

Completing a Motion for Modification – CAO 10-1B
7/29/2005 Revision

[REMOVE THESE INSTRUCTION PAGES BEFORE FILING]

Talk to an attorney, if possible.

WARNING: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. Even if you do not hire a lawyer to appear in your case, you may be able to find a lawyer to review your paperwork or give you more information about your rights. Call the Idaho State Bar (208-334-4500) to provide you with the name of an attorney who handles this type of case. Contact the Court Assistance Office for information about resources for low-income people.

You will be signing a sworn statement that you have read the motion, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions

Fill in the forms by typing or by printing neatly and legibly in **black ink**. If you are working on a computer, you may delete the optional sections you don't need and renumber the remaining sections, or type in "none" if a section doesn't apply. The documents have a boldface "**or**" at the start of optional sections. If the section does not contain a boldface "**or**" it is necessary and you should type in the appropriate information (which might be the word "none"). Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, fill in your full legal name, mailing address and telephone number.

The Court Heading. Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF BANNOCK") exactly like it is in the Order or Decree you are asking to be changed.

The Caption. Fill in the names of the Father and Mother exactly as they appeared in the caption in the original case.

The Case No. Fill in the case number from the original court case. This is not the same as your Department of Health and Welfare Child Support case number.

Fill in your full legal name and check the box to indicate if you are the Father or the Mother.

1. Fill in the name and date of birth for each minor child and the city and state where each child has lived for the last five years. If none of the children and no parent still live in Idaho, the Idaho court may lack authority ("jurisdiction") to modify custody. In that event you should consult an attorney to determine whether there may be other grounds for jurisdiction under the

Uniform Child Custody Jurisdiction and Enforcement Act, Section 32-11-203, I.C.

2. Write in the city, county and state where Mother resides and the city, county and state where Father resides.

3. UCCJEA Jurisdiction.

You are required to inform the court if there have been any other cases involving your child/ren in any court or if there are any other people claiming custody or visitation rights with the child/ren. In paragraphs 3a, b, c and d, check the appropriate box and provide all requested information.

4. Before asking the court to modify (change) the order now in effect, you must provide information to the court explaining what significant (“substantial and material” for child support) change(s) in circumstances make the modification necessary. Check the box/es that describe the change(s) that have occurred since the most recent order. If none of the boxes apply, provide your own description of the changes.

5. **Custody.** Check the first box if there will be no change.

- Check the second box if you are seeking to have the previous order modified with respect to custody (or “Parenting Plan”) and
 - Write in the date of the most recent Custody Order. Consult the court file if you are unsure about the date of the most recent order. *Note: There may be different orders if you have changed either support or custody before.*

Legal Custody. “*Joint legal custody*” means the parents are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will award joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to share the decision-making rights.

- Check the first box if there will be no change.
- Check the second box if both parents are fit persons to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren, **or**
- Check the third box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
 - Write in the name of the parent who should be awarded sole legal custody **and**
 - State why the other parent should NOT be allowed to share legal custody.

Physical Custody. “*Joint physical custody*” means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if there will be no change. **or**
- Check the second box if both parents should be given physical custody of the child/ren **and**

- Complete the **Parenting Plan**. (Both parents may sign the Parenting Plan, but it is not required). Write **Exhibit A** on the bottom of the first page of the Parenting Plan and attach (staple) it to the Motion for Modification. **IMPORTANT: The Parenting Plan must be attached to make it a part of the Motion for Modification.** Make an extra copy of the Parenting Plan to attach (staple) to the Modification Order. **or**
- Check the third box if you are asking the court to give sole physical custody of the child/ren to only one parent, **and**
 - Write in the name of the parent should be given sole physical custody **and**
 - State why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision.
 - If you want the court's order to give the other parent restricted or conditional time with the child/ren, write in the parent's name **and**
 - State specifically what you want the court to order; or check the box to refer to the Parenting Plan you will attach (staple) to your Motion.

6. Child Support.

Note: If the percentage of time the child/ren is with each parent is changed, the amount of child support will probably also need to be changed. You will need to complete an Affidavit Verifying Income and a Child Support Worksheet to calculate the amount of child support. A Court Assistance Officer will be able to help you generate these documents if you provide the required information.

- If you want or need to change the current amount of child support, check the appropriate box, **and**
- Write in the date of the most recent support order. Consult the court file if you are unsure about the date of the most recent order. *Note: There may be different orders if you have changed either support or custody before.*

Note: If the child support order is in a different case, that case and this case will need to be consolidated so the child support can be modified.

