

Family Law

Court Procedure Booklets



If the parties disagree

Court Services Information

Court Services Branch: 667-5441 (toll-free 1-800-661-0408, extension 5441)

Sheriff's Office: 667-5365 (toll-free 1-800-661-0408, extension 5365)

Maintenance Enforcement Program: 667-5437 (toll-free 1-800-661-0408, extension 5437)

Child Support Guidelines: 667-3066 (toll-free 1-800-661-0408, extension 3066)

Law Library: 667-3086 (toll-free 1-800-661-0408, extension 3086)

Legal Information

The Law Line: 668-5297 (toll-free 1-800-668-5297)

Legal Aid: 667-5210 (toll-free 1-800-661-0408, extension 5210)

Lawyer Referral Service (Law Society of Yukon): 668-4231

Yukon Public Legal Education Association (also called the Law Line): 867-667-4305 (toll-free 1-866-667-4305)

Family Support Services

Family Violence Prevention Unit: 667-3581 (toll-free 1-800-661-0408, extension 3581)

Kids Help Line: 1-800-668-6868

Parents Help Line: 1-888-603-9100

Victoria Faulkner Women's Centre: 667-2693

Yukon Family Services Association (YFSA) – Counselling: 667-2970 (call collect outside Whitehorse) YFSA also provides workshops on parenting after separation

Part 1. Services

Some of the offices that deal with child support matters are in the Court Services Branch of the Yukon Department of Justice. These offices include the court registry, the Maintenance Enforcement Program, the Child Support Guidelines Office, the Sheriff's Office and the Law Library. All of these offices are in the Law Courts Building on Second Avenue (between Wood Street and Jarvis Street) in Whitehorse. The Court Services mailing address is Box 2703, Whitehorse, Yukon Y1A 2C6.

This booklet does not replace a lawyer and cannot teach you everything you need to know. You should seek legal advice even if you decide to proceed without a lawyer.

About this booklet

This booklet is one of a series to help you if you are representing yourself in a court procedure to deal with a family law matter. This particular booklet is about changing an existing child support order (if the parties disagree).

Either party may apply to change a child support order and both parties have the right to agree with the other's application or to oppose it. The judge who reviews the application to change the order will use the information that you provide, the response from the other party and the Child Support Guidelines tables to come to a decision on the application.

Forms are part of the information package with this booklet. You can also ask for the forms from Yukon Court Services. For forms on-line, go to: www.justice.gov.yk.ca.

The information in this booklet is believed to be correct as of its date of publication. Please note, however, that although this booklet is written to help you through the court process, it does not replace the advice of a lawyer in private practice or through Legal Aid. You may also get information from the Yukon Public Legal Education Association (YPLEA), also called the Law Line. You should also note that the Law Society of Yukon has a list of lawyers who will provide a half hour session for a set rate. Further, some lawyers do "pro bono" work (free or at a reduced rate). Telephone numbers for all of these organizations are listed on page 2.

Yukon court system

The Yukon court system includes:

- Yukon Supreme Court hears civil and criminal matters such as divorce, adoption and most child support matters, and appeals of decisions from the Territorial Court;
- Territorial Court deals with most adult criminal prosecutions under the Criminal Code of Canada and other federal statutes, has jurisdiction over child protection matters under the Yukon Children's Act;
- Youth Court a part of the Territorial Court that deals with young offender matters;
- Justice of the Peace Court a part of the Territorial Court that deals with a range of matters such as issuing search warrants, receiving pleas, conducting sentencing hearings and other responsibilities of a Justice of the Peace;

- Small Claims Court a part of Territorial Court that hears civil cases when the amount of money or value of personal property being claimed is \$5,000 or less; and
- the Domestic Violence Treatment Option (DVTO) a part of the Territorial Court that offers a court-based alternative to dealing with domestic violence that includes counselling for offenders and support for victims and families.

Most child support matters are heard in the Yukon Supreme Court.

