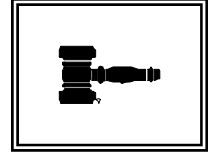




CO-COUNSEL BULLETIN



CONSENT MODIFICATION OF CHILD SUPPORT

It is sometimes necessary to advise clients on the modification of child support in North Carolina by consent. Such a change in support might be necessary when the income of one parent changes substantially [as when a parent is about to leave military service], when the needs of a child have increased, or when other financial factors require modification of support. When both parties are in agreement, the law does not require lawyers for each side; a simple consensual modification of the agreement or order is all that is required, with the forms shown below. Remember to serve any modification by court order on the employer (if there is a garnishment) and any child support payment agency involved (Centralized Collections, in North Carolina).

There is also a form (published by the Administrator's Office of the Courts) to modify child support at www.nccourts.org. Look for forms and then scroll down to AOC-CV-615.

Modification of Support in Separation Agreement. When the support is set out in an unincorporated separation agreement or marital settlement document, the modification should be in an amendment to the agreement, which might look like this:

AMENDMENT TO SEPARATION AGREEMENT

This Amendment to Separation Agreement is made this the ___ day of _____, 20___, by and between _____, hereinafter referred to as "WIFE," and _____, hereinafter referred to as "HUSBAND."

WITNESSETH:

WHEREAS the parties hereto entered into a Separation Agreement dated _____; and

WHEREAS the parties wish to amend Paragraph ___ in regard to _____ for the following reason: _____;

NOW, THEREFORE the parties do hereby agree that Paragraph ___ of the Separation Agreement is amended by deleting it entirely and replacing it with a new paragraph as follows:

PARAGRAPH [HERE STATE TEXT OF NEW PARAGRAPH]

This Amendment shall become effective on the following date: _____. Except as modified herein, the prior Separation Agreement remains in full force and effect.

This Amendment is executed in duplicate originals with each of the parties having retained one (1) original, the day and year first above written.

[PRINT NAME OF "WIFE"]

[PRINT NAME OF "HUSBAND"]

ACKNOWLEDGMENT OF WIFE

____ COUNTY
NORTH CAROLINA

I certify that the following person personally appeared before me this day, and
____ I have personal knowledge of the identity of the principal; or
____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification
with the principal's photograph in the form of a _____; acknowledging to me that she
voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____, PRINCIPAL.
[name]

Date: _____, 20__.

Print name: _____, Notary Public

(Official Seal)

My commission expires:

ACKNOWLEDGMENT OF HUSBAND

____ COUNTY
NORTH CAROLINA

I certify that the following person personally appeared before me this day, and
____ I have personal knowledge of the identity of the principal; or
____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification
with the principal's photograph in the form of a _____, acknowledging to me that he
voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____, PRINCIPAL.
[name]

Date:

Print name: _____, Notary Public

(Official Seal)

My commission expires:

.....
Modification Motion for Support in Court Order. When the child support is provided in a court order, the
proper format for consent modification is to first move for modification, with a motion as follows:

STATE OF NORTH CAROLINA
COUNTY OF

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

Plaintiff

v.

Defendant

MOTION TO MODIFY CHILD SUPPORT

The [Plaintiff/Defendant] hereby moves this court for a modification of child support under G.S. 50-13.7, showing to the court that:

1. In a prior order of this court, entered on [date], the [Plaintiff/Defendant] was ordered to pay child support as follows:[here set out pertinent parts of order] for the following minor children:
[names, dates of birth].

2. Since entry of the prior order there has been a substantial change of circumstances such as to justify a modification of child support, namely: [here set out reason for modification, such as increase in child's needs, increase in income of non-custodial parent, decrease in income of custodial parent or all of the above].

WHEREFORE [Plaintiff/Defendant] prays that this court enter an order that:

- 1. Provides for an increase in child support to a reasonable amount;
- [or... 1. Provides for a reduction in child support to a reasonable amount;]**
- 2. Grants such other relief as is just and proper.

[Name][Plaintiff/Defendant]
PRO SE
[Address]
[Telephone Number]

Date: _____

.....
Consent Order for Modification of Support. After filing the above motion, the parties should execute a consent order in substance as below:

STATE OF NORTH CAROLINA
COUNTY OF

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

Plaintiff

v.

Defendant

ORDER MODIFYING CHILD SUPPORT

THIS CAUSE was heard before the undersigned judge on the motion of [Plaintiff/Defendant] for modification of child support. It was made to appear to the court that the parties had knowingly and

voluntarily consented to the entry of this order, as shown by their signatures below. The Court makes the following:

FINDINGS OF FACT:

- 1. In a prior Order of this court, [Plaintiff/ Defendant] was ordered to pay \$____ per month as child support for the following minor child(ren): _____.
- 2. Since the entry of the prior order, there has been a substantial change of circumstances such as to justify a modification in child support, namely: [here set out past and current circumstances and finances, including changes in child-related needs, incomes of either parent or either parent's debts, expenses, assets or liabilities].
- 3. The terms of this order are fair, reasonable, adequate and necessary.

CONCLUSIONS OF LAW

- 1. There has been a substantial change of circumstances since entry of the last order for child support herein.
- 2. The terms of this order are fair, reasonable, adequate, and necessary.
- 3. [Plaintiff/Defendant] is entitled to a modification of child support as set out below.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- 1. The Defendant's monthly obligation for child support shall be changed from \$____ per month to \$____ per month.
- 2. This change shall be effective as of [date].

Date: _____

DISTRICT COURT JUDGE PRESIDING

WE HAVE READ THE ABOVE AND CONSENT TO IT:

PLAINTIFF

DEFENDANT

[rev. 2/1/10]
* * *

The CO-COUNSEL BULLETIN series of information papers for JAG officers in North Carolina is a product of the NC State Bar's Standing Committee on Legal Assistance for Military Personnel (LAMP). For comments or corrections, contact LAMP Committee member Mark E. Sullivan, 919-832-8507, or at Mark.Sullivan@ncfamilylaw.com.