



**26th Judicial District
SelfServe Center**

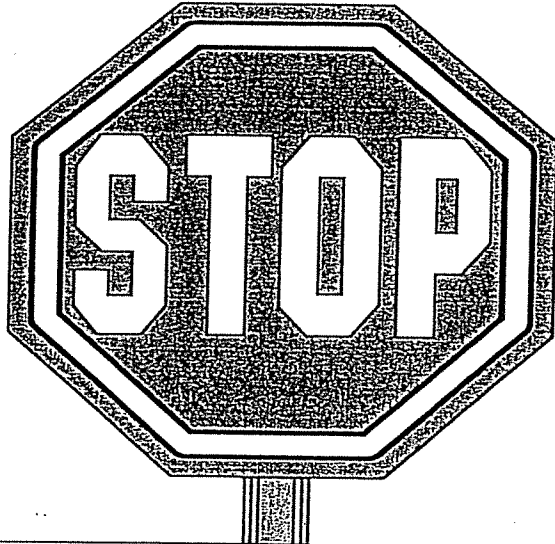
**MODIFICATION
CUSTODY OR VISITATION**

Due to the changing nature of the law, the forms and information contained in this packet may become outdated. Therefore, you should review and research statutes and rules of procedure referenced in the instructions to ensure that the forms are accurate and current.

IN NO EVENT will the SelfServe Center, Clerk of Court or anyone contributing to the production of these forms, instructions, or guidelines be liable for any indirect or consequential damages resulting from use of the forms or information provided to you by the SelfServe Center.

IF THERE ARE ANY QUESTIONS in your mind concerning these forms, the use of these forms, or your legal rights, it is strongly recommended that you consult with or retain an attorney.

USE THESE FORMS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED. IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE!



**PLEASE CAREFULLY READ THE FORMS AND
INSTRUCTIONS CONTAINED IN THIS PACKET.**

**IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT
WITH AN ATTORNEY.**

THESE ARE EDUCATIONAL FORMS DESIGNED TO
ASSIST YOU, BUT YOU ARE REPRESENTING
YOURSELF. PLEASE REVIEW AND FOLLOW THE
DIRECTIONS TO IMPROVE YOUR PERFORMANCE IN
YOUR CASE. FAILURE TO READ AND FOLLOW THE
INSTRUCTIONS MAY ADVERSELY IMPACT YOUR
CLAIM.

INTRODUCTION

What is this?

This packet of information is provided for individuals who wish to pursue a case without the assistance of an attorney. This is called a *pro se* or self represented case. If you are not sure that you want or need to go to court, please ask the SelfServe Center staff to direct you to numbers for lawyer referral services or the list of local attorneys willing to provide “unbundled services” (*willing to represent you for a limited portion of your case on an hourly fee basis*). Please note that this is a *process* that you will be going through. If things do not proceed as quickly as you hoped, please be patient. The goal is to provide the best and safest environment for the child. That is not a one step procedure.

How will it help me?

If you do not plan to use an attorney, this packet will guide you through the process by providing the forms and filing instructions that you will need. Since you are representing yourself, it is YOUR responsibility to ensure that these are the correct and current forms for the nature of your case. Therefore, you should review and research *applicable laws* and *rules of procedure* that apply to your type of case. If you are not able to do this, you should talk with an attorney. If at any point during the process you become confused or wish to proceed with the help of an attorney, contact the Mecklenburg County Bar Lawyer Referral Service (704) 375-0120 or the North Carolina Bar Lawyer Referral Service (800) 662-7660. The SelfServe Center also maintains a list of attorneys willing to provide “unbundled services.”

What does this mean?

Certain legal terms will be used throughout the proceeding. A complete legal glossary is available for your convenience in the SelfServe Center. If you still do not understand the term, consult a legal dictionary or the SelfServe Center staff. Staff CANNOT provide legal advice, but can provide procedural information and definitions of legal terms.

What is Modification of Child Custody or Visitation?

The packet available in the SelfServe Center allows a party to file to **change an existing custody or visitation order where there has been a substantial change in circumstance.**

Can or should I file to modify my Child Custody or Visitation order?

Please note that the SelfServe Center staff CANNOT provide legal advice. Therefore, we cannot tell you if you should file or what you should file, but we can tell you that you must meet certain criteria to be eligible. For instance, you must have an existing custody order from North Carolina that you want to modify due to a substantial change in circumstance.

What do I do first?

