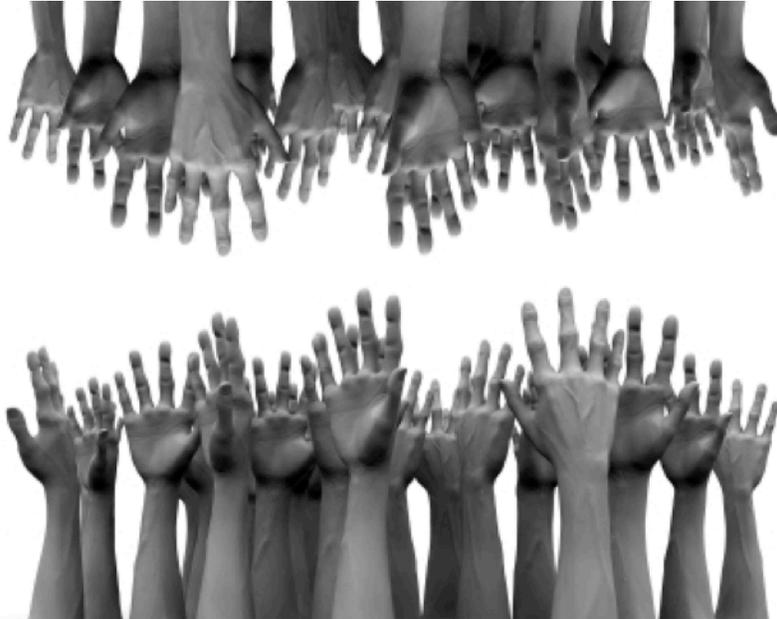


# THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW PRO BONO INITIATIVE



## CHILD SUPPORT MODIFICATION AND ARREARAGES

TRAINING FOR VOLUNTEER ATTORNEYS AND  
STUDENTS

*Two hours CLE credit*  
*Two hours toward Pro Bono Credit*



# TABLE OF CONTENTS

<b>CONTEXTUALIZING FACTUAL HYPOTHETICALS .....</b>	<b>1</b>
<b>CHILD SUPPORT MODIFICATION AND ARREARAGES.....</b>	<b>2</b>
<b>Arrearages.....</b>	<b>2</b>
I. Steps in assessing arrearages .....	2
II. Proof of arrearage .....	2
III. Interest on arrearages.....	2
IV. Credit against amount due.....	2
V. Defenses to judgment for arrearages .....	3
VI. Entry and enforcement of judgment.....	4
<b>Modification of child support .....</b>	<b>6</b>
I. Steps in assessing a modification claim.....	6
II. Calculating support: Mississippi guidelines for child support .....	6
III. Modifications of support .....	8
IV. Determination of modified support award amounts .....	10
V. Abatement of support .....	10
VI. Effective date of modification.....	10
VII. Modification by affidavit.....	10
<b>Statutes: .....</b>	<b>10</b>
<b>CHART I. ARREARAGES.....</b>	<b>11</b>
<b>CHART II. MODIFICATION.....</b>	<b>12</b>
<b>HELPFUL QUESTIONS .....</b>	<b>13</b>
<b>PETITION TO MODIFY FINAL JUDGMENT .....</b>	<b>14</b>
<b>SUMMONS AND NOTICE OF HEARING.....</b>	<b>18</b>
<b>CIVIL CASE FILING COVER SHEET .....</b>	<b>20</b>
<b>ORDER MODIFYING FINAL JUDGMENT.....</b>	<b>22</b>
<b>ORDER FOR WITHHOLDING.....</b>	<b>24</b>
<b>WEBSITE INFORMATION .....</b>	<b>27</b>

## CONTEXTUALIZING FACTUAL HYPOTHETICALS

### Hypothetical 1: John

- John has children with two different women. He pays support to both women.
- He has one child with his first ex-wife. He has two children with his second ex-wife.
- The Support and Custody Order for his first ex-wife and their one child was entered on June 1, 1998 for the amount of \$100 per month.
- The Support and Custody Order for his second ex-wife and their two children was entered on November 1, 2005 for the amount of \$200 per month.
- John was injured in a car accident in 2009 and can no longer work his physically demanding job at the local power plant's loading docks. As a result, John is in arrears.
- He was able to pay child support out of his savings until 2010. During this time he has been trying to get disability payments under social security payments.
- He has started receiving benefits in June 2011, amounting to \$300 per month. He has been paying his orders, but has fallen into arrears due to his depleted savings. He has since moved into his mother's house because he could not afford his rent, etc.
- As it presently stands, John cannot work, his savings has been totally wiped out and John's income has decreased beyond his control. John has a legitimate claim for a modification.

### Hypothetical 2: Frank

- Frank previously went to junior college for two years, but since that time he had been working as a cashier at Kroger where he made minimum wage.
- Frank and his ex-wife have four children together. They divorced three years ago. He has been paying child support for all four of their children since that time.
- Frank was having trouble making ends meet and wanted to go back to school so that he could get a better job upon graduation to provide for his children.
- He voluntarily left his job at Kroger and enrolled in the new Manufacturing Excellence Program at Ole Miss. Based on his transferrable hours from junior college he should be able to finish in approximately two years.
- There are new industrial jobs coming to Mississippi (Winchester & Toyota plants) and there is a likelihood that upon graduation from his program Frank will be able to find a skilled labor position that pays better than his previous job at Kroger.
- Frank quit his job in July 2011 and began classes in August 2011. He has yet to fall into arrears but anticipates that it may happen soon based on his lack of income and depleted savings.
- He seeks a downward modification for some or all of his child support based on his need to spend money on living expenses, housing, tuition, books, etc. while enrolled as a student.

**CHILD SUPPORT MODIFICATION AND ARREARAGES**  
TRAINING FOR VOLUNTEER ATTORNEYS AND STUDENTS

*Two hours CLE credit*  
*Two hours toward Pro Bono Credit*

For cases and statutes supporting outline, see excerpts from Bell on Mississippi Family Law, available on the Pro Bono Website on the UM Law School Home Page.

**ARREARAGES**

**I. Steps in assessing arrearages**

- A. Is the client in arrears?
- B. If so, is there an argument for reducing arrearages?
  - 1. Are there credits that will reduce the amount due?
  - 2. Has the payor made direct payments?
  - 3. Are one or more children emancipated?

**II. Proof of arrearage**

Past due support payments become a final judgment on the date set for payment. Payment records do not need to be complete to find that some amount is in arrears. When child support is more than 30 days delinquent, a judgment arises by operation of law.

