

# OFFICE OF THE FAMILY COURT COMMISSIONER

----- Milwaukee County, Wisconsin

*[These materials are made available to the public pursuant to the directives of Section 767.081 of the Wisconsin Statutes.]*

## **PLEASE NOTE:**

*These instructions must be followed COMPLETELY and CORRECTLY, or your case may not be heard as scheduled.*

## **INSTRUCTIONS FOR PROCESSING YOUR MODIFICATION MOTION**

A motion is your request that a court take some action in your case. The particular form that you are receiving with these instructions is very simple and very general. It will work for many different purposes if you fill it out correctly. Still, there are basic procedures that you must follow before the court can give you a hearing or make the orders you request.

The four basic steps necessary to handling a motion before the court are:

1. Preparing the papers;
2. Obtaining a date for your hearing;
3. Notifying your former spouse (or the other adult party in paternity actions) of the date - this is the most difficult part and must be done properly or you cannot have a hearing;
4. Appearing at the hearing and presenting your position to the court and making sure you arrange for receipt of a copy of the order.

### **1 PREPARING THE PAPERS**

You will need a copy of your divorce judgment (or paternity judgment) or temporary order to do this.

Copy **[PRINT]** the names just as they appear in the top portion of your divorce or paternity papers. Once the petitioner, always the petitioner. Likewise, your case number is the same, so copy it exactly. (In a paternity case, sometimes the other adult party is listed as a co-respondent.)

Next, fill in the other person's name, complete address and phone number in the lines following "to" on the first page.

Fill in your own name in the blank before the words "PRO SE".

In the space in the middle of the page, write **[PRINT OR TYPE]** in exactly what it is you want the court to do, namely how you want the court to change the existing order or enforce it. This is a very important section of your papers, so give careful thought to exactly what it is

you want the court to do. If your request is NOT clear, the court may dismiss your motion.

Do **NOT** fill in the next blanks - the Court Commissioner's clerk will assign the date and time.

The most important part of your papers comes next. **On PAGE 2** fill in the section where you tell the court your reasons - both legal and common sense - for wanting the orders you seek. Be sure to type or print this section well.

If you are asking the court to change an existing order you **MUST** tell the court (and the other party) what has changed since the existing order was made. All modifications must be based on some change of circumstances - financial or emotional. If you are seeking a change in visitation/periods of physical placement, you must also state why the change is in the child's best interest.

You may also use this packet if you are seeking to enforce an existing order. You must tell the court how the order is being violated. But, you must also understand that these papers are **NOT** the ones necessary to have the other person held in contempt and sent to the judge for punishment. These papers are only good for asking the court to make orders that will remedy the problem without a finding of contempt or threat of jail.

Finally, sign and date the papers and write **[PRINT OR TYPE]** your street address or post office box number, including ZIP code, and telephone number on the blanks at the end of the papers.

You have now finished filling out your motion. Make five (5) copies of the motion papers, staple them together in packets and get ready to file your motion at the Courthouse.

*(The "Monthly Earnings and Expenses" form should be completed and given to the commissioner on the day of your scheduled hearing.)*

## **2. OBTAINING A DATE and PAYMENT OF FEES**

Go to Room 104 of the Courthouse if you must pay a filing fee. If you are trying to modify an order the charge will be \$50.00 for anything having to do with custody or visitation and \$30.00 for anything having to do with money. If you are only attempting enforcement of an existing order, there is no filing fee. *(If you believe you qualify for a waiver of the fee, you may pick up a fee waiver form in Room 104.)*

After you pay the required fee (or present a copy of the order waiving fees), you return to Room 707 of the Courthouse to get your date and time for the hearing before the Family Court Commissioner. Approach the first counter on your right as you enter the door. Present your original motion and the five copies to the clerk and tell her that you are here to file a motion. She will ask what the motion is about and you will tell her whether it is for modification or enforcement.

Copy the date and time on all your copies. Now you move on to the most difficult part.

## **3. SERVING THE PAPERS**

**\*\*\* IF THERE WAS WELFARE OR ARE W-2 BENEFITS, READ THIS CAREFULLY.**

*If the other person now receives W-2, or ever did receive AFDC, you must deliver a copy of any motion concerning money to the Department of Child Support Enforcement which is located in **ROOM 101** of the courthouse at 901 North 9th Street. We recommend that you simply take your original and a copy of the motion to the agency, leave a copy with the*

receptionist and **MAKE SURE** he or she stamps your original on the back with the "copy received" stamp showing that the department has received a copy.

