

Filing a Motion for Change of Venue in a Dissolution of Marriage (Divorce) or Modification of a Parenting Plan, Child Support Order or Decree from a Dissolution

This packet contains the instructions and forms you will need to ask the court to move a marital dissolution or a modification of a parenting plan, child support order, or decree entered in a dissolution to a different county – this is called a Motion for Change of Venue. You may use this packet if the other party filed your case in the wrong county (such as a county where neither party lives), or if it would be more convenient for you to finish your case in a different county.¹

A. What is a Motion for Change of Venue?

A Motion for a Change of Venue asks the court where a case was filed to allow a different county's court to hear the case. A Motion for Change of Venue must be filed in the Superior Court where your case was filed.

Venue for Marital Dissolution. Washington law says that a marital dissolution case should be filed in the county where either the husband or wife lives.² Generally, a Motion for a Change of Venue should be granted if the dissolution was filed in a county where neither party resides.³ If the case is filed in the county where one spouse lives, and the other spouse wants to move the case to the county where s/he lives, the court may (but is not required to) change venue.⁴

Venue for Modification of a Parenting Plan or Child Support Entered in a Dissolution. Washington law says that modifications may be filed in the county where the minor children live, where the final order, judgment or decree was entered, or in the county “where the parent or other person who has the care, custody, or control of the children” lives.⁵

Venue for Modification of a Decree of Dissolution. A modification of a Decree of Dissolution (such as the maintenance or property and debt division) should be filed in the county where the final Decree of Dissolution was entered.⁶

Some private services that prepare marital dissolution papers for a fee tell people to file their dissolution in a county in which neither person lives. One county in which dissolutions are commonly filed by non-residents is Lincoln County. If one spouse files a dissolution in a county where neither spouse lives, the responding spouse has the legal right to move the case to the proper county and the court should grant a change of venue.

¹ See the “Glossary of Important Terms” in Appendix A of this packet.

² RCW 26.09.010(2).

³ *Schroeder v. Schroeder*, 74 Wn.2d 853, 447 P.2d 604 (1968).

⁴ RCW 4.12.030.

⁵ RCW 26.09.280.

⁶ *Washington State Bar Family Law Deskbook*, §15.10(4) (2d. ed., 2000).

B. What is a reason a person would want to file a Motion for Change of Venue?

There are practical problems that can arise if a case is filed where neither party lives. For instance, if the parties must have a hearing or a trial, they may be required to travel to the court and appear in person, which can be a long and expensive trip. It may be harder to file the motion documents. It may be more difficult to find out about court procedures or get help from courthouse facilitators. If a party needs to try to modify a parenting plan or child support later, it may be more difficult and expensive to get copies of pleadings from a county that is far away.

There are other reasons that you might file a Motion for Change of Venue, such as it being very difficult for your witnesses to travel to the county where the case has been filed. Before you file a Motion for Change of Venue, you should discuss your case with a CLEAR advocate (1-888-201-1014) or other lawyer or legal services provider.

C. How Do I Make a Motion for Change of Venue?

The issue of improper venue must be raised at the earliest opportunity or else it may be given up (waived).⁷ You must either write in your Response to Petition form that you object to venue, or you must file a Motion for Change of Venue with the court before you file any more pleadings.⁸

Enclosed in this packet are the forms needed to file a contested Motion for Change of Venue; this includes a Motion for Change of Venue, Declaration In Support of Change of Venue, Certificate of Mailing or Personal Delivery, Order for Change of Venue, and a Note for Hearing Docket. Some counties require that you file forms that are specific to that county. Call your county clerk and ask whether your county requires certain forms for a Motion for Change of Venue before filling out the forms included in this packet.

D. What If I Cannot Get to the Courthouse?

Frequently, a party requests a Motion for Change of Venue because he or she cannot travel to the courthouse where the case was filed.⁹ If you want to ask the court to change venue, but you do not think you can travel to the court for a hearing, you should call the clerk's office where your case was filed and ask the court clerk:

- (1) If you can file your motion by mail or fax (and if so, how do you do it);
- (2) If you can set the hearing date by phone or mail and if so, how;
- (3) If you can attend the hearing by telephone, (called a "telephonic hearing") and if so how; and
- (4) If you will have to pay a fee for doing (1) – (3), and if so, how much.

⁷ Sanders v. Sanders, 63 Wash.2d 709, 714, 388 P.2d 942 (1964).

⁸ Civil Rule 12(b)(3).