Court Services staff, librarians in the Law Library and other government employees cannot provide legal advice. You must consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

Before you begin

Going to court can be a stressful experience. You may be adding to that stress by representing yourself. Furthermore, it will take a lot of time to prepare for court. Court Services staff cannot give legal advice. You may use the Law Library in the Law Courts Building on Second Avenue in Whiteherea, but library staff cannot provide legal advice. This library is on If you have already had a lawyer represent you in court, that lawyer is your lawyer of record. The court assumes that this person is still your lawyer unless you let the court know that you will represent yourself. Ask Court Services staff for the form called Notice of Intention to Act in Person if you want to represent yourself.

Whitehorse, but library staff cannot provide legal advice. This library is open to the public.

This booklet does not replace a lawyer and does not present everything you need to know. It is always helpful to seek legal advice even if you decide to proceed without a lawyer.

Be sure to read booklet 2 in this series (Representing Yourself in Court).

Forms

You will need to complete several documents to prepare for court. Get the forms at Court Services in the Law Courts Building in Whitehorse or on-line at www.justice.gov.yk.ca. These documents may include:

- Application to Vary Corollary Relief or Notice of Motion;
- Notice of Hearing;
- Affidavit; and
- Financial Statement.

After the judge's decision, you will be required to prepare a court order.

Part 2. Steps to change an existing child support order

The process to apply to vary (change) a child support order is a formal one. Some of the legal terms that you will need to understand are defined in booklet 1 of this series (List of Key Words).

A lawyer can help you determine if you have reason to make an application to vary, what evidence you need and the possible outcomes of your application. You may also find information in the Law Library and on the Internet.

Before you proceed with these steps to change an existing child support order, make sure that you have a copy of the original order. If you do not have a copy of your order, you can ask for this from the court registry.

If the original child support order was made in conjunction with a divorce order, the federal *Divorce Act* and the federal Child Support Guidelines apply. Check at the Law Library, call the Law Line or go to the federal government web site at http://canada.justice.gc.ca for information.

If the original child support order was not made in conjunction with a divorce order, you should refer to the Yukon *Family Property and Support Act* and the Yukon Child Support Guidelines (a regulation to the *Family Property and Support Act*). Go to the Law Library or to the Yukon legislation web page at www.gov.yk.ca/legislation/pages/page_f.html. Click on *Family Property and Support Act* and you will see a list that will take you to the legislation and to the Yukon Child Support Guidelines regulation.

Step 1. Gather financial information and prepare a Financial Statement

A Financial Statement needs to be filed in all family court proceedings if support is sought. The Financial Statement must be sworn before a Notary Public. There is a Notary Public at the Sheriff's Office and in the court registry.

Financial information includes everything needed for a judge to determine how much child support should be paid according to the Child Support Guidelines. Your own information includes:

- a copy of personal income tax returns for the last three years;
- a copy of notices of assessment (and reassessment) from the Canada Revenue Agency for the last three years;
- if you are an employee, your most recent statement of earnings indicating total earnings paid to date (including overtime, bonuses, commissions, etc.) or a letter from your employer showing your rate of annual salary or remuneration;
- if you are self-employed, financial statements of business or professional practice (other than a partnership) and a statement showing a breakdown of salaries, wages management fees or other payments or benefits paid out for the three most recent taxation years;

The province of Nova Scotia has produced a video called "Your Day in Court". You can borrow this video from the Law Library in the Law Courts Building. Some of the details in the video may not apply in the Yukon, but the tape provides good information on court behaviour and the court process.

- if you are in a business partnership, confirmation of income, draw and capital in the corporation for the three most recent taxation years;
- if you control a corporation, financial statements of the corporation and a statement showing salaries, wages, management fees or other payments paid, for the last three taxation years;
- if you are the beneficiary of a trust, a copy of the trust settlement agreement and the trust's three most recent financial statements;
- proof of the amount of Social Assistance, Employment Insurance, workers' compensation payments, or any income other than from employment this year;
- any other information you have to show your income; and
- a list of any special expenses you may be asking for under section 7 of the Child Support Guidelines.

