

**PROCEDURE FOR FILING A MOTION
AND REQUEST FOR HEARING**

Included forms:

- 1) Motion
- 2) Request for Hearing
- 3) Notice of Hearing
- 4) Stipulation for Modification of Previous Decree/Judgment/Order (only with the Motion to Modify Previous Decree/Judgment/Order (when parties agree))
- 5) Order of Modification (this is only used with a request for modification. It will be used following the hearing or with the Motion to Modify Previous Decree/Judgment/Order (when parties agree))
- 6) Subpoena (this is used if you need to request financial information, documents, or testimony from the other party)
- 7) Proof of Service

FILING A MOTION WHEN THE PARTIES DO NOT AGREE

If filing a General Motion, Motion to Modify or Enforce Child Support, or Motion to Modify Previous Decree/Judgment/Order (parties do not agree):

1. Prepare a *Motion, Request for Hearing, Notice of Hearing, and Subpoena* (if applicable). Prepare an original set of documents plus three (3) sets of copies of each form. Sort the documents according to title and staple each one separately. The originals of each form should be placed on top of its copies and then paper clipped together. **For example:** Place the original Motion on top with the stapled copies underneath, and paper clip them together. Repeat the procedure for the Request for Hearing and Notice of Hearing.
2. Prepare three (3) *stamped and addressed legal sized envelopes*. Two (2) envelopes should be stamped and addressed to the opposing party (or his/her Attorney) and one (1) envelope stamped and addressed to you. **Note:** If the opposing party is not represented by an attorney and you do not have a home address, it may be acceptable to use their work address.
3. **Note:** If CSED is a party, you must also prepare two envelopes stamped and addressed to CSED as well. One envelope will be used to mail a copy of the Motion to CSED. The other envelope will be left at the court when you file your motion so that the notice of the hearing can be mailed to CSED from the court.
4. A filing fee of **\$137.00** is required if the case has been closed for more than ninety (90) days and you want to request a hearing. When you are ready to file your documents, submit **\$137.00, if applicable**, (in the form of cash, a money order, or cashier's check made payable to District Court Clerk) with your original documents, copies and envelopes (stamped and addressed for all parties) to the **Domestic Relations Clerks Office, Room 119 (first floor)**, of the Bernalillo County Courthouse, located at 400 Lomas Blvd. NW, Albuquerque, NM between the hours of **8:00 A.M. - 4:00 P.M., Monday - Friday**. Personal checks and credit cards are not accepted.
NOTE: If the case is pending, a filing fee of **\$137.00** is not required.
5. The Clerk will file the original documents, endorse stamp your copies, and will return two (2) sets to you. One set of copies is for your records and the other set is for the opposing party or his/her Attorney. Send endorsed copies of the motion and request for hearing in one of the envelopes you addressed to the opposing party (or his/her attorney). It is your responsibility to inform the opposing party you have requested a hearing and what it is concerning.
6. Service (Notice to the Other Party)
 - a. Is the case pending/open when you file your motion and request a hearing? If yes, then service is complete upon mailing documents as listed in Step 5.
 - b. If the case is closed when you file your motion and request for hearing, did it close within the last 90 days?

(Hint: if you had to pay the filing fee or apply for free process, your case was most likely not closed within the last 90 days). If yes, then service is complete upon mailing documents as listed in Step 5 above. Exception: If your case closed due to Lack of Prosecution, a filing fee will be paid after 30 days and service will be required.

c. If the case is closed and it has been closed for greater than 90 days at the time you file your motion and request a hearing, you will need to serve the other party and CSED, if applicable. See the attached document *Service of Process* for instructions on how to complete service.

7. The assigned judge's assistant will send a scheduled *Notice of Hearing* to all parties in the envelopes provided by you. This notice will inform you of the hearing date and time.

FILING A MOTION WHEN THE PARTIES AGREE

If filing a Motion to Modify Previous Decree/Judgment/Order (when parties agree), prepare a *Motion, Stipulation for Modification of Previous Decree/Judgment/Order, and Order of Modification*.

1. Prepare an original set of documents plus three (3) sets of copies of each form. The *Stipulation* and *Order* must be signed by BOTH parties.
2. If the parties are changing the primary residence for a minor child(ren) from one party to the other or are changing the amount of child support paid, a Child Support Worksheet must be submitted using the NM Child Support Guidelines for calculation. The worksheet must be signed by both parties.
3. Sort the documents according to title and staple each one separately. The originals of each form should be placed on top of its copies and then paper clipped together. **For example:** Place the original Motion on top with the stapled copies underneath, and paper clip them together. Repeat the procedure for the other forms.
4. Submit your documents for filing to the **Domestic Relations Division, Room 119**, First Floor, of the Bernalillo County Courthouse, between the hours of **8:00am-4:00pm, Monday through Friday**.
5. A filing fee of **\$137.00** is not required when both parties stipulate (agree) to the modification. If the assigned judge has concerns, than a hearing for the Motion and Stipulation may be set. In this instance, a filing fee may be required and the party filing will be notified by the judge's trial court administrative assistant.
6. Go to the **Domestic Relations Division** and submit the *Order of Modification* with copies and ENDORSED copies of the *Motion* and *Stipulation*, and a *Child Support Worksheet* (if applicable). Inform the Receptionist of the name of the judge assigned to the case.
7. Return to the **Domestic Relations Division** in five working days to pick up your *Order of Modification* and other documents. If the Order has been signed, return to the **Domestic Relations Division** to file the original *Order of Modification* and the clerk will endorse the copies. At this time, the filing procedure will be complete.