1. After you get your packet, **READ THE INSTRUCTIONS!** Then fill out the forms by typing or printing *neatly* in ink. You may fill them out at home or at the courthouse. Please read the forms carefully as some have a "Verification" page. This means that they must be signed in the presence of a Notary Public. If the document does require this, do not sign until you are in front of a Notary. They can be likely found at banks, law firms, and insurance agencies. A few may also be found in the Yellow Pages. Notaries often charge a small fee and require you to show a picture ID for their services. Be sure you have your documents already notarized when you take them to the Clerk's Office to file.
2. The SelfServe Center has a video available on filing for modification of custody and/or visitation. It is suggested that you view it for procedural information.
3. After the forms are filled out and notarized, you must make 2 COPIES (one for yourself, one for the other party and the original for the file).
4. There is not a filing fee to file a motion for modification.
5. Take your completed forms and 2 copies to the Civil Filing Department (Clerk's Office) in Suite 3725.
6. Go to the Family Court Office Suite 3350 to obtain a hearing or mediation date.
7. You must serve the other party with a copy of these documents via 1st class US mail at least 13 days before the modification hearing or mediation date.

IMPORTANT REMINDERS BEFORE YOU BEGIN

Your case involves complicated legal issues! This packet describes the general process, but it is impossible to cover everything that may affect your rights. If you get confused during the process, you should stop and seek advice from an attorney. The staff of the SelfServe Center, Clerk of Court, Judge, or the Trial Court Administrator's Office **CANNOT GIVE YOU LEGAL ADVICE!**

PLEASE...if you are thinking of contacting an attorney, please do so as soon as possible. Unless there is an emergency, try to contact an attorney at least 30 days before your hearing. Waiting could decrease your chances of obtaining representation.

STEP 1

Filling out the forms

CHECKLIST

You must complete the following documents:

- ◆ Motion for Modification of Custody or Visitation Order
- ◆ Domestic Civil Action Cover Sheet
- ◆ Affidavit as to Status of Minor Child (2 Copies)
- ◆ Certificate of Service (Found on Back of Motion for Modification of Custody and/or Visitation Order)

Make sure to place your **existing case number** in the upper right hand corner of each document. Please note that the **Affidavit as to Status of Minor Child** needs to be signed in the presence of a Notary Public.

STEP 2

Photocopying and Filing the documents

Make two (2) copies of the documents. Copies can be made for a fee in the Civil Files Office, room 3342.

Take these documents and 2 copies to the **Civil Filing Department, Room 3725**. The clerk will file them for you.

STEP 3

Obtaining dates, further information, etc.

Take your **Motion for Modification of Custody or Visitation Order** to the **Family Court Office, Room 3520** or to the **Mediation Department Room 8510**, to obtain a mediation session. The Family Court Office will ^{not} provide you with an **Order to Attend Child Custody/Visitation Mediation Session**. This order will include a session date and time. ~~This order needs to be filed in Civil Files and served upon the defendant.~~

STEP 4

Service of Process

North Carolina General Statutes require that you give notice to the other party about the filing of your claim. This is known as "Service of Process." The correct way to serve the other party is determined by law. If the documents are not correctly served on the other party, the court will not hear your case.

ATTENTION: You must serve the defendant/defendant's attorney copies of the **Order to Attend Child Custody/Visitation Mediation Session, Affidavit as to Status of Minor Child, and Motion for Modification of Custody or Visitation Order.**

You may serve the defendant by 1st Class US Mail. **The defendant must have at least 13 days notice of the hearing; however the court's calendar is prepared a month in advance and, depending on the court's schedule, it may be a one to two month wait for a hearing date. We recommend that you serve the documents on the day that you get your hearing scheduled to ensure proper and timely service of process.**

For further clarification regarding service of process for written motions, see the North Carolina Rules of Court (State) Rule 5.