Even if the Child Support Guidelines do not seem to require the income information of the person who will be receiving child support, the judge may still require it.

If you need more information, please refer to section 13 (Income) of the Yukon Child Support Guidelines, which are a regulation of the Yukon *Family Property and Support Act*. To get to both of these, go to the Yukon government legislation web page at www.gov.yk.ca/legislation/pages/page_f.html or go to the Law Library.

The other party's information

Bring the same type of information to show the other party's income. To get the other party's financial information, send a letter to that person. You should send the letter by Registered Mail. You need to be able to prove that you have asked for the information before you can get a court order for it.

The Child Support Guidelines say that, when the financial information is asked for in writing:

- the other party has 30 days after the request is received to get the information to you if the other party lives in Canada; and
- the other party has 60 days after the request is received to get the information to you if the other party lives outside Canada.

The Child Support Guidelines also say that you can assume that your written request is received ten days after it is sent. Remember to keep a record of the date when you mailed the request. If you send the request by Registered Mail, you have a receipt that shows this date.

If the other party does not respond to your request for financial information, you may apply for a court order that says that the other party must give the information to you.

To get a court order for the other party's financial information, you would usually file documents at the court registry. In some cases, however, when you are in court for the hearing and the other party does not show up or hasn't filed the required documents before the hearing, you may ask the judge, orally, for an order for income disclosure.

You should note that if you file the Notice of Motion and the Affidavit, the practice is that you give notice to the other person. In unusual cases, however, you do not have to tell the other party that you have applied for an order for income disclosure.

Step 2. Prepare a Notice of Motion OR an Application to Vary Corollary Relief

Depending on your situation, you need to prepare an **Application to Vary Corollary Relief** (page 8) or a **Notice of Motion** (page 9). An Application to Vary Corollary Relief is required if the original child support order was made as corollary relief in conjunction with a divorce order.

If the original order was *not* made in conjunction with a divorce order, you must complete a Notice of Motion to apply to change an existing child support order. The Notice of Motion says what you are requesting from the court, what documents will be presented to support your request and the reason why you are making the request.

Step 3. Prepare a Notice of Hearing

The **Notice of Hearing** (page 10) gives the date and time of the court hearing.

Step 4. Prepare an Affidavit

This is the document that states any information that you want the judge to know. An **Affidavit** (page 12) must be sworn before a Notary Public. There is a Notary Public available at the Sheriff's office and at the court registry.

Be sure that your evidence is complete, accurate, clear and relevant to your application. You must, in all cases, tell the truth. In your Affidavit you can say only things that you know personally to be true or things that you believe to be true (but you must give the reason for that belief). There are serious legal consequences for not telling the truth in a sworn document.

The other party or the other party's lawyer can cross-examine you about anything you include in your Affidavit.

An Affidavit typically contains information such as:

- a statement that you believe your statements to be true;
- the timeframe of your relationship with the other party;
- the names and dates of birth of the children;
- where you live;
- where you are employed; and
- any other relevant information you would like the court to consider.

When you apply to vary a child support order, be sure to include statements in your Affidavit about why you feel the amount of support being paid should be changed.

