

**Instructions and Forms for Modification of:
Child Support; Spousal Support
Time Spent With the Children.**

*** IMPORTANT INFORMATION ***

**YOUR RIGHTS MAY BE BETTER PROTECTED
WITH HELP OF AN ATTORNEY.**

You may file a Petition for Modification without the assistance of an attorney, and represent yourself in Family Court, **BUT** your rights may be better protected with the help of an attorney.

The staffs of the Circuit Clerk's Office and the Family Court are prohibited by law from providing legal advice.

Please notify the Circuit Clerk's Office in advance if you require any special arrangements to fully participate in court proceedings; for example, a language interpreter, hearing or visual aids, or accommodations for physical access.

Instructions

The Modification Packet contains instructions; a Modification Petition form, a Bureau for Child Support Enforcement Application and Income Withholding Form, a Civil Case Information Statement form, and a Certificate of Service form. Read these instructions carefully, and please write clearly when you fill in the forms. If the instructions are not followed, or if the forms are not properly completed, your modification case may be harmed, or delayed. It's best to read all of the instructions before you start filing out forms.

These instructions will tell you about serving papers on the "other parties," in the case. Your spouse or ex-spouse, for example, will be often be referred to as the "opposing party;" and the Bureau of Child Support Enforcement would in most instances be another of the "other parties" besides you.

These instructions will tell you about needing copies of your completed forms for various purposes. You can have copies made in the Circuit Clerk's Office, or elsewhere. The law requires the Circuit Clerk to charge fifty cents a page. You may want to make a couple of spare copies of each blank form you'll be filling out. You can use these spare copies to practice on, or if you make an error.

The forms in this packet require you to provide your name, address, and telephone number. **If you believe your safety, liberty, or health, or the safety, liberty, or health of your children would be put a risk by the disclosure of this information, you may file an affidavit to have the information withheld from all persons except court employees who require the information to carry out their duties.** The affidavit you need to file is the Affidavit for Withholding Identifying Information. This affidavit form is not included in this

packet. You can obtain the affidavit form at the Circuit Clerk's Office. You can complete and file the affidavit in the Circuit Clerk's Office at any time, or you can ask the Family Court Judge to enter an order allowing you to withhold the information. If your identifying information is withheld, the other parties' court papers will be served through the Family Court, and not directly on you.

STEP 1. FILL OUT THE FORMS.

Fill out the Petition form first. Start at the very top of page 1. The information at the top of page one is called the "case style." Except for any changes in address or phone number, the case style stays the same as it has been throughout your case. For example, if you have been the Respondent, you are still the Respondent. If you want, you can look at one of the Orders from your case, and copy the case style.

After filling in the information at the top of page 1, you're ready to fill out the Petition. Filling out the Petition is a matter of checking the right boxes, and filling in blanks. Make certain you read carefully, and fully understand what you're doing when you check a box or fill in a blank. Complete the Petition down to, but not including the signature line. Don't sign the Petition until you are before a Notary Public or Deputy Circuit Clerk.

The next thing you need to do depends on whether your Modification Petition reopens a case which has been closed by a Final Order. You should know if there was a Final Order in your case, but if you want to make certain, check with the circuit Clerk's Office. One of the next two paragraphs applies to your case.

If you are NOT reopening a closed case. In addition to your Petition, you will need to fill out a BCSE Application and Income Withholding Form, and a Civil Case Information Sheet form. Make two copies of the completed Case Information Statement; you will file the original and both copies with the Circuit Clerk. Make two copies of the BCSE form; you will file the original and a copy with the Circuit Clerk, and you'll keep a copy. The next thing you need to do is file your papers in the Circuit Clerk's Office, and arrange to have the papers served on the other parties. How to do this is explained in Step 2.

If you are reopening a closed case. In addition to your Petition, you will need to fill out a BCSE Application and Income Withholding Form, and a Civil Case Information Sheet form. Make two copies of the completed Case Information Statement, you will file the original and both copies with the Circuit Clerk. Make two copies of the BCSE form; you will file the original and a copy with the Circuit Clerk, and you'll keep a copy. The next thing you need to do is file your papers in the Circuit Clerk's Office, and arrange to have the papers served on the other parties. How to do this is explained in Step 2.

STEP 2. AT THE CIRCUIT CLERK'S OFFICE.