STEP 5

Attendance

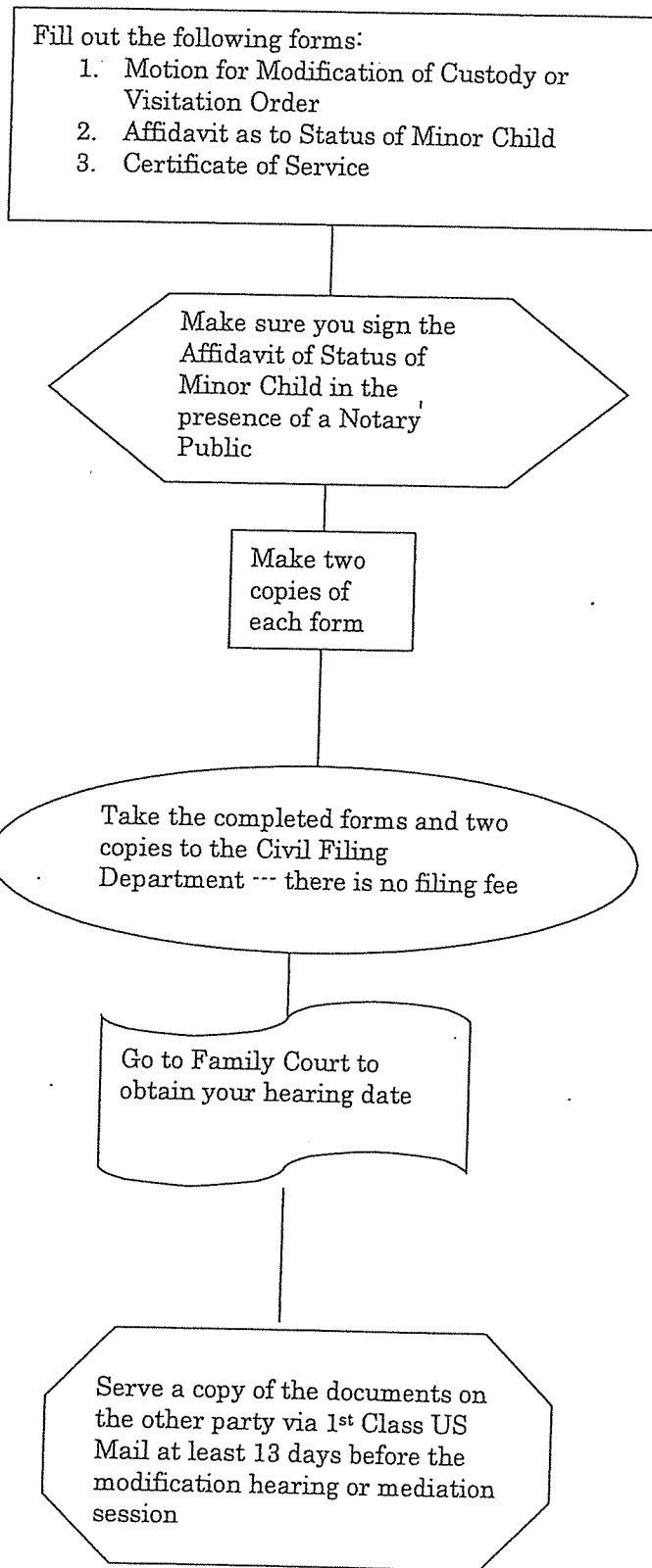
Be sure to attend all scheduled court events on time and dressed appropriately (as if you were going to a job interview). This is very important.

Lawyer Referral Services:

*Mecklenburg County Bar Lawyer Referral Service: (704) 375-0120 or
www.meckbar.org*

North Carolina Bar Lawyer Referral Service: (800) 662-7660

Steps for filing for Modification of Custody or Visitation



WHAT YOU NEED TO KNOW ABOUT MEDIATION

Once a petition has been filed and the defendant has been served, the Family Court Office will send out a "Scheduling Notice". This notice will inform the parties of the Custody Mediation Orientation (CMO) date and Parenting Education (PE) deadline. Once all parties has completed the CMO, a mediation session will be scheduled. You will either 1. Receive an appointment the day of your scheduled CMO if all parties are present. 2. Receive a letter in the mail with the scheduled day and time.

WHAT IS MEDIATION?

North Carolina law requires that the parties to a custody law suit attend mediation before the case goes to a Judge. "Mediation" is a form of alternative dispute resolution where a neutral mediator helps the parties in a dispute agree on a resolution of their legal claims against each other. The parties involved in the custody lawsuit (the mother, father, grandparent or other legal guardian) meet together with a mediator. Only individuals named in the lawsuit can wait within the mediation suite. Each person is provided an opportunity to share their concerns with the mediator and the other side while discussing the child's custody and visitation plan. Topics discussed are:

- Physical custody—(where the children will live, visitation schedule for the weekends, holidays, summer and school breaks).
- Legal Custody -Major Decision Making for the child (non-emergency medical, educational, and religious).