Frequently Asked Questions

1. **What is a Motion?** Motions are documents used to let the Judge and the other party know there is something that needs to be addressed, and that a hearing may be needed to try to resolve the problem. A Motion can be used before the case is finalized to get some immediate relief or to resolve an emergency situation. It is also used to reopen a case after it has been closed.
2. **What is the case heading?** The "heading" of the case is the top part that includes the Court, the Case Number, and the Names of the Petitioner and the Respondent. The heading remains the same *forever*. There is a heading at the beginning of each separate court document (pleading). The heading must be *exactly* like the heading in the original Petition. Do not change the names in any way. The original Petitioner is always the Petitioner, etc. Also, even though a party may have a legal name change, this change *will not* be shown in the heading. If the original Petition shows your name as "Jane Doe" you will continue to use "Jane Doe", even though you have now married Mr. Smith and now use the name "Jane Smith". You may add, n/k/a (now known as) "Jane Smith".
3. **What is Burden of Proof?** The person who files the Motion has the "Burden of Proof - that is, the responsibility of convincing the Judge that the Order is necessary. In many cases, the law requires that there be a "substantial change in circumstances" before a judge will change a previous order. The person who files a Motion to Modify a previous order of custody, timesharing, or support **MUST** prove a "substantial change in circumstances."
4. **What do I need to do for a modification of child support?** If a modification of child support is requested (whether an increase or a decrease), then the Child Support Guidelines are usually followed. Modification of child support amounts may be possible if there are "material and substantial changes in circumstances subsequent to the adjudication of the pre-existing order" (40-4- 11.4 NMSA). A deviation up or down of more than 20% of the current support payment and more than a year going by since the previous order is a type of "material and substantial change. The Child Support Guideline Worksheet (either Worksheet A or Worksheet B) must be completed to modify a child support order.
5. **What are the Request and Notice of Hearing?** The Request for Hearing and Notice of Hearing are two separate documents. You will fill out the request. Most of the time the Judges allow 15 to 30 minutes for a Motion. If you think you need more time than this, put in the time that you feel will be needed. Remember, if you want a hearing as soon as possible, it will be easier for the Judge to set a 30 minute hearing than to find room for a 2 hour case. You should also complete all blanks on the Notice of Hearing **EXCEPT** the date, time, and length of hearing.

SERVICE OF PROCESS: GIVING THE OTHER PARTY LEGAL NOTICE

ASSEMBLING A SERVICE PACKET

Means putting together the following:

- a. Copy of the Proof of Service
- b. Copy of the Motion
- c. Subpoena if necessary.

ARRANGING FOR SERVICE

Means method of service that you will use to notify the other party:

PERSONAL SERVICE BY USING ONE OF THESE:

- a. SHERIFF/LAW ENFORCEMENT
- b. PROCESS SERVER (may see yellow pages, internet and/or Self Help Center for a list of these)
- c. PERSON OVER 18 YRS. OF AGE WHO IS NOT A PARTY TO THE CASE

OR

SUBSTITUTE SERVICE BY USING ONE OF THESE:

- a. To a person over the age of 15 years of age residing at the home of the person being served and by mailing by first class mail to that address.
- b. To a person apparently in charge at the actual place of business or employment of the person being served and by mailing by first class mail to the person being served at the last known mailing address.

OR

MAIL

It must be mailed to a good address by using a mailing method where Respondent will sign for receiving the Summons Packet and you having proof to present to the court. Example: Certified Mail with Return Receipt.

OR

NEWSPAPER

Publishing a Legal Notice in a Newspaper: This method of service is used when you have made all of the attempts possible to locate the Respondent and whereabouts are unknown. You will need to tell the court about all of the ways you have tried to find the other party. Before publishing you must ask the Court for permission to do this (you may return to the Center for Self Help and Dispute Resolution for proper forms and procedural information).

FILING PROOF OF SERVICE

Means proving to the court that the other party was given notice of the legal proceeding.

To do this you must file the Proof of Service, Affidavit of Service (mail) and/or Affidavit of Publication. What you submit will depend on the method of service that you used to serve the other party. You must file in the Domestic Relations Clerks Office, Room 119, 1st floor of the Second Judicial District Court. **NOTE: IF PERSONAL SERVICE WAS DONE, THE PROCESS SERVER OR PERSON WHO SERVED RESPONDENT, MUST SIGN THE PROOF OF SERVICE IN FRONT OF A NOTARY PUBLIC. IF A LAW ENFORCEMENT OFFICER DID PERSONAL SERVICE, THE OFFICER MUST SIGN THE PROOF OF SERVICE, BUT A NOTARY IS NOT NEEDED.**

NOTE: You must always follow the Rules of Civil Procedure. Service of Process is a requirement that must be completed in order to move forward with finalizing your case. For additional information governing Service of Process you can refer back to NMRA, Rule 1-004 and/or visit the Second Judicial District Court, Center for Self Help and Dispute Resolution, in room 119, 1st floor, for proper forms and further instruction.