

CHILD SUPPORT MODIFICATION INFORMATION AND INSTRUCTIONS

CONFIDENTIALITY: If you have concerns about confidential information such as addresses and/or social security numbers, please consult an attorney and do not attempt to do this on your own. You should also know that Domestic Violence Protection Orders or Stalking Orders are available free of charge at the circuit court clerks' offices. You may request assistance in obtaining Domestic Violence Protection or Stalking Orders from your local domestic violence or sexual assault program or you may call the Wyoming Coalition Against Domestic Violence & Sexual Assault (1-800-990-3877). There are also private attorneys that are willing to assist clients in these matters. If you have ever obtained a Domestic Violence Protection Order, this information should be indicated in the *Petition for Modification of Child Support and Judgment for Arrears* or the *Counterclaim*. A Domestic Violence Protection Order generally will be in effect for up to three (3) months and any provision included in that order (such as child custody and/or support) will end when the order expires.

Read through the following information and instructions before completing the forms to ensure that you qualify to file for a modification of child support in Wyoming.

This packet is to respond to a petition for modification of child support only. If you need to address modifying custody, visitation or parenting time with your child(ren), a separate packet is available.

Information:

Qualifying for a modification of child support. Either party may seek to modify a child support order if one of the following situations is present:

a. **Twenty (20%) percent change in support amount after six (6) months.**

Any child support order that was entered more than six (6) months prior to the petition or which has not been adjusted within *six (6) months* from the date of filing of the petition may be reviewed and adjusted if the court finds that the support amount would ***change by twenty percent (20%) or more*** per month from the amount of the existing child support order; OR

b. **Substantial change of circumstances.** A modification based on a ***substantial change of circumstances*** may be brought at ***any time***. The commencement of aid under the Personal Opportunities With Employment Responsibilities (POWER) Program, medical benefits under Title XIX of the Social Security Act, food stamps and supplemental security income (SSI) shall be considered a substantial change of circumstances requiring modification of child support. Other changes, including custody modifications, may also be sufficient. (If you are seeking a change of custody as well as a change in the child support

order, please use the custody modification packet or seek the advice of an attorney); OR

c. **Every three (3) years.** Every three years, upon request, the court is required to review and, if appropriate, adjust the child support order. There is no need for a showing of a change of circumstances if it has been at least three years since the previous child support order was entered.

If a party wishes to modify the current child support order and one of the above situations exist, then that party will file a *Petition for Modification of Child Support and Judgment of Arrears* (“Petition”). The person filing the Petition is the “Petitioner” regardless of whether he/she was the Plaintiff or the Defendant when the child support order was first entered. The other party is referred to as the “Respondent”.

Once a *Petition* has been filed, a copy must be formally given to (a/k/a **served** on) the respondent, who is then expected to respond the *Petition*. **Personal service** of the *Petition* and *Summons* on the respondent by a **sheriff** is required for the *Petition* **UNLESS** the respondent completes an **Acknowledgment and Acceptance of Service** form. Formal service is required for the *Petition* so the Court has proof that the respondent actually received the papers. Other forms of service exist, but these are the easiest methods that meet the formal service requirement for a *Petition*.

Instructions:

STEP 1. *Response or Response and Counterclaim.* Two options exist – you may either file a *Response* to the *Petition* or file a *Response and Counterclaim*. Both options are explained below:

OPTION A. Response to Petition. If you have been served or have signed an *Acknowledgement and Acceptance of Service* form, you should file a *Response to Petition for Modification of Child Support and Judgment for Arrears* with the Clerk of District Court where the *Petition* was filed. A *Response to Petition for Modification of Child Support and Judgment for Arrears* is a written document explaining to the court exactly which provisions you agree with and which provisions you deny. If you fail to answer, a default judgment may be entered against you and your spouse may be entitled the relief he or she asked for in the *Petition*.

