

## **Modification of Prior Custody Order: Because Nothing Ever Stays the Same** **By Nancy M. Perry**

Once your family law court signs your order for custody, access and possession, and child support, that case is not closed out per se. Courts that hear family law issues are called courts of continuing jurisdiction. What this means is these orders may need modifying as the child grows and the circumstances of the parties change over time. For this reason, the court that signed the order, or issuing state, will maintain jurisdiction over the case until your last child turns 18. If the order needs to be changed, then the modification action must be filed in the original issuing court. The only time this will not be the case is if all of the parties move out of the issuing state or if there is an emergency and the non-issuing state needs to hear the matter and deal with it immediately.

### **When can I modify my order?**

Generally, if there's a substantial change in the circumstances of the child that warrants the change. Most courts will not allow modification of the order within a year of when the court signed the order unless an affidavit is attached to the request for modification. This is to prevent the angry parent from going back to court just out of spite. Bottom line – you better have a good reason to modify your order.

### **What is a substantial change in circumstances?**

Some examples of cases that would warrant going back and modifying your order are as follows:

- the parent with custody voluntarily relinquished the child to live with the other parent for six months or more;
- if there was neglect, abuse, or drug abuse on the part of a parent and their access to the child needs to be limited;
- if there was a substantial change in the income of the parent who pays child support that warrants an increase or decrease in the amount paid;
- if the parents were following an agreed upon schedule that was not in their order and one parent decides to go back to the original order but the other parent wants to keep the verbally agreed order;
- an older child chooses to live with the non-custodial parent;
- something in your order is simply not workable as written and needs to be changed to make it more workable; or
- one parent is not cooperating with the other and orders need to be made such as requiring medical and school notifications, telephone access, changes in pick up and drop off locations or times.

### **What if we both agree to the changes?**

There's a couple ways you can agree to the changes. First, you simply agree and toss your court order in a drawer and do your own thing. Next, you can hire one attorney to draft the changes in the order and file them for you. This can be done relatively cheaply.

Family law orders are not written in stone, but are changeable because of the continuing jurisdiction.

