

# Plaintiff

## Child Support Increase



Do you think that your child support needs to be increased? Has it been a long time since the order was set? Do you think that the non-custodial parent is making more money than when the order was set? Have your expenses caring for your child dramatically increased? If so, see if you can possibly get a modification to increase your child support.

Act promptly. If your child support is changed, it will only be increased from the date legal paperwork was filed with the court or a written request was received by Child Support Enforcement. Orders will not be increased back to when circumstances changed.

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*. If you are asking the Court to increase your child support, you are the Plaintiff. You may have been the Defendant when the order was set. Even if you were a Defendant before, you are now called the Plaintiff. Remember, the person who is asking for a change is the Plaintiff.

## Things to Think About Before You Begin

Before you begin, make sure your order is from South Carolina. These forms are only for South Carolina cases. Then, check the child support guidelines to estimate what the child support amount should be. An online child support guidelines calculator is available at [www.state.sc.us/dss/csed/calculator.htm](http://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. If you do not know the other party's income, it may be hard to calculate the child support amount. It is still a good idea to visit the South Carolina Department of Social Services Child Support website and figure out the new child support amount using the child support calculator and the best information you have available. Once you have calculated the support amount, you can make a better decision about trying to get the child support order modified. You should carefully consider the results of the calculator before deciding if filing a child support modification will benefit you and your family.

You also need to determine if you have a substantial change of circumstances that would make you eligible for a modification. Some common examples of a change are:

- increased child care costs for children in the support order
- increased needs of the child or children in the support order
- the person who pays the child support has increased income
- you lost your job through no fault of your own
- you make substantially less than you did when the child support order was issued
- a medical condition or disability that prevents or limits your ability to work
- having another child with the same noncustodial parent
- a child with the same noncustodial parent is now living with you

To show a substantial change of circumstances, you will have to provide proof of the changes. Some documents you can use are:

Job application copies or rejection letters

Disability benefit application

Written statement from your doctor

Copies of child care bills

If you have lost your job, you will need to show the Judge you are looking for a job if you want to request a support increase. You will need evidence such as copies of job applications, rejection letters, or any other written proof that you may have. If you have a job 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 health care needs have dramatically increased, copies of medical bills are needed.

The South Carolina Department of Social Services Child Support Division considers a change of circumstances substantial when the new child support amount is **20%** more 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.

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

If you determine that you want to proceed, you need to determine if your child support order was set by the Integrated Child Support Services Division (formerly known as Child Support Enforcement Division) of DSS - or if it is a Private Case.

If you do not know the answer to this question, contact the Clerk at the Family Court. Physical locations of all South Carolina Family Courts can be found in the telephone book or online at <http://www.sccourts.org>.

### *Private Case*

If your case is a Private Case, you must go directly to the Family Court.

### *Child Support Case*

If your child support case is handled by DSS, you may contact DSS and request a review and modification or you may go directly to Family Court. In most cases, the modification process is much faster if you file an action with the Family Court. Since a support order can only be modified from the time it is filed and served, a better choice may be to file the action with the court.

If you decide to go to DSS, you must contact DSS in writing. You should send the letter by certified mail. Your letter needs to state that you are seeking a review. Warning – if you use regular mail, email or a telephone call, the modification date could be much later.

DSS will send you and the other party forms to complete. The forms will request financial information to determine if a modification is needed. This is done at no cost to you but it is often a very long process. If the other party does not cooperate and provide the financial information, the modification will take much longer.

Once DSS receives the financial information forms back from you and the other party, they will review the case. If DSS agrees that a modification is needed, they will issue a notice of financial responsibility. A negotiation conference will be held to see if an agreement can be reached. If there is no agreement, the case will be set for a court hearing. If DSS does not agree that a modification is needed, DSS will notify you. You may then want to file a petition with the Family Court to request a modification.

## Filling out the Forms

There are a lot of forms that you will need to complete this process. An automated interview is available online along with a video guide at [www.ModifyChildSupportSC.com](http://www.ModifyChildSupportSC.com). The automated interview questions will help you easily and accurately fill out these forms. Some of the forms will be needed to file in Court. Other forms will be used for serving the papers. Another group of forms is used to request a hearing. A final group of forms will be used at the hearing

To complete the forms, you will need a computer with internet access and a printer. If you do not have access to a computer at home, computers are available at public libraries. You will need a copy of your court order and the address of the other party. 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.