**III. Interest on arrearages**

A judgment for arrears must include interest on overdue payments; it is an error as a matter of law for a court to omit an award of interest on a judgment for past-due support. Courts have discretion to determine a fair interest rate under the circumstances. Orders setting interest at the legal rate of 8% are usually affirmed, but lower rates have been affirmed in times of generally low interest rates. Interest runs from the time each payment was due, rather than from the entry of judgment for arrearages.

**IV. Credit against amount due**

A payor may be credited for some payments made directly to a child or payee. Alimony payors are also entitled to credit for derivative social security payments by a payee. Credit may be given by the courts for payments made after a change in custody, a child's emancipation, for some third party payments, or for social security benefits based on the payor's employment. Generally, however, no credit is allowed for a non-custodial parent's voluntary payment of expenses not ordinarily covered by basic support.

*A. Direct support payments.* A non-custodial parent is NOT entitled to credit for voluntary payments directly to children unless the payment is for items ordinarily covered by basic child support.

*B. Credit for payments after emancipation.* A payor may receive credit for payments after a child's emancipation depending in part on whether the support order specifies the amount per child or is undivided.

(1) Per Child Order → If the support order specifies a certain amount payable per child, support for each child automatically terminates upon emancipation.

(2) Undivided Order → When support is ordered as a single amount for all children, a chancellor has discretion to allow or refuse credit for payments made after one child's emancipation.

a. If credit is allowed → payments should NOT be reduced on a pro rata basis.

b. Instead, it should be calculated under the statutory guidelines for the remaining child or children.

*C. Credit for third party payments* may be awarded in some circumstances.

*D. Credit for Social Security Benefits*

(1) Child support arrearages are offset by social security or disability benefits paid to a child as a result of the payor's employment.

(2) Support should *not* be reduced to reflect supplemental security income received by a disabled child on his own account.

(3) A disabled payor is entitled to an offset when a child receives a lump sum disability payment representing amounts that date back to the date of the disability.<sup>1</sup>

## **V. Defenses to judgment for arrearages**

*A. A payor may defend* an enforcement action by asserting:

(1) That the statute of limitations ("SOL") has run,

a. Alimony

i. The 7-year SOL runs from the time each alimony payment is due, not from the date of the divorce decree.

ii. Only payments due and vested more than 7 years prior to the date of filing suit are barred.

b. Child support

Note: The running of the SOL is suspended during a child's minority.

i. The 7-year SOL applies to actions to collect child support arrearages but the period does not begin until a child reaches the age of 21.

ii. If the SOL runs on the claim of one of several children covered by a support order, the claim is barred as to that child's pro rata share.

iii. The claim may be brought by either the child or the child's custodial parent (within the 7 years after the child reaches the age of majority).

---

<sup>1</sup> MISS. CODE ANN. § 93-11-71(6) (2008).

- (2) That the claims were barred by res judicata,
- (3) In rare cases, the “Clean Hands Doctrine” may apply.

*B. The following are NOT defenses to arrearages actions*

(1) Out-of-court modification

- a. Parents may NOT modify support or forgive arrearages through an out-of-court agreement.
- b. A custodial parent receives support as a fiduciary and cannot waive a child’s right to support.
- c. Out-of-court modifications of alimony are also unenforceable.

(2) Laches & estoppel

- a. In MS, petitioners who delay in suing for arrearages for either alimony or child support are not barred by laches (i.e. the defense of laches may not be used unless the SOL has expired).
- b. Defenses based on equitable estoppel have also been rejected by the appellate courts.

*C. Forgiveness of arrearages*

Arrearages may not be forgiven by a court. Once accrued, they may only be reduced by the credits set out above.

**VI. Entry and enforcement of judgment**

*A. Judgment for arrearages*

(1) Unpaid support. A court may:

- a. Enter a judgment for the amount owing with interest from the date each payment was due.
- b. Enter a judgment for payment of the entire amount due, OR more likely, through installment payments.

(2) A court CANNOT:

- a. Forgive arrearages or modify vested payments.
- b. Suspend collection. A judge cannot prolong the “normal” collection process so long as the defendant meets certain conditions.
- c. IMPORTANT NOTE: Even payors who have paid their arrearages in accordance with a court order may be reported as delinquent to credit bureaus.

*B. Enforcement.* If a payor is non-compliant with a child support decree, the court may render judgment for arrearages or otherwise order compliance in the form of:

- Income Withholding
- Imposing a Lien
- Requiring Transfer of Assets
- Requiring Post of Bond
- Charging Payor with Contempt (and requiring payment of all or a portion of arrearages to purge contempt)
- Incarceration

### *C. Satisfaction of arrearages*

- (1) Income withholding orders
  - a. A court may order withholding exceeding limits on garnishment to collect child support or alimony arrearages, or both.
  - b. Maximum / Minimums
    - Minimum = at least 15% of payment due must be withheld.
    - Maximums = 55% of disposable income if supporting other dependants, 65% of disposable income if NOT supporting other dependants.
- (2) Asset transfer. If property transfer provisions are not met, payor may be divested of title by court order.
- (3) Imposition of equitable lien
  - a. Lien may be placed on defendant's property to secure payment even if original decree did not require a lien and even if payee did not request it.
  - b. Lien can secure both arrearages AND payments not yet due.
- (4) Requirement of bond
- (5) Sanctions for Contempt
  - a. Sanctions include:
    - i. Fines
    - ii. Payment of arrearages
    - iii. Prohibition of future conduct
    - iv. Payment of attorney's fees
    - v. Incarceration
  - b. Incarceration
    - i. Defendant who is currently UNABLE to satisfy a judgment may NOT be imprisoned for civil contempt (i.e. Defendant who was injured, unable to work, and thus unable to afford payments; Defendant who was laid off and has lost significant income.)
    - ii. Burden is on the payor/defendant to prove inability to pay.
  - c. Attorney's fees
    - i. Payee who successfully prosecutes a contempt action is entitled to attorney's fees WITHOUT a showing of need.
    - ii. This does not apply if the petition for contempt is denied.

## MODIFICATION OF CHILD SUPPORT

### I. Steps in assessing a modification claim

- A. Was the original support correctly calculated or was it a deviation?
- B. Has a material change occurred?
- C. Was the material change a voluntary choice of the client?
- D. What would support be, based on the client's current income?
- E. Is the client arguably entitled to a deviation below the guidelines?

### II. Calculating support: Mississippi guidelines for child support

**Noncustodial parent must pay the following percentages of "Adjusted Gross Income":**

Number of Children	Percentage of Gross Income
1	14%
2	20%
3	22%
4	24%
5 or More	26%

\*If adjusted yearly income is below \$5,000 or above \$50,000, the court must make specific, written findings as to whether application of guidelines is reasonable.