- write in the name of the parent who will pay child support **and**
- the total monthly amount (the base amount of support plus or minus any adjustments for work-related child care expenses, health insurance premiums and/or the tax dependency).
- Fill in the Base Amount of child support
- If your child support calculation includes adjustments for sharing work-related child care costs, health insurance premiums and/or tax benefits,
- Check the boxes that apply and fill in the amounts.
- If you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is emancipated (no longer eligible for support under Idaho law). Fill in the total amount of child support from the child support worksheet.
- Attach your Affidavit Verifying Income and Support Worksheet(s) to the Motion, marking each as **Exhibit B**.

Extended Visits. Check the box if the child/ren lives in the home of one parent at least 75% of the time. You can choose either or both of the next two paragraphs of the form. If the child/ren

spends more than 25% of the year with each parent (shared physical custody), write “N/A” in the box.

- If you selected the first paragraph, indicate how much the support payment will be reduced by either checking the box for 50% or filling in your own percentage. You will need to notify the Department of Health & Welfare, Child Support Services when this paragraph should take effect.
- If you have more than one child, you can check the box to also select the next paragraph.

WARNING: If you are the parent paying child support (the “obligor”) you should be aware the decree will provide for collection of unpaid child support from your wages and from your real estate or personal property. The decree will also provide that if you move to another state, the child support award (and any spousal maintenance award) can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

7. Medical Insurance.

- Check the first box if there will be no change. **or**
- Check the appropriate box to indicate how health insurance coverage for the child/ren is now being provided. If you selected the second paragraph, write in the name of the parent(s) currently providing health insurance.
- In the fourth paragraph, if health insurance premiums are NOT included in the calculation of child support and you want a court order that the premium be shared, check the box and write in the percentage to be paid by each parent, based on each of your Guidelines income percentage. (These percentages are determined when calculating the child support. Refer to the Child Support Worksheet.)

WARNING: The Order will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

8. Health Care Costs Not Paid by Insurance.

- Check the first box if there will be no change. **or**
- Check the second box and write in the percentage to be paid by each parent. Idaho’s Child Support Guidelines presume a sharing in proportion to your Guidelines incomes.

9. Work-related Child Care Costs.

- Check the first box if there will be no change. **or**
- Check the second box if you did not figure these expenses in your child support calculation **and**
 - Fill in the percentages each parent will pay.
 - Check the box if both parents will pay the care provider directly.

10. Income Tax Exemption.

Check the first box if there will be no change. **or**

- Check the second box **and**
 - Write in the blank the parent who will claim each child as a dependent on their income tax return(s). *Note: The child support calculation must reflect the same designation.*

Signature. Leave the spaces for the State and County blank. Go to an office where there's a Notary. Have the notary fill in the spaces. Sign the Motion to Modify in front of the Notary and have your signature notarized.

Exhibits: Mark your Parenting Plan as **Exhibit A** and your Child Support Affidavit and Worksheet(s) or Child Support Order from another case as **Exhibit B**. Make an extra copy of the Parenting Plan for use with the Modification Order, before attaching (stapling) to the Motion. Attach (staple) Exhibits to the Motion with a staple. Make additional copies of the Motion with Exhibits attached (stapled) so there is a copy for each party. Take the original and copies to the clerk of the court for filing and conforming.

Refer to the Instruction – Filing for Modification – for complete instructions.

REMOVE THESE INSTRUCTIONS BEFORE FILING YOUR MOTION TO MODIFY!

Full Name of Party Filing This Document

Mailing Address (Street or Post Office Box)

City, State and Zip Code

Telephone Number

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

_____,
Father

_____,
Mother

State of Idaho, Department of Health and Welfare

Case No.: _____

MOTION TO MODIFY AN ORDER OR
DECREE

Fee Category:
Filing Fee:

I, _____, [] Mother [] Father, ask the
court to enter an order pursuant to Rule 60(c), I.R.C.P., modifying a previous Order/Decree
entered in this case, and state:

1. The following child/ren under the age of 18 years, or 19 years and still pursuing a high
school education, was/were born to or adopted by the parties:

<u>Name</u>	<u>Date of Birth</u>	<u>Addresses for last 5 years</u> (city & state beginning with most recent)
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2. Mother resides at (city, county, state) _____.

Father resides at (city, county, state) _____.