### *To complete the forms*

#### **Step 1**

Go to [www.ModifyChildSupportSC.com](http://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 Increase forms in the Plaintiff Forms section.

#### **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.

#### **Step 5**

When you have 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.

## **Completing the Legal Process**

You want to follow each step of this process so that you do not have to start over, waste time and possibly money, or risk your case being dismissed. There are basically four steps to completing this process:

#### **Step 1**

## ***Filing with the Court***

### **Step 2**

**Serving** the other parent, the other parent's attorney or Child Support Enforcement with the paperwork.

### **Step 3**

#### ***Requesting a hearing***

### **Step 4**

#### ***Presenting at the hearing***

There are six forms; five of them are required to file with the court. The Motion and Affidavit to Proceed in Forma Pauperis, is optional. This form is only used if you want to ask the court not to charge you a fee for filing your documents.

The six forms are

1. Family Court Coversheet
2. Summons
3. Complaint
4. Motion and Affidavit to Proceed in Forma Pauperis – OPTIONAL
5. Financial Declaration form when filing for a modification
6. Case Party information Sheet

The **Family Court coversheet** is a summary page that needs to be on top of your entire packet. It gives the identification information that the court needs for the parties involved.

The **Summons and the Complaint** are two separate documents that become the official court record that will establish your case once you file them. Date and sign the Summons and the Complaint. You need to attach a copy of your child support order to the Complaint. If you do not have a copy of the child support order, ask the Clerk of Court for a copy. There may be a small fee for the copies.

If you cannot afford to pay the filing fee, you may complete the form called the **Motion and Affidavit to Proceed in Forma Pauperis**. **This means you are asking the court to let you proceed with your case without paying the filing fee as you do not have the money to pay this fee. This form is optional.** This form must be notarized; do not sign until you are in front of the notary. The notary must witness you signing the form. Notaries can usually be found at banks, funeral homes and courthouses. By filling out this form and having it notarized, you are swearing under oath that you do not have the money to pay the filing fee. Do not fill in anything in the bottom section of this form under ORDER. A Judge will review your request to have the fee waived and he will complete the order section. If the Judge says you must pay, you must pay the filing fee by the date set by the court or your case will be dismissed and you will have to start over. If you have the money to pay the fee, you do not have to complete this form.

The **Financial Declaration** has information about your finances. Attach a copy of your most recent pay stub or benefits statement. Do not sign this form right now. This form must also be notarized. That means a notary must watch you sign the form. The last form is the **Case Party Information Sheet**. **Fill this out with information about the other party.** It is used by the Sheriff's office to serve the papers so provide as much information as you can

So let's review.

1. You must complete five forms: Family Court Cover sheet, Summons, Complaint, Financial Declaration and Case Party Information Sheet.
2. If you are asking for a modification, you must attach a copy of your child support order to the Complaint.
3. You must attach a copy of your most recent pay stub to your Financial Declaration.
4. You only fill out the Motion and Affidavit to Proceed *In Forma Pauperis* if you believe you cannot pay the filing fee and want to ask the Judge to waive the fee.
5. Make sure the Financial Declaration and the Motion and Affidavit to Proceed *In Forma Pauperis* have been notarized
6. Make two copies of the entire packet.
7. Take the copies and the original to the Clerk of Court, Family Court Division in the county that handles your child support payments if you are asking for a child support modification. Physical locations of all South Carolina Family Courts can be found in the telephone book or online at <http://www.sccourts.org>.

Remember that if you did not file the "Motion and Affidavit to Proceed *In Forma Pauperis*," you will need to pay the filing fee. Only bring cash, a cashier's check, or money order for the filing fee. Do not bring a personal check.

If you are paying the filing fee, the Clerk of Court will: (1) assign your case a docket number; (2) record the docket number on the upper right hand corner of all of the forms; (3) keep the originals; and (4) return two copies of the forms to you. One copy is for you to keep. The other copy is to serve on the Defendant.

It is very important that you print the docket number that has been issued for your case on all future forms you file with the court.