You must fill in the caption. DO NOT forget to include the case number. This is located in the caption of the *Summons* and/or *Petition*.

i. **Admit or Deny.** To respond to the *Petition*, you should go through each and every paragraph of the *Petition* and either “admit” or “deny” each paragraph. If you do not have sufficient information to either admit or deny a particular allegation, you must state that in your *Response to Petition for Modification of Child Support and Judgment*

for Arrears. If you disagree with something and you fail to “deny” it in your *Response*, the Judge can find that you admitted it.

ii. **Time limit to respond. You have only a limited amount of time to file a response to the Petition.** Generally, if you were served within the State of Wyoming, you will have 20 days to file the *Response to Petition for Modification of Child Support and Judgment for Arrears*. If you were served outside the State of Wyoming, you generally will have 30 days to file a response. If you do not file a response by your deadline, then your spouse may obtain an *Order Modifying Child Support and Judgment for Arrears* giving him/her everything he/she requested in the *Petition*.

iii. **Computation of Time Limits.** In computing most time limits, unless otherwise stated, the day the pleading is served shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. A "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

NOTE: If you have any question or concerns as to when the deadline to file a response is, you should consult an attorney.

iv. **REQUIRED INFORMATION FOR CHILD(REN):** Certain information is required to be given **under oath** for each child, unless you have a court order or are operating under another law allowing you to maintain confidentiality of addresses or other identifying information. If the information is not provided, the court, upon motion of a party or its own motion, may stop the case from going forward until the information is provided. The information necessary is included in the *Response* and the *Response and Counterclaim*.

v. **Certificate of Service:** Copies of all documents sent to or filed with the court must be sent to the petitioner before the judge will consider them. This certificate is included at the end of each document that requires it.

vii. **Copies.** Make two (2) copies of the document. The original will be filed by the Clerk of District Court, one copy is for the petitioner and the other copy is for you (the respondent). You will need to repeat this step for all documents you file with the Clerk's office.

OR

OPTION B. Response and Counterclaim. If you want the Judge to grant relief to you, you should file a *Response and Counterclaim*. This document responds to the *Petition* and gives you an opportunity to tell the court what you want to happen with the case. First, you will go through each and every paragraph of the *Petition* and either “admit” or “deny” each paragraph. Second, the *Counterclaim* portion of the document asks the Judge to give you what you want. You must fill out all of the information in the document completely.

- ii. Follow **Step 1(ii)** through **Step 1(vii)** above.

NOTE: If you have any question or concerns as to when the deadline to file the *Response and Counterclaim* is, you should consult an attorney.

C. **Petitioner’s Reply to Your Counterclaim.** The petitioner must reply to the *Counterclaim*. If you file a *Counterclaim*, the petitioner will have 20 days to “reply” by filing a *Reply to Counterclaim*. The petitioner will either admit or deny the separate allegations in your *Counterclaim*. If the petitioner fails to reply to the *Counterclaim*, you may be entitled to file *Default* paperwork seeking the relief you request in your *Counterclaim*.

STEP 2. Initial Disclosures. The law requires certain information be made available at least thirty (30) days after the respondent is served, including a schedule of financial assets; schedule of non-financial assets; schedule of all debts owed individually or jointly; location(s) of safety deposit box(es); employment information; and information regarding other income and retirement accounts.

EXCEPTON: If you and the petitioner agree on all issues in your case and you both are signing the *Order Modifying Child Support and Judgment for Arrears*, then you do NOT need to complete the *Initial Disclosures* and you can move on to Step 3.

A. **WHEN TO SERVE:** Initial Disclosures must be sent to the petitioner (or his/her attorney) **WITHIN 30 DAYS AFTER YOU ARE SERVED**. Be sure to keep a copy of this document for your records.

B. **DO NOT FILE THE INITIAL DISCLOSURES WITH THE CLERK.** This form is only given to the petitioner (or his/her attorney).

STEP 3. Fill out a *Confidential Financial Affidavit* and attach all required documents (tax returns for previous two years and statement of earnings for the current year).