Serving the papers means getting them into the other person's hands in a legally defined way.

You yourself **CANNOT** be the process server - the sheriff or a private process server or the mail carrier can deliver the necessary copy of the papers to the other party. Your personally handing them to the other party is legally no good **unless** he/she signs your original papers after you write the words "Service Admitted" above the spot where you wish the signature (usually the back of the last page of the original papers). The Family Court Commissioner strongly advises you NOT to rely on an admission of service - it is too easy for the other person to ignore the hearing and claim later that you forged the signature or didn't give him/her the necessary copy.

The very best method of service is personal service by the sheriff - you will obtain an affidavit that is reliable and unquestioned **if** the sheriff in fact succeeds in finding the other party and giving him/her the papers. One attempt at service by the sheriff is \$30.00. The sheriff's Civil Process division is located in **ROOM 102** of the **Safety Building**, just across MacArthur Square from the Courthouse. You may take your original motion and one copy to the sheriff and request service. The \$30.00 fee must be paid **at the time you request the service**. (If your fees are waived, bring a copy of your order waiving costs with you). You must give the sheriff very accurate information about how and where to find the person to be served if you expect successful service. Sometimes a picture is helpful.

Finally you **may** serve a motion by mail, **but be forewarned** that the Family Court Commissioner is likely to be much happier if you have had the sheriff personally serve the papers, particularly in the event the other person doesn't attend the hearing.

To serve by mail, you prepare what is called a "transmittal letter," which says:

Dear **(other person's name)** \_\_\_\_\_:

Enclosed is my motion, which is served on you by mail. Please note the time and place of the hearing.

Thank you for your attention.

Sincerely,

[Your name]

[date]

Put the **ORIGINAL** letter, together with a **COPY** of your motion in an envelope. Put a **COPY** of the letter together with **ANOTHER COPY** of your motion in another envelope. Address both envelopes to the other party. Send one **regular mail** and the other **certified mail, return receipt requested**. Attach **ANOTHER COPY** of your letter to the **ORIGINAL** motion and bring it to Court with you.

If the other party signs the certified mail receipt, **bring that receipt to court**. If she/he doesn't, you still can tell the court you sent the papers by regular mail as well, and use your transmittal letter as proof.

### **--- TIME LIMITS ON SERVICE**

The law says motions must be served five (5) days before the hearing. However, in adding

up the days, Saturdays, Sundays and holidays don't count, nor does the date of the hearing. So, five really means eight (8). Further, if you choose to serve the papers by mail, the law requires that you add three (3) more days. Then, five (5) means eleven (11). You should probably get a date at least thirty (30) days away and take steps to serve the papers immediately so you are sure that service is timely.

### **--- PROOF OF SERVICE**

All of your work in serving the papers will be wasted unless you remember to bring your proof of service to the hearing. Proof of service is:

- written admission of service on the original papers, if you have served by admission of service method, or:
- the affidavit of service, attached to the original papers, from the person, either the sheriff or private process server, who actually served the papers, or:
- the transmittal letter you wrote when you mailed the papers, attached to the original papers, together with any return receipt from certified mail.

### **4. ATTENDING THE HEARING AND GETTING AN ORDER**

Go to the appointed place a half hour ahead of time and inform the clerk of your arrival. If your hearing is before the Family Court Commissioner for Milwaukee County, you will need to fill out the "Case Number" and Name and Address portions (for both parties), plus the names and birthdates of minor children on the form called "Family Court Commissioner Findings and Order." A copy of that form is available when you check in on the date of the hearing.

You must also completely fill out (to the extent you are able) the "Monthly Earnings & Expenses" form which you also found in the packet. THIS INFORMATION IS NECESSARY TO ENABLE US (or the judge) TO PROCEED WITH YOUR HEARING.

If you are appearing before the Family Court Commissioner, when your case is called, go into the hearing room and hand the commissioner your ORIGINAL papers, with the proof of service attached, together with the 2 forms described above. Take your seat and wait for the commissioner to tell you to proceed. Take your cues from the commissioner - each commissioner has his/her own style. Be prepared to tell the court exactly what it is you want the court to do. Don't interrupt the other party or the court when it is their turn to talk.

