking the Court to relieve you from paying the fees. **Please note that the request is not automatically granted by the judge. The judge will ask questions about your financial resources.**

***Fees subject to change. Please check with the Clerk's Office.**

STEP 5- FILING YOUR FORMS

You should make two (2) copies of all of your documents. Attach one (1) original **Summons** to your original documents. Attach one (1) original Summons and **Sheriff's Entry of Service** to one of your copies. (**You may get the Summons and the Sheriff's Entry of Service Form from the Clerk's Office or the Family Law Information Center.**) Give the clerk your original document and copies. The clerk will assign a number to your case and will write in the number on your documents. The clerk will then stamp your documents to show that your petition has been filed and will give you a copy for your records. The original will remain with the court. The other copy will be given to the sheriff to have served on the opposing party unless he/she signed an Acknowledgment of Service or it is being served by publication.

STEP 6- SERVICE

Personal service is generally required. (*See paragraph 2 "Venue and Service".*) If you have questions about how you should properly serve the other side, see the "Service Packet."

STEP 7- HEARING/CONFERENCE

You will be notified of the date of your hearing/conference when you file your petition. The Clerk's Office will inform you if your case is assigned to the Family Division. **If your case is not assigned to the Family Division, you may request a Rule Nisi.** A Rule Nisi is a temporary hearing to have the judge make decisions about your petition on a temporary basis before your case is set for a final hearing. **Please follow the following instructions to fill out the Rule Nisi form:**

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.

1. Fill in your name where it says "Petitioner".
2. Fill in the other side's name where it says "Respondent".
3. Do not fill in the "Civil Action File No.". The clerk will fill in the information for you.
4. Fill in "Petition for Change of Custody and Child Support" on the first blank line. The clerk will fill in the rest of the information.

You will need to prepare to present your case before the judge before you attend any hearing.

If you require materials in alternate format, please notify the Family Law Information Center as soon as possible.