

Defendant

What to do if you are the Defendant



Have you recently received legal papers that asked the court to increase or decrease the amount of child support in your case? You need to take this seriously and act promptly. The person that asked for the change is called the Plaintiff. You are called the Defendant. Even though you may have been called the Plaintiff in a prior action, when someone else files the case against you, you are the Defendant. You should have received documents in one of three ways:

- 1) You received them directly from the plaintiff. You voluntarily signed a form called Acceptance of Service saying that you received the papers.
- 2) You received the papers through the mail or from a commercial delivery company like UPS or Fed Ex. You signed a green Certified Mail card at the post office or signed a receipt from the delivery person.
- 3) You received the papers from a law enforcement officer or a private process server.

You should read all of the paperwork that you received and then decide how to respond.

You can file on your own, but it is recommended that you contact an attorney. If you do not have a lawyer, you can contact the South Carolina Bar's Lawyer Referral Service at (800)-868-2284 (statewide) or (803) 799-7100 (Richland/Lexington counties) and ask for a Family Law attorney. If you do not make more than 125% of the Federal Poverty Guidelines, you may qualify for assistance from South Carolina Legal Services. You may contact South Carolina Legal Services toll free at **1-888-346-5592** or **803-744-9430** in the Columbia area.

If you decide to proceed on your own, you are a self-represented litigant. This is also called *pro se*.

Department of Social Services (DSS) Integrated Child Support Services or a Private Case

Case Handled by DSS

If your case is handled by the South Carolina Department of Social Services (DSS), Child Support Enforcement Division (formerly known as Child Support Enforcement Division) then you should contact the office handling your case and give them a copy of the paperwork you received. If you don't know which office to call, go to their website – <http://www.state.sc.us/dss/csed/contact.htm#region> – to locate your county and see which office can help you.

Case NOT Handled by DSS – private case

If your case is NOT handled by DSS, it is a private case. You must respond within 30 days of when you received the paperwork

If you decide to represent yourself in court, you must complete all of the paper work and comply with the court rules and orders JUST LIKE YOU ARE AN ATTORNEY.

Filling out the Forms

There are three forms that you will need to complete this process.

Defendant's Answer

Financial Declaration

The Affidavit of Service by Mailing (Answer)

You can complete the forms by using the online interview at www.LawHelp.org/SC. The interview will ask you a series of questions to help you easily and accurately fill out these forms.

To complete the forms, you will need access to a computer with internet access and a printer. If you do not have access to a computer at home, public computers are available at public libraries. You should save your work at several points as you go along. The forms will take some time to complete and you do not want to lose your data. You will need the address of the other party. This address will be on the papers that you received. You will also need your financial information including your pay check stub, information about all of your income and information about your expenses like rent or mortgage payments, car payments, credit card and household bills. After you have finished the interview, you can print your completed forms.

Step 1

Go to www.ModifyChildSupportSC.com . You can view the video instructions and click on the link to Complete the Forms. You will be taken to LawHelp.org/SC and the Self Help Forms page. In the center of this page is the instruction video for the Self-Help Interviews. You should watch this entire video as it guides you through the steps needed to use the automated forms. To access the forms, under the video you will see a section titled Self Help Interviews. Click on the one for the Child Support Modification.

Step 2

You will choose the Defendant forms that applies to you. Make sure to look over the list of information you will need. You should have that information with you when you complete the interview.

Step 3

After you click on the interview link, you will be taken to the starting page. You may choose to register or go directly to the interview. You should register by signing up for a username and password so you can save your answers and make changes or come back to complete the interview at a later time. On the next page, you will accept the terms of use

Step 4

The A2J Access to Justice Guided Interview screen will appear. You can then begin answering the questions and following the online instructions. As you complete the interview, you will have the chance to agree or disagree (admit or deny) with each claim made by the other party. You will be able to say if you admit (agree with) each and every statement or deny (disagree with) each and every statement. You can also note if you agree with part of the claim, but not all of it. You will be asked to state which part you do not agree with.

If the other party asked for a decrease but you think child support should increase or if the other party asked for an increase and you think it should decrease, the online interview will help you ask for this. You will need to provide documentation to support why the court should give you what you are asking.

How do you know if you should ask for an increase or decrease? The best way to help you decide is to check the child support guidelines. Child support is calculated by using the South Carolina Child Support Guidelines. An online child support guidelines calculator is available at www.state.sc.us/dss/csed/calculator.htm. The results of the child support calculator do not guarantee that a Family Court Judge will change the child support obligation, but it is a helpful indicator in making a decision about proceeding. You should carefully consider the results of the calculator before deciding if filing a child support modification will benefit you and your family.

You will also have to answer questions about your finances.

Step 5

When you are finished answering questions, you may review your answers or click "Submit" and wait for your documents to assemble. When you click "Get Documents" you will be directed to a screen where you can save your answers, go back to the questions, or get documents. You will be able to see and print your documents. Instructions will print with your documents that you can use to file the forms with the court and to serve the documents.

