

MOTION TO CHANGE CUSTODY OR PHYSICAL PLACEMENT

These forms may be used to petition the Court to change legal custody of a child or children or to change the schedule of physical placement. When the parties cannot agree on changes to custody or physical placement, the parties must usually attend a parent education session and at least one mediation session (unless waived) to attempt to resolve the matter. If mediation fails, the Family Court Counseling Service will do a custody evaluation before a trial can be scheduled with a Judge. A custody evaluation cannot be done unless a motion to change custody or physical placement has been filed.

NOTE: Do not use this form if there is an agreement to change custody or placement. Instead, complete and sign the form called “Stipulation & Order to Amend Judgment for Support/Maintenance/Custody/Placement,” available in the Legal Resource Center, Room 315 City-County Building for a small fee, or online at <http://www.wicourts.gov>.

STEP 1 : FILL OUT THE FORMS If the parties do not agree on what the changes should be, carefully study the instructions and fill out the forms labeled “Notice of Motion and Motion to Change” and “Statement in Support of Motion” in this packet, using the sample form as a guide. There must be a reason to request a change. If you cannot truthfully state on the motion that Reasons 1, 2, 3, or 4 describe your situation, or you do not have substantial evidence to prove your reason, you should not file the motion.

After filling out the forms, make four additional copies.

STEP 2: FILE THE FORMS

Take the original and four copies of the Motion forms and pay the appropriate filing fee in the Clerk of Court's Office, Room GR-10, City-County Building, 210 Martin Luther King, Jr. Blvd., Madison, WI 53703-3341.

If you believe that you are entitled to a waiver of court fees because of poverty, complete a Petition and Waiver of Fees/Costs, Affidavit of Indigency and Order, which is available in the office of the Family Court Commissioner, Room 104, City-County Building. A Commissioner will determine if the fee will be waived. **If you ask for a waiver, do so before you pay any fees. Do not pay the fees and then ask for a waiver.**

The filing fee for a Dane County case is \$50.

If you are seeking to modify an order from another county or state, you will need to complete and file additional forms and pay other fees.

The Clerk of Courts office will send the original of the motion forms to the Judge and you will need to deliver a copy to the Family Court Commissioner's Office. Keep a copy for yourself. The other two copies are needed for service on the other party or his or her attorney. If the Judge sets a hearing date, you and the other party will receive a notice in the mail.

STEP 3: SERVE THE NOTICE OF MOTION AND MOTION

If the other party had an attorney at the last hearing, you must mail an additional copy of the forms to the attorney. You may choose one of the following methods of service.

A. By Sheriff

If the other party lives in Dane County, you may have the Notice of Motion and Motion to Change, and Statement served on the other party by the Civil Process Division of the Dane County Sheriff's Department, Rm. 2002, Public Safety Building, 115 W. Doty Street, Madison, WI 53703. The Sheriff will need two of the copies you made of the forms you filed. There is a \$40 charge for every service or attempted service, plus 37¢ per mile, round trip, that the deputy travels. There will be no fee if you qualify for a fee waiver. Once the forms have been served by the Sheriff, you will be sent proof of service. **Bring this document to your hearing.**

If the party to be served lives outside Dane County, you must call the Sheriff in that county for instructions.

B. By Private Process Server

You may use a private process server to serve the other party with the Notice of Motion and Motion to Change, and Statement forms. To locate a private process server, look in the phone book yellow pages under "Process Servers." When the forms have been served, you will be sent proof of service. **Bring this document to your hearing.**

C. By Mail (Not recommended for parties without lawyers)

You may use regular mail or certified mail with return receipt to serve the other party with the Notice of Motion and Motion to Change, and Statement forms. If you use certified mail with return receipt, bring the receipt to the hearing. **If you serve by mail, you must submit an Affidavit of Mailing so that it will be kept with your court file.** An Affidavit of Mailing form can be obtained for a small fee from the Legal Resource Center, Room 315, or online.

STEP 4: REVIEW BY THE JUDGE AND REFERRAL TO MEDIATION

The Judge will review the forms to make sure that your motion is appropriate under the law. The Judge may determine that even if the facts are true, they do not constitute grounds for a change. The Judge may deny or dismiss the motion without a hearing, or may give you 20 days to provide additional information in support of the motion. The Judge may schedule a status conference with the parties before making a referral to the Family Court Counseling Service (FCCS). Occasionally, if there are urgent circumstances, the Judge or Commissioner may hold an immediate hearing to consider a temporary change to the placement Order. When the FCCS receives a referral, that office will send both parties a letter scheduling a parent education session.

After both parties have attended this session, FCCS will schedule a mediation session for both parties. Mediation may be waived by the Judge or Commissioner if there are concerns about domestic violence or other significant factors. There is a fee for the parent education session, but not for the first mediation session. There is a fee if additional mediation sessions are needed.

If mediation results in an agreement between the parties, the mediator will draft and forward the proposed agreement to the Judge. The Judge will hold the agreement for 30 days to see if anyone objects to it. If no one objects, the Judge will usually make the agreement a court order. The Judge will send a copy of the order to each of the parties, and the Family Court Counseling Service.