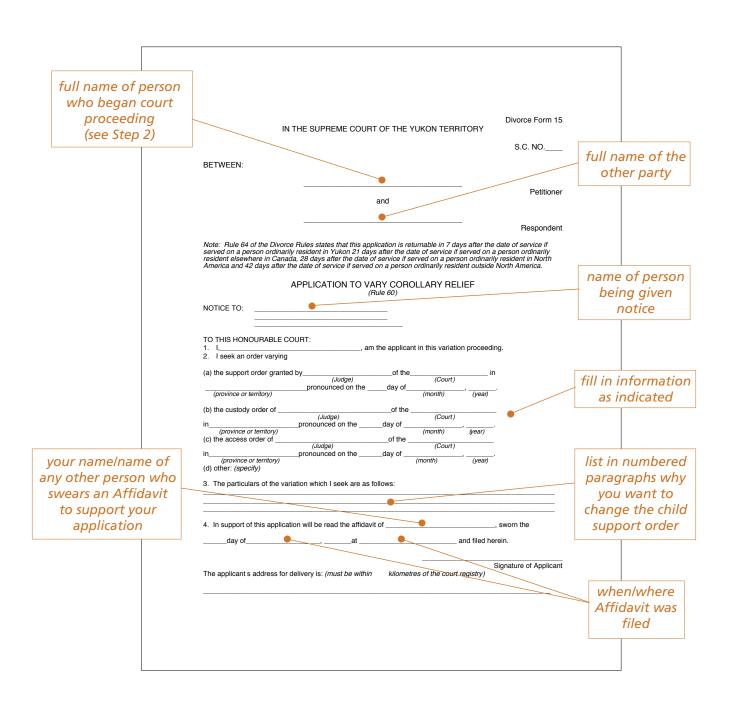
Step 5. Copy your documents

Make sure that you have three copies besides the original of each document.

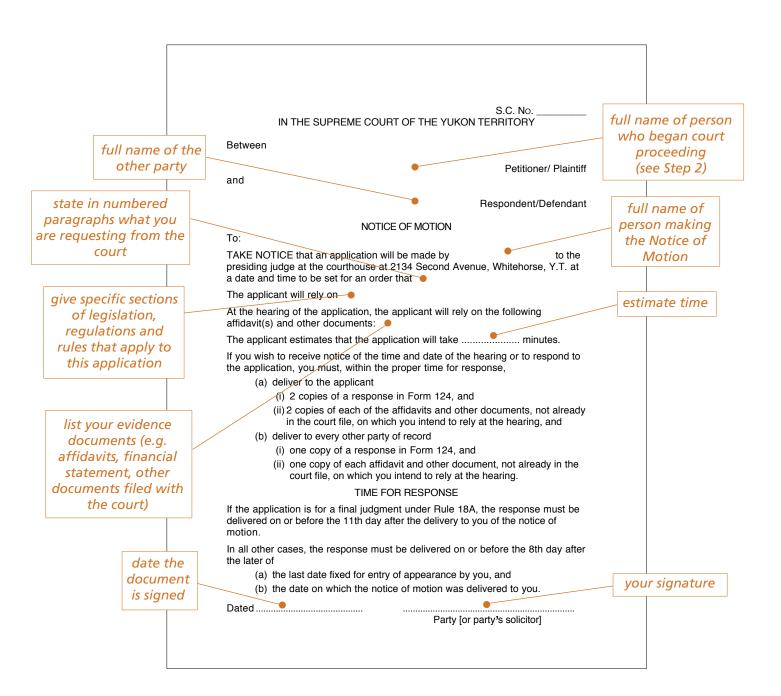
- Application to Vary Corollary Relief or Notice of Motion (form 55) whichever applies in your situation (one copy for each party and one copy to be attached to the Affidavit of Service – the original is kept by the court registry)
- Affidavit (one copy for each party and one copy to be attached to the Affidavit of Service the original is kept by the court registry)
- Financial Statement (one copy for each party and one copy to be attached to the Affidavit of Service the original is kept by the court registry)
- Notice of Hearing form 126 (one copy for each party and one copy to be attached to the Affidavit of Service the original is kept by the court registry)
- Outline form 125 if you indicate on your Notice of Motion or Notice of Hearing that you estimate that the application will take more than 30 minutes in court (Remember, each party completes different parts of the outline.)

You must indicate in the Notice of Motion and the Notice of Hearing the length of time that you feel the hearing will take. If you estimate more than 30 minutes, you, and the other party who opposes the application, must prepare an "outline". The outline (form 125) includes sections on what you (the applicant) are requesting from the court and the reasons why you are making the request and a section that the other party completes to say why he or she is opposing what you are requesting from the court.

