

RULE 412. UNCONTESTED ACTIONS TO MODIFY A JUDGMENT OR ORDER

In order to facilitate uncontested actions to modify a judgment or order, including, but not limited to, actions to modify child support consistent with the Child Support Guidelines, the following uniform procedure is to be followed:

(a) The parties shall file with the court a joint petition to modify a judgment or a joint motion to modify an order, on a form approved by the Probate and Family Court. The petition or motion shall be accompanied by a copy of the judgment or order to be modified and:

- (1) an agreement setting forth the agreed upon modification(s), which must be notarized if modifying a judgment. If a child's primary residence or custody is being modified, the agreement must specifically state whether any terms in a prior judgment or order related to child support, health, dental, vision or life insurance coverage are also modified, or if they remain in effect. If child support is being modified and the parties deviate from the guidelines amount, the agreement must include specific facts that justify departure from the guidelines, and if the parties agreement terminates child support upon the age of 18, the agreement must acknowledge that G. L. c. 208, § 28 or G. L. c. 209C, § 9 is not applicable;
- (2) complete and accurate financial statements signed by each party, and counsel, if any, pursuant to Supplemental Probate and Family Court Rule 401, with supporting documentation (attach W- 2, and 1099 forms for prior year), if financial issues are being modified;
- (3) a complete and accurate Child Support Guidelines Worksheet, if child support or medical, dental or vision insurance is being modified;
- (4) a written assent from the Department of Revenue Child Support Enforcement Division as the IV-D agency when a party, and/or a dependent child, is a current recipient of public assistance or owes a past-due child support debt assigned to the Commonwealth, and any term relating to child support or medical insurance is being modified;
- (5) a proposed Child Support Findings form, if child support is being modified and the parties deviate from the guidelines amount;
- (6) an Affidavit Disclosing Care or Custody Proceeding form by each party, pursuant to Trial Court Rule IV, if the care, custody or visitation of a child is being modified;
- (7) any other assent or document required by statute or court rule; and
- (8) a proposed judgment or order on a form approved by the Probate and Family Court.

(b) Formal notice or service shall not be required.

(c) Neither party shall mark the joint petition or joint motion for hearing. In the event that the court believes that a hearing is necessary or helpful to a disposition of the matter, the court will set the time and date for the hearing and will notify the parties within twenty-one (21) days of the filing of the petition or motion. If the pleadings are deficient or incomplete, an in-person hearing will be required.

(d) A joint petition or joint motion that is not scheduled for a hearing will be decided on the papers filed in accordance with this rule within thirty (30) days of such filing.

(e) A judgment or order entered on a joint petition or joint motion involving child support will be entered in the State Case Registry pursuant to G.L. c. 119A, § 4.

(f) This rule cannot be applied to actions governed by G. L. c. 209A.

Adopted June 5, 2003, effective September 2, 2003; amended December 14, 2011, effective January 2, 2012; amended _____, effective _____.

Reporter's Notes-2003

This new Rule allows for a simplified process by which parties may agree to modify a judgment for child support consistent with the Child Support Guidelines. Entry of the case in the State Case Registry pursuant to section (d) necessitates the filing of a State Case Registry form if the parties have not previously filed the form.

Reporter's Notes-2013

The Rule is expanded to allow parties to jointly request modification of a judgment or order of the Probate and Family Court where the parties are in agreement, the agreement is in writing, and all other requirements of this Rule are met. The 2013 amendments to the Rule will allow the court to handle more cases administratively. Section (d), as referenced in the 2003 Reporter's Notes, is now section (e). Section (f) allows a modification of child support to be brought under this Rule when there is an active c. 209A order, but custody or visitation changes that require the modification of a c. 209A order are prohibited. The joint pleadings approved for use by the Probate and Family Court under section (a) shall require the parties to disclose any past or present c. 209A order, or DCF involvement, in order to highlight cases that might be able to use this Rule but require additional scrutiny by the court.