



**Judicial District 20B
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Due to the changing nature of the law, the forms and information contained in this packet may become outdated.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 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.

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 AND INSTRUCTIONS 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.

NO ONE AT THE JUDICIAL CENTER, CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE, MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!

Steps for Modification of Custody/Visitation

STEP 1

Filling out the forms

CHECKLIST

You must complete the following documents:

- Motion for Modification of Custody Order or Visitation Order**
- Certificate of Service**
- Notice of Motion to Modify Custody/Visitation**
- SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT (2)-(AOC-G-250)**

Please note that the **Motion for Modification** needs to be signed in the presence of a Notary Public BEFORE bringing it to the CLERKS OFFICE. *Please* make sure to place your existing case number in the upper right hand corner of each document before bringing to the Clerk of Superior Court Office.

STEP 2

Filing the documents

Take the original documents and 2 copies to the Civil Filing Department (Union County Judicial Center, 400 N. Main St., 1st Floor). The clerk will file them for you. An additional copy of the "Notice of Motion to Modify Custody/Visitation" page should be delivered to the District Court Judges office.

STEP 3

Further information

You will be mailed notice of any and all dates of your case. PLEASE MAKE SURE THAT YOUR CORRECT MAILING ADDRESS IS IN THE FILE, AS WELL AS THE CORRECT ADDRESS FOR THE OTHER PARTY. **Please note that your claim may be resolved in Mediation. If a signed parenting agreement is reached in Mediation, you will not be given a hearing date.**

STEP 4

Service of Process

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

You are now ready to serve the documents on the party. You may do this using 1st class US mail.

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. If you do not appear for the Mediation an Order to Show Cause may be issued by the Judge.

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

SERVICE OF PROCESS

PLEASE READ THIS SECTION VERY CAREFULLY.

If you have concerns or are confused, consult with an attorney immediately!

In order for your case to be binding against the other party, the other party must be given notice of the case, or served in a manner that is recognized by the Court. **PLEASE NOTE that service of process must be completed successfully for your case to proceed and avoid dismissal. IT IS YOUR RESPONSIBILITY.** Service of the motion may be served by using 1st class US mail, complete certificate of service form.

1. You know where the other party is:

Service of the motion may be served by using 1st class US mail, complete certificate of service form.

2. You do not know where the other party is:

If you do not know where the other party is located, you will need to serve the other party by “publication”. This is a complex process using the newspaper to run notice of the case. You should speak to an attorney regarding this type of service. If you need an attorney, you can contact the **North Carolina Lawyer Referral Service at 1-800-662-7660**. If you cannot afford an attorney you may be eligible for representation or assistance from **Legal Services of Southern Piedmont at 704-376-1600**.

PLEASE NOTE: This is service of “last resort”. If you know where the Defendant is, or if you can find out where the Defendant is, you should never attempt this type of service.

STATE OF NORTH CAROLINA
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

Plaintiff

Plaintiff's address

Vs

Defendant

Defendant's address

MOTION TO MODIFY
CUSTODY/VISITATION
ORDER

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: _____

____ Plaintiff ____ Defendant moves to modify the ____ Custody ____ Visitation.

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

STATE OF NORTH CAROLINA
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
___-CVD-_____

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Motion to Modify ___ Custody ___ Visitation, in the above entitled action upon all other parties to this cause by depositing a copy thereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties, or to the party(s) individually, as set forth below:

Signed the _____ day of _____, 20_____.

Signature of Moving Party

Name of Moving Party

Address of Moving Party

NORTH CAROLINA
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File No. ____-CVD-_____

Plaintiff

vs.

**NOTICE OF MOTION TO
MODIFY
CUSTODY / VISITATION**

Defendant

The ____ plaintiff ____ defendant has filed a Motion to Modify in the above case.

All parties ____ have ____ have not attended Child Custody Mediation Orientation and Parenting Apart Program on or about _____ (date)

Plaintiff's address: _____

Plaintiff's phone numbers: (home) _____
(cell) _____

Defendant's address: _____

Defendant's phone numbers: (home) _____
(cell) _____

QUESTIONS MAY BE DIRECTED TO THE CUSTODY MEDIATOR.

Date

Filing party or attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THIS NOTICE OF MOTION TO MODIFY HAS BEEN PROVIDED TO THE OTHER PARTIES IN THE FOLLOWING MANNER:

- [] By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:
__ Plaintiff at _____
__ Defendant at _____
__ Plaintiff's Attorney _____
__ Defendant's Attorney _____

CC: Mediator

_____ County

In The General Court Of Justice

Name And Address Of Plaintiff

**SERVICEMEMBERS CIVIL RELIEF ACT
AFFIDAVIT**

VERSUS

Name And Address Of Defendant

50 U.S.C. 3901 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date: (check one of the following)

- a. I have personal knowledge that the defendant named above is in military service.*
- b. I have personal knowledge that the defendant named above is **not** in military service.*
- c. I am unable to determine whether the defendant named above is in military service.*

2. (check one of the following)

a. I used the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's military status.

The results from my use of that website are attached.

(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. DoD security certificates were automatically added to the computers of all Judicial Branch users, such that these users should not expect security alerts to appear with this website after July of 2015. As of June 22, 2016, the Servicemembers Civil Relief Act Website includes the following advice: "Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser.")

b. I have not used the Servicemembers Civil Relief Act Website and the following facts support my statement as to the defendant's military service: (State how you know the defendant is not in the military. Be specific.)

***NOTE:** The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	Date
Date	Signature Of Affiant
Signature Of Person Authorized To Administer Oaths	Name Of Affiant (type or print)
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate	
SEAL <input type="checkbox"/> Notary	Date My Commission Expires

NOTE TO COURT: Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).