⁹ Lincoln County is a county where this commonly occurs. If you are trying to get your dissolution out of Lincoln County, see "Helpful Information Regarding Lincoln County Superior Court" located in Appendix B of this packet.

Please note: Some courts allow telephonic hearings and some do not. In most counties, you must speak directly with the Court Administrator to schedule a telephonic hearing and there may be other steps you must take, which you should ask the Court Administrator about.

E. Summary of Steps

Step 1: Gather the Required Forms and Documents

Step 2: Complete the Forms

Step 3: Talk to an Attorney, if Possible

Step 4: Make 3 Additional Copies of Each Document

Step 5: File / Deliver Working Papers / Have the Other Party Served

Step 6: Confirm Hearing / Attend Hearing

STEP 1: GATHER THE REQUIRED FORMS AND DOCUMENTS

(FORMS # 1, 2, 3, 4, and 5 Are Part of This Brochure)

FORM #1: Motion for Change of Venue

FORM #2: Declaration In Support of Change of Venue

FORM #3: Certificate of Mailing or Personal Delivery

FORM #4: Order for Change of Venue (Proposed)

FORM #5: Note for Hearing Docket. If there is a special Note for Hearing Docket form that is used in the court where you are filing your motion, get the court's special form and use it instead.

STEP 2: COMPLETE THE FORMS

On all of the forms, complete the caption (the top portion of each form naming the county, the parties involved, and the case number) by copying the caption from the "Petition of Dissolution of Marriage".

FORM #1: *Motion for Change of Venue*

When you file a motion, you are asking the court to grant you something. In this motion, you are asking the court to move your case to another county. Please note that the form in this packet asks the court to order the other party to pay all costs of moving the case to the new county (which includes paying the new filing fee.) If you feel that this is not appropriate in your situation, cross out this portion of the Motion.

Begin this form by filling out the Caption. Look at the top of the first page of the Petition for Dissolution of Marriage that you received. Copy the name of the county in which the case was filed, the names of the parties, and the case number from the Petition and write them on the Motion for Change of Venue form..

Fill in the rest of the document by writing your name in the space before [Name] and the name of the county to which you want the case moved, in the space before the word County. At the bottom, sign and print your name, then write the date.

FORM #2: *Declaration In Support of Change of Venue*

Complete the caption.

Write your name and your age on the lines provided. Next to “Relationship to the Parties in this Action,” you should write “Respondent” or “Petitioner.”

On the lines after "I declare that", you must state why you believe venue should be transferred. All of the information that you want to consider about this motion needs to be in the declaration. For example, if true, some things you may want to include are:

- (1) Neither the opposing party nor I live in the county where the case is filed,
- (2) Neither party owns property in the county where the case is filed,
- (3) It would be a great inconvenience for me to participate in any proceeding in the county where the case was filed. I live in “x” county. I cannot afford to travel and stay in a county where I do not live.

Make the statements short and factual, not argumentative and opinionated. Number each fact separately. After you finish writing your declaration, sign and date it at the end. Fill in the date and the place (city, state) where the form is signed. Remember, this is sworn testimony; therefore, all statements in the declaration must be truthful.

At the hearing, you can tell the judge your side of the case, but you cannot present any new facts not in the documents filed. Therefore, be sure that everything you will want to say is in the declaration form.

FORM 3: *Certificate of Mailing or Personal Delivery*

You are responsible for serving the other party with your motion papers. You must deliver to the other party the Motion for Change of Venue, Declaration In Support of Change of Venue, Note for Motion Docket, and any other paper you want the court to consider for the change of venue. As proof that you have done this, it is a good idea to do a “Certificate of Mailing or Personal Delivery” and then file it with the clerk’s office. Because the legal action has already started, delivery can be done either by delivering the documents to the opposing counsel yourself (or opposing party if they are representing themselves), or by having someone do this for you. However, if you suspect that the opposing party may state that he or she never received the

papers, or if there are issues of safety involved, it is a good idea for someone to deliver the papers for you.

Begin this form by filling out the caption as done in Form #1.

In the next section of the pleading, write out the name of the other party and in the next blank, after “with the following documents,” list every document that you are delivering to the other party. (Example: Motion for Change of Venue, Declaration In Support of Change of Venue, etc.) You must list every form.

If the papers were served by regular mail, check the first box and write the name and address where the papers were sent.

If the papers were personally delivered, check the second box and fill in who the papers were delivered to (petitioner or petitioner’s attorney.) Then, write in the date and time, and address of service in the second blank provided.

The person who mailed or delivered the papers should sign the end of the form under “*I declare under penalty of perjury . . .*” Fill in the date and the place (city, state) where the form is signed. Print the name of the person signing the form under the signature.

