

Form FOC 61

OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY

Use this form if:

- you have been served with an ex parte order (an order entered without a hearing) for support, parenting time, or custody; **and**
- you want to object to and change that order.

If you want to object to and change the ex parte order, you must file an objection and motion within 14 days after you are served with the ex parte order. After you file the objection and motion, the friend of the court is required to attempt to resolve the dispute within 14 days after receiving your objection.

If the dispute cannot be resolved by the friend of the court, the matter will be scheduled by the friend of the court for a hearing. You may represent yourself at the hearing or have an attorney represent you. The friend of the court office does not have to make an investigation or report unless ordered by the court to do so. The friend of the court does not represent either party at this hearing.

MOTION CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

- | | |
|---|------------------------------|
| 1. Fill out all requested information on the form? | YES <input type="checkbox"/> |
| 2. Make all necessary copies? | YES <input type="checkbox"/> |
| 3. Mail (serve) a copy of the objection and motion on the other party and on any other custodian/guardian after the judge and hearing date were assigned to your case by the clerk? | YES <input type="checkbox"/> |
| 4. Return to the clerk's office after you mailed the objection and motion and notice of hearing to the other party and completed the certificate of mailing? | YES <input type="checkbox"/> |
| 5. Keep one copy of the objection and motion and notice of hearing form for yourself? | YES <input type="checkbox"/> |
| 6. Give two copies of the completed form to the clerk of the court? | YES <input type="checkbox"/> |

If you cannot answer "yes" to all the above steps, a hearing on your motion may be delayed or your motion may be dismissed.

By using this form packet you are representing yourself in a court action regarding an ex parte support, parenting time, or custody order. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the order you get from the court may not give you the relief you want.

If you have any questions about any steps in the process, refer to pages 3 through 5 of this booklet for details.

**INSTRUCTIONS FOR USING FORM FOC 61
OBJECTION TO EX PARTE ORDER AND MOTION TO RESCIND OR MODIFY**

»»FILING AN OBJECTION AND MOTION

1. Fill out the Objection and Motion form.

Use the instructions on page 6. Be careful not to make mistakes.

Before filling out the "Notice of Hearing" part of the form, contact the friend of the court office to find out who to contact about getting a hearing date. Then contact the person or office as directed by the friend of the court office. Fill in the form with the information you get about the hearing date, location of hearing, and name of the judge or referee who will be hearing the motion.

Make at least five copies of the forms after you have filled it out.

2. File the Objection and Motion form with the county clerk.

Take the original and five copies of the form to the county clerk in the county where your case is located.

There is no filing fee.

The county clerk will write the name of the judge assigned to your case on your form. The clerk will keep the original and one copy of the objection and motion and any attachments for the court file and the friend of the court. Then the clerk will return four copies and remaining attachments to you. Do not lose them.

What you should have when you leave the clerk's office:

- One copy of FOC 61 (with any attachments) - for you
- One copy of FOC 61 (with any attachments) - for the other party
- One copy of FOC 61 - for proof of service to the court
- One copy of FOC 61 - for proof of service to the friend of the court

»» SERVING THE OBJECTION AND MOTION ON THE PARTY OR PARTIES

1. Serve the Objection and Motion and Notice of Hearing on the other party.

The other parent, or other party (if there is a custodian or guardian other than a parent) must be served with (notified of) the objection and motion and hearing date at least 9 days before the hearing date.

NOTE: Serve the papers by mailing them to the other party by first-class mail.

What you need for service:

One copy of FOC 61 (with any attachments) - for the other party

Two copies of FOC 61 - for proof of service

Any additional copies of FOC 61 (with any attachments) - for other custodian or guardian if there is someone other than the other parent who has care or custody of the child(ren).

Mail one copy with attachments to the other party. If there is a custodian or guardian, mail one copy and the attachments to him/her. Then fill out the Certificate of Mailing on the front of the remaining three copies. Keep one copy for your own records.

2. Return to the county clerk.

Once you have mailed the objection and motion and notice of hearing and filled out the Certificate of Mailing on the remaining three copies, return to the county clerk's office with two copies. Remember to keep one copy for your own records. The county clerk will deliver one copy to the friend of the court.