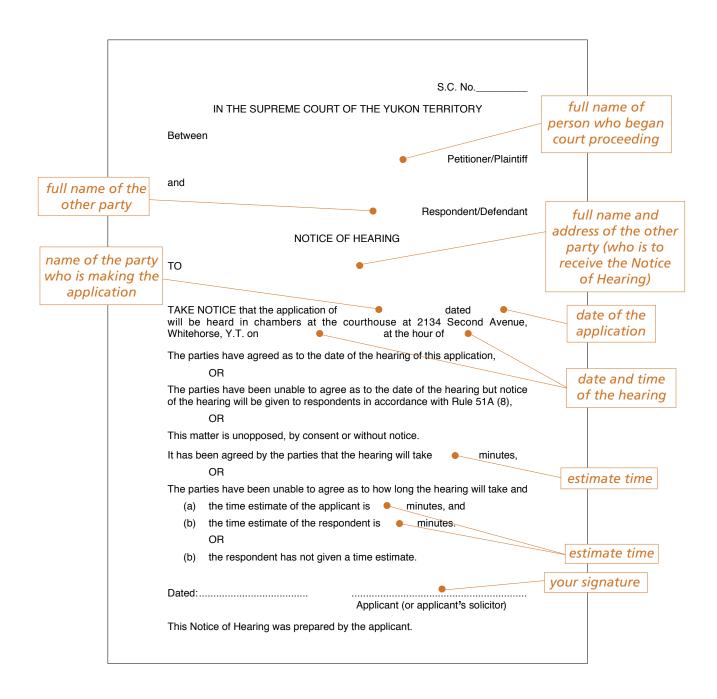
Sample form: Application to vary corollary relief



Sample form: Notice of Motion



Sample form: Notice of Hearing



Step 6. Obtain a court date

Go to the court registry to schedule a hearing. A trial coordinator will set a date for your hearing. If possible, the applicant should consult with the other party to make sure that he or she is available before asking the court registry to schedule a hearing. The date and time of the court hearing are on the Notice of Hearing.

Step 7. File documents

The clerk in the court registry will file your Notice of Motion, Notice of Hearing, Affidavit and Financial Statement and return your copies to you, stamped with the date of filing.

It's important to file the Affidavit of Service before the court date as well so that if the other party does not show up on the court date, the judge has proof that he or she was notified.

Step 8. Get the application to the other party

While you may deliver the court documents you have filed to the other party, the more common procedure is to have the Sheriff's Office serve them. There is a charge for this service, but it takes a lot of stress and responsibility off the applicant. First of all, if the Sheriff's Office serves the documents, that office also prepares and returns the Affidavit of Service to you for you to file with the clerk in the court registry. If you deliver the documents yourself, you must prepare and file the Affidavit of Service yourself. Second, the sheriff is a neutral party. If you deliver the documents yourself, there may be a greater risk of conflict between you and the other party.

In any case, the other party must receive copies of all documents that you file with the court.

Rules of Court: The Yukon Supreme Court uses the British Columbia Rules of Court. You can see these rules on the web at http://www.ag.gov.bc.ca/ courts/civil/sup_crt_rules/rules/ index.htm and in the Law Library. You should be familiar with the Rules of Court that apply to your situation. For example, Rule 51 is about Affidavits. Among other things, Rule 51 tells you how to prepare an Affidavit including how to identify exhibits, what to do if there are alterations to the Affidavit and the contents of an Affidavit. There are other instructions called Practice Directions issued by Yukon Supreme Court.

If you choose to deliver the documents yourself, remember that if you used Registered Mail you should keep your post office receipt and purchase a copy of the other party's signed delivery receipt from Canada Post. You will need to list these as exhibits attached to your Affidavit of Service.