A. **Fill out a Confidential Financial Affidavit and attach all required documents (tax returns for previous two years and statement of earnings for the current year).**

- Both parties are required to file a *Confidential Financial Affidavit* with the court with all the necessary supporting documentation.

- **Required Attachments.** The *Confidential Financial Affidavit* must be supported with documentation of both current and past earnings. Proper documentation of current earnings includes, but is not limited to, pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Include copies of income tax returns for the previous two years and your most recent pay stub(s) to show how much you have made so far this year.
- The *Confidential Financial Affidavit* may be filed with the Clerk's office at the same time you file your *Response* or *Response and Counterclaim*.

STEP 4. Once you have filed your *Response* or *Response and Counterclaim* to the *Petition*, exchanged your *Initial Disclosures* (if applicable), and have filed your *Confidential Financial Affidavit*, then a couple of options exist regarding how your case can proceed. Pick the option that best describes your situation:

Option A. If you filed a *Response* or *Response and Counterclaim* and you and the petitioner agree on all of the issues of your case, follow **Option A** below.

Option B. If you filed a *Response* or *Response and Counterclaim* and you and the petitioner do NOT agree on all of the issues of your case, follow **Option B**.

OPTION A. If you and the petitioner agree on all of the terms in the *Order Modifying Child Support and Judgment for Arrears*, sign the *Order* in front of a notary public. Here is some important information about the *Order*:

The *Order* will need to be filled out completely, signed by you and the petitioner and both of your signatures need to be notarized.

Relevant Child Support Laws:

- Recipients of certain public benefits.** Recipients of certain public benefits, such as POWER, are required to assign their rights to support to, and cooperate with, the department of family services in the establishment of parentage and the establishment, enforcement and modification of support obligations. If you or your children receive public benefits, contact your Department of Family Services Caseworker or local child support enforcement office as a modification of child support may have an impact on your benefits. **Wyo. Stat. §20-6-105.**

- b. **Military Personnel:** Military regulations specify that military duty will not be used as a basis for avoiding family support obligations, but setting the level of support is a civilian matter. It is most common to set the support obligation based on basic military pay. You can go to www.dfas.mil for updates on military pay and many other issues. If military pay and benefits are an issue in your child support case, you may want to contact an attorney for assistance. The following is also a helpful website:

<http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm#determine>.

- c. **Overtime compensation:** Overtime compensation is not counted in the “net income” unless the court, after considering all overtime earnings derived in the preceding twenty-four (24) month period, determines the overtime earnings can reasonably be expected to continue on a consistent basis.
- d. **Entry of income withholding order.** An income withholding order (IWO) enables an employer to take child support out of the pay of the parent obligated to pay. The court always enters an IWO which takes effect immediately, unless the parties agree otherwise, or unless one (1) of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. When the parties agree to an alternative arrangement, the arrangement must be in writing, signed by the parties and reviewed and entered in the record by the court. The court shall include in the record its findings of good cause, including a statement explaining why implementation of immediate income withholding would not be in the best interests of the child and, in cases involving modification of child support, proof of timely payments.

An income withholding order which did not become effective immediately upon entry, becomes effective upon the earliest of the following: (i) the date the parent paying requests withholding commence; or (ii) child support becomes delinquent in payment of an amount equal to one (1) month's support obligation under the support order.

- e. **Limits on amounts withheld:** The total amount that can be withheld from any employee's paycheck is limited by the Consumer Credit Protection Act (CCPA). The limits provided in the CCPA are fifty percent (50%) of disposable earnings if the parent who pays child support has a second family and sixty percent (60%) if there is no second family. These limits are each increased by five percent (5%) if payments are in arrears for a period equal to twelve (12) weeks or more. See definition of disposable income in paragraph 4 below.
- f. **Social security or veteran's benefits.** If your children receive part of a parent's social security or veteran benefits, you might want to contact an attorney or legal services program for assistance with child support calculation. If a proportion of a support obligor's (person who is supposed to pay child support) social security or