#### A. *Determining a payor's gross income*

- Gross income may include:
  - o Wages and salary income;
  - o Income from self-employment (gross income less ordinary and reasonable expenses incurred);
  - o Income from commissions;
  - o Employee benefits;
  - o Income from investments, including dividends, interest income and income on any trust account or property;
  - o Absent parent's portion of any joint income of both parents;
  - o Worker's compensation, disability, unemployment;
  - o Annuity and retirement benefits, including an individual retirement account (IRA);
  - o Any other payments made by any person, private entity, federal or state government or any unit of local government;
  - o Alimony;
  - o Any income earned from an interest in or from inherited property;
  - o Income from overtime and second jobs if the work is consistent and predictable; and
  - o Any other earned income.
- Gross income does not include:
  - o Child support payments;

- Current spouse's income; or
- Tax Returns.
- Gross income may be reduced by:
  - Amount of payor's mandatory retirement;
  - Disability benefits a child receives on the payor's disability (not the child's disability);
  - Expenses necessary to the production of income; and
  - Straight-line depreciation.
- Gross income may not be reduced by:
  - Personal expenses.
  - Note: Payors with fluctuating incomes (e.g., salesmen) may use the average of their incomes as their calculated "Gross Income."

*B. Determining a payor's adjusted gross income*

- (1) Identify payor's gross income from all sources.
- (2) Reduce gross income by taxes, other legally mandated deductions such as mandatory retirement, and support for other children.

*C. Imputing earning capacity.* Courts apply the good faith / voluntariness test to determine whether a payor should be presumed to have income at a higher level than their actual income.

A payor's earning capacity may be imputed based on:

- (1) Underemployment by payor
- (2) Voluntarily quitting job
- (3) Voluntary unemployment
- (4) Discharge from employment
- (5) Imprisonment
- (6) Hidden income or assets or transfers
- (7) Inconsistent lifestyle

*D. Deviating from MS guidelines for child support*

Criteria considered in determining deviation include:

- (1) Child's extraordinary or unusual medical, psychological, dental, or educational expenses (private school)
- (2) Other special needs of the child, such as childcare
- (3) Shared parenting arrangements (extensive or reduced visitation)
- (4) Age of the child (older children)
- (5) Independent income of the child
- (6) Spousal support to the custodial parent
- (7) Total available assets of the parents
- (8) Seasonal variations in income or expenses of one or both spouses
- (9) Any other adjustment needed to achieve an equitable result

\*Note: If a non-custodial parent is unemployed at the time when child support is first determined, the court may order support to begin upon employment without a showing of a material change in circumstances.

\*Note: A court may not order a custodial parent to pay support to a non-custodial parent—despite income discrepancies.

#### *E. Types of expenses that may be added to base support*

In addition to the statutory percentages, issuance of a support award may require consideration of additional factors and expenses.

##### (1) Health insurance & medical expenses

- a. Health insurance needs must be addressed in a child support order pursuant to statutory amendments. (Note: if parents are low-income, child is probably eligible for free health care under MS CHIPS Program)
- b. Absent availability of health insurance provisions must be made for payment of uncovered health care costs.
- c. Payment of these expenses by a non-custodial parent may be grounds for downward modification from the guideline percentages, and vice versa.

##### (2) Life insurance

##### (3) College expenses

- a. College expenses until age 21 may be awarded in addition to the statutory percentages if the child bears the requisite aptitude and the parent is capable of paying the expenses.
- b. The parent-child relationship has a bearing on eligibility of a child support award of college expenses.
- c. Employment status and financial capabilities of the parents factor into whether the college expenses will be paid by one parent or shared between the two.
- d. Provision of college support may warrant a downward modification of basic child support while the child is in college when there is an overlap of services.

### **III. Modifications of support**

Support orders may not be modified by out-of-court agreements.

#### *A. Types of support that may be modified*

- (1) Basic support awards are most commonly modified to increase or decrease the amount.
- (2) Agreed orders of support and other support awards collateral to the basic award may also be modified (i.e. health insurance expenses, college expenses, etc.).
- (3) Vested payments of support may NOT be modified, and all downward modifications must be prospective.

#### *B. Eligibility for modification: The Clean Hands Doctrine*

In some cases, an otherwise qualified payor in arrears has been barred from seeking prospective child support modification. However, a payor who is unintentionally in default should not be barred from modification. In addition, entry of a judgment on the overdue support

should “cleanses” the payor (referred to as a “cleansing judgment”) and render the payor eligible for modification.

*C. Test for non-DHS support modification: Change in circumstances*

The traditional test for modification requires proof of a substantial and material change in circumstances regarding the child or parent, occurring since the last decree awarding support; and that the change or changes were not foreseeable at the time of the earlier decree awarding support

An increase in a payor’s income alone will not satisfy the substantial and material change test. Most voluntary lifestyle choices affecting a payor’s income or expenses will not qualify as material (i.e., incurring additional personal bills or having additional children).

*D. DHS approved support modification.* For modification of an award through DHS, no material change in circumstances need be proven if the award is three years old. Modification may be ordered upon a showing that the application of the guidelines to current income produces a different award. A parent’s arrearage is not a bar to modification.

*E. Factors justifying a reduction in support*

(1) Involuntary reduction in income

- a. Child support may be modified downward if:
  - i. The payor involuntarily suffers a reduction in income;
  - ii. That was unforeseeable at the time of the previous support order; AND
  - iii. The reduction affects the payor’s ability to meet the payor’s reasonable needs (i.e. the payor must show a corresponding reduction in his or her standard of living).
- b. The decrease must satisfy the “material and substantial” requirements, and slight decreases will not justify modification.
- c. Voluntary reduction in income may result in imputation of income greater than what the payor actually earns.
  - i. In 2010, the Court of Appeals in *Wells v. Wells* appeared to return to the bad faith test. The court rejected a custodial father’s argument that full-time income should be imputed to a non-custodial mother who reduced her hours to part time to spend more time with her children. The court held that her actions were not in bad faith, because they were not for the purpose of evading her support obligation.<sup>2</sup>

(2) Emancipation of child. The amount of support may be modified downward when a child is emancipated, unless the original order was a global order not based on guideline percentages for the number of children.

(3) Change in custody. A substantial increase in the payor’s custody may warrant a downward modification of support, so long as the custody arrangement was not foreseeable.

---

<sup>2</sup> *Wells v. Wells*, 35 So. 3d 1250, 1260 (Miss. Ct. App. 2010).

- (4) College expenses. A payor providing college expenses for a child may be entitled to a downward modification of basic child support while that child is actually receiving such basic support via the college expenses.

