

FAMILY COURT MATTER

RESPONSE TO OTHER PARTY'S REQUEST TO CHANGE CHILD CUSTODY

The following documents will be needed to respond to a request to change child custody:

Instructions for Response to Other Party's Request to Change Child Custody (CHC401)

Responsive Notice of Motion and Motion for Change of Child Custody (CHC402)

Affidavit in Response to Motion to Change Custody (CHC403)

Instructions – Financial Affidavit for Child Support (FAM101)

Financial Affidavit for Child Support (FAM102)

Confidential Information Form 11.1 (CON111)

Cover Sheet for Non-Public Documents 11.2 (CON112)

Affidavit of Service by Mail (SOP104)

Important Notice and Resources:

The Court provides forms and instructions as a general guide to the court process. The instructions explain the steps and address common questions, but are not a comprehensive guide to the law.

You are responsible for your own case. Court employees can provide general information on court rules, procedures and practices but are prohibited from giving legal advice.

If you do not understand the forms and instructions, you may contact the Statewide Self-Help Center at www.mncourts.gov/selfhelp or by calling 651-435-6535.

If you are not sure you should file court papers or if you have questions not addressed in the instructions, you should talk to a lawyer. For lawyer referral information, see www.mncourts.gov/selfhelp/?page=252.

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

IMPORTANT NOTICES

- You **cannot** use these forms unless there is already a court *order* awarding custody.
- Use these forms to respond to a request to change physical or legal custody, or to change the primary residence of the children as specified in the parenting plan.
- You cannot ask the court to change the child's custody or to change the child's primary residence as specified in the parenting plan if (1) it has been less than one year since the last custody order or (2) if it has been less than 2 years since the last request to change custody, unless the children is/are currently in danger or unless there is a persistent and willful denial of or interference with parenting time or unless the other party agrees in writing to change custody.
- If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the court may be not able to immediately decide a request to modify custody.
- Court personnel and the County Attorney's office **CANNOT** help you fill out these forms.
- You should see a lawyer if you don't know how to answer the questions on these forms or if you think the other party will hire a lawyer.
- You **MUST** fill out both the *Responsive Notice of Motion and Motion* and the *Affidavit in Support of Responsive Motion* and you **MUST** follow the instructions set forth below.
- Type your answers or print neatly using dark ink.
- If you need more space to answer a question, use an additional full sheet of paper.
- The court expects every person who appears in court without a lawyer to know the law. If you act as your own lawyer, you must do what a lawyer would do.

INTRODUCTION

You have been served with a motion in which the other party is asking the court to change something about the existing custody order. These instructions, starting at Step 1, tell you how to respond to that motion. Read the instructions carefully, paying particular attention to the time deadlines.

The *Notice of Motion and Motion* you received tell you the date and time of the hearing at which the judge will consider the motion. This introduction summarizes what happens at the hearings.

What Happens at the Court Hearing?

There will probably be two court appearances **if** you are opposing the other party's request for modification. The first court appearance usually involves a short hearing of up to 30 minutes. At the first hearing, the judge will only consider the written Affidavits you and the other party filed.

The judge will use the first hearing to decide if the other party presented a "prima facie case." For purposes of deciding if the other party presented a prima facie case, the judge will assume that all facts stated in the other person's Affidavit are true. If the facts in the Affidavit legally support a change of custody, the judge may schedule a second, longer hearing. At the first hearing the judge does NOT decide whether the Affidavits presented by the person seeking to change custody are in fact true. The judge will decide which fact allegations are true and which fact allegations are not true only after the second hearing. At the second hearing, you and the other party will testify under oath and bring witnesses.

If the other party's Affidavit *in Support of Motion to Change Custody* does not state a "prima facie case," the judge may dismiss the case without taking any sworn testimony. The judge will dismiss the case because, even if the party asking for a change in custody and his or her witnesses testify and prove that everything in the *Affidavit* is the truth, the standards under Minnesota law for making a change or modification to custody would not be met. If the case is dismissed, the existing order will remain in effect.

Custody Evaluations

On many occasions the judge will ask for a custody evaluation in order to have someone gather facts to help the judge make a decision. A custody evaluation from Family Court Services takes at least 120 days, and there is a cost. (If a party has an "IFP" the fee is waived. "IFP" is explained at Step 9.) If a custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least five months. The judge may also appoint a guardian ad litem to do a custody evaluation. This person may or may not be a lawyer.