****Note on Mailing Your Motion to the Other Party:** Civil Rule (b)(2)(A) states “If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day.”

This means that delivery by mail must be sent postage prepaid, from a post office. Delivery will be considered complete on the third day after placed in the mail *unless* the third day falls on a weekend or legal holiday. If the third day falls on a weekend or legal holiday, delivery will be considered complete on the first non-weekend day or legal holiday.

FORM 4: *Order for Change of Venue (Proposed)*

An order is the legal document on which the court writes the decision that it makes. The order requires the parties to do (or not do) something. If the court decides to grant your motion, the court and the parties will sign and date your order. This will be done at the hearing.

Please note that, like the Motion, the Order for Change of Venue as drafted requires the other party to pay all costs of moving the case to the new county. If you feel that this is not appropriate in your situation, cross out this portion of the Order.

Begin this form by filling out the caption as done in Form #1.

Fill in the remainder of the document by placing, in the appropriate spaces, your name and the name of the County you would like the case moved to. At the bottom of this form, sign your name under “Presented by” and then print your name on the following line. Do not write in the

date in the space above “Presented by” and to the left of the line where the judge or commissioner signs; this should be done by the judge or commissioner who heard the motion when you present your order.

FORM 5: *Note for Hearing Docket*

You will set the hearing and complete the “Note for Hearing Docket” or “Note for Motion Docket” form.” This form is used to let the court and the other parties know the date, time, location, and reason for your hearing. **Many counties require you to use a special form.** Check with the Family Law Facilitator’s office or court clerk’s office to find out if the court in the county where your case is pending uses a special Note for Hearing form. If your county does not have a special form to set up a hearing, you can use the form included here.

It is best to fill out this form with the assistance of the court clerk or facilitator.

How Do I Set a Date for My Hearing? You may choose a date for your hearing, but there are important rules about how much advance notice you must give the other party and what days and times you can schedule your hearing. If possible, call the family law facilitator or court clerk’s office where you are filing your motion and ask: 1) Is a Motion for Change of Venue to be heard by a family law commissioner or a judge? 2) How many days before the hearing date do you need to file your papers and serve the other party? 3) Are there certain days or times when you are allowed to schedule a Motion for Change of Venue in a family law case? and 4) Do you need to send working papers or confirm the hearing (and if so, how/where)? If you cannot contact a clerk or facilitator, check the Local Rules for that county:

http://www.courts.wa.gov/court_rules/?fa=court_rules.local&group=superior, or the Superior Court Civil Rule 6(d) at

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CR. Make sure you add more days if you serve your motion by mail.(See directions for Form 3).

STEP 3: TALK TO AN ATTORNEY, IF POSSIBLE

These instructions are not a substitute for legal advice. It is always advisable to talk to a lawyer about your problem before filing your action. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork at a lesser cost, or you may be able to obtain legal advice by calling CLEAR’s toll-free line, 1-888-201-1014.

STEP 4: MAKE 3 ADDITIONAL COPIES OF EACH DOCUMENT

Make at least three copies of each document (more if there is more than one other party in the case). One copy will be for you, one for the opposing attorney (or your spouse if he or she does not have an attorney), and one for working papers. See Step 5 for more information on working papers.

STEP 5: FILE / DELIVER WORKING PAPERS / HAVE OTHER PARTY SERVED

File the originals of the following forms with the Clerk's office. Form #1, Form #2, Form #3, and a copy of Form #4. Stamp your copies of the forms with the Clerk's date stamp to prove that you filed the originals of Forms #1, #2 and #3 with the Clerk.

Working Papers: Some counties require "working papers". Working papers are an extra copy of your motion packet (the papers you filed plus the order marked "Proposed") that goes to the judge. Ask the clerk or family law facilitator if you will need to file working papers. If yes, you should write the following in the top right hand corner of the first page of this set:

WORKING PAPERS: MOVING PARTY
CIVIL LAW MOTIONS

DATE: _____ TIME: _____ AM/PM

NAME: _____

(Your Name)

***Be sure to fill in the date and time of your hearing.**

It is your job to have the other party served with a copy of your "motion packet" the proper amount of time before the hearing. Furthermore, each county has a particular local rule on how much time in advance a party must be given notice prior to the hearing. Therefore, **ask the family law facilitator or court clerk how many days' notice to the other party are required in the county, then be sure to deliver or serve the motion packet appropriately.** Bring the remaining copy of your motion packet to your hearing.