veteran's benefit is paid directly to the custodian (parent or guardian with custody of the children) of the obligor's children who are the subject of the child support order, the total amount of the social security or veteran's benefit, including the amounts paid to the obligor and custodian under the child support order, will be counted as gross income to the obligor (count the amount the children receive as income to the parent who has to pay support). You will need to calculate the child support due and subtract the amount of the social security or veteran's benefit sent directly to the custodial parent from the noncustodial (obligor's) parent's share of presumptive support. If the subtraction of the social security or veteran's benefit sent directly to the custodian results in a negative dollar amount, the support amount shall be set at zero. The child support obligation shall be offset by the amount of the social security or veteran's benefit sent directly to the custodian, beginning from the time the custodian began receiving the social security or veteran's benefit. **Wyo. Stat. §20-2-304(e).**

- g. **Date new amount of child support begins.** An order for child support is not subject to retroactive modification except: (i) Upon agreement of the parties; or (ii) The order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was served on the respondent. **Wyo. Stat. §20-2-311(d).**
- h. **When the child support obligation ends.** An on-going child support obligation terminates when the:
 - (i) Parents marry or remarry *each other* (After the remarriage of the parents to each other, the court may eliminate all child support arrearage existing between the parents except those assigned to the state of Wyoming);
 - (ii) Child dies;
 - (iii) Child is legally emancipated; or
 - (iv) Child attains the age of majority. (See "age of majority" definition below.

IMPORTANT DEFINITIONS:

- a. **"Obligor"** means a person who owes a duty of support for a child;
- b. **"Payor"** means any employer or other person who pays income to an obligor and who has or provides health care coverage to employees;
- c. **"Arrearage"** means past due child support, past due medical support, past due spousal support, attorneys fees, guardian *ad litem* fees, costs, interest and penalties, but, does not include property settlements.
- d. **"Income"** means *any* form of payment or return in money or in kind to an individual, regardless of source. Income includes, but is not limited to wages, earnings, salary, commission, compensation as an independent contractor, temporary total disability, permanent partial disability, permanent total disability, worker's compensation

payments, unemployment compensation, disability, annuity and retirement benefits and any other payments made by any payor.

e. **The following is not “income”:** Means tested sources of income such as Pell Grants, aid under the Personal Opportunities With Employment Responsibilities (POWER) Program, food stamps and Supplemental Security Income (SSI) shall not be considered as income.

f. **“Net” or “Disposable” income** is the gross income minus total mandatory deductions. **Mandatory deductions:** federal income tax withheld, social security tax (FICA) withheld, state income tax withheld, and other deductions required by law, such as required disability contributions and/or required retirement contributions. The cost of dependant health care coverage for dependent children may be deducted too.

g. **“Imputed income”** can be used when either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent. In making that determination the court shall consider:

- 1) Prior employment experience and history;
- 2) Educational level and whether additional education would make the parent more self-sufficient or significantly increase the parent's income;
- 3) The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
- 4) Availability of employment for which the parent is qualified;
- 5) Prevailing wage rates in the local area;
- 6) Special skills or training; and
- 7) Whether the parent is realistically able to earn imputed income.

h. **"Age of majority"** means a person eighteen (18) years of age, *except* for purposes of child support obligations, a parent's legal obligation for the support of his or her children, whether natural or adopted, continues past the age of majority in cases where the children are: (i) mentally or physically disabled and thereby incapable of self support; or (ii) between the age of majority and twenty (20) years and attending high school or an equivalent program as full-time participants.

ADDITIONAL INFORMATION FOR CALCULATING CHILD SUPPORT:

- **Child Support Payments.** You will need to determine the amount of child support due based upon the *Confidential Financial Affidavits* you and the respondent completed (or by the *Affidavit of Imputed Income* if the respondent did not complete his/her own *Confidential Financial Affidavit*). You may use the ***Child Support Computation Form*** as a guide to help you calculate the support due. Another option is to go online to:

www.alllaw.com/calculators/childsupport/wyoming/ to calculate child support.