Avoid This Mistake: Often people think they can briefly write what they want in the Motion and Affidavit forms, and supply the details to the judge at the hearing. This is a big mistake. Do not assume you can talk about something that is not in your papers. You should write everything you want the judge to know in your Affidavit in Response to Motion to Change Custody. Another common mistake is to state conclusions, not facts, in the Affidavit filed with the Responsive Motion. An example of a conclusion is: the other parent abuses my child. Do not state conclusions without supporting facts. Give the judge detailed information so that the judge can draw his own conclusions. Write down the actions the other party has taken, or evidence of actions that you believe supports the conclusion. Remember, courts operate by rules and laws, not by what makes sense to you. If you choose to represent yourself, the court rules say that you are responsible for knowing the law and rules, just like an attorney. The judge cannot give you special consideration or help because you are not a lawyer.

If the Child is in Danger

In extremely rare cases, a judge may change custody on a temporary basis before a full hearing with live testimony has been heard by the court. Those rare cases involve situations in which the child is in immediate, significant danger if the existing custody arrangement continues. If your child is in immediate danger, you may seek legal advice from a private attorney or other legal services provider; contact social services; seek an Order for Protection; or request an emergency expedited hearing.

Please Note: An Order for Protection (OFP) might be available in extreme situations, but an OFP will not permanently change custody. You need to use the motion papers for requesting a permanent change of custody. You can get help with Orders for Protection from the Court Administrator's office or local domestic abuse advocacy programs.

If you choose to request an emergency expedited hearing, you will need to draft your own court forms or seek help from a private attorney or other legal service provider, as there are **no court forms available** from court administration or on the public website.

If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may not be able to immediately decide your request to establish custody.

DETAILED INSTRUCTIONS

Step 1

Fill Out the *Responsive Notice of Motion and Motion for Change of Custody* Form

Fill out the *Responsive Notice of Motion and Motion for Change of Custody* form. This form tells the court and the other party your response to the other party's *Motion* to change custody of the children.

FILL IN THE TOP PART OF THE FORM (this is known as "the caption")

NOTE: The information to fill in the top part of the form can be found at the top of the other party's *Notice of Motion and Motion* or at the top of your *Divorce or Paternity Decree* or other existing *Order*. Be sure to copy the information **EXACTLY** as it is on your current *Order*.

- Write the case number (also called the "court file number") located on your existing *Order*.
- On the line marked "Name of Petitioner," write the name of the Petitioner as listed on your current *Order* or *Divorce* or *Paternity Decree*.
- On the line marked "Name of Respondent," write the name of the Respondent as listed on the current *Order* or *Divorce* or *Paternity Decree*.
- On the "TO" line, write the full name and street address of the other party.
- On the line marked "Please Take Notice," print in the date, time, name of judicial officer and location of the hearing the same as in the other party's *Notice of Motion and Motion*.

FILL OUT THE REST OF THE FORM:

NOTE: The instructions which follow are numbered the same as the questions on the *Responsive Notice of Motion and Motion* form.

1. Print the full name and date of birth of each child for whom the other party has asked to change custody. Print the date of the existing custody *Order* or *Decree*.
2. **Legal** custody means which parent or parents have a say in the major decisions regarding the children's life, including education, religious upbringing and medical treatment.

Check box (a) if the other party wants to change legal custody and you want the court to deny the other party's request to change legal custody. Check box (b) if you want legal custody of your children changed and check the box for joint legal custody or the box for sole legal custody. If you checked the box for sole legal custody write in who should have sole legal custody.

3. **Physical** custody means who will be responsible for the routine daily care and control of the children. Check box (a) if the other party wants to change physical custody and you do not want to change physical custody. Check box (b) if you want to change physical custody and then check the box for joint physical custody or sole physical custody. If you checked the box for sole physical custody write in who should have sole physical custody.
4. You do not need to write anything for this question.
5. Check whether you want the court to change the existing child support order if the Court changes physical custody.
6. Check box 6 only if you have been ordered to pay child support, you stopped paying child support because the children were living with you, and you want the court to forgive your child support for the time you were not paying it when the children were with you.
7. You do not have to write anything for this question, but you should read and understand it.

Read the Verification and Acknowledgements carefully. By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the court or if you are serving or filing this document for an improper purpose, the court can order you to pay money to the other party or impose other sanctions.

Step 2
Fill Out the *Affidavit in Response to Motion to Change Custody* Form

Fill out the *Affidavit in Response to Motion to Change Custody* form that tells the court and the other party what you are asking for from the court and **WHY** you are asking for it.

- Fill in the top part of the form (caption) the same way you did on the *Responsive Notice of Motion and Motion* form.

- Print your name on the blank above Paragraph/Question #1.

If the only issue in this case is legal custody (neither you nor the other party are requesting any changes to physical custody), then you only need to answer Questions 1-12 and 38-40. If either party is requesting a change to physical custody, then answer all of the questions.

Read the questions on the *Affidavit* carefully and answer each question with detailed, specific information. Attach all copies of day care, school, medical and other records and documents that help support the statements in your *Affidavit*. In your *Affidavit in Response to Motion to Change Custody*, you will:

- Write your response to the changes the other party is requesting and why you think the changes are not in the best interests of the children;
- Explain to the court why **you** are asking for changes in custody, if any.