By completing the online questions, you have provided information that will complete the forms that you need. You will have three completed forms: Defendant's Answer, Financial Declaration, and the Affidavit of Service by Mailing (Answer).

On the **Defendant's Answer** form, if you asked the Court for other things, they will be printed in the section called "By Way Of Counterclaim."

You will have to bring three copies to Court of any documentation that proves the statements that appear in numbers 2 and 3 of the Counterclaim section. If you have lost your job, you will need to show

the Judge you are looking for a job. You will need evidence such as copies of job applications, information from employment services, rejection letters or any other written proof that you may have. If you have a job but are making substantially less, you will have to provide documentation such as a pay stub showing that you are making less.

Have you been injured or become disabled? You need to show the Judge that you have applied for or received some type of disability benefit. You must provide documentation such as applications for disability benefits, social security insurance, or VA benefits. If a doctor has determined that you cannot work, you will need a written statement from your doctor.

If your child care costs have increased, copies of child care bills and other child care expenses are needed. If other needs of your child have increased, you will need to provide documentation. For example, if your child's healthcare needs have dramatically increased, copies of medical bills are needed.

If the original child support order was based on minimum wage, the Family Court Judge will probably not reduce the child support unless there is some other substantial change of circumstances.

Many Family Court Judges will not consider having additional children with another partner to be a substantial change of circumstances for a reduction.

The South Carolina Department of Social Services Integrated Child Support Services Division considers a change of circumstances substantial when the new child support amount is **20%** less than the old amount. Judges do not have to follow this 20% standard, but many use it as a reasonable guide along with the other circumstances.

The second form is the **Financial Declaration** form. Do not sign this form right now. This form must be notarized. That means a notary must watch you sign the form. You must attach a copy of your most recent pay stub to your financial declaration form.

The third form is the **Affidavit of Service by Mailing (Answer)**. You will need to write in the date that you are mailing the information. This form also has to be notarized.

Make two copies of the entire packet which includes all three forms and your paystub.

Keep the original copy. You will need this to file in Court.

Mail one copy to the Plaintiff or Plaintiff's attorney.

Take the original and the other copy to the Clerk of Court, Family Court Division where the complaint was filed. Physical locations of all South Carolina Family Courts can be found in the telephone book or online at <http://www.sccourts.org>. The Clerk will keep the original and will return a stamped copy to you. Keep the stamped copy for your files.

You do not need to do anything else until you receive a Notice of Hearing which will come to you via mail from the Plaintiff or Plaintiff's attorney. The Notice will tell you the time and date of the Hearing.

Preparing and Presenting at the Hearing

Be sure to bring your copy of all papers to Court. If you asked the Court for other things (additional relief), you will need to bring 3 copies of any documentation that will support your case.

On the day of your hearing, you should arrive at the courthouse at least thirty (30) minutes prior to your scheduled time. Make sure to take copies of your documents with you to court. **Dress appropriately and turn off your cell phone.** Appropriate dress includes suits, jackets, dresses, dress slacks, and neatly tucked shirts. Casual clothing such as sweat clothes, tank tops, shorts, and similar summer beachwear is not appropriate for the courtroom. Remove hats when entering the courtroom, unless they are required for a medical condition. How you dress is important. If you have chosen to represent yourself, it is in your best interests to wear appropriate clothing. Most courts do not allow children into the courtroom so make arrangements for a responsible adult to watch your children while you are in court. There is usually an officer or bailiff at the court room door if you have questions about where to sit. To learn more about court room behavior and dos and don'ts, watch the video on Courtroom decorum.

The Plaintiff will present his/her case first. You should only speak when asked to do so. After the Plaintiff and witnesses have spoken, you will be given an opportunity to testify and present witnesses for your case. You will have the opportunity to ask the Plaintiff questions. If there are any witnesses, you can also ask them questions. If your completed forms show that you wanted to ask the Judge for something else, this is the time when you must prove that your request should be granted.

The Judge may interrupt you from time to time to ask you a question. Listen carefully, and answer the questions the Judge asks you. If you have any papers that you want the Judge to see, hand the original and a copy to the Deputy Sheriff who will give the original to the Judge and a copy to the Plaintiff. After everyone has spoken, the Judge will decide what to do. The Judge will write the decision on the Order. The Clerk of Court will provide you and the Plaintiff or the Plaintiff's attorney with a copy of the order.

Court Room Decorum

The South Carolina Access to Justice Commission and the South Carolina Bar prepared a video called "Your Day in Circuit Court." This video shows the process of going to court in the Circuit Court and discusses appropriate behavior in the courtroom. Family Court cases are very similar but they do not have juries. You should look at the entire video to give you an overview. If you only want to see the section on proper courtroom procedure and behavior you can forward to 10 minutes and 30 seconds.

<http://sccourts.org/selfHelp/index.cfm>