#### **IV. Determination of modified support award amounts**

If a modification is granted, the court will determine the new amount based on the statutory guidelines. If the court does not adhere to the guidelines or the payor's income falls outside of the \$5,000 - \$50,000 statutory window, then factual findings are necessary for the award amount to lessen the risk of reversal.

#### **V. Abatement of support**

Child support obligations may be suspended, not terminated, during the time an un-emancipated child is incarcerated. In one circumstance, support obligations have been suspended while a working eighteen-year-old male was not in school.

#### **VI. Effective date of modification**

By statute, a decrease in support may be effective only from the date of the court's order. It may not be made retroactive to the date of filing the petition.

#### **VII. Modification by affidavit**

If parents are in agreement, and award may be modified by filing a signed affidavit for approval by the court, without the necessity of filing pleadings.

#### **Statutes:**

MISS. CODE ANN. §§ 43-19-101, -103 (child support guidelines & deviation factors, determination of gross and adjusted gross income).

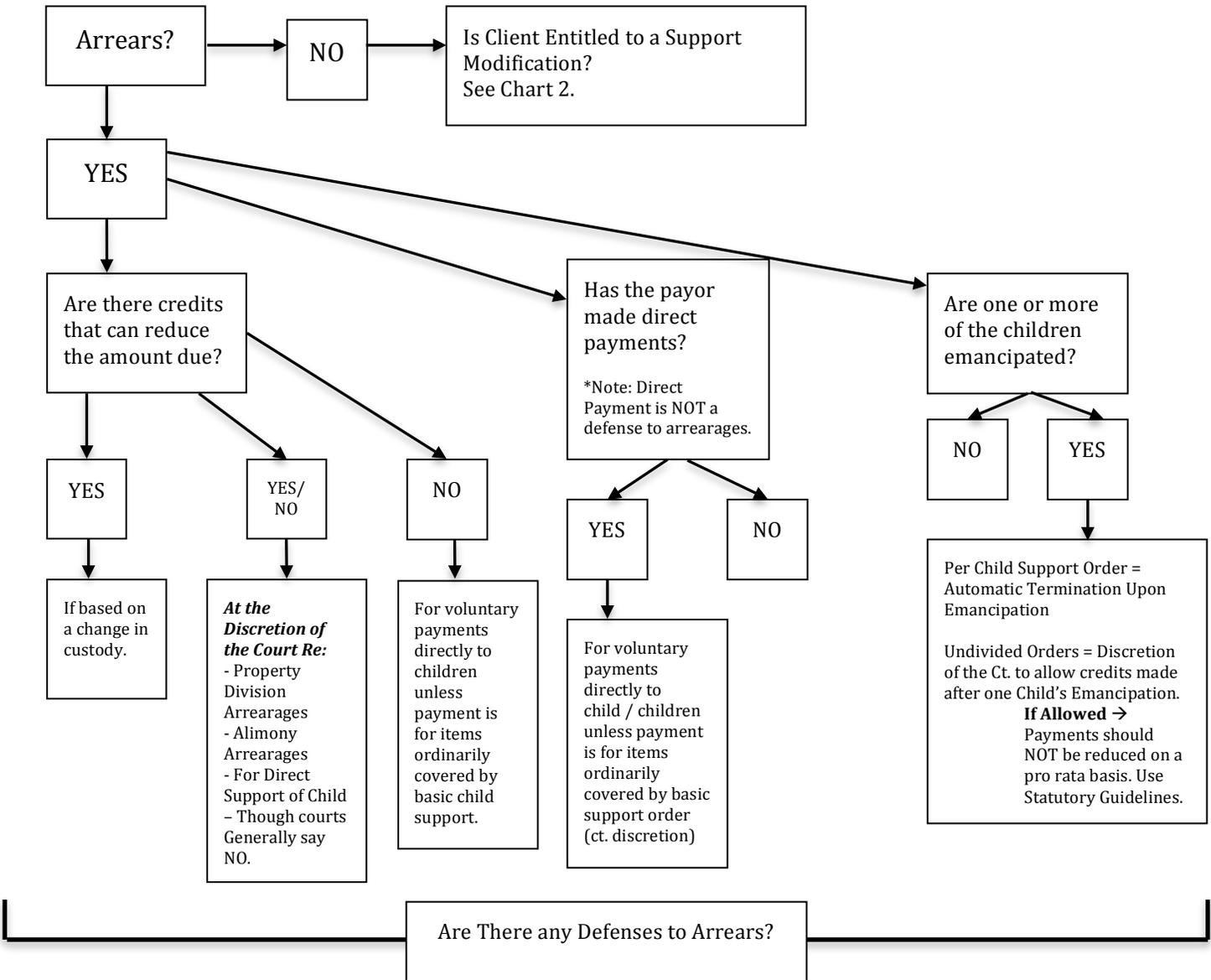
MISS. CODE ANN. § 93-11-65 (emancipation, termination of obligation, suspension).

MISS. CODE ANN. §§ 93-11-103, -105 (income withholding).

MISS. CODE ANN. § 83-5-5 (limits on garnishment).

MISS. CODE ANN. § 43-19-34 (effective date of modification; DHS modification, modification by affidavit).