Generally, you will not be allowed to expand upon your *Affidavit* at the first hearing. **If there is something that you want the judge to know, put it in writing in your *Affidavit*.**

Questions 17-37 will help the court determine the appropriate amount of child support, if applicable in your case. If you want an estimate of how much child support may be ordered by the court if a change in physical custody is granted, you can use a calculator created by the Department of Human Services, which is available on-line at: <http://childsupportcalculator.dhs.state.mn.us/>

Step 3

Complete Financial Affidavit for Child Support (If Either Party is Requesting Change to Physical Custody)

If you or the other party are asking for a change in physical custody, you must fill out the form called "*Financial Affidavit for Child Support*." This form asks for your income information. The information you put on the *Financial Affidavit* should be the same in the *Affidavit in Response to Motion to Change Custody*. The *Financial Affidavit* is required to be served on the other party and filed with the court at the same time you serve and file your motion papers. The *Financial Affidavit* has separate instructions that you should read. It is very important to attach to the *Financial Affidavit* any proof you have regarding your income. This proof may include the last 3 months of pay stubs, income tax return, or other documents. Make sure the copy of the *Financial Affidavit* you provide to the other party also has copies of your proof of income.

Step 4

Complete Confidential Information Forms

NOTE! Most documents filed with the court are considered public documents and are available to the public. Certain information that is filed with the court may be considered confidential based on court rule and not available to the public. To keep this information confidential and not available to the public, you must take certain steps that are described below.

The steps listed below are for filers who are filing paper documents. Filers who are using eFS to submit their court documents must identify and designate their filings as required in Minn. Gen. R. Prac. 11.03 and 14.06.

Confidential Information Form 11.1

All social security numbers, employer identification numbers, and financial account numbers (also called “restricted identifiers”) must not be listed on papers you file with the court. This is to protect your privacy, the other parties and your children. Only provide social security numbers, employer identification numbers, and financial account numbers when the court requires this information to be provided to the court. For example, if you must provide the court with bank account numbers, or medical account numbers, do not include any account number in your document (your motion, supporting affidavit, etc.). Instead, you must use Form 11.1 to list these confidential numbers.

If account numbers are not required to be provided to the court, and the numbers appear on documents that are considered available to the public, (such as medical invoices or credit account numbers on statements) you must remove the number on the document before filing the document with the court.

Cover Sheet for Non-Public Documents Form 11.2

Most documents filed with the court are public. However, some documents are considered non-public documents based on court rules. You **must** identify these documents as non-public at the time you file the documents with the court. You must complete and file the “Cover Sheet for Non-Public Documents Form 11.2 (also called Form 11.2 cover sheet) when you file non-public documents. The most common non-public documents are called “financial source documents.” Examples of financial source documents include:

- Paycheck stubs, employer statements, W-2 forms, or business income and business expenses
- Copies of your tax returns and schedules
- Bank statements
- Credit card statements
- Check registers

You may also need to submit other documents that court rules identify as non-public documents, such as a medical record. For example, a report from a doctor that provides a medical diagnosis or treatment plan for you or your child would qualify as a medical record.

You must use the Form 11.2 cover sheet when filing other non-public documents, such as medical records, with the court. One Form 11.2 cover sheet can be used for submitting all non-public documents.



The failure to use Form 11.2 or Form 11.1 may result in your document being rejected by court administration, being available to the public, stricken from the court record, and sanctions from the court.

See Rule 11 of the Minnesota General Rules of Practice for more information about how to file documents containing social security numbers, financial account numbers, “financial source documents” and other non-public documents.

Form 11.1 and Form 11.2 can be found at www.mncourts.gov/forms under the court forms category of “Confidential Information” and is court form number CON111 and CON112.

Step 5

Signing Papers

SIGN YOUR *AFFIDAVIT* (and *Financial Affidavit* if applicable to your case) under penalty of perjury.

Step 6

Make Copies of Forms

- Make **two** copies of all documents and attachments.
- Keep **one** copy of each form for yourself (make sure to bring your copies with you to court on the day of your hearing).
- Give **one** copy of each form to the other party, following the instructions at Step 7.
- You will file the **originals** of each form with the Court Administrator, following the instructions at Step 9.

Step 7

Serve Notice on the Other Party

Overview

The other party must receive complete copies of all documents you have prepared for the hearing. This is called "service of process." The papers can be served personally (handed to the other party), or by mail. If papers are served by mail, Court Rules require adding three days. **Papers cannot be served on a legal holiday**, which is defined in Minn. Stat. § 645.44, subd. 5 (<https://www.revisor.mn.gov/statutes/cite/645.44#stat.645.44.5>).

