

# **How to modify placement or custody orders if parents don't agree**

## **Within the first two years of the order**

When parents do not agree on the changes, it is not easy to change custody or placement orders, especially in the first two years after the orders are made. Courts generally won't make substantial changes in the placement or custody of a child within two years of a final order when only one parent is requesting the change, unless there is proof that the current orders are physically or emotionally harmful to the best interest of the child. Even after the first two years, it is still very difficult to change the initial placement and custody decisions of the court unless the two parents agree on the changes.

## **After the order has been in place for two or more years**

In motions to change placement or custody made after two years have passed, the court starts with the presumption that the existing orders are in the child's best interests. The court can only change the existing orders if there has been a substantial change in circumstances and the change in circumstances means that a change in placement or custody is in the best interests of the child. A change in economic or marital status is not enough of a reason to change an existing custody or placement order.

There are some exceptions to these strict standards for changing placement orders:

- If the parents have substantially equal periods of physical placement and circumstances make it impractical to continue the arrangement.

- If a parent has repeatedly and unreasonably failed to use their periods of placement.
- If the requested change does not substantially alter the amount of parenting time and the change is in the best interest of the child.
- If continued placement would endanger the child's physical, mental or emotional health.
- If a parent is a service member and the court changes a placement order because of the parent's active duty, the original placement schedule will be put back into place immediately once the parent is discharged or released from active duty.

## Mediation

Because it is easiest to change a custody or placement order when you have an agreement with the other parent, you may want to try mediation before filing a court action. In fact, some counties require that you try mediation before filing a court action to change custody or placement. You can file a [Request for court Ordered Mediation](#) to try to come to an agreement with your co-parent on a custody or placement change with the assistance of an impartial third party.

**Note:** Some counties have their own specific forms and instructions for requesting mediation. Check with your local court to see what they prefer.

Any agreement reached can then be filed with the court attached to a [Stipulation to Change Custody/Placement form](#). If the court approves, the agreement then becomes part of your court order.

In many counties, there is no charge to the parents for the first mediation session, but there is a fee for mediation if the dispute isn't resolved during the first session. You can request a fee waiver or payment plan if there is a fee for the regularly-used mediator. You can also use a private mediator for a higher fee. This will give you more scheduling flexibility and you and your co-parent can choose the mediator.

If mediation is not successful, the court may order a physical placement study. There is a fee for that as well. Also, if mediation does not produce an agreement, the

court may appoint a Guardian ad Litem. A Guardian ad Litem assists the court in determining the best interests of the child. The court may order both parents to each pay an initial deposit to the Clerk of court to be applied to the Guardian ad Litem's fees.

## The Court Process

If you do want to ask the court to change a custody or placement order, either because mediation has not been successful or because you would rather file and then wait for the court to order mediation, there are two ways to do so. You can choose which option is best for you or ask your family court which documents they prefer. The following outlines the procedural differences between the two options:

### [Notice of Motion and Motion to Change Legal Custody, Physical Placement](#)

The other parent is notified that there is a hearing. The other parent's presence is not required.

The documents may be served by mail.

CAUTION: Some counties require personal service for all documents filed by unrepresented people.

Signed by the requesting parent only.

### [Order to Show Cause and Affidavit to Change: Legal Custody, Physical Placement](#)

The other parent is ordered to appear at the scheduled hearing. The other parent's presence is required.

The document(s) must be Personally Served on the other parent.

Signed and made an order by a court official after a review of the supporting affidavits.

Unfortunately, court procedure varies slightly in every county. Some counties want you to call and get a court date to fill in on the papers before filing. Some counties have additional forms they want you to fill out. Some counties require the parties to attend mediation before filing a request to change custody or placement. Due to these and other variations, it is very hard to make a universal instruction form that

will work for every county. Your best bet is to go to the source - call your family court or clerk of courts or look them up online and get instructions directly from them.

General instructions that may differ in your county:

1. Complete either [Notice of Motion and Motion to Change Legal Custody, Physical Placement form](#) OR [Order to Show Cause](#) and [Affidavit to Change: Legal Custody, Physical Placement form](#)
2. Make at least 3 copies.
3. Go to the Family court/Clerk of courts in the county where the case is filed. The clerk will:
  - a. Collect the appropriate filing fees.
    - If you believe you are entitled to a waiver of this fee because of poverty, complete a [Petition for Waiver of Fees and Costs Affidavit of Indigency](#).
  - b. Assign you a court date or direct you to the office that will assign the court date.
    - The clerk might stamp “TO BE SET” in the section for the hearing date and time. A Commissioner will review the document to determine if there are sufficient facts to justify scheduling a hearing. You will either receive the date by mail or will be advised by mail why your case will not be scheduled.

**Caution:** If you don’t receive a date for the motion when you’re in the courthouse, you must still serve the other parent a copy of what you filed. Don’t wait to receive the date.
- c. Return the appropriate number of authenticated copies to you.
4. Attach a blank [Financial Disclosure Statement](#) form to the other party’s copy.
  - Some counties may want you to use the [Income & Expense Statement](#) instead

5. In some counties you need to attach a copy of the most recent court order or portion of the order that deals with the issue you want changed to your original motion and all copies of that motion.
6. Give the other parent notice of the hearing by having them served with the court papers. Which form you completed to request the court date will determine which method you must use to have the other party served.
  - If you filed a Notice of Motion and Motion to Change, you can serve by mail, unless you live in a county that requires all self-represented parties to use personal service.
  - If you filed an Order to Show Cause and Affidavit to Change, you must use personal service no matter your county. See our [article on personal service](#)

**Deadline:** The other parent must be notified properly and provided with the forms at least five business days before the date of the hearing. If serving by mail, you must mail the court papers at least eight business days before the date of the hearing. If the other parent had an attorney at the last hearing, mail a copy of the forms to the attorney too.

7. File proof of service ([Affidavit of Service](#), [Admission of Service](#), or [Affidavit of Mailing](#)) along with a copy of the served documents with the court as soon as possible. Remember to keep a copy for your records.

**Warning:** Without proof of service, the court cannot proceed with the hearing.

## The Hearing

Take the following items with you to court:

- Copy of the proof of service.
- Original and two (2) copies of your Financial Disclosure Statement form unless your county allows the Income & Expense Statement.

- Any other documents you think may help you make your case to the court.
- If you wish to have other people testify for you, make sure they come to court. A letter, affidavit, email, or text from them is not acceptable.

At the hearing, the party who filed the Motion or Order to Show Cause will normally get to go first, and must present evidence to justify the change in custody or physical placement as requested in the motion or order. When they are done, the court will have the other parent present their case. Sometimes each parent will get another turn and sometimes the court will ask questions of each parent.

It is very common that the problems that brought the case to court involve a lot of emotion, and people have a tendency to want to interrupt or argue with the other parent. Be careful not to do that. Don't verbally attack the other parent, and don't get into a debate with the other parent. It doesn't help your case and it can harm your case. You are talking to the court, not to the other parent. Everyone gets a turn.

At the end of the hearing the court will make an order. Take notes during the hearing; you may be told to complete the [Decision & Order on Motion or Order to Show Cause to Change Legal Custody, Physical Placement](#) or the court's staff may prepare the written document. Either way, the orders the court enters are effective on the day of the hearing, not when the written document gets signed. If the court's staff prepares the order, you should receive a copy approximately one week after the hearing.

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