# CHART I. ARREARAGES

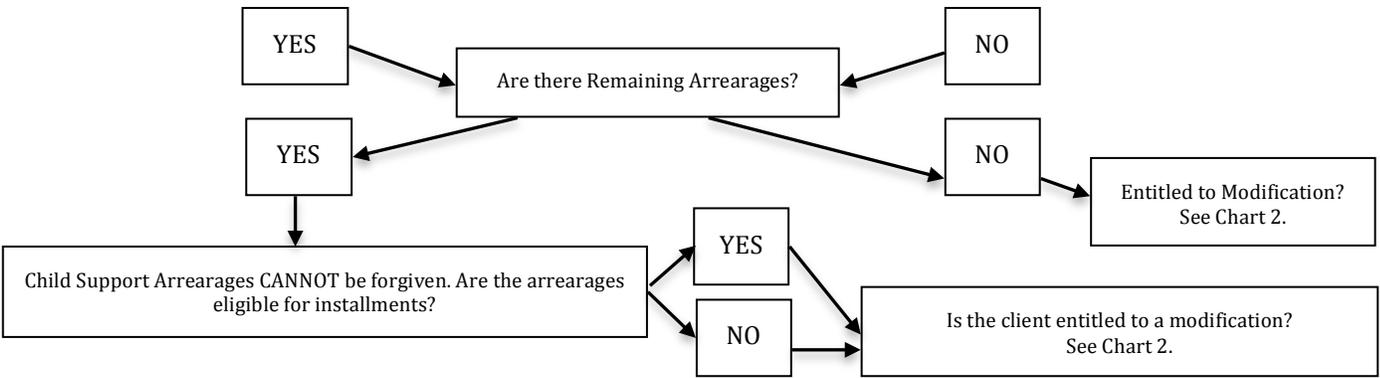


Valid Defenses to Arrearages

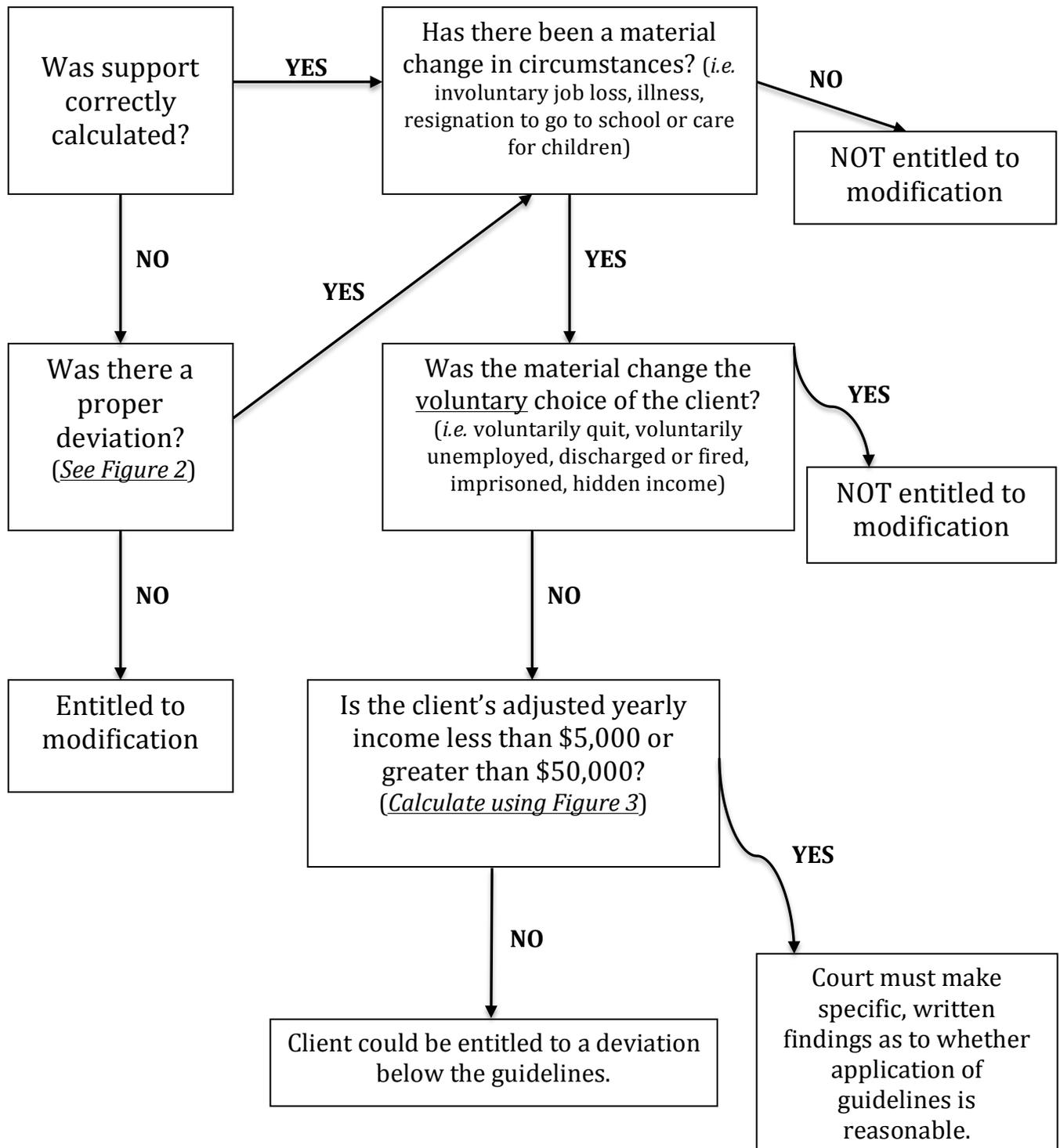
(1) 7-Year Statute of Limitations on actions to enforce Alimony and Child Support has run.  
 \*Note: SOL is suspended during child's minority.  
 (2) Claims barred by res judicata.  
 (3) In Rare Cases: "Clean Hands Doctrine" Applies

Invalid Defenses to Arrearages

(1) Out-of-Court Modification  
 (2) Laches & Estoppel



## CHART II. MODIFICATION



## HELPFUL QUESTIONS

### *What questions might a judge ask you if you are seeking reduction of support*

- Where do you live?
  - Do you live alone?
    - If you live alone, how are you paying the bills?
  - Are you living with a girlfriend or relative?
    - If you live with someone else, who is paying the bills?
- Do you own a vehicle?
  - If so, who pays for gas and upkeep?
- *Can you provide proof that someone else is paying for your basic necessities because you cannot afford to pay for them yourself?*
  - Are you working full-time but still cannot make ends meet?
  - Are you unemployed but have proof that you're looking for work?

### *What do judges want to see if you have been laid off?*

- Letters from prospective employers stating that you have applied for a job
- Letters from employment organizations such as:
  - WIN Job Center
  - Department of Employment Security
- Proof that you are receiving Unemployment benefits
- Evidence of a disability, such as:
  - Filing a Disability/SSI claim
  - Proof of when injury occurred

### *What is a judge likely to count as "good credit" if you are seeking a reduction in arrearages?*

- Change in primary custody
  - Have the children been living with you instead of the other parent?
  - If so, then for how long? Weeks? Months? A year or more?
- SOME direct expenditures
  - SUCH AS payment for necessary items including:
    - Tuition and books
    - Clothing
    - Groceries
  - BUT NOT for unnecessary items such as:
    - Car payments (unless the child needs the car due to hardship)
    - Cell phone payments
    - Christmas or birthday gifts

**\*\* When in doubt, remember that compelling documentation is always more convincing than compelling personal testimony! \*\***

IN THE CHANCERY COURT OF \_\_\_\_\_ (name) \_\_\_\_\_ COUNTY, MISSISSIPPI  
\_\_\_\_\_ (#) \_\_\_\_\_ JUDICIAL DISTRICT

(Plaintiff's name & DHS if Applicable)

PLAINTIFF

VS.