STEP 6: CONFIRM YOUR HEARING AND ATTEND HEARING

Confirmation:

Check with the family law facilitator or court clerk to determine when and how you must confirm your hearing. Some counties will require you to confirm your hearing several days before the actual hearing will take place. **IF YOU FAIL TO CONFIRM YOUR HEARING, IT MIGHT BE AUTOMATICALLY CANCELLED!**

If the other party chooses to file a written response to your motion, he or she must do so no later than the time period stated in your county's Local Rules. Check with the family law facilitator or court clerk in your county to learn what period of time this is. If the other party fails to file a written response in time, then you have the right to object to the response being considered by the judge/commissioner.

At Your Hearing:

You must attend the hearing. The hearing is where the judge or commissioner "hears" your motion. At the hearing, you can tell the judge your side of the case, but you cannot present any new facts that are not in the documents you already filed. Further, the court will only allow you

a limited time to speak, if it allows you to speak at all. Therefore, be sure that everything you will want to say regarding the motion for change of venue is in the declaration form.

Also at the hearing, EXPECT THAT YOU MAY HAVE TO WAIT UP TO 3 HOURS FOR YOUR HEARING. DO NOT BRING CHILDREN WITH YOU. Arrive 30 minutes early for your hearing to check in.

Bring a copy of your motion packet with you, which includes the original of Form #4 (Order for Change of Venue).

*If you have prearranged a hearing by phone, make sure that you have followed all the requirements directed by the Court Administrator. Remember, you cannot wait until the day of the hearing to schedule a hearing by phone! In addition, be sure that you have filed with the court a blank copy of the proposed Order for Change of Venue for signature.

After Your Hearing:

Make yourself of copy of whatever document(s) the commissioner or judge signed. If the other party was not present, make a copy and mail it to the other party. All original orders signed by the judge/commissioner must be filed in the clerk's office. **Do not leave the courthouse with or destroy original orders signed by the commissioner or judge.** If you do not know what to do with the originals, ask the clerk's office or family law facilitator to help you.

WARNING: The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always a good idea to speak to a lawyer about your problem before filing your action. (You may be able to hire a lawyer for a small fee to review your completed forms and talk about your problem, but not represent you in court.) If you need a lawyer, contact the appropriate legal services office for your area.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, May 2005.

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Glossary of Useful Terms

Calendar - The court's schedule of cases to be heard, also called a Docket.

Caption - The heading of each legal document that contains the name of the court, the names of the parties, the case number, and the name of the document itself.

Certificate of Mailing or Personal Delivery: This document tells the court that service to the other party occurred.

Clerk of the Court - An officer of the court who handles clerical matters like keeping records, entering judgments and providing certified copies.

Commissioner (Court Commissioner) - This person is similar to a judge but only makes decisions relating to a particular subject matter. Many counties have family law commissioners who decide only in family law cases (dissolutions, etc.).

Continuance - Postponing your court hearing to a later date.

Court - The judicial branch of government that has the purpose of applying the laws to disputes brought before it. When this packet refers to "the court," that means you will be talking to the judge or commissioner who represents the court.

Declaration - A written statement made to the court that the signer swears is true.

Default Order - An order that can be obtained if the responding person does not respond on time.

Ex Parte - Going before the court without notifying the other party.

Family Law Facilitator - A facilitator can provide helpful information, but not legal advice, for parties without an attorney. The program is available at some county courthouses throughout the state. Family law facilitators can help a party obtain the forms needed to guide a person through the courthouse process, answer limited procedural questions, and review family law documents to check for completeness. Services are typically available by appointment only.

Filing - Giving court papers to the court clerk to place in the case file.

Hearing - Going before a judge or court commissioner in person to request a court order.

In Re the Marriage Of: - The heading of all your court papers. It tells the court that the type of your court action relates to your marriage.

Motion - A request made to the court for an order.

Motion Docket - The court's schedule of motions to be heard.

Note/Notice of Hearing - A written request to the clerk to schedule your case for a hearing.

Order - A court document signed by a judge or commissioner that requires someone to do or not to do something.

Petition - A formal written request for a dissolution of marriage (divorce).

Petitioner - The spouse who files the dissolution case.

Pro Se - Acting without the aid of an attorney; representing yourself.

Response - A formal written answer to a petition filed with the court by the respondent.

Respondent - The spouse against whom the dissolution case is filed.

Ruling - A decision made by the court.

Service - Giving court papers to the other party by having them hand-delivered, sending it by certified mail or publishing in a newspaper.

Stipulation – An agreement by the parties.

