

WAKE COUNTY FAMILY COURT INSTRUCTIONS: MODIFICATION OF CHILD CUSTODY

STEP 1

THE DOCUMENTS YOU NEED TO COMPLETE FOR MODIFICATION

- Motion to Modify Child Custody or Visitation
- Affidavit as to Status of Minor Child (AOC-CV-609)
- Custody Mediation Cover Sheet (WAKE-DOM-06)
- Order to Attend (WAKE-DOM-07)
- Affidavit re: Servicemembers Civil Relief Act

STEP 2

COMPLETING & FILING YOUR DOCUMENTS

1. You may handwrite or type the information required in these forms, however TYPING is preferable.
2. Please note that both the Motion to Modify and Affidavit as to Status of Minor Child (AOC-CV-609) contain “Verification” sections which must be signed in the presence of a Notary Public. There are no notaries in the Family Court Office.
3. There may be a filing fee for this motion. To determine the amount of the fee, please refer to www.nccourts.org/Courts/Trial/Costs or contact the Clerk’s Office at (919) 792-4125.
4. Bring the **original plus 3 copies** (original – for the clerk, one copy – to be retained by you, other copies – for service) of all the documents you have now completed to the Clerk’s Office in Room 102 of the Wake County Courthouse for filing. Please note that the Family Court Office cannot make photocopies for you. **If you do not bring the appropriate number of copies at the time of filing, the clerk’s office will make your copies at a cost of \$2.00 for the first page, and \$0.25 for each additional.**
5. Take the *Custody Mediation Cover Sheet* (WAKE-DOM-06) and *Order to Attend* (WAKE-DOM-07) to the Family Court Office in Room 1112 to obtain a date for mandatory Custody Mediation Orientation. If you have previously attended Custody Mediation Orientation, please advise the Family Court staff.

STEP 3

SERVING THE OTHER PARTY

You are now ready to serve the other party. See Rule 5 of the North Carolina Rules of Civil Procedure regarding service and filing of pleadings and other papers. A copy of the North Carolina Rules of Civil Procedure is available on this website under *Domestic Rules & Forms*. If you are unclear as to how to serve the other party, you should speak to an attorney.

Wake County Family Court

Wake County Courthouse • Post Office Box 351, Raleigh, North Carolina 27602 • 792-4875

STEP 4 **CUSTODY MEDIATION**

Rule 8 of the Tenth Judicial District Family Court Rules for Domestic Court sets forth the procedures involved in Custody Mediation. A copy of the Tenth Judicial District Family Court Rules for Domestic Court is available on this website under *Domestic Rules & Forms*. If you have any questions about Custody Mediation, you may contact the Custody Mediation Office at (919) 792-4425.

STEP 5 **OBTAINING A HEARING DATE FOR MOTION TO MODIFY**

Rules 3 and 4 of the Tenth Judicial District Family Court Rules for Domestic Court set forth the procedures involved in scheduling your hearing on your motion to modify. A copy of the Tenth Judicial District Family Court Rules for Domestic Court is available on this website under *Domestic Rules & Forms*.

If the Defendant has failed to file any pleadings or response in the case, and fails to appear on the trial date, you will need to file (or have with you at the trial) a completed and notarized *Affidavit re: Servicemembers Civil Relief Act*.

STEP 6 **APPEARING AT COURT ON THE DAY OF YOUR HEARING**

1. Calendar call will take place at 9:00 a.m. on the date set forth in your *Calendar Request* (WAKE-DOM-04) and *Notice of Hearing* (WAKE-DOM-01). Please arrive at the assigned courtroom no later than 8:45 a.m. Make sure you allow yourself ample time to find parking (either on-street or in one of the public garages), go through courthouse security, and take the busy elevators up to your judge's courtroom on the 8th or 9th floor. It is recommended that you arrive downtown no later than 8:15 a.m. on the date of your hearing.
2. At calendar call, your Judge will tell you on what date and/or time you need to return for your hearing.
3. On that return date, your hearing will then be conducted. At the conclusion of the hearing, your Judge will render his/her ruling, or take the matter under advisement and announce his/her ruling at a later date.

STEP 7 **CUSTODY ORDER**

1. Your Judge will then typically prepare a final Custody Order. If the other party is represented by an attorney, the Judge may request that the attorney prepare a proposed order for the Judge's signature. Make sure that the other party's attorney has your address, telephone number, facsimile number, email

address and any other pertinent contact information so that the attorney can share with you a proposed draft order prior to submission to your Judge.

2. Your Family Court Case Coordinator will contact the parties when the Order has been signed by the Judge. One of the parties will need to pick up copies of the Order from the Family Court Office in Room 1112, and *serve* the other party with one copy.

QUESTIONS

After reading these instructions and reviewing the forms and all relevant statutory laws and procedural rules, if you feel that you are unable to represent yourself or complete the paperwork **ON YOUR OWN** (note: Family Court staff **CANNOT** assist you in preparing your paperwork), or if any of the instructions are unclear to you, you should speak with an attorney. If at any point during the process you should wish to proceed with the help of an attorney, some resource information is available on this website under *Domestic Attorneys in Wake County*.