CIVIL ACTION FILE NO.: \_\_\_\_\_

(Defendant's name)

DEFENDANT

**PETITION TO MODIFY FINAL JUDGMENT**

COMES NOW Defendant, \_\_\_(Name)\_\_\_, to this action and files this Petition to Modify Final Judgment and would show unto this honorable court the following matters and facts, to-wit:

1.

That \_\_\_(Plaintiff)\_\_\_ is a resident(/non-resident) of Mississippi, and can be served with process at his/her residence at \_\_\_\_\_ (address) \_\_\_\_\_, or wherever he/she may be found.

2.

That service of process may be effected on (The Department of Human Services) through personal service on the Attorney General's Office in Jackson, Mississippi.

3.

That (Defendant) is a resident/non-resident of Mississippi, and can be served with process at his/her residence at \_\_\_\_\_ (address) \_\_\_\_\_, or wherever he/she may be found.

4.

That this Court has continuing jurisdiction over the parties and subject matter herein, and that venue is proper before this Court.

5.

That heretofore, this Court rendered a Judgment on \_\_\_\_\_ (date) \_\_\_\_\_ containing an order of child support and maintenance ordering the Defendant to pay (\$ amount) per month until (point in time agreed upon). (That subsequently this Court entered a Judgment

on \_\_\_(date)\_\_\_ modifying the original order of child support and maintenance to the amount of  
\_\_\_\_(\$ amount)\_\_\_ per month until \_\_\_(point in time agreed upon).) That the Judgment  
entered on \_\_\_(date)\_\_\_ ordered Defendant to pay child support for:

NAME \_\_\_\_\_ BIRTHDATE \_\_\_\_\_

6.

That a substantial material change in circumstances has occurred since the rendition of  
the Final Judgment in this matter, in that, \_\_\_(explain reason)\_\_\_.

7.

That said modification is in best interest of the child/children.

8.

WHEREFORE, PREMISES CONSIDERED, Defendant prays and demands Judgment  
and Relief as follows:

i. The Court enter a Judgment modifying downward the existing Judgment ordering  
support, commensurate with the Defendant's changed financial status and the Child Support  
Guidelines.

ii. The Court should enter a separate order for Withholding against the Defendant  
which should take effect immediately. The Court should also order the Defendant to keep the  
Department informed of the name and address of his/her current employer (if applicable) or any  
new or additional employer, and to provide this information within five (5) days of employment.

iii. The Defendant should provide health insurance for the child(/children) when and  
if it is available at reasonable cost, such as employment-related or other group insurance  
regardless of service delivery, and should provide the Department with policy information  
including: the name of the insurer, policy number, costs, effective date of coverage for the

child(/children), and any changes in insurance availability. (**Alternatively:** The Defendant is presently not required to provide health insurance, as it is available to the child(/children) due to eligibility and coverage under the Children's Health Insurance Plan (CHIP).)

iv. The Court enter a Judgment against Defendant adjudicating, finding, and ordering the relief prayed for hereinabove and any general relief as may be deemed necessary and proper.

RESPECTFULLY SUBMITTED this, the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

---

ATTORNEY FOR THE DEFENDANT

(Address) \_\_\_\_\_

(Telephone number) \_\_\_\_\_

(Bar number) \_\_\_\_\_

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for the County and State aforesaid, \_\_\_\_\_, the DEFENDANT, who upon being first duly sworn stated that the matters and facts set forth in the above and foregoing Motion for Child Support Modification are true and correct as therein stated.

\_\_\_\_\_  
(DEFENDANT'S NAME)

SWORN TO AND SUBSCRIBED before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



**SHERIFF'S RETURN**

**NAME OF PERSON SERVED:** \_\_\_\_\_

[ ] **PERSONAL SERVICE:** I personally delivered copies of the **SUMMONS IN A CIVIL CASE**, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to the above named person where I found him/her in \_\_\_\_\_ County, State of \_\_\_\_\_.

[ ] **RESIDENCE SERVICE:** After exercising reasonable diligence I was unable to deliver copies of the **SUMMONS IN A CIVIL CASE** to the above named individual in person. I served the **SUMMONS IN A CIVIL CASE** on the \_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the usual place of abode of the above named person by leaving a true copy of the **SUMMONS IN A CIVIL CASE** with \_\_\_\_\_, who is the \_\_\_\_\_ of said individual and a member of his/her family over the age of sixteen (16) years who was willing to receive the same on his/her behalf. I mailed, by first class mail, postage prepaid, to the above named person copies of said **SUMMONS IN A CIVIL CASE** at his/her usual place of abode where the copies were left.

[ ] **SERVICE NOT MADE:** I was unable to serve the **SUMMONS IN A CIVIL CASE**.

**CERTIFICATE TO BE SIGNED WHERE SERVICE MADE BY SHERIFF:**

I completed the service in the manner hereinabove stated on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Sheriff, \_\_\_\_\_ County,

State of \_\_\_\_\_

By: \_\_\_\_\_ D.S.

**COVER SHEET**

**Civil Case Filing Form**

(To be completed by Attorney/Party  
Prior to Filing of Pleading)

**Court Identification Docket #**

County # [ ][ ] Judicial District [ ] Court ID (CH, CI, CO) [ ][ ]  
Month [ ][ ] Date [ ][ ][ ] Year [ ][ ][ ]

**Case Year**

[ ][ ][ ][ ]

**Docket Number**

[ ][ ][ ][ ][ ][ ][ ][ ]  
Local Docket ID [ ][ ][ ]

Mississippi Supreme Court Form AOC/01  
Administrative Office of Courts (Rev 2009)

This area to be completed by clerk

Case Number if filed prior to 1/1/94

In the \_\_\_\_\_ Court of \_\_\_\_\_ County — \_\_\_\_\_ Judicial District

**Origin of Suit (Place an "X" in one box only)**

Initial Filing  Reinstated  Foreign Judgment Enrolled  Transfer from Other court  Other  
 Remanded  Reopened  Joining Suit/Action  Appeal

**Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form**

**Individual**

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if applicable \_\_\_\_\_ M.I. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_  
Check ( x ) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Estate of \_\_\_\_\_  
Check ( x ) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity D/B/A or Agency \_\_\_\_\_

**Business**

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated \_\_\_\_\_  
Check ( x ) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: D/B/A \_\_\_\_\_

**Address of Plaintiff**

**Attorney (Name & Address)**

MS Bar No. \_\_\_\_\_  
Check ( x ) if Individual Filing Initial Pleading is NOT an attorney  
Signature of Individual Filing: \_\_\_\_\_