Finances are NOT discussed in custody mediation including child support, who files for taxes, and who pays for health insurance for the child. The goal of mediation is to agree on a plan for custody and visitation that both parties can agree too.

WHO IS THE MEDIATOR?

The mediator is a neutral third party who helps assist parties in reaching a parenting agreement. They are Masters Level trained professional with several hours of mediation training. The mediator will not decide who is right or wrong nor force anyone to agree to anything. The mediator is appointed and paid by the Court.

WHERE IS THE MEDIATION HELD?

The mediation is held at the courthouse in suite 8510 (8th floor) or other location typically in the county where the lawsuit has been filed.

WILL ATTORNEYS BE THERE?

No. Attorneys are not allowed in the mediation session.

WHAT HAPPENS IF WE REACH AN AGREEMENT?

The mediator will draft the custody and visitation agreement in writing and mail a copy of the draft to all parties for review. This agreement is called a "Parenting Agreement" (PA). Each party will sign and have the parenting agreement notarized and mail back to the mediation office or come in person and sign. In person signatures require a government issued ID. After the parties sign the parenting agreement, the Family Court Judge signs it, making it become a legal court order. You will receive the file stamped copy in the mail once the parenting agreement has become a court order.

WHAT IF ONE PARTY WANTS TO CHANGES THE PARENTING AGREEMENT BEFORE IT IS SIGNED?

If one party wants to make changes the parenting agreement before the parenting agreement is signed, he/she can contact the mediator. However, in order for any changes to be made both parties will have to agree to the proposed changes.

If either party is interested in changing the parenting agreement after it is signed by the parties and Judge, a motion must be filed. It is the responsibility of the party filing the motion to have the other party served with the modification. The parties are required to return to mediation to make an effort to resolve the matter prior to going before the courts. All parties named on the motion will receive a letter informing them of their scheduled mediation session date and time.

WHAT IF ONE SIDE VIOLATES THE PARENTING AGREEMENT?

The non-violating party can file a motion to have the violating party held in "contempt of court" for violating the order. The Court can punish the other side if the Agreement is violated; or the Court can modify the Agreement.

WHAT IF WE DO NOT REACH AN AGREEMENT AT MEDIATION?

Your case will be referred back to Family Court and placed on the calendar to be heard in court and decided by a Judge.

WHAT ARE BENEFITS OF REACHING AN AGREEMENT AT MEDIATION?

Mediation is usually quicker than going to court to get a decision. You can avoid the possibility of a Judge ruling against you. It is less of an emotional trauma than going to Court. You can save yourself and witnesses the time, inconvenience and embarrassment of testifying in court.

ARE THERE ANY EXCEPTIONS TO MEDIATION?

Except in approved situations, all custody cases go to mediation. A party has to petition the court to have a mediation waived. Until the "waiver" is signed by a Judge, mediation is not "waived". Mediation MAY be "waived" (not required) in these situations:

- One of the parties lives more than 100 miles from the Court
- The parties have agreed to private mediation (subject to approval from the Court)
- The other party has abused or neglected the child(ren) involved in the case
- The other party suffers from alcoholism or abuses drugs or abuses the parent who is filing the case
- The other party suffers from severe psychological, psychiatric or emotional problems

County

In The General Court Of Justice
District Court Division

Name And Address Of Plaintiff 1

Name And Address Of Plaintiff 2

**DOMESTIC
CIVIL ACTION COVER SHEET**

INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

VERSUS

Jury Demanded In Pleading? No Yes

Name Of Defendant 1

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Summons Submitted Yes No

Telephone No. Cellular Telephone No.

Name Of Defendant 2

NC Attorney Bar No. Attorney E-Mail Address

Summons Submitted Yes No

Initial Appearance in Case Change of Address

Counsel for
 All Plaintiffs All Defendants Only (List party(ies) represented)

Name Of Firm

FAX No.

