HARRIS DIVORCE & FAMILY LAW

WHEN CAN I FILE FOR A MODIFICATION OF CHILD CUSTODY OR VISITATION?

It is very common for a parent to seek a modification of child custody, or visitation, at some point in the years following a divorce. Either parent can file for a modification when there has been a substantial change in circumstances. Such changes include, but are not limited to, one party relocating such that the original parenting plan is unmanageable, or consistent failure of one party to abide by the existing parenting plan. A modification of visitation is allowed even without a showing of a substantial change, but some limitations apply. The Court will always assess any potential modifications using the "best interest of the child" standard.

In cases where one parent is willfully violating the parenting plan, it may be appropriate to file a contempt case. The Court cannot order a custody modification as part of a contempt case so separate cases must be filed in order to resolve the contempt and to modify an existing order for child custody.

A modification may also be appropriate when a child, age 14 years or older, signs an Affidavit of Election. However, the Court is not obligated to honor a child's Affidavit and will consider all factors pertaining the best interest of the child.

A modification of child custody will naturally result in a modification of the child support award. When the non-custodial parent is awarded more or less parenting time, the child support award will likely be recalculated accordingly. As such, it is important to fully discuss all possible outcomes with an attorney prior to filing a modification case.

O.C.G.A. § 19-9-3

A modification must be filed in the county where the Defendant resides

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A modification is proper when there is a substantial change in circumstances

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A child who is 14 years or older may sign an Affidavit, electing to live with one parent

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