**Defendant - Name of Defendant - Enter Additional Defendants on Separate Form**

**Individual**

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Maiden Name, if applicable \_\_\_\_\_ M.I. \_\_\_\_\_ Jr/Sr/III/IV \_\_\_\_\_  
Check ( x ) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Estate of \_\_\_\_\_  
Check ( x ) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: D/B/A or Agency \_\_\_\_\_

**Business**

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated \_\_\_\_\_  
Check ( x ) if Business Defendant is acting in the name of an entity other than the above, and enter below: D/B/A \_\_\_\_\_

**Attorney (Name & Address) - If Known**

MS Bar No. \_\_\_\_\_

**Damages Sought:**

Compensatory \$ \_\_\_\_\_ Punitive \$ \_\_\_\_\_ Check ( x ) if child support is contemplated as an issue in this suit.\*

\*If checked, please submit completed Child Support Information Sheet with this Cover Sheet

**Nature of Suit (Place an "X" in one box only)**

<b>Domestic Relations</b> <input type="checkbox"/> Child Custody/Visitation <input type="checkbox"/> Child Support <input type="checkbox"/> Contempt <input type="checkbox"/> Divorce: Fault <input type="checkbox"/> Divorce: Irreconcilable Diff. <input type="checkbox"/> Domestic Abuse <input type="checkbox"/> Emancipation <input type="checkbox"/> Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Property Division <input type="checkbox"/> Separate Maintenance <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> UIFSA (eff 7/1/97; formerly URESA) <input type="checkbox"/> Other _____	<b>Business/Commercial</b> <input type="checkbox"/> Accounting (Business) <input type="checkbox"/> Business Dissolution <input type="checkbox"/> Debt Collection <input type="checkbox"/> Employment <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Replevin <input type="checkbox"/> Other _____	<b>Children/Minors - Non-Domestic</b> <input type="checkbox"/> Adoption - Contested <input type="checkbox"/> Adoption - Uncontested <input type="checkbox"/> Consent to Abortion Minor <input type="checkbox"/> Removal of Minority <input type="checkbox"/> Other _____	<b>Real Property</b> <input type="checkbox"/> Adverse Possession <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Eviction <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Lien Assertion <input type="checkbox"/> Partition <input type="checkbox"/> Tax Sale: Confirm/Cancel <input type="checkbox"/> Title Boundary or Easement <input type="checkbox"/> Other _____
<b>Appeals</b> <input type="checkbox"/> Administrative Agency <input type="checkbox"/> County Court <input type="checkbox"/> Hardship Petition (Driver License) <input type="checkbox"/> Justice Court <input type="checkbox"/> MS Dept Employment Security <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other _____	<b>Probate</b> <input type="checkbox"/> Accounting (Probate) <input type="checkbox"/> Birth Certificate Correction <input type="checkbox"/> Commitment <input type="checkbox"/> Conservatorship <input type="checkbox"/> Guardianship <input type="checkbox"/> Heirship <input type="checkbox"/> Intestate Estate <input type="checkbox"/> Minor's Settlement <input type="checkbox"/> Muniment of Title <input type="checkbox"/> Name Change <input type="checkbox"/> Testate Estate <input type="checkbox"/> Will Contest <input type="checkbox"/> Other _____	<b>Civil Rights</b> <input type="checkbox"/> Elections <input type="checkbox"/> Expungement <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Post Conviction Relief/Prisoner <input type="checkbox"/> Other _____	<b>Torts</b> <input type="checkbox"/> Bad Faith <input type="checkbox"/> Fraud <input type="checkbox"/> Loss of Consortium <input type="checkbox"/> Malpractice - Legal <input type="checkbox"/> Malpractice - Medical <input type="checkbox"/> Mass Tort <input type="checkbox"/> Negligence - General <input type="checkbox"/> Negligence - Motor Vehicle <input type="checkbox"/> Product Liability <input type="checkbox"/> Subrogation <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Other _____
		<b>Contract</b> <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Installment Contract <input type="checkbox"/> Insurance <input type="checkbox"/> Specific Performance <input type="checkbox"/> Other _____	
		<b>Statutes/Rules</b> <input type="checkbox"/> Bond Validation <input type="checkbox"/> Civil Forfeiture <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction or Restraining Order <input type="checkbox"/> Other _____	

**CHILD SUPPORT INFORMATION SHEET**

*Please include all information known*

IN THE COURT OF COUNTY, MISSISSIPPI  
JUDICIAL DISTRICT, CITY OF

Docket No. \_\_\_\_\_ - \_\_\_\_\_ Docket No. If Filed  
File Yr Chronological No. Clerk's Local ID Prior to 1/1/94 \_\_\_\_\_

**Father:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone # Drivers License #  
Employer Name and Address: ( ) Employer Phone #

**Mother:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone # Drivers License #  
Employer Name and Address: ( ) Employer Phone #

**Child:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone #

**Child:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone #

**Child:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone #

**Child:**

Last First M/I Jr/Sr etc. Date of Birth Social Security #  
Address: ( ) Phone #

**FOR ADDITIONAL CHILDREN, PLEASE ATTACH ADDITIONAL FORMS**

MANDATED PURSUANT TO:  
**Federal Social Security Act Title IV-D,  
§§ 454(26)(A) and 454A(e)(4);  
Miss. Code Ann. §43-19-31(l)(iii) (Supp. 1999)**

**Information will be sent to the  
ADMINISTRATIVE OFFICE OF COURTS AND  
MDHS CHILD SUPPORT ENFORCEMENT DIVISION**

IN THE CHANCERY COURT OF \_\_\_\_\_ (name) \_\_\_\_\_ COUNTY, MISSISSIPPI  
\_\_\_\_\_ (#) \_\_\_\_\_ JUDICIAL DISTRICT

(Plaintiff's name & DHS if Applicable)

PLAINTIFF

VS.

CIVIL ACTION FILE NO.: \_\_\_\_\_

(Defendant's name)

DEFENDANT

**ORDER MODIFYING FINAL JUDGMENT**

This action came on for hearing on Defendant's Petition to Modify Final Judgment in the above cause entered on \_\_\_\_\_ (i.e. June 7, 1999) \_\_\_\_\_, so as to modify the amount of child support for the support and maintenance of:

NAME \_\_\_\_\_

BIRTHDATE \_\_\_\_\_

This Court finds that it has jurisdiction over the parties and the subject matter, and that the matters and facts contained in said Petition are true and correct, and that the relief prayed for therein shall be granted.

IT IS THEREFORE ORDERED AND ADJUDGED:

1.

That the Final Judgment in this cause rendered on \_\_\_\_\_ (i.e. June 7, 1999) \_\_\_\_\_ be, and the same hereby is modified to the extent, and only to the extent, that henceforth the amount of child support shall be decreased to \$ \_\_\_\_\_ per month beginning \_\_\_\_\_ (i.e. June 7, 1999) \_\_\_\_\_.