If your hearing is before Milwaukee County Family Court Commissioner in a marital action, your work is pretty much over once the commissioner has ruled. If you think the commissioner's order is unfair, you have **15 business days** from the date the order is signed by the commissioner (*18 business days if the decision is mailed to you*) to file a motion for review before the judge assigned to your case. If your hearing is in the FCC paternity section, you must speak with the commissioner about how to obtain a copy of the order. If your hearing is before a judge, **YOU** will have to write the order after the judge makes it and submit it to the judge for signature. While you can use this same basic motion form for hearings before a judge, we really do seriously recommend that you retain an attorney for any non-routine proceeding before a judge.

We hope that these instructions enable you to present your motion before the court in an orderly fashion.

In re the Marriage of:  
In re the Paternity of \_\_\_\_\_

\_\_\_\_\_  
Petitioner,

MOTION AND NOTICE  
OF MOTION

Case #      FA / PA \_\_\_\_\_

\_\_\_\_\_  
Respondent.

Family    **A    B    C    D    E**  
*[CIRCLE appropriate one]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_

You are notified by this document that \_\_\_\_\_, PRO SE, will ask the court to make the following orders:

A hearing will be held on this request as follows:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

PLACE:      Room 707, Milwaukee County Courthouse  
                 901 North 9th Street, Milwaukee, WI 53233

BEFORE:      MICHAEL J. BRUCH, Family Court Commissioner, or his  
                 designee

If you object to the orders requested in this motion, you are expected to attend the hearing and make your objection known to the court.

If you fail to attend the hearing, the Court may go ahead without you and has the power to make the orders requested in this document.

THE GROUNDS FOR THIS MOTION ARE AS FOLLOWS:

Dated at Milwaukee, Wisconsin, on \_\_\_\_\_.

\_\_\_\_\_  
*[Sign your name]*

\_\_\_\_\_  
*[P R I N T your name]*

P.O.: Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone (     ) \_\_\_\_\_

# **MONTHLY INCOME & EXPENSES**

DATE OF HEARING: \_\_\_\_\_ CASE # \_\_\_\_\_

NAME: \_\_\_\_\_ Soc. Sec. No: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ Phone #: \_\_\_\_\_  
\_\_\_\_\_ Other case #'s: \_\_\_\_\_

Presently ☐ MARRIED ☐ SINGLE Number of minor children you have \_\_\_\_\_ Number living WITH YOU \_\_\_\_\_

Place of Employment: \_\_\_\_\_

Employer address: \_\_\_\_\_

Employer phone #: \_\_\_\_\_ Employer FAX #: \_\_\_\_\_

Hourly rate of pay: \$ \_\_\_\_\_ Average hours worked per week: \_\_\_\_\_

How often are you paid (pay period): ☐ weekly ☐ Every 2 wks. ☐ 2 times/month ☐ monthly

GROSS pay [*BEFORE deductions*] per period: \$ \_\_\_\_\_

NET pay [*AFTER deductions*] per period: \$ \_\_\_\_\_

Number of exemptions claimed: \_\_\_\_\_

Benefits you receive: W-2 benefits (of any nature) \$ \_\_\_\_\_ per month

SSI \$ \_\_\_\_\_ per month

SS Disability \$ \_\_\_\_\_ per month

Unemployment Comp. \$ \_\_\_\_\_ per WEEK

Workers' Comp. \$ \_\_\_\_\_ per \_\_\_\_\_

Other [*explain nature and amount*]: \$ \_\_\_\_\_

Other monthly income [*amount/source*]: \_\_\_\_\_

## **MONTHLY EXPENSES:**

Food: \$ \_\_\_\_\_

Mortgage/Rent: \$ \_\_\_\_\_

Heat: \$ \_\_\_\_\_

Electric: \$ \_\_\_\_\_

Telephone: \$ \_\_\_\_\_

Health insurance: \$ \_\_\_\_\_

Life insurance: \$ \_\_\_\_\_

Operating auto: \$ \_\_\_\_\_

Other expenses: \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

## **MONTHLY PAYMENTS:**

Child Support: \$ \_\_\_\_\_

Auto loan payment: \$ \_\_\_\_\_

Auto insurance: \$ \_\_\_\_\_

Credit card/installment loans: [*name/monthly payment*]

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

Other bills: [*name of creditor/monthly amount*]

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

**TOTAL** of monthly expenses and payments: \$ \_\_\_\_\_

Is health insurance available to you for your children? ☐ YES ☐ NO

SIGNATURE: \_\_\_\_\_ [*Use reverse side for additional information*]