- **You CANNOT agree that no support will be paid.** The statutes allow for a reduced amount of support when you agree on shared physical custody and each parent keeps the child(ren) overnight for more than forty percent (40%) of the year and both parents contribute substantially to the expenses of the children in addition to the payment of child support.
- Where the combined *net monthly* income of *both* parents is less than eight hundred and thirty three dollars (\$833.00), the non-custodial parent has to pay twenty-five percent (25%) of his/her net income, but the minimum amount of child support a person has to pay cannot be less than fifty dollars (\$50.00) per month for each family unit in which there are children to whom the noncustodial parent owes a duty of support.
- There are NO DEVIATIONS from the presumed support allowed UNLESS the Court CHOOSES to deviate from the set amount because the amount was unjust or inappropriate in the particular case. The Court must include the specific reasons for deviation in the *Order*.
- **NO AGREEMENTS FOR LESS THAN THE PRESUMED SUPPORT CAN BE APPROVED IF GOVERNMENT OR STATE BENEFITS (SUCH AS MEDICAID (TITLE 19), FOOD STAMPS, POWER, ETC. ARE BEING PROVIDED ON BEHALF OF ANY CHILD.** This means the Court cannot lower the amount of child support calculated by using the net income of you and the respondent even if you and the respondent agree to a lower amount of support.
- **Medical Support.** The law requires that medical support for the child(ren) be included as part of any child support order. The Court shall order either or both of the parents to provide medical support, if insurance can be obtained through an employer or other group carrier, or if it is otherwise reasonably available. This may include dental, optical or other health care needs for the child(ren). In addition, the Court will order that any medical expenses not covered by insurance and any deductible amount on the required insurance coverage be paid by one or both parents. If both parents are ordered to pay for expenses not covered by insurance, the Court will specify the proportion for which each parent is responsible (for example 50 % to petitioner and 50 % to respondent).
- **When will your child support order be modified?** Your order modifying child support will not be effective until the Judge signs the *Order* and it is filed with the Clerk. It may take several days for the Judge to sign the *Order*. You must verify with the Clerk that the *Order* has been file-stamped before you can be sure your child support order has been modified.

OPTION B. If you and the petitioner DO NOT agree on all of the terms to be included in the *Order Modifying Child Support and Judgment for Arrears*, you will need to have a trial.

A. **Trial.** If you and the petitioner cannot agree on all issues, your case will have to be heard and decided by a Judge at a trial.

- **Caution:** It is strongly recommended that you hire or find an attorney to represent you at trial, though you may represent yourself. You proceed at your own risk and will be expected to know the laws.

B. **Request a trial date.** If the petitioner has NOT done so, you will need to request a hearing by completing a *Request for Setting*. Write in “trial” where it asks the type of hearing. Indicate how much time you think it will take for you and the other party to present your evidence and write that in (usually one (1) to three (3) hours). You also need to decide whether or not you want a Court reporter to record the proceeding. If you request a Court reporter, you will be responsible for paying the fees. SEE BELOW FOR DETAILS ON GETTING A COURT REPORTER. It is very difficult to appeal the Judge’s decision if you do not get a Court reporter to take down everything that is said at the trial.

- You must file the *Request for Setting* and the *Order Setting Modification Trial and Requesting Pretrial Statements* with the Clerk’s office and someone there will fill in the hearing date and time and mail a copy to you and the other party. You will need to provide an addressed, stamped envelope for you and the petitioner to the Clerk.

Once a trial date has been set, do the following:

D. **Pretrial Disclosures.** - Both parties must provide to other party AND PROMPTLY FILE WITH THE COURT the *Pretrial Disclosures* regarding the evidence that it may present at trial. If you have questions, you should contact an attorney.