3. UCCJEA Jurisdiction. This court has jurisdiction to modify custody of our child/ren under the Uniform Child Custody Jurisdiction and Enforcement Act, Idaho Code § 32-11-101, et seq.

a. I have not participated as a party or witness, in any other case involving our child/ren. **or**

I have participated as a party or witness in the following case involving our children (provide all specifics including the parent's name, the state, the court, the case number and the date of the child custody order, if any): _____

_____.

b. I do not know of any other case that could affect our child/ren. **or**

I know of the following court case that could affect our child/ren (provide all specifics including the parent's name, the state, the court, the case number and the nature of the proceeding): _____

_____.

c. Other than the parents, no one claims custody or visitation rights with our child/ren. **or**

In addition to the parents, the following person/s claim custody or visitation for our child/ren (list names and addresses): _____

_____.

d. Our child/ren live(s) only with both parents. **or**

If our child/ren lives(s) with someone other than a parent, the name(s) and present address(es) of the person(s) with whom our child/ren live(s) is/are: _____

_____.

4. There have been substantial and material changes in the circumstances of the parties since the date of the last Order/Decree herein. The following changes have occurred (check all boxes that apply):

- The custodial arrangement.
- The gross annual income of one or both parents.
- A parent is providing medical insurance.
- The parent claiming the tax dependency exemption should be changed.
- (other reason) _____

_____.

5. Custody. [] No change. **or**

[] The moving party requests that the court modify the order entered (date of last custody order) _____ respecting custody of the minor child/ren as follows:

Legal Custody. [] No change. **or**

[] Both parties are fit to act as parents. It is in the best interest of our child/ren that we be awarded joint legal custody. **or**

[] It is in the best interest of our child/ren that _____ be awarded sole legal custody because _____

_____.

Physical Custody. [] No change. **or**

[] It is in the best interest of our child/ren that we be awarded joint physical custody of our child/ren according to the Parenting Plan which is attached as **Exhibit A.** **or**

[] _____ should be awarded sole physical custody of our child/ren because _____

_____.

[] _____ should spend time with our child/ren

[] as follows:

_____.

or

[] in accordance with the Parenting Plan which is attached as **Exhibit A.**

6. Child Support.

[] Child support has already been set and does not need to change. If child support was set in a different case, a copy of the Child Support Order is attached as **Exhibit B.** **or**

This court has jurisdiction to determine child support, Title 32, Chapter 7, Idaho Code. The moving party requests that the court modify the order entered (date of last Child Support Order) _____ respecting child support for the minor child/ren as follows:

Child support should be paid by _____ in the total amount of \$_____ per month, based on the Idaho Child Support Guidelines, according to the Affidavit Verifying Income and Child Support Worksheet(s) attached as "Exhibit B". The total amount includes: Base child support in the amount of: \$_____

- Work-related childcare expenses \$_____
- Medical, dental, and/or optical insurance premiums allocated in the amount of: \$_____
- Tax benefits allocated in the amount of: \$_____

Child support payments should begin on the twentieth (20) day of the month after the Modification Order is signed and continue to be paid on the twentieth (20) day of each following month until the child/ren for whom support is being paid reaches the age of eighteen (18). If a child for whom support is being paid continues his/her high school education after reaching the age of eighteen (18) years, child support payments should continue until the child discontinues his/her high school education or reaches the age of nineteen (19) years, whichever is sooner. Payment should be made payable to the Department of Health and Welfare and sent to: **Idaho Child Support Receipting, P.O. Box 70008, Boise, ID 83707-0108.**

We have more than one minor child. If this Child Support Order has not been modified, when one child is no longer entitled to support, child support for the remaining child/ren should continue in the total amount of \$_____ per month; when two children are no longer entitled to support, child support for the remaining child/ren should continue in the total amount of \$_____ per month; when three children are no longer entitled to support, child support for the remaining child should continue in the total amount of \$_____ per month.

NOTICES

According to Chapter 12, Title 32, Idaho Code, this Child Support Order is immediately enforceable through income withholding. Income withholding shall be enforced by a Withholding Order issued to the paying parent's employer without additional notice to the paying parent. A statewide lien on all real and personal property of the paying parent will arise automatically if child support is past due in an amount equal to the smaller of \$2,000 or 90 days of support, according to Idaho Code §§7-1206 and 45-1901, *et seq.*

The Support Order can also be enforced by license suspension.

Extended Visits: Our child/ren live/s in the home of one parent at least 75% of the time.