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____

Assigned Judge: _____

Plaintiff,

v.

Defendant.

**MOTION TO MODIFY CHILD CUSTODY
OR VISITATION [MCUS]**

The undersigned hereby moves that the Court modify the Order now in effect in this action, and in support of this Motion states:

1. The Plaintiff is a resident of _____ County, _____ (name of State). The Plaintiff has been a resident of this County and State since _____ (insert date).

2. The Defendant is a resident of _____ County, _____ (name of State). The Defendant has been a resident of this County and State since _____ (insert date).

3. The order now in effect regarding child custody and/or visitation in this action was entered on _____ (insert date) (**attach a copy of the custody/visitation order to this motion**).

4. Attached hereto and incorporated herein is a completed Affidavit as to Status of Minor Child (AOC-CV-609) for each child where a modification of the custody arrangement is being sought.

5. Since the current Order for Custody and/or Visitation was entered, a substantial change in circumstances relating to the minor child(ren) has occurred as follows:

PRAYER FOR RELIEF

WHEREFORE, the undersigned hereby requests that the order for Custody and/or Visitation be modified as follows:

_____ Date

Plaintiff

Defendant

_____ (your) street/mailling address

_____ (your) City, State, Zip Code

_____ (your) Telephone Number

VERIFICATION

(Must be signed before a Notary Public)

STATE OF _____
COUNTY OF _____

I, _____ (*print your name*), being first duly sworn, depose and say that I have read the foregoing **Motion to Modify Child Custody or Visitation** and know the statements therein to be true of my own personal knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

_____ Date

_____ Signature of Moving Party

Subscribed and affirmed before me this ____ day of _____, 20____.

Notary Public
My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Modify Child Custody or Visitation has been served on the opposing party/counsel in the following manner:

By depositing a copy in the US Mail in a properly addressed, postpaid envelope to:

By hand delivery to:

By confirmed facsimile transmission to the following number:

Other:

_____ Date

_____ Plaintiff

_____ Defendant

Assigned Judge: _____

_____, Plaintiff,
v.
_____, Defendant.

CUSTODY MEDIATION COVER SHEET

1. Have the parties previously attended a group orientation? YES NO
2. Have the parties previously attended custody/visitation mediation? YES NO
3. Is there a current, unexpired civil or criminal domestic violence order involving the same parties in North Carolina or any other State? YES NO
4. If yes, what is the file number? _____
5. Do either of the parties need an interpreter? YES NO
6. Which party needs an interpreter? Plaintiff Defendant
7. What language(s) does the party speak? _____

Instructions: Please COMPLETELY fill out the contact information for both parties and attorneys. All boxes must be completed for orientation and/or mediation to be scheduled.

Plaintiff's Address:	Defendant's Address:
Plaintiff's Telephone Number:	Defendant's Telephone Number:
Plaintiff's Email Address:	Defendant's Email Address:
Attorney for Plaintiff's Name and Address:	Attorney for Defendant's Name and Address:
Attorney for Plaintiff's Telephone Number:	Attorney for Defendant's Telephone Number:

Date: _____

Plaintiff Defendant
 Attorney for Plaintiff Attorney for Defendant

CUSTODY MEDIATION/FAMILY COURT OFFICE USE ONLY	
Orientation Date:	Mediation Date:

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____

Assigned Judge: _____

Plaintiff,
v.

Defendant.

**ORDER TO ATTEND CHILD CUSTODY MEDIATION
ORIENTATION and PARENTING EDUCATION**

(A copy of this form **MUST** be sent by the Moving Party to the other parties and it shall operate as an Order to Attend for all parties.)

THIS MATTER comes before the undersigned Judge of the District Court, and the Court hereby FINDS that pursuant to N.C.G.S. §50-13.1, the child custody and / or visitation issues in this case have been referred to mandatory custody mediation and parenting education, and ORDERS that:

The parties named above are to appear for and participate in Custody Mediation Orientation and Parenting Education (CMO/PE) on **Wednesday**, _____ at **10:00 a.m.** by joining the Zoom link (an internet-based video conferencing tool) below. **ALL** parties will participate via videoconference. The CMO/PE session is scheduled for approximately **2 hours**. To complete the CMO/PE requirement:

- Prior to** the date and time above, **complete and return** the Custody Mediation Intake Form
 - Download a copy to your computer: <https://www.nccourts.gov/documents/forms/custody-mediation-intake-form>. Complete the form and save the completed form to your computer.
 - Attach a copy of the form to an email and send it to D10.custodymediation@nccourts.org
- Prior to** the date and time above, **click** the links below and **review** each booklet:
 - [Putting Children First: Orientation Booklet for Families in Transition](https://www.nccourts.gov/documents/publications/putting-children-first-orientation-booklet-for-families-in-transition) or copy and paste: <https://www.nccourts.gov/documents/publications/putting-children-first-orientation-booklet-for-families-in-transition>
 - [The Most Important Job: Parenting Information for Families Living Apart](https://www.nccourts.gov/documents/publications/the-most-important-job-parenting-information-for-families-living-apart-north-carolina-parent-education-handbook) or copy and paste: <https://www.nccourts.gov/documents/publications/the-most-important-job-parenting-information-for-families-living-apart-north-carolina-parent-education-handbook>
- On the date above**, sign into the videoconference and attend the Zoom CMO/PE session until the end. Use the following information to join the videoconference no later than **10:00 a.m.** You are advised to begin the process 15 minutes before the videoconference to allow time for the application to download.
 - Use this link to join from PC, Mac, Linux, iOS or Android: **<https://nccourts.zoom.us/j/98425682467> Meeting ID: 98425682467**
 - Use phone numbers below only if you cannot connect **both** audio and video through your device using the link above. Dial: (669) 900-6833 (US Toll) or (646) 876-9923 (US Toll).

This video-conferenced orientation is for the purpose of resolving child custody. Only the plaintiff(s) and defendant(s) listed in the caption above are allowed to be at orientation. No children, family, friends, personal interpreters (unless court approved), nor attorneys may attend. The CMO/PE session may not be recorded. Do not participate in the videoconference in a running vehicle or in any unsafe situation.

Contact the Custody Mediation Office at D10.custodymediation@nccourts.org.

FAILURE BY EITHER PARTY TO COMPLY WITH THIS COURT ORDER MAY RESULT IN SANCTIONS, INCLUDING THE CONTEMPT POWERS OF THE COURT.

/s/ Ned Mangum

Ned Mangum
Chief District Court Judge
10th Judicial District

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Order to Attend has been served on the opposing party/counsel in the following manner:

By depositing a copy in the US Mail in a properly addressed, postpaid envelope to: _____

By certified mail, return receipt requested to: _____

[Note: the return receipt green card must be filed with the clerk's office to show proof of service]

By Sheriff to: _____

By facsimile to: _____ Fax No.: _____

Other: _____

Date:

Plaintiff
 Attorney for Plaintiff

Defendant
 Attorney for Defendant

SHERIFF COMPLETES THE FORM BELOW THIS BOX

I certify that this Order to Attend was received and served as follows:

Date Served:	Name of Responding Party:
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By delivering to the Responding Party named above a copy of this Order.

By leaving a copy of this Order at the dwelling house or usual place of abode of the Responding Party named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left:

The Responding Party **WAS NOT** served for the following reason:

Date Received:	Name Of Sheriff:
Date Of Return:	County:
Service Fee:	Deputy Sheriff Making Return:

STATE OF NORTH CAROLINA

Court File No.

In The General Court Of Justice
District Court Division

_____ County

AFFIDAVIT AS TO STATUS OF MINOR CHILD

G.S. 50A-209

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

Name Of Minor Child

Date Of Birth

Birthplace

I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above named minor child has lived as follows:

Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person
From	To			
	Present			

I further say that: (Check those that apply)

I have participated in litigation concerning the custody of the above named child.

Capacity As Participant

Name And Address Of Court

Date Of Child Custody Determination

Case No.

Details

I have information about a custody proceeding. Examples of custody proceeding include divorce, proceeding related to domestic violence, a protective order, termination of parental rights or adoption that is pending in a court of this or another state and could affect this proceeding.

Name And Address Of Court

Details (include case number and describe nature of the proceeding)

I know of a person as listed below, who has physical custody or claims to have custody or visitation rights with respect to the above named child.

Name And Address Of Person

Physical Custody

Claimed Custody

Visitation Rights

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Affiant

Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate

Name Of Affiant (type or print)

Notary

Date My Commission Expires

Relationship To Above Named Child

SEAL

County Where Notarized

_____ County

In The General Court Of Justice

Name And Address Of Plaintiff

**SERVICEMEMBERS CIVIL RELIEF ACT
DECLARATION****VERSUS**

Name And Address Of Defendant

G.S. Ch. 127B, Art. 4; 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.**DECLARATION****I, the undersigned Declarant, 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. As of the current date, I have have not received a copy of a military order from the defendant named above relating to State active duty as a member of the North Carolina National Guard or service similar to State active duty as a member of the National Guard of another state. See G.S. 127B-27 and G.S. 127B-28(b).
3. I used did not use the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's federal military service.
 - 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. Members of the North Carolina National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will **not** appear in the SCRA Website database.)
4. The following facts support my statement as to the defendant's military service: *(State how you know the defendant is or 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). The term "military service" also includes the following: State active duty as a member of the North Carolina National Guard under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days; service as a member of the National Guard of another state who resides in North Carolina and is under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days. G.S. 127B-27(3) and G.S. 127B-27(4).

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Date

Signature Of Declarant

Name Of Declarant (type or print)

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 or declaration (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 And Declarations

1. Plaintiff to file affidavit/declaration

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/declaration

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/declaration

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/declaration

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).