Venue - The county where the case should be filed, usually the county where you live.

Waive - To give up a right voluntarily.

APPENDIX B

Helpful Information Specific to Lincoln County Superior Court

Phone number of Clerk's Office and Family Law Facilitator:
509-725-1401

Address of Clerk's Office:
Lincoln County Clerk
450 Logan Street
P.O. Box 68
Davenport, WA 99122-0068

Note on Telephonic Hearings in Lincoln County:

As in other counties, it is at the court's discretion whether a hearing by telephone will be allowed. To ask about how to schedule a telephonic hearing, you should contact the Court Administrator at 509-725-3081. You must schedule a telephonic hearing **before** the hearing date. Furthermore, the person requesting the motion has the responsibility of calling the other party on his or her own phone line and then calling into the court on a three-way line. If the requirements of the court cannot be met, then a contested Motion for Change of Venue will have to be done in person.

Note on a Stipulated Order for Change of Venue:

In Lincoln County, a Stipulated Order for Change of Venue (an order by agreement of both of the parties) can be done without a physical court appearance by the parties. For information on how to do this, call the Family Law Facilitator or Court Clerk.

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

In re the Marriage of:

_____,

Petitioner,

and

_____,

Respondent.

No. _____

MOTION FOR CHANGE OF VENUE

(No Mandatory Form Available)

I. MOTION

_____ [Name], moves the court for an order changing venue in this matter to _____ County.

This Motion is based on the facts set forth in the attached Declaration In Support of Change of Venue and on the following legal authority: RCW 26.09.010(2); RCW 4.12 et. seq.; CR 12(b)(3); CR 81(b); and CR 82(d).

Based on the foregoing considerations, _____ [Name] requests that the Court order that venue of this matter be changed to _____ County.

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_____ [Name] further requests that all costs associated with the change of venue shall be paid by the opposing party unless paid in full by the county the case is transferred from per CR 82(d).

Dated: _____

Signature

Print or Type Name

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

In re the Marriage of:

_____,

Petitioner,

and,

_____,

Respondent.

No. _____

DECLARATION IN SUPPORT OF
CHANGE OF VENUE

(No Mandatory Form Developed)

This declaration is made by:

Name: _____

Age: _____

Relationship to the parties in this action: _____

I DECLARE that:

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(Attach Additional Pages if Necessary and Number Them.)

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _____ [City and State] on _____ [Date].

Signature

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

In re the Marriage of:

_____,

Petitioner,

and

_____,

Respondent.

No. _____

**CERTIFICATE OF MAILING OR
PERSONAL DELIVERY**

(No Mandatory Form Available)

I hereby certify and declare under penalty of perjury that I have this day provided the Petitioner, _

_____ with copies of the following documents, _____

_____, in the following manner:

Via first class U.S. Mail, postage prepaid:

Name & Address of Party Being Served

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By handing to and leaving with said Petitioner or another adult member of his household, or his attorney, namely _____, a true and correct copy of said pleadings at the following location: _____.

Dated: _____

Signature

Print or Type Name

Place signed

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

In re the Marriage of:

_____,

Petitioner,

and

_____,

Respondent.

No. _____

**ORDER CHANGING VENUE TO
_____ COUNTY (PROPOSED)**

(No Mandatory Form Available)

THIS MATTER came regularly before the Court pursuant to _____ [Name]’s Motion to Change Venue. The Court considered the parties’ respective pleadings, declarations and the records and files therein. Based on the foregoing, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

1. _____ [Name]’s Motion to Change Venue shall be and hereby is GRANTED. The Clerk of the Court is directed to forward all records and files herein to the Superior Court Clerk for _____ County and to take any other actions that are necessary to complete the change of venue.

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2. Any court costs and filing fees associated with the change of venue shall be paid by the opposing party.

Dated: _____

JUDGE/COURT COMMISSIONER

Presented by:

Signature

Print or Type Name

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

In re the Marriage of:

_____,

Petitioner,

and

_____,

Respondent.

No. _____

NOTE FOR HEARING DOCKET

(No Mandatory Form Available)

TO THE CLERK OF COURT AND TO: _____

Please take notice that this case will be heard on the date below and the clerk is requested to note this issue on the docket for that day.

HEARING DATE: _____

HEARING TIME: _____

LOCATION: _____

COURTHOUSE ROOM: _____

ADDRESS: _____

NATURE OF MOTION: _____

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Dated: _____

Signature of Lawyer or Party

Print or Type Name

Notice to party: you may list an address that is not your residential address where you agree to accept legal documentsN.

Address