The first thing you will do at the Circuit Clerk's Office is pay the filing fee. The fee for filing a Modification Petition is \$85. **THIS FEE IS NOT REFUNDABLE UNDER ANY CIRCUMSTANCES.** If you cannot afford to pay this fee, read the last paragraph in Step 2 before continuing.

After you have paid your filing fee, or had it waived, you are ready to file your Petition and other forms. The forms you will file, and how you will have them served depends on whether you are reopening a closed case.

If you are NOT reopening a closed case, you will file the originals of your Petition and Certificate of Service with the Circuit Clerk. Remember, you will need to serve your Petition on the other parties by first class mail, and the Certificate of Service you file with the Circuit Clerk needs to verify this. If you know you will need to subpoena witnesses for the hearing on your Petition, you should take care of this while you're at the Circuit Clerk's Office. To learn how to do this, read the paragraph entitled "Witness Subpoenas" later in Step 2. After you're finished in the Circuit Clerk's Office, the next thing you need to do is prepare for your hearing. How to do this explained in Step 3.

If you are reopening a closed case, you will do these things. 1. File the original of your Petition, and one copy for each party you want served through the Clerk's Office. 2. File the original and two copies of the Case Information Statement. 3. File the original and one copy of the BCSE application. 3. Decide how you want to serve your papers.

The simplest and most common type of service for a Modification Petition is certified mail, restricted delivery, return receipt requested. To have your papers served this way, you tell the Deputy Circuit Clerk you want certified mail service, pay a \$10 fee for each party served, and the Circuit Clerk's Office handles the service. If the BCSE is a party, you don't have to serve them by certified mail. You can save some money by mailing a copy of your Petition to the BCSE office by first class mail. The following paragraphs explain other ways your papers can be served.

Personal Service By The Sheriff's Department. The papers are delivered by the Sheriff's Department. This type of service is arranged through the Circuit Clerk's Office. The fee is \$20 for each party being served.

Acceptance Of Service. If a party is willing to voluntarily accept the papers, you can simply hand the papers to that person; or that person can pick the papers up in the Circuit Clerk's Office. The person accepting the papers must sign an Acceptance of Service form, and the form must be filed in the Circuit Clerk's Office.

Personal Service By Private Process Server. The law permits persons other than members of the Sheriff's Department to deliver legal papers, **but**, service cannot be made by a party to the case, **and** the person serving the papers must be 18 years of age or older. For this type of service to be valid, the person who serves the papers must complete an affidavit which states the papers were served, **and** this affidavit **must** be filed in the Circuit Clerk's Office.

After you've filed your papers, and arranged for service, you should think about one more thing before you leave the Clerk's Office. If you know you will need to subpoena witnesses for the hearing on your Petition, you should take care of this while you're at the Clerk's Office. To learn how to do this, read the following paragraph entitled "Witness Subpoenas." After you're finished in the Circuit Clerk's Office, the next thing you need to do is

prepare for your hearing. How to do this is explained in Step 3.

Witness Subpoenas

If you know you will need a witness to testify at a hearing, you need to make certain that witness will attend. If you are not certain the witness will voluntarily show up, you will need to subpoena that witness. Witness subpoenas are handled through the Circuit Clerk's Office. To obtain a witness subpoena, you need to provide the Deputy Circuit Clerk with the name and address of the witness, and pay a Clerk's fee of 50¢ per subpoena, and a service fee of \$20 per subpoena, unless your fees have been waived. If you do not request witness subpoenas at the time you file your Petition, you should make certain you do so at least 10 days before the hearing.

What to do if you cannot afford to pay fees.

If you cannot afford to pay fees, you should ask a Deputy Circuit Clerk for an affidavit to waive fees and costs. You can fill out the affidavit in the Clerk's office. The affidavit requires you to list some basic information about your financial situation. A Deputy Clerk can review your completed affidavit while you wait, and tell you if you meet the legal requirements to have your fees and costs waived. If you don't meet these requirements, you must pay fees and costs, but you can ask the Court to review your affidavit later. Criminal charges can be filed against you if you provide false information on this affidavit.

STEP 3. PREPARING FOR THE HEARING.

1. If you are reopening a closed case, make sure the opposing party has been served. Wait seven business days after filing your Petition, and check with the Circuit Clerk's Office to confirm service. If the opposing party has not been served, there will be no hearing.