If the other party is represented by an attorney, serve the other party's attorney, instead of the party directly.

Who Can Serve

The forms you have prepared can be served by any of the following:

- The sheriff;
- Another adult; or
- You.

Personal Service

The server hands to the other party **one copy** of the completed *Responsive Notice of Motion and Motion, Affidavit in Support of Responsive Motion, Financial Affidavit for Child Support* (if applicable), and one copy of any and all attachments.

- The server must give the papers to the other party (or their attorney, if they have one) at least 7 days before the hearing date.
- **Note:** If your responsive *Motion* **raises new issues** not addressed by the other party's *Notice of Motion and Motion*, your responsive papers must be served at least 14 days before the hearing.

Service by Mail

The server places **one copy** of the completed *Responsive Notice of Motion and Motion, Affidavit in Support of Responsive Motion, Financial Affidavit for Child Support* (if applicable), and one copy of any and all attachments in an envelope.

- The server must mail the envelope containing the forms to the other party (or their attorney, if they have one) by first class U.S. mail at least 10 days before the hearing date.
- **Note:** If your *Responsive Motion* raises new issues not addressed in the other party's *Notice of Motion and Motion*, the Responsive papers must be mailed at least 17 days before the hearing.

WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR HIS/HER ATTORNEY) ON TIME, THE COURT MAY DISREGARD YOUR RESPONSE.

Step 8

The Person that Served the Papers on the Other Party Must Fill Out the *Affidavit of Service* Form

After the papers are served, the person who served the papers must fill out an *Affidavit of Service* form. The Affidavit of Service is proof for the Court that the papers were served on the other party.

IF THE PAPERS WERE SERVED PERSONALLY, FOLLOW THESE INSTRUCTIONS:

1. Use the *Affidavit of Personal Service* (Court Form SOP102).
2. Fill in the top part of the form the same as you did for the *Responsive Notice of Motion and Motion*.
3. Fill in the name and birth date of the server.
4. Fill in the date the papers were handed to the other party.
5. Fill in the name of the other party.
6. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the

truth, punishable by jail or other sanctions.

7. After it has been signed, make one copy of the *Affidavit of Personal Service* for your records. You will file the papers with the Court as part of Step 9.

IF THE PAPERS WERE SERVED BY MAIL, FOLLOW THESE INSTRUCTIONS:

1. Use the *Affidavit of Service by Mail* (Court Form SOP104).
2. Fill in the top part of the form the same as you did for the *Responsive Notice of Motion and Motion*.
3. Fill in the name of the person who mailed the envelope.
4. Fill in the name of the person to whom the documents were mailed (the other party).
5. Write in the address of the other party where the papers were mailed.
6. Write in the name of the city and state where the post office was located from which the documents were mailed.
7. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.
8. After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records. You will file the original with the Court as part of Step 9.

Step 9

File the Forms with the Court

File your documents with the Court Administrator's office **at least 7 days before** the date of the hearing, (or **at least 14 days before** the hearing if the response raises new issues.) You can mail them to the court, but you must put them in the mail **at least 10 days before** the hearing (or 17 days before the hearing if the response raises new issues.)

File the following documents:

- The **original** of the *Responsive Notice of Motion and Motion*;
- The **original** of your *Affidavit in Response to Motion to Change Custody*;
- The **original** of your *Financial Affidavit* (if applicable) and any Confidential Information forms; and
- The **original** of the *Affidavit of Service by Mail* or *Affidavit of Personal Service*.

There will be a [motion fee](#) due when you file your paperwork. You can make checks payable to "District Court."

If you cannot afford to pay the motion fee, you can ask for a fee waiver by completing the forms in the *In Forma Pauperis/IFP* packet of forms (found online at www.mncourts.gov/forms). If a judge does not sign the fee waiver order, then you must pay the motion fee before Court Administration can process your forms.

Step 10

Appear in Court

You must go to court on the date set for the hearing. Plan to arrive 15 minutes before your court time. Bring your copies of all the papers you filed with the court. Call the Court Administrator's office before the hearing and ask if you should bring your witnesses and all of your evidence to the first hearing. Usually the judge will not listen to live testimony at the first hearing. If either party requested an emergency hearing and claims that the child is in immediate danger, you may have to testify at the first hearing. The judge may set a second hearing for listening to testimony and reviewing your evidence.

Do not bring children to the first hearing, unless the judge's clerk tells you to. The hearing is very formal. You are expected to know and follow the court rules of procedure. You should be respectful to the other party and to everyone in the courtroom. Do not interrupt the judge or other party. Try to stay calm, and avoid unnecessarily criticizing the other party. Answer any questions from the judge honestly. Direct all your comments to the judge, not the other party.

After the final hearing the judge will issue an order. The judge may issue the order at the end of the hearing or may send a copy of the order to you in the mail.