When the parent paying child support has physical custody of the child/ren

for 14 or more overnights in a row, the amount of base child support should be reduced for that period of time; however, visitation of two overnights or less with the other parent should not eliminate the reduction of base child support during extended visits. The child support reduction for the period of the actual physical custody should be [] 50% **or** [] _____% of the base child support obligation. The reduction should be subtracted from the child support payment due the next month.

[] If the parent paying child support has physical custody of some but not all of the children for a continuous period of fourteen (14) or more overnights in a row, before a reduction is made, the base child support obligation should first be divided by the number of children under eighteen (18) years of age. The reduction for the paying parent should only apply to the base child support thus allocated to the children in that parent's custody.

(Example: Parent has 3 of 4 children for 14 days. \$300/mo. base support payment divided by 4 children = \$75 per child per month divided by 30 days = \$2.50 per day per child x 14 days = \$35.00 x 3 children = \$105.00. Reduction = 50% of \$105 or \$52.50.)

7. Medical Insurance. [] No change. **or**

[] _____ is/are currently providing health insurance for the minor child/ren and should continue to do so, so long as it is reasonably available through that parent's employment. If such insurance becomes unavailable to the parent currently providing insurance, the parent first reasonably able to obtain group health insurance through employment should do so. **or**

[] Neither parent is currently providing health insurance for the child/ren. The parent first reasonably able to obtain group health insurance through employment should do so. **or**

[] The child/ren participate/s in the Children's Health Insurance Program. The parent first reasonably able to obtain group health insurance through employment shall do so.

[] The total child support amount does not include any actual cost paid by either parent for health insurance premiums for the child/ren. That cost, whether being paid now or incurred in the future, should be prorated between the parents in proportion to their Guidelines income. Father should pay _____ % and Mother should pay _____ %. The payment should be in addition to the base child support award and promptly paid directly between the parents.

Where medical insurance is provided, each parent should be ordered to provide the other with all medical insurance information necessary to obtain health care for the child/ren. Insurance proceeds will be applied first to unpaid medical bills and then to reimburse the paying

parent for any prepaid medical costs. Both parents shall sign any needed document that provides continuing health care for our child/ren.

Notice

Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

8. Health Care Costs Not Paid by Insurance. [] No change. **or**

[] The actual cost paid by either parent for health care expenses for the child/ren not covered or paid in full by insurance, including, but not limited to orthodontic, optical and dental, should be prorated between the parents. Father should pay _____ % and Mother should pay _____ %. These payments should be in addition to the base child support award and be promptly paid directly between the parents.

Any health care for the child/ren (whether denominated as psychiatric, psychological, special education, addiction treatment, or counseling in any form, and including regular medical or dental care), whether or not covered by insurance, that would result in an actual out-of-pocket expense of over \$500 to the parent who did not incur or consent to the expense, must be approved in advance, in writing, by both parents or by prior court order. (*Note: The court may consider whether consent for out-of-pocket expenses in excess of \$500 was unreasonably requested or withheld and order payment of the incurred expense in some percentage other than the Guidelines Income.*)

9. Work-related Child Care Costs. [] No change. **or**

[] The total child support amount does not include work-related child care costs. The actual net out-of-pocket costs for work-related child care should be paid _____% by Father and _____% by Mother.

[] Payment should be made directly to the child care provider by both parents according to arrangements made with the care provider. If one parent pays the child care provider any portion of the other parent's share of costs, the non-paying parent should reimburse the paying parent within 10 days after the paying parent provides a copy of the invoice and receipt for the payment.

10. Income Tax Exemption. [] No change. **or**

[] The state and federal dependency tax exemption(s) for the parties' minor child/ren should be assigned as follows: _____

The parent not receiving the exemption(s) should sign the required Internal Revenue Service form(s) to release the claim to the exemption(s).

VERIFICATION: I swear I have read this Motion and state that all facts included are true. WHEREFORE, the moving party asks that the court enter its Modification Order after appropriate notice.

DATE _____, 20__.

Signature of Party Submitting

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

Notary Public for Idaho
Residing at: _____
My Commission expires: _____

REMOVE THIS PAGE AND

If modifying the custody schedule,
Attach (staple) the Parenting Plan
and
Mark it as **EXHIBIT A**

If modifying child support,
Attach (staple) the Affidavit Verifying Income
and
Child Support Worksheet(s)
and
Mark them as **EXHIBIT B**

If child support was ordered in a different case,
Attach (staple) that Child Support Order
and
Mark it as **EXHIBIT B**