2. After your Petition has been filed, and the other parties have been served, you will receive an Order from the Family Court. This Order will state the place, date, and time of your hearing, and it will order you and the opposing party to file certain financial information, documents, and records before the hearing. **You MUST gather all of these documents and records, make copies, and file the copies in the Circuit Clerk's Office AT LEAST 5 DAYS BEFORE THE HEARING. IF YOU DO NOT, YOUR HEARING MAY BE CANCELED!**

3. Make sure you have requested all necessary witness subpoenas. You need to request these subpoenas at least 10 days before the hearing. Return to Step 2 for information on witness subpoenas.

4. Make a plan for how you will present your case for modification at the hearing. At the hearing, you will be required to make a case to the Court why the amount of child support, or spousal support should be changed, or why the arrangements for time spent with the children should be changed. To make a case for a support change, you need to show that your financial circumstances, and/or the opposing party's financial circumstances have changed in such a way that support should be increased or decrease. These types of cases are generally made by showing increases and/or decreases in income and/or expenses. To make a case for a change in

time spent with children, you would need to show, for example, that your circumstances, and/or

the opposing party's circumstances have changed in such a way that one of you is able to spend more, or less time with the children. With regard to support and time spent with the children, you can show changes in circumstances by your testimony, by the testimony of other witnesses, or by documents or records. Make a plan for how you will present your case. It's best to write things down. List the things you want to prove, and for each thing you want to prove, list how you will prove it, by witness testimony, or a document, for example.

Step 4 explains what happens after the hearing.

STEP 4. WHAT HAPPENS AFTER THE HEARING?

The Family Court Judge will consider the evidence presented at the hearing, and make a decision. That decision will be written down in an Order, and copies will be sent to the parties.

End

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA.

In Re:

The Marriage / Children of:

Civil Action No. _____

_____,
Petitioner

and

_____.
Respondent

Address

Address

Daytime phone

Daytime phone

PETITION FOR MODIFICATION

1. General Information

a. The Petitioner is: _____, who is:

(Print your name.)

___ the mother / wife whose name is listed in the case style at the top of this page.

___ the father / husband whose name is listed in the case style at the top of this page.

___ other person, whose relationship to the Respondent / children is: _____

b. The Petitioner requests that the Order entered on the date of _____ be modified with regard to:

___ Parenting Plan

___ Child support

___ Spousal support

___ Other; (Explain) _____

2. I want the Court to modify the Order in these ways: (Check all that apply.)

___ Increase child support

___ Decrease child support ___ End child support

___ Change Parenting Plan with regard to: ___ Decision making;

___ Time spent with the children; ___ Other; (Explain) _____

___ Order child support *paid to* another person, who

is: _____.

Order child support *paid by* another person, who

is: _____.

Increase spousal support

Decrease spousal support End spousal support

Other modification request(s); (Explain.) _____

_____.

3. Circumstances that justify the modification I am requesting.

(Explain all of the changes in circumstances you think justify the modifications you requested.) :

_____.

4. Information concerning Public Assistance and Child Support Enforcement Services

- a. A Public Assistance check from Health and Human Services is now being received by: The Children; The Petitioner; The Respondent.
- b. A Public Assistance check from Health and Human Services was received in the past by: The Children; The Petitioner; The Respondent.
- c. Services from the Bureau for Child Support Enforcement have been applied for by: The Petitioner; The Respondent.
- d. Income withholding services are currently being received from the Bureau for Child Support Enforcement.

Petitioner's Signature

Date

You must sign the Verification on the next page before a Notary Public.

VERIFICATION

I, _____, after making an oath or affirmation to tell the truth, say that the facts I have stated in this Petition are true of my personal knowledge; and if I have set forth matters upon information given to me by others, I believe that information to be true.

Signature

Date

This Verification was sworn to or affirmed before me on the ____ day of _____,
2____.

Notary Public / Other official

My commission expires:_____.

CERTIFICATE OF SERVICE

State of West Virginia

County of _____

I, _____, the Petitioner for Modification, mailed my Petition
by first class United States Mail, postage paid, to:

(Name and Address)

(Date mailed)

And:

(Name and Address)

(Date mailed)

Petitioner's Signature

Date