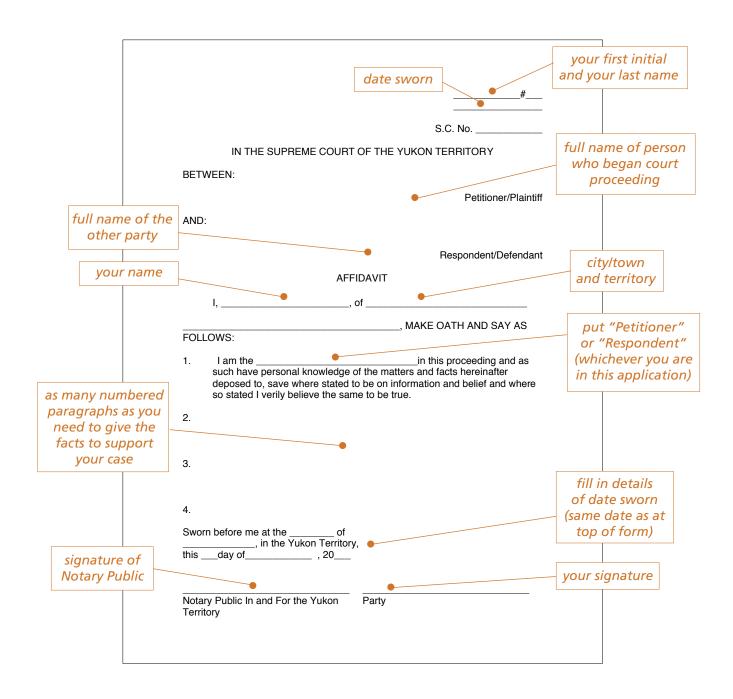
Step 9. Court

If you and the other party come to an agreement before your court date, please go directly to Step 11.

Make sure that you are ready for court. Besides your files and supporting documents, take a pen and paper with you so that you can write down information such as the judge's name, the court room number and date of the hearing. You will also want to write down the judge's decision.

Be sure to bring a copy of the filed Affidavit of Service which includes the Notice of Motion, Notice of Hearing and Affidavit. Have copies of Financial Statements and supporting documents on hand.

Sample form: Affadavit



On the day of court, check the Chambers list to find your courtroom number. Lists are posted in the atrium of the Law Courts Building on Second Avenue in Whitehorse. The list is posted just outside of the Court Services office. Courtrooms one to four are on the second floor.

Your name will appear on the Chambers list. Your name will be called when it is time for your application to be heard. Be sure to be in court at the start time of the list. Even if your name is further down the list, you may be called earlier if hearings before yours proceed quickly or are cancelled.

You will be asked to present your case to the judge. The only facts that you can discuss in court are the ones that are included in your Affidavit or an Affidavit from the other party. Be prepared to answer questions from the judge and from the other party or the other party's lawyer.

Step 10. Prepare the order

After a judge makes a decision, you have to prepare the written **order** (page 14). To do this you may review your notes, or the notes of a person that you may have brought with you to court, or you can purchase a copy of the court clerk's notes from the court registry. The order that you prepare must be typed. You can use the computer in the Law Library to do this.

If both parties were present for the hearing, both parties must sign it, unless the judge has said that one or the other of them does not need to.

Besides other details specified by the judge in your particular case, the Child Support Guidelines say that child support orders must include:

