

Drafting motions

The following notes should help you customize your motion for the particular circumstances in your case:

- A. After the **NOTICE OF MOTION AND MOTION FOR** , insert one of the following that applies to your case:

**AN ORDER OF CHILD CUSTODY, PLACEMENT AND SUPPORT.
A TEMPORARY ORDER OF CHILD CUSTODY, PLACEMENT AND SUPPORT
DE NOVO REVIEW OF COURT COMMISSIONER'S ORDER REGARDING CHILD
CUSTODY, PLACEMENT AND SUPPORT.
TO MODIFY AN EXISTING ORDER FOR CHILD CUSTODY, PLACEMENT AND
SUPPORT.
RECONSIDERATION OF THE COURT'S DECISION.**

(You need to contact the court to schedule a date for a hearing of this motion, before you can complete the notice and send it out.)

(The motion must give the other party at least 5 working days to respond before the court can have a hearing on this motion.) See Wisconsin Statutes Section 801.

B. FOR MOTIONS FOR TEMPORARY ORDERS:

add to the brief in support of this motion the following :

767.23 (1) Except as provided in ch. 822, in every action affecting the family, the court or circuit court commissioner may, during the pendency thereof, make just and reasonable temporary orders concerning the following matters:

(am) Upon the request of a party, granting periods of physical placement to a party in a manner consistent with s. 767.24.

C. MOTIONS FOR DE NOVO REVIEWS:

If a court commissioner fails to maximize placement in a temporary or final order, you should consider immediately (within 10 days) filing a motion for de novo review before a judge.

A de novo review is a complete fresh review of the issues involved in the case. A motion for the de novo review need only include the name of the court commissioner, the date of the order, and identify the specific issue you want the judge to review. If the above information was not already submitted to the court commissioner in a motion or brief, you could consider submitting this as a brief in support of your original motion.

Wis Stat. 757.69(8) provides for: *Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo*

The following Milwaukee County Circuit Court rule provides time limits for filing such a review.

524. REVIEW OF FAMILY COURT COMMISSIONER DECISIONS, ORDERS AND RULINGS

A. Either party or guardian ad litem has the right to move for review of any decision, order, or ruling of any court commissioner, with notice to the opposing party and guardian ad litem, provided that said motion is filed with the assigned judge within twelve (12) days of the date the written decision was signed. All decisions, orders, and rulings of court commissioners assigned to this division shall be prepared, dated and signed within five (5) days of the hearing date.

Check with your county courthouse about the specific rules in your county to make sure you file a timely and complete motion.

D. MOTION FOR RECONSIDERATION OR APPEAL:

If a judge issues a temporary or final order, that fails to maximize placement with each parent, you can file a motion for reconsideration ASAP or an appeal within 45 days of the court's written order.

A motion for reconsideration is a much less expensive and complicated step than a formal appeal of the decision. It is our understanding that judges rarely will change their original order unless there are very compelling arguments of an error or circumstances.

A motion for reconsideration or Appeal should identify the specific portion of order you want to be reconsidered, and should include reasons why you believe the court made an error in applying the law. (These could be the ones discussed in the above brief, if the court did not apply the law according to the court's responsibility as discussed above.)