If you are filing the "Motion and Affidavit to Proceed *In Forma Pauperis*," you do not have to pay the filing fee when you file, but may have to pay after the Judge reviews your information and signs the order. The Judge will look at the papers and let you know the decision by mail. You should take a large brown envelope with enough postage to mail everything back to you. It is a good idea to take the originals and the copies to the Post Office with you to know how much postage you should buy to go on the envelope. The envelope should be addressed to you. You will receive the envelope in the mail in about two weeks. When you receive it, look at the "Motion and Affidavit to Proceed *In Forma Pauperis*." If the box at the bottom marked "granted" is checked, there will be two copies of the forms. Your

documents should have a date stamp and a docket number on them. You keep one set of copies for your records and now you can serve papers on the Defendant.

If the motion to proceed *In Forma Pauperis* is denied, a box at the bottom of the form by the words "leave is denied" will be marked. Right next to this, it will tell you when you must pay the filing fee and other fees, if there are any.

If the fee is not paid on or before the date listed on the Order, your case will be dismissed, and you will have to begin the process again by re-filing your information.

To pay the fee, send or take the payment (money order, cash or cashier's check) to the Clerk of Court with the Order that you received in the mail.

## **Serving the other parent, the other parent's attorney or child support services**

After you receive the two copies of the documents back from the Clerk of Court, be sure to keep one complete set of copies for your files. The next step is very important. It is called Service of Process.

You must serve the other party with a copy of the Family Court Coversheet, Summons, Complaint and Financial Declaration. If you are asking for a modification of your child support and if your case is a DSS case, you have the papers served on the Child Support office that handles your case. If you do not know if your case is a DSS Case or private case, contact the Clerk at the Family Court. Physical locations of all South Carolina Family Courts can be found in the telephone book or online at <http://www.sccourts.org>.

You do not need to include the Motion to Proceed *In Forma Pauperis* nor the Case Party information Sheet in the packet of documents going to the other party, the other party's attorney or child support.

You will need one of three forms to prove that you served the other parent, other parent's attorney or Child Support. These forms print when you complete the online interview. The form you use depends on how you serve the documents.

The form that corresponds with the process you used must be completed, notarized and taken to the Clerk of Court's office for filing to provide documentation that the other party has received the paperwork. Ask the Clerk of Court's office to make a copy for you.

So let's review the options that you may use for serving the paper work. If the other party, the other party's attorney, or Child Support is not served properly, you will not be able to proceed and you cannot get a hearing date set. You may have to try more than one way.

In general, if you know the other party will accept the papers, you can use the acceptance of service. If not, it is usually quicker and easier to have the Sherriff's office serve the papers.

### **1) ACCEPTANCE OF SERVICE**

If the other party or DSS Child Support is willing to accept service, have the other party or DSS complete the Acceptance of Service form. Handing the papers to the Defendant yourself is not good service of process unless the Defendant is willing and completes the acceptance form. Take the completed form to the Clerk of Court's office for filing. Ask the Clerk of Court to make a copy of the form for you at the time of filing.

## 2) U.S. MAIL

You must have a good mailing address to try to serve by mail. You must send these documents Certified Mail, Restricted Delivery, Return Receipt Requested. When you get the return receipt card (green card) back from the U.S. Post Office, check it to make sure the other party signed the card. If someone other than the other party signed the return receipt card (green card), you do not have good service and must try again.

If you receive the return receipt card (green card) and it was signed by the other party or DSS, record the docket number you received from the Clerk of Court and the words "Summons and Complaint" across the top of the return receipt (green card).

Make a copy of the card for your file. Next, complete and sign the Affidavit of Mailing form before a notary. Do not sign this form until you are in front of a notary. The notary must witness your signature on the Affidavit of Mailing. Attach the return receipt card (green card) to the notarized Affidavit of Mailing and take it to the Clerk of Court's office for filing.

If you do not get the return receipt card (green card) back, you should contact the Sheriff's office or Private Process Server to have the papers served.

## 3) SHERIFF'S OFFICE

You must have a good address for the Defendant. If you do not have a good home address, you may use a work address. Some employers do not allow service of process at the work site. Contact the Sheriff's office in the county where the other party lives or works to serve the papers. There may be a fee for this service by the Sheriff's office. If your Motion to Proceed *In Forma Pauperis* was granted, provide a copy to the Sheriff's office and you may not have to pay the fee

When the Sheriff serves the papers, ask the office to complete the bottom half of the Affidavit of Service (SCCA 402F) form before a notary, have the form notarized, and return the form to you. The Sheriff's Office may have its own Affidavit of Service Form and their form may be used. File the notarized Affidavit of Service with the Clerk of Court.