TYPE OF PLEADING

CLAIMS FOR RELIEF

(check all that apply)

(check all that apply)

- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Answer/Reply (ANSW-Response)
- Complaint (COMP)
- Confession Of Judgment (CNFJ)
- Contempt (CNTP)
- Continue (CNTN)
- Compel (CMPL)
- Counterclaim vs. (CTCL) Assess Counterclaim Costs
- Extend Time For An Answer (MEOT-Response)
- Modification Of Alimony (MALI)
- Modification Of Custody (MCUS)
- Modification Of Support in non-IV-D cases (MSUP)
- Modification Of Visitation (MVIS)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Sanctions (SANC)
- Show Cause (SHOW)
- Transfer (TRFR)
- Vacate/Modify Judgment or Order (VCMD)
- Other (OTHR):

- Alimony (ALIM)
- Annulment (ANUL)
- Child Support (CSUP)
- Custody (CUST)
- Divorce (DIVR)
- Divorce From Bed And Board (DIVB)
- Domestic Violence (DOME)
- Equitable Distribution (EQUD)
- Medical Coverage (MEDC)
- Paternity (PATR)
- Possession Of Personal Property (POPP)
- Post Separation Support (PSSU)
- Reimbursement For Public Assistance (RPPA)
- Visitation (VIST)
- Other: (specify and list separately)

Date

Signature Of Attorney/Party

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include a Domestic (AOC-CV-750), Motions (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

Name And Address Of Plaintiff

Telephone No. (Optional)

VERSUS

Name And Address Of Defendant

Telephone No. (Optional)

MOTION
FOR MODIFICATION OF
CUSTODY AND/OR VISITATION
ORDER

G.S. 50-13.7

MOTION

The undersigned moves that the Court modify the Order now in effect in this action, and in support of this Motion states:

Date Of Current Order

Modification of:

TM Custody TM Visitation
TM Custody and Visitation

Since the current Order for Custody and/or Visitation was entered, circumstances have changed as follows:

Therefore, the undersigned requests that the Order for Child Custody or Visitation be modified as follows:

Date

Signature

Name (Type Or Print)

NOTE: You need to complete the attached Affidavit as to Status of Minor Child, have it notarized and attach it to this Motion.

TM Plaintiff/Attorney TM Defendant/Attorney
TM Other

(Over)

CERTIFICATE OF SERVICE

I certify that I served the above Motion with the attached Affidavit as to Status of Minor Child, by:

TM delivering a copy personally to:

<i>Name of Person(s) And Place Served</i>	<i>Name Of Person(s) And Place Served</i>
---	---

TM depositing a copy in the United States mail in an envelope bearing proper postage and addressed as follows:

<i>Name And Address</i>	<i>Name And Address</i>
-------------------------	-------------------------

TM leaving a copy at the office of the attorney named below, with a partner or employee:

<i>Name of Attorney</i>	<i>Name Of Attorney</i>
<i>Party Represented</i>	<i>Party Represented</i>
<i>Person With Whom Copies Left</i>	<i>Person With Whom Copies Left</i>

Date Of Service

Signature of Person Who Served Motion And Notice

Side Two

STATE OF NORTH CAROLINA

Court File No.

County

In The General Court Of Justice
District Court Division

Name And Address Of Plaintiff

AFFIDAVIT AS TO
STATUS OF MINOR CHILD

G.S. 50A-209

VERSUS

Name And Address Of Defendant

Name Of Minor Child

Date Of Birth

Birthplace

I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above named minor child has lived as follows:

Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person
From	To			
	Present			

I further say that: (Check those that apply)

I have participated in litigation concerning the custody of the above named child.

Capacity As Participant

Name And Address Of Court

Date Of Child Custody Determination

Case No.

Details

I have information about a custody proceeding. Examples of custody proceeding include divorce, proceeding related to domestic violence, a protective order, termination of parental rights or adoption that is pending in a court of this or another state and could affect this proceeding.

Name And Address Of Court

Details (include case number and describe nature of the proceeding)

I know of a person as listed below, who has physical custody or claims to have custody or visitation rights with respect to the above named child.

Name And Address Of Person

- Physical Custody
- Claimed Custody
- Visitation Rights

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Affiant

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court
- Magistrate

Name Of Affiant (type or print)

Notary

Date My Commission Expires

Relationship To Above Named Child

SEAL

County Where Notarized

STATE OF NORTH CAROLINA

Court File No.

County

In The General Court Of Justice
District Court Division

AFFIDAVIT AS TO
STATUS OF MINOR CHILD

G.S. 50A-209

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

Name Of Minor Child

Date Of Birth

Birthplace

I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above named minor child has lived as follows:

Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person
From	To			
	Present			

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Name And Address Of Person

Physical Custody

Claimed Custody

Visitation Rights

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Affiant

Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate

Name Of Affiant (type or print)

Notary

Date My Commission Expires

Relationship To Above Named Child

SEAL

County Where Notarized