

Is there a filing fee?

Yes, there is a filing fee.

Modify legal custody or physical placement—\$50.00

Modify all other types of orders—\$30.00

Contact your local Clerk of Court to learn about any other associated fees.

Must I notify the other party?

Yes, you must serve notice of the hearing along with the court papers on the other party no later than five (5) business days before the date of the hearing.

How do I serve a motion?

You must serve the document you filed on the respondent. Your local Sheriff's Department, a private process server, or a private person (over the age of 18) may serve the documents. You, as petitioner, may not personally serve the papers. The Sheriff's Department or private process server will charge you for serving the papers.

The person serving the papers will have to fill out an Affidavit of Service Form. The process server must sign the affidavit in front of a Notary Public and then file it at the Clerk of Courts office prior to the hearing. If this is not possible, you should bring the form with you to the hearing.

What will happen at the hearing?

At the final hearing you must show the court what you want changed since the last order was entered and why. The court will then determine if you have met the standard for modification.

The courts only have the best interest of the child in mind and do not favor one parent or another.

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Post Judgment Motions

Modification / Change Legal Custody, Physical Placement, Child Support or Maintenance

Explanations,
procedures and
where to go for help.

Waupaca County
Clerk of Circuit Court office
811 Harding Street
Waupaca, WI 54981
Phone number (715) 258-6460
Office hours—8:00a.m. to 4 p.m.
Monday thru Friday

Disclaimer: This brochure is intended to provide the public with general information regarding post judgment motions. It is in no way intended to be legal advice. You must contact a licensed attorney for specific legal advice.

Legal Definitions:

Motion—A request to change an existing order or judgment.

“Best Interest of the Child” - A standard used in family law to make decisions impacting a child in matters of adoption, child custody, guardianship, and visitation, among other issues. It is a subjective, discretionary test in which all circumstances affecting the child are taken into account.

Legal Custody—Major life decisions involving the child including doctor, dentist, religion, schooling, nonemergency medical care, permission to join the military and/or to marry before the age of 18. The presumes that joint legal custody is in the best interest of the child.

Physical Placement—Periods of time during which the child will be with one parent or the other. A scheduled visit or scheduled holiday.

Child Support—Court-ordered funds to be paid by one parent to the custodial parent of a minor child after divorce (dissolution) or separation.

Maintenance—(Alimony) Financial support paid by one ex-spouse to the other ex-spouse as ordered by a court in a divorce (dissolution) case.

Shared Placement Child Support Guidelines:

Courts may use the Shared-Placement Guidelines when the court order reflects that each parent cares for the child at least 25% of the time (92 days/yr).

Each parent is to assume the child’s basic and variable support costs in proportion to the time that the parent cares for the child.

The income of each parent is used to set the amount of support

The parent’s share of placement determines the parent’s share of support.

The Percentage Standards in a Non-Shared Placement Case:

The Percentage Standards are:

- ◇ 17% for one child
- ◇ 25% for two children
- ◇ 29% for three children
- ◇ 31% for four children
- ◇ 34% for five or more children

For more information on child support, visit the Department of Workforce Development at www.dwd.state.wi.us

Can I file a motion to modify/change at any time?

Yes, you may file a motion at any time. However, according to *Wisconsin Statute 767.451*, a court may not modify physical placement or custody within two years unless there is substantial evidence that modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child.

What may the court order if we cannot come to an agreement?

In custody and/or placement disputes the court may order mediation. Mediation helps you come to an agreement with the assistance of an impartial third party.

A Guardian ad Litem may also be ordered by the court. This is an attorney who is assigned assess the best interests of the child and make a recommendation to the court.

The court may feel that a home study should be done by Family Court Counseling Service or other agencies. A social worker conducts the investigation and the results are used by the courts to help decide what is in the child’s best interest.

What forms do I need?

FA-4170 Notice of Motion and Motion to Change– Notice of Change—Post Divorce

FA-4171 Order to Show Cause (OTSC) and Affidavit– Order to Show Cause

FA-4175 Decision & Order on Motion or OTSC– Decision and Order on Motion or OTSC

What if we come to an agreement on our own?

FA-604 Stipulation Order to Amend Judgment for Support/Maintenance/Placement. Allows parties to stipulate to certain modifications of an original family court judgment for child placement, custody, and support issues. This eliminates the need for a court hearing.

Where do I get the forms I need?

You can get the forms you need from your local Clerk of Court for a cost, or you can get them on the Wisconsin Court System’s Self-Help Center quick link at www.wicourts.gov

How do I fill out the Forms?

When filling out the forms, be very precise regarding the changes you want and why you believe the proposed change is best for the child. Make sure the forms are filled out completely. Type or print neatly. The court must be able to read your writing and have no questions about what it is you are asking for.

What do I do after I have the forms filled out?

After the forms are filled out, make five (5) copies. Take these to your local Clerk of Courts and file your motion. You will then get a time and date for the hearing. Write the time and date on all copies. The Clerk of Courts will keep the original and two copies. You will need to keep one copy for yourself, and you will need the other two copies to be served on the other party