3. Response from other party.

If you receive a response to your objection and motion from the other party, make sure you read it before you attend the hearing. Think about what you want to say on your behalf.

4. Attend the hearing.

You must attend the hearing on the motion.

»» INFORMATION ABOUT ATTENDING THE HEARING

Bring the original and five copies of the Order Modifying Ex Parte Order (form FOC 62) with you to the hearing. Also bring all supporting papers you have and any witnesses who are willing to testify.

1. Because you are representing yourself, you are expected to conduct yourself as an attorney would and to follow the same general rules an attorney would.
2. Make a list of information you think is important for the referee or judge to know. The information should relate to the reasons stated in your objection and motion. You can use this list as a reminder to bring up the points you think are important.
3. If you think you need to order someone to attend this hearing, follow the procedure in MCR 2.506 or consult with an attorney.
4. Go to the judge's courtroom or referee's hearing room on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Be prepared to spend most of the morning or afternoon in court. Bring any witnesses with you.

5. If you are responsible for preparing the order, bring all copies of your order form.
6. Go into the courtroom or referee hearing room and tell the referee or clerk (sitting near the judge's bench) your name, that you are there for a hearing, and you are representing yourself. Do not interrupt any hearing in progress. Then take a seat in the back of the courtroom and wait for your case to be called.
7. When your case is called, be prepared to state:
 - 1) your name.
 - 2) that you are representing yourself.
 - 3) that you need an order modifying or rescinding an ex parte order.
 - 4) the facts or reasons for your request (bring papers that support your facts or reasons).
 - 5) why you believe this order would not be contrary to the best interests of the child(ren).

Answer the judge's or referee's questions clearly and directly. If the judge or referee wants to hear from the other witnesses, ask them to tell the court what they saw or know regarding your situation.

8. If the other party is in court, he or she will have a chance to speak also. When the other party talks, take notes. Do not interrupt the other party. After the other party speaks, you will have another chance to talk. Taking notes will help you with this.
9. After the judge or referee makes a decision, follow the instructions on the packet for FOC 62, "Order Modifying Ex Parte Order." You are responsible for preparing the order even if you do not get what you are asking for.

NOTE: If your hearing is held before a referee and you do not agree with the referee's decision, you have 21 days from the date of mailing of the referee's recommendation to file an objection and request a de novo hearing before the judge. Use the packet FOC 68, "Objection to Referee's Recommended Order."

INSTRUCTIONS FOR COMPLETING "OBJECTION AND MOTION TO RESCIND OR MODIFY EX PARTE ORDER"

Please print neatly. After filling in the form, you will need to make at least three copies.

Items A through H must be completed before your objection and motion can be filed with the court. Please read the instructions for each item. Then fill in the correct information for that item on the form.

- A** Before you fill in the Case No., get your court papers for divorce, separate maintenance, family support, or paternity and copy the Case No. from those court papers onto this form.
- B** Also use your court papers to fill in the "Plaintiff" and "Defendant" boxes. Copy the names from these court papers onto this form. For example, if your name is in the box that says "plaintiff," then you should write your name in the "plaintiff" box on this motion form.
- C** You are the "moving party." Write in your name.
- D** Write in the date of the ex parte order. This is usually next to the signature of the judge or referee, at the bottom of the order.
- E** Check the boxes that apply. For example, if you are objecting to the support provisions of the ex parte order, check that box. Then explain why you think the order should be changed. If you need more space, use a separate sheet of paper.
- F** Write in today's date and sign your name. Now contact the the friend of the court office in your county to find out how to get a hearing date. See page 3 of this booklet for details.
- G** Once you get a hearing scheduled, fill in the full name of the judge or referee who will be hearing this motion, the date of the hearing, the time of the hearing (include whether it is a.m. or p.m.), and the place of the hearing.

Now go to the county clerk's office with the original and five copies of this form and the four copies of each separate sheet. The clerk will attach one copy of each separate sheet to four of the copies. The clerk will return four copies to you.

Read page 3 of this booklet for details on mailing this form to the other party.

- H** On the date you mail one copy (and the separate sheets) to the other party, write in the date and sign your name on the remaining three copies.

Return to the county clerk with two copies. Read page 4 of this booklet for details.

You must read this booklet for directions on the legal process.