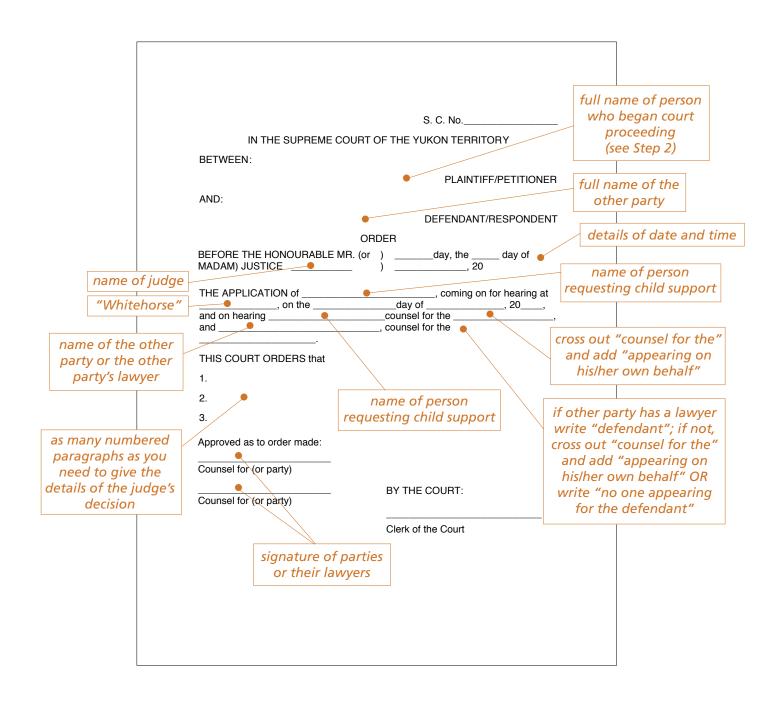
- the names of the people paying and receiving child support;
- the names and birth dates of the children for whom support is to be paid;
- the annual income of people whose income is used to determine the amount of the child support;
- the Child Support Guidelines table amount for that level of income and the number of children for whom support is to be paid;
- the amount determined for a child the age of majority or over;
- the particulars of expenses, the child to whom the expense relates, the amount of the expense or, where the expense cannot be determined, the proportion to be paid in relation to the expense; and
- the date on which the lump sum or first payment is payable and the day of the month or other time when subsequent payments are to be made.

If the other party was represented by a lawyer, the lawyer will sign the order. If the other party will not sign the order, you should speak to a lawyer to find out what you can do. It is possible to return to court to ask the judge who made the order to "settle" it, meaning that the other party will not need to sign it.

The other party's signature on the order does not mean that he or she agrees with the order. It means that the other party agrees that the terms of the order as written by you are substantially the same as the judge's verbal order.

While lawyers must confirm their client's application to be heard in chambers (i.e. most child support applications) the day before it is scheduled to be heard, you, as a self-represented litigant are not asked to do this. If you do not need the court date, however, you should contact the clerk of the court to cancel your hearing.

Sample form: Order



Finally, take the original order and two copies to the court registry for filing. The copies will be returned to you but the original order stays on file. Sometimes the court registry will ask that changes be made to your draft order before it can be filed. When that happens, you will need to make the changes and submit a new signed original with copies.

In situations where it might be ordered, a copy of the filed order is served on the other party. Usually, however, the other party can obtain his or her own copy of the order from the court registry.

Step 11. Prepare a consent order

If you and the other party come to an agreement before the court date, you may want to prepare a consent order that must be signed by both parties to present to a judge for approval. A consent order contains:

- the names of the people paying and receiving support;
- the names and birth dates of the children for whom the support is being paid;
- the annual income of the person paying support, or the income agreed by the parties to be the basis for support payments;
- the Child Support Guidelines table amount for that level of income and the number of children for whom support is to be paid;
- the amount of support agreed to by the parties;
- the date when the support payments will begin; and
- the subsequent dates when support payments must continue to be made (e.g. "on the first day of each month thereafter").

Remember, the judge will refer to the Child Support Guidelines to come to a decision. The amount of child support awarded will be the amount in the Child Support Guidelines tables unless special circumstances exist.

April 2005

This publication is **number 5** in a series published by the Department of Justice. These easy-to-understand publications provide information about court procedures related to family law:

- List of Key Words 1
- 2 Representing Yourself in Court3 General Steps to a Court Order
- 4 Applying for a Child Support Order
- 5 Changing a Child Support Order (if the parties disagree)
- 6) Opposing an Application for Child Support

© 2005 Government of Yukon ISBN 1-55362-234-0 For more information, or to obtain copies of these publications, please contact the following: Government of Yukon, Department of Justice **Court Services** Andrew A. Philipsen Law Centre Second Avenue (between Wood Street and Jarvis Street) Box 2703, Whitehorse, Yukon Y1A 2C6 www.justice.gov.yk.ca

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