If mediation does not result in an agreement, a custody evaluation will be conducted, and a fee will be charged.

GUARDIAN AD LITEM

The Judge may appoint a guardian ad litem, an attorney who represents the best interests of your child(ren). You will be required to pay for all or part of the guardian ad litem services, unless the Court decides that you are indigent.

STEP 5: THE HEARING AND ORDER

After the custody evaluation is complete, the Judge will schedule a hearing on the motion and will notify all parties. At the hearing, the party who filed the motion to change custody or physical placement must prove their reasons for changing custody or physical placement as described on the motion form. If this is done, custody or placement may be changed. If the reasons for changing the order are not supported by enough evidence, the motion will be denied and the last Order will remain in effect. In most cases, affidavits or written statements by those supporting your case, such as friends or family members, will not be admitted into evidence; you must bring your witnesses to the hearing to testify. Documents such as police reports, medical bills, or employment records may not be considered as evidence unless there is an exception to the evidence rules. You may want to consult with an attorney if you are unsure.

If the request for a change in custody or physical placement, and related support, is ordered by the Judge at the trial, you may be required to prepare an Order for the Judge to sign describing the changes. Send three copies of the completed but unsigned Order to the Judge with a self-addressed, stamped envelope, and one copy to the other party or his or her attorney. Once the Order has been approved and signed by the Judge, it will be filed in the Clerk of Courts office and you will receive two signed copies by return mail. It is your responsibility to mail a copy of the signed Order to the other party. The Judge may decide to draft the written Order in which case, you will not have to do it.

INSTRUCTIONS FOR FILLING OUT THE FORMS

Instructions for filling out Notice of Motion and Motion to Change:

THESE NUMBERS CORRESPOND TO THE NUMBERS ON THE SAMPLE FORM:

*Type or print form neatly.

1. Insert the branch number of the Court that established the original order.
2. Write in the name, address, and birthdates of the Petitioner or Joint Petitioner and Respondent or Joint Petitioner **as they appear on the divorce or paternity judgment.**
3. Insert the Dane County case number, which can be taken from another court document in this case or obtained from the Clerk of Courts, Rm. GR-10.
4. Insert your name and check what you are asking to be changed: Legal Custody (the right and responsibility to make major decisions concerning the child(ren)), Physical Placement (the right to spend time with the child(ren)), and/or Child Support if the requested change in legal custody or physical placement is made. Add the names of the children where indicated on the form. Explain what changes you are asking to be made to the court order. Attach pages if necessary.
5. Check the box under only one Reason if all the circumstances apply.
6. Sign and date the form at the bottom. Print your name on the bottom line.

Instructions for filling out the Statement in Support of Motion:

THESE NUMBERS CORRESPOND TO THE NUMBERS ON THE SAMPLE FORM:

*Type or print form neatly.

1. Insert the branch number of the Court that established the original order.
2. Fill in the name, address, and birth dates of the Petitioner or Joint Petitioner and Respondent or Joint Petitioner **as they appear on the divorce or paternity judgment.**
3. Insert the Dane County case number, which can be taken from another court document in this case or obtained from the Clerk of Courts, Rm. GR-10.
4. Fill in the names, birthdates, and social security numbers of your children.
5. Indicate who has legal custody and physical placement according to the current Order. **Attach a photocopy of this section of the current Judgment or Order.**
6. Describe the evidence that supports your choice of Reason on the motion. (Attach additional sheets if necessary)
7. Sign and date the Statement at the bottom of the form.

2/21/05

THIS IS A SAMPLE ONLY. THE NUMBER IN EACH BLANK CORRESPONDS TO THE NUMBER IN THE INSTRUCTIONS.

STATE OF WISCONSIN
(2)

CIRCUIT COURT BRANCH (1)

DANE COUNTY

Petitioner's name

(street address)

(city, state, zip)

(Date of birth)
vs.

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**NOTICE OF MOTION AND
MOTION TO CHANGE:**

- LEGAL CUSTODY
- PHYSICAL PLACEMENT
- SUPPORT

Joint Petitioner / Respondent's name

(street address)

(city, state, zip)

(Date of birth)

Case # (3)

I, (4) , ask the Court to order a change in

- Legal custody of child(ren) _____
Names of children
- Physical placement of child(ren) _____
Names of children
- Child support if the requested change in legal custody or physical placement is made

Explain changes to be made (attach pages, if necessary) _____

LEGAL BASIS OF MOTION (5)

For the motion to be granted, one of the following reasons must be true. Select Reason 1, 2, 3, or 4, depending on which set of circumstances applies in your case. **You may select only one reason** and all the circumstances under that reason must apply. The necessary evidence must be described on the attached Statement.