2.

That all child support payment and fees are ordered to be paid through the Mississippi Department of Human Services in care of the Central Receipting and Disbursement Unit, P.O. Box 4301, Jackson, Mississippi 39296-4301.

3.

The Court shall enter a separate order for Withholding against the Defendant which shall and hereby is ordered to take effect immediately. The Defendant shall keep the Department informed of the name and address of his/her current employer (if applicable) or any new or additional employer, and shall provide this information within five (5) days of employment.

4.

The Court finds that the Defendant does/does not have access to insurance at reasonable cost. The Defendant is/is not ordered to provide health insurance for the children if available at reasonable cost. The Defendant shall provide the Department with health insurance policy information, including: the name of the insurer, policy number, costs, effective date of coverage for the child(/children), and any insurance card needed to obtain service from a provider. The Defendant shall inform the Department if there is any change in health insurance availability.

5.

That in all other respects said Final Judgment shall remain in full force and effect.

SO ORDERED AND ADJUDGED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
CHANCELLOR

PRESENTED TO THE COURT BY:

\_\_\_\_\_

\_\_\_\_\_  
(Telephone number)

\_\_\_\_\_  
(Bar number)

IN THE CHANCERY COURT OF \_\_\_\_\_ (name) \_\_\_\_\_ COUNTY, MISSISSIPPI  
\_\_\_\_\_ (#) \_\_\_\_\_ JUDICIAL DISTRICT

(Plaintiff's name & DHS if Applicable)

PLAINTIFF/OBLIGEE \_\_\_\_\_  
OBLIGOR \_\_\_\_\_

VS.

CIVIL ACTION FILE NO.: \_\_\_\_\_

(Defendant's name)

DEFENDANT/OBLIGOR \_\_\_\_\_  
OBLIGOR \_\_\_\_\_

**ORDER FOR WITHHOLDING**

ON THIS DAY, this Court hereby ORDERS, ADJUDGES AND DECREES the following:

(1) (COMPLETE AND CHECK THE APPROPRIATE BLOCK(S) WHICH APPLY ON THIS DATE)

( ) COMPLETE FOR ORIGINAL PROCEEDING:

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (this) or (name other) \_\_\_\_\_ Court entered a judgment directing that the Obligor pay child support in the amount of \$ \_\_\_\_\_ per month, payable \$ \_\_\_\_\_ per month beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and continuing thereafter until the child(/children) are emancipated.

( ) COMPLETE FOR MODIFICATION PROCEEDING:

On this day the prior support order was revised and the Obligor was ordered to pay child support of \$ \_\_\_\_\_ per month, payable \$ \_\_\_\_\_ per month beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and continuing thereafter until the child(/children) are emancipated.

( ) COMPLETE FOR CONTEMPT PROCEEDING:

On this day, having taken evidence, the Court finds that the Obligor is in arrears, that there is no mistake of law or fact, that the Obligor was properly served with process and notice of these proceedings and the Obligor was adjudicated to be in arrears totaling \$ \_\_\_\_\_. In addition to the required child support, the Obligor was ordered to pay the delinquency at the rate of \$ \_\_\_\_\_ per month, payable at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, until the arrearage is paid in full.

( ) COMPLETE WHEN NOTICE OF DELINQUENCY IS USED:

On this day a NOTICE OF DELINQUENCY has issued from this Court to the effect that the Obligor is in arrears totaling \$ \_\_\_\_\_. The Obligor must pay the arrearage at the rate of \$ \_\_\_\_\_ per month, payable \$ \_\_\_\_\_ per \_\_\_\_\_, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, until the arrearage is paid in full.

(1) COMPLETE TO GRANDFATHER IN ORDER FOR WITHHOLDING:

On this day and by operation of the law, the Court does hereby enter this Order for Withholding.

(2) THE OBLIGOR is ( ) self-employed, ( ) unemployed, or ( ) employed at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) THE EMPLOYER IS DIRECTED and instructed by the Court to withhold from the earnings of the Obligor the following amounts:

- (a) \$ \_\_\_\_\_ per month for current child support.
- (b) \$ \_\_\_\_\_ per month to pay off any arrearage.
- (c) \$ 5.00 per month to be paid to the Department of Human Services to cover administrative cost for handling this matter.
- (d) \$ 2.00 per withholding to the Employer to cover his cost. This fee should be retained by the Employer and must NOT be forwarded to the Department of Human Services. HOWEVER, the Employer may waive his \$ 2.00 fee if he so chooses.
- (e) The Employer is allowed 14 days from the date of receiving these documents to start withholding the amounts specific herein. After the 14 days has passed, withholdings must begin with the next payroll. The Employer may withhold these amounts in a manner that matches his payroll schedule. He does not have to change his payroll schedule to comply with this Order.

(4) IN THE EVENT THE OBLIGOR'S EMPLOYMENT SITUATION CHANGES, any interested party is authorized to notify the Court by mailing a dated and signed letter to the Chancery Court Clerk containing the name and address of the new employer. This ORDER FOR WITHHOLDING shall continue in full force and effect against any subsequent employer.

(5) THE EMPLOYER SHALL NOT withhold any amounts in excess of that allowed under 303(b), CONSUMER CREDIT PROTECTION ACT, being 15 U.S.C.A. 1673, as amended. The Obligor and his Employer are informed and advised of their rights, remedies and duties as the same are contained on the attached EXHIBIT 1, which is made a part hereof as though full copied and set out at length herein. (NOTE: These laws are printed on the attached EXHIBIT 1).

(6) WITHIN TEN (10) DAYS AFTER EACH WITHHOLDING IS MADE, the Employer shall send the amounts to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and the following information shall be noted on each remittance:

Name of Obligor: \_\_\_\_\_  
Chancery Court, County of: \_\_\_\_\_, Mississippi  
Action No.: \_\_\_\_\_  
Name of Obligee: \_\_\_\_\_

This ORDER FOR WITHHOLDING shall take effect \_\_\_\_\_.

ORDERED, ADJUDGED, AND DECREED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
CHANCELLOR

PRESENTED TO THE COURT BY:

\_\_\_\_\_  
(Telephone number)  
\_\_\_\_\_  
(Bar number)  
\_\_\_\_\_

\_\_\_\_\_  
FAMILY MASTER

## **WEBSITE INFORMATION**

The materials in this packet, stand-alone editable forms, and other documents and news will be available at the Pro Bono Initiative website.

Please visit our website at: <http://probono.olemiss.edu/>