

**Administrative Process Action
(APA)
Modifications**

2017 CFSC

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APA MODIFICATION

LEGAL AUTHORITIES

- ✘ §26-13.5-112, C.R.S. (APA statute)
- ✘ §26-13-121, C.R.S. (Child Support Enforcement Act)
- ✘ Volume 6.714

REVIEW OF AN APA ORDER

- ✘ From the time a Review is opened on ACSES through the determination of the Review results the review process for an APA order is identical to the process for reviewing a judicial order.
- ✘ The right to Request a Review and the requirements of a valid Request for Review (or denying a review) are also identical.

REVIEW PROCESS

× APA

- × Review Opened
- × Notice of Review delivered
- × 30 days to complete Review
- × Challenge period
- × Review results determined

× Judicial

- × Review Opened
- × Notice of Review delivered
- × 30 days to complete Review
- × Challenge period
- × Review results determined

....and next.....

This is where the processes.. diverge...

HOW APA ESTABLISHMENT DIFFERS FROM REVIEWS (APA MODIFICATIONS)

Establishment

- ✘ Documentation/Evidence
 - + No evidence is given to the other party
- ✘ Only the Obligor's agreement is needed for a stipulated order
- ✘ Both "good cause" and "standard continuances"
- ✘ No challenges
- ✘ No Post-filing objection period
- ✘ 30 day notice of negotiation conference

Reviews

- ✘ Documentation/Evidence
 - + What ever is used to calculate the guidelines is given to the other party
- ✘ Both parties must agree to a stipulated order
- ✘ Only one "good cause" continuance (only 30 days)
- ✘ Challenges (unlimited)
- ✘ Post-filing objection period (15 days)
- ✘ 15 day notice of negotiation conference

NO CHANGE REVIEW RESULTS

- ✘ In both APA & Judicial cases, if the review results are that there is not at least a 10% change in the MSO (and no need to add/change the medical support provision in the current order), The Post Review Notice (CSE 206) is provided to both parties together with the guidelines worksheet and the supporting documentation.
- ✘ If no written challenge is received within 15 days, ACSES will automatically close the review and it will then appear on your Modification Summary report (MM474).

REVIEW RESULTS : CHANGE INDICATED

- ✘ Determine If APA is appropriate (this must be evaluated and re-evaluated as new facts/ evidence arise during the order modification process).
- ✘ If APA is appropriate, the APA modification process will be initiated by using the Main Menu, Establishment / Option K.
- ✘ Then select Option C to add (open) an APA modification action.
- ✘ Generate and deliver to both parties (or attorney of record), via first class mail, the Administrative Process Notice of Financial Responsibility / Modification (CSE 129) and Order (CSE 134) with the guidelines worksheet (set cal rev for 15 days for next step).

APA MODIFICATION: NEXT STEP

- ✘ On the 15th day,
 - + Conduct the Negotiation Conference as scheduled in the notice, **or**
 - + Check to see if both parties have signed and returned a stipulated order, **or**
 - + Determine that a challenge has been filed, **or**
 - + If challenge is filed and/or more documentation is necessary, enter a good cause continuance and re-schedule the Negotiation Conference

OBLIGOR APPEARS AT NEGOTIATION CONFERENCE

- ✘ Obligor will either sign a stipulated (agreed) APA Order of Modification **or**
- ✘ Obligor will refuse to sign a stipulated Order, in which case, you will generate and file with the court, a Motion for Modification

Note: This will make the case judicial and APA can no longer be used on the case. A court hearing will also be requested and notice delivered to all parties.

OBLIGOR DOES NOT APPEAR AT THE NEGOTIATION CONFERENCE

- ✘ If all valid challenges, if any, have been resolved **and** the obligor does not appear at the Negotiation Conference, an APA Default Order (CSE 129) should be entered.

Note: Always use Early Intervention / Reducing Default Order techniques. Make a reminder call to both parties prior to the conference and if necessary make another call if a party does not appear within 15 minutes of the scheduled time. You may use your “good cause” continuance if appropriate. Remember, if the obligor is incarcerated, no default order.

APA

DEFAULT ORDER (MODIFICATION) PROCESS

- ✘ File with the Court:

- + APA NFR

- + Income & Expense Affidavit

- + Guidelines Worksheet

- + Affidavit of Non-Appearance (CSE 136) **and**

- + Default Order

- + Genetic Testing Results, if any.

Note: Set cal rev for 16 days to follow up with court to see if any objection has been filed.

THE POST-FILING 15-DAY OBJECTION PERIOD

- ✘ For both APA Stipulated and Default Orders, there is a 15-day objection period that runs from the date the Order of Modification is filed with the court.
- ✘ Pursuant to 26-13-121 and 26-13.5-112, C.R.S. both parties have the right to object to the Order of Modification (even if they agreed to the order previously).
- ✘ If an objection is timely filed, the court may (1) overrule the objection, (2) change the order or (3) schedule a hearing.

Note: For default orders of modification both the approval of the court and passage of the 15-day period apply!

APA DEFAULT ORDER (MODIFICATION) PROCESS (CONT.)

- ✘ Otherwise, the same rules/law/procedures apply for APA Default Orders of Modifications as for APA Establishment Default Orders.
- ✘ “Curable” defects (i.e. forgot to file Affidavit of Non-Appearance) should be fixed immediately.
- ✘ “Incurable” defects: You must start the review/modification process all over again.
- ✘ When judge “approves” the default order, the case stays “APA” appropriate.

APA MODIFICATIONS & ACSES / DISH

- ✘ APA – Custodian of the Record
 - + It may or may not change in a Modification action
 - ✘ If it does, complete the CSE 160 and file all original APA documents with court
 - + Don't forget the Legal Process Code if the case does go judicial
- ✘ Troubleshooting Mods (Handout)

QUESTIONS?

Thanks!

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