## 4) PRIVATE PROCESS SERVER

Private process servers are listed in the telephone book. There will be a fee for this service. It is usually more expensive than the Sheriff's Office. When they have served the papers, they will give you the completed Affidavit of Service you gave them or their own form. File the notarized Affidavit of Service with the Clerk of Court.



## 5) COMMERCIAL DELIVERY

You may use a commercial delivery company like UPS or FedEx to serve the Summons and Complaint. The delivery company will give you a delivery record showing the date, time and place of delivery, the name of the person served and an original signature or electronic image of the signature of the person served. If someone other than the Defendant signs for the documents, you will not be able to proceed if the Defendant does not appear. If delivery is refused or returned undelivered, you must try another method.

Check the box on the Affidavit of Service next to commercial delivery and attach the delivery record. After you complete the Affidavit of Service form, take it to the Clerk of Court's office for filing. Ask the Clerk of Court to make a copy of the form for you at the time of filing so you can keep the copy for your files.

## Requesting a Hearing

At this point you have properly filed your paperwork with the Clerk of Court's office. The other party has been served with the paperwork and you have filed an Affidavit of Service to prove that. You may now request a hearing. You will need the Request for Hearing form and the Affidavit of Service by Mailing (Notice of Hearing) form. These forms printed when you completed your online interview.

Take the original and a copy of the Request for Hearing to file with the Clerk of Court. The Clerk will date stamp your copy and give it back to you for your records.

The Clerk of Court will inform you of your hearing date by mailing you a Notice of Hearing. The hearing date may be several months away. After you receive the Notice of Hearing from the Court, you must send a copy of the Notice of Hearing that you received from the Clerk of Court to the other party or the other party's attorney by certified mail, return receipt requested. They must receive the Notice of Hearing at least 10 days before the hearing.

You will then need to complete the Affidavit of Service by Mailing (Notice of Hearing) before a notary.

This form proves when you mailed the Notice of Hearing. Do not sign this form until you are in front of a notary. The notary must witness your signature on the Affidavit of Service by Mailing (Notice of Hearing).

If the envelope used to mail the Notice of Hearing to the other party or other party's attorney is returned from the U.S. Post Office, take the returned envelope to the hearing. It is only necessary to show that the Notice of Hearing was mailed. You do not have to show that the other party or other party's attorney actually received the notice.

## Preparing and Presenting at the Hearing

To prepare for the hearing, handwrite the date assigned for your hearing on the Order. The Order printed when you completed your online interview. If you are asking for a child support decrease, a Support Information Sheet was also printed and should be submitted with the Order.

Take the Order and the Support Information Sheet to Court with you on your hearing date.

Also be sure to bring with you the following:

- Your copy of all papers
- 3 copies of any documentation that will support your case for a change of circumstances
- The returned envelope that you mailed the Notice of Hearing in if it came back to you
- Your script – this printed when you completed your online interview

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 or religious reasons. How you dress is important. If you have chosen to represent yourself, it is in your best interest 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.

When it is time for your hearing, the Bailiff or Deputy will call your name. At that time, enter the courtroom, sit, and wait for the Judge to ask you if you are ready. When the Judge asks if you are ready, please stand if you are able to and say: “Your honor, may I begin.” The Judge will tell you to proceed or wait. Before you begin, you will be sworn in. If the Judge indicates you should come forward, take your paperwork with you and sit in the witness chair. If the Judge allows you to stay at the table in front of the Judge, you should stand if you are able.

Review your script that printed with your forms before your hearing. At the hearing, you will read the script as your testimony. Make sure you tell the Judge everything that shows why your request should be granted. 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 Defendant. Be sure to keep another copy for yourself in case the Judge or the Defendant asks you questions about it.

The Judge may interrupt you from time to time to ask a question. Listen carefully and answer the questions the Judge asks you. When you are finished testifying, the Judge will indicate that you may leave the witness stand or sit down at the table. The other party will have a chance to testify as well. At the end of the hearing, the Judge will tell you the decision. You may ask the Deputy to hand the Judge the Order to finish completing.

The Judge will usually sign the Order at the hearing.

If the Judge does not sign the Order at the hearing, the Order will be mailed to you. If the Judge hands the Order back to you, go directly to the Clerk of Court's office and file it with the Clerk of Court. If the Judge hands the Order to the Clerk, the Clerk will file it and provide you and the other party with a copy.

**The modification is not final until the Order has been signed by the Judge and filed with the Clerk of Court.**

## **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>