REASON CIRCUMSTANCES

- 1** The last Order was signed less than two years ago, and
I have substantial evidence that the requested change is necessary because the current conditions are physically or emotionally harmful to the best interest of the child(ren)
- 2** The last Order was signed more than two years ago, and
I have substantial evidence that the requested change is in the best interest of the child(ren), and
There has been a substantial change of circumstances since the last Order on custody or physical placement
- 3** The current Order gives the parties substantially equal periods of physical placement, and
I have evidence that shows that circumstances make it impractical for the parties to continue this placement schedule
- 4** The requested change does not substantially change the amount of time the other party and I spend with the child(ren), and
I have evidence that the change is in the best interest of the child(ren)

Signed _____ (6) _____ Date _____ (6) _____
Print Name _____ (6) _____

_____,
 Petitioner's name

 (street address)

 (city, state, zip)
 _____ (Date of birth)

NOTICE OF MOTION AND MOTION TO CHANGE:

- LEGAL CUSTODY
- PHYSICAL PLACEMENT
- SUPPORT

vs.

Case # _____

_____,
 Joint Petitioner / Respondent's name

 (street address)

 (city, state, zip).
 _____ (Date of birth)

I, _____, ask the Court to order a change in:

- Legal custody of child(ren) _____
Names of children
- Physical placement of child(ren) _____
Names of children
- Child support if the requested change in legal custody or physical placement is made

Explain changes to be made _____

LEGAL BASIS OF MOTION

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REASON CIRCUMSTANCES

- 1 The last Order was signed less than two years ago, and
 I have substantial evidence that the requested change is necessary because the current conditions are physically or emotionally harmful to the best interest of the child(ren)

- 2 The last Order was signed more than two years ago, and
 I have substantial evidence that the requested change is in the best interest of the child(ren), and
 There has been a substantial change of circumstances since the last Order on custody or physical placement

- 3 The current Order gives the parties substantially equal periods of physical placement, and
 I have evidence that shows that circumstances make it impractical for the parties to continue this placement schedule

- 4 The requested change does not substantially change the amount of time the other party and I spend with the child(ren), and
 I have evidence that the change is in the best interest of the child(ren)

Signed _____ Date _____

Print Name _____

THIS IS A SAMPLE ONLY. THE NUMBER IN EACH BLANK CORRESPONDS TO THE NUMBER IN THE INSTRUCTIONS.

STATE OF WISCONSIN
(2)

CIRCUIT COURT BRANCH (1)

DANE COUNTY

_____,
Petitioner's name

(street address)

(city, state, zip)
_____(Date of birth)

vs.

_____(2)_____,
Joint Petitioner / Respondent's name

(street address)

(city, state, zip).
_____(Date of birth)

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**STATEMENT IN SUPPORT
OF MOTION TO CHANGE:**

- LEGAL CUSTODY
- PHYSICAL PLACEMENT
- SUPPORT

Case # (3)

1. Our children are:

Name: _____ Birthdate: _____ Social Security No.: _____

(4)

2. The current Order awards legal custody to: mother father joint other (5)
The current Order awards physical placement as follows: (5)

- a. Mother Father has primary physical placement and the other party's periods of physical placement are: (5)
- b. The parties have substantially equal periods of physical placement.

3. **Attached is a copy** of the section(s) of the current Judgment or Order regarding custody and physical placement.

4. Explain and describe the evidence that supports your choice of Reason 1, 2, 3, or 4 on the attached Motion. (Be factual and specific; attach additional sheets if necessary)

(6)

5. You are also notified that, under WI Stat. §767.081 (2), you may request, and may have to pay for, the following written information from the Family Court Commissioner:

- 1. The procedure for obtaining a judgment or order in this action.
- 2. The major issues usually addressed in such an action.
- 3. Community resources and family court counseling services available to assist the parties.
- 4. The procedure for setting, modifying, and enforcing child support awards or modifying and enforcing legal custody or physical placement judgments or orders.
- 5. A copy of the statutory provisions in Chapter 767 generally pertinent to this action for inspection or purchase.

If you require services because of a disability, please call 608-266-4678 (TDD 608-266-9138) and ask for the court ADA Coordinator.

Dated this (7) day of (7), 20(7)

Petitioner/Joint Petitioner/Respondent Signature

_____,
 Petitioner's name

 (street address)

 (city, state, zip)
 _____(Date of birth)
 vs.

**STATEMENT IN SUPPORT
OF MOTION TO CHANGE:**

- LEGAL CUSTODY
- PHYSICAL PLACEMENT
- SUPPORT

_____,
 Joint Petitioner / Respondent's name

 (street address)

 (city, state, zip)
 _____(Date of birth)

Case # _____

1. Our children are:

<u>Name:</u>	<u>Birthdate:</u>	<u>Social Security No.:</u>
_____	_____	_____
_____	_____	_____

2. The current Order awards legal custody to: mother father joint other _____
 The current Order awards physical placement as follows:
 a. Mother Father has primary physical placement and the other party's periods of physical placement are: _____
 b. The parties have substantially equal periods of physical placement.

3. **Attached is a copy** of the section(s) of the current Judgment or Order regarding custody and physical placement.
 4. Explain and describe the evidence that supports your choice of Reason 1, 2, 3, or 4 on the attached Motion. (Be factual and specific; attach additional sheets if necessary)

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If you require services because of a disability, please call 608-266-4678 (TDD 608-266-9138) and ask for the court ADA Coordinator.

Dated this _____ day of _____, 20____

Petitioner/Joint Petitioner/Respondent Signature