- When are the *Pretrial Disclosures* due? Unless otherwise directed by the Court, these disclosures must be made at least **30 days before trial.**
- Take the original and two (2) copies to the Clerk for filing. Keep one copy for your records and send the other copy to the petitioner (or his/her attorney).
- **Settlement before trial.** In the event that your case settles before the trial, you must present the Court with the completed and signed *Order Modifying Child Support and Judgment for Arrears* in writing before the Court will take the trial off of the schedule. There will be no continuances or canceling of the trial date based on telephone calls. If you need a continuance, you should contact an attorney for assistance in seeking one.
- **Court reporter.** If you wish to have a Court Reporter you are required to make a request by phone to the appropriate official court reporter at least **three (3) working days** before the matter is set for hearing. The clerk will be able to inform you which court reporter to

contact. The three-day notice requirement will not be waived by the Court. The notice is required for all civil matters including jury trials. Payment of the statutory reporting fee of **\$45.00** per day shall be paid to the official court reporter prior to the commencement of the hearing/trial. Checks for the statutory reporting fee shall be made payable to the Wyoming State Treasurer.

- **Evidence and witnesses.** At the hearing, you will need to present your evidence and witnesses. If the *Order Setting Modification Trial and Requesting Pretrial Statements* is entered (signed by the Judge), you must follow the terms and provide the Court with the information requested in that document, including copies of exhibits you want to introduce at the trial and a list of your proposed witnesses and what their testimony is going to be about within the time frame ordered (usually 3 to 5 days prior to the trial). Under the law, the Judge cannot help you or assist you at trial. You are on your own without an attorney.

- **Final Decision (Order).** Following the trial, the Judge will make a decision or may take the matter under advisement, meaning he or she will need to think further before making a determination. If the Judge instructs you, you must take that decision and type it into the *Order Modifying Child Support and Judgment for Arrears* incorporating the Judge's decision.

➤ **You are again reminded that, if you choose to continue without an attorney, you are expected to know what to do and how to do it. The judge will not guide you through the trial/hearing, tell you how to proceed or advise you on the law.**

G. **When will your child support order be modified?** Your child support order will not be modified until the judge signs the *Order* and it is filed with the Clerk of Court. It may take several days for the judge to sign the *Order*. You must verify with the Clerk's office that the *Order* has been file-stamped before you can be sure your child support order has been modified. The time limit to appeal the *Order* begins to run from the day the *Order* is filed with the Clerk's office.

RECAP for Respondent's Documents:

1. File an *Response* or *Response and Counterclaim* within 20 days from the date you were served (or 30 days if served out of state)
 - Mail a copy to the petitioner and keep a copy for your records
2. File a *Confidential Financial Affidavit* and the required attachments
 - Mail a copy to the petitioner and keep a copy for your records
3. Assist the petitioner in filling out the *Order Modifying Child Support and Judgment for Arrears* if you both agree on all of the terms.
 - **Sign the *Order* in front of a Notary Public.**

Your child support order is modified when the *Order* has been signed by the Judge and filed by the Clerk.

4. If you and the petitioner do NOT agree on all of the terms, and a trial is needed, follow these steps:
 - a. File a *Request for Setting and Order Setting Modification Trial and Requiring Pretrial Statements* **ONLY** if the petitioner has not done so.
 - b. Take an original and two (2) copies of the *Order Setting Modification Trial and Requiring Pretrial Statements* for filing with the Clerk and two (2) addressed, stamped envelopes (one addressed to you and one to the petitioner with enough postage to cover the cost of mailing the *Order Setting Modification Trial and Requiring Pretrial Statements* to you and the petitioner).
 - c. File your *Pretrial Disclosures* **30 days** before the trial date.
 - Mail a copy to the petitioner and keep a copy for your records (do not file with the Court)
 - d. At least 3 working days before the trial, request a court reporter, if desired.
 - e. Attend the Trial
 - f. Complete and file any additional documents required by your Court.

Your child support order is modified when the *Order* has been signed by the Judge and filed by the Clerk.