

F.C.A. §§ 652, 654  
D.R.L. §240

General Form GF-40a  
(Order on Petition for Modification of Order of  
Custody or Visitation Made by Family Court or  
Supreme Court)<sup>1</sup>

9/2009

At a term of the Family Court of the State of New York  
held in and for the County of \_\_\_\_\_, at  
New York, on \_\_\_\_\_,

PRESENT:

Hon.  
Judge

.....  
In the Matter of a Proceeding for  
Custody Visitation under  
Article 6 of the Family Court Act  
Section 240 of the Domestic Relations Law

Docket No.

FINAL ORDER  
TEMPORARY ORDER  
ON PETITION FOR  
MODIFICATION OF ORDER OF  
CUSTODY VISITATION  
MADE BY FAMILY COURT  
SUPREME COURT

Petitioner,

-against-

Respondent

.....  
NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY RESULT IN  
INCARCERATION FOR CRIMINAL CONTEMPT.

The above-named Petitioner having filed a petition in this Court seeking to modify a  
judgment order, dated \_\_\_\_\_, \_\_\_\_\_, granting custody visitation, made by the  
Supreme Court of the State of New York, \_\_\_\_\_ County, Index No.  
Family Court of \_\_\_\_\_ of the State of New York, \_\_\_\_\_ County, Docket No.

And the name(s) and date(s) of birth of the child(ren) involved are:

NAME DATE OF BIRTH

And the Respondent having: appeared with counsel without counsel  
not appeared not appeared, but counsel appeared;

[Applicable where Order had been made by Supreme Court]: And the Court having found  
that under the terms of the judgment order of the Supreme Court, the Supreme Court has not  
retained exclusive jurisdiction to modify the judgment order; and

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<sup>1</sup> If the order was entered by a Court outside New York State or by a tribal court, use Form *UCCJEA-10*.

**[Check applicable box(es)]:**

And the Court having searched the statewide registry of orders of protection, the sex offender registry and the Family Court's warrant and child protective records, and having notified the attorneys for the parties and for the child [check if applicable]: and the following self-represented party or parties [specify]: of the results of these searches;

And the Court having considered and relied upon the following results of these searches in making this decision [specify; if no results found, so indicate]:

**[Applicable to TEMPORARY orders only]:** And the Court, having dispensed with the search of the statewide registry of orders of protection, the sex offender registry and the Family Court's warrant and child protective records because these databases had been reviewed within the past 90 days;

**[Applicable where a party had made an allegation of domestic violence or child abuse; findings must be stated on the record, included in a written decision OR included in this order; check applicable box]:**

And the Court having explained its findings on alleged domestic violence or child abuse on the record;

And the Court having issued a written decision containing its findings on alleged domestic violence or child abuse;

And the Court having found that the allegation that [specify party]: had committed domestic violence or child abuse against [specify party or child(ren)]:

was not proven by a preponderance of the evidence, and having considered the effect of such domestic violence or child abuse upon the best interests of the child(ren) and relevant facts and circumstances as follows in making this order [specify how findings, facts and circumstances were factored into this Order]:

**And the matter having duly come on to be heard before this Court;**

**NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, this Court finds and determines that:**

Since the entry of the judgment order sought to be modified, there [check applicable box]: has been the following change of circumstances [specify; if party returned from active military service, so indicate]:

has not been a change of circumstances.

**[Applicable to cases where Petitioner is a relative or other non-parent and where hearing on modification petition was consolidated with child protective dispositional or permanency hearing, pursuant to F.C.A. §§1055-b or 1089-a; delete if inapplicable]:**

Termination of the order placing or remanding the child(ren) pursuant to Article 10 or 10-A of the Family Court Act  will  will not not jeopardize the child(ren)'s safety and  is  is not in the best interests of the child(ren).

The child(ren)'s birth mother  has  has not consented to the award of custody to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek custody of the child(ren) [specify]:

The child's legally-established birth father  has  has not consented to the award of custody to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek custody of the child(ren) [specify]:

The child has been living with the following foster parent(s)[specify]:  
for a period in excess of one year, who has/have has/have not consented to the award of custody to the Petitioner.

The local department of social services, the petitioner in the related  child abuse or neglect  permanency proceeding  has  has not consented to the award of custody to the Petitioner.

The attorney for the child(ren) [specify]: \_\_\_\_\_ in the related  child abuse or neglect  permanency proceeding  has  has not consented to the award of custody to the Petitioner.

**And this Court further finds and determines that [specify]:**

**NOW, therefore, it is hereby ORDERED that the petition for modification is denied and the petition is DISMISSED.**

**ORDERED that the petition for modification is GRANTED and the judgment order, dated \_\_\_\_\_, is modified as follows [specify]:**

\_\_\_\_\_ ; and it is further

**[Applicable to cases involving a party or parties in the military; delete if inapplicable]:**

**ORDERED** that, since "Petitioner" Respondent is on active duty, deployed or temporarily assigned to military service and since such service affects such party's ability to act as a joint or primary custodian of the child(ren), the return of such party from such active duty shall constitute a substantial change of circumstances sufficient to entitle such party to a review of this Order for possible modification if in the child(ren)'s best interests, unless the parties and child(ren)'s attorney have otherwise stipulated or agreed; and it is further

**ORDERED** that during the period of active military service, deployment or temporary assignment, the party on such duty shall be permitted the following contact and visitation with the child [specify, including electronic communication and visitation during military leaves]:

\_\_\_\_\_ ; and it is further

**[Applicable to cases where hearing on modification petition was consolidated with child**

**protective dispositional or permanency hearing, pursuant to F.C.A. §§1055-b or 1089-a; delete if inapplicable]:**

**ORDERED** that the following local department of social services [specify]:  
and the following attorney for the child(ren)[specify]: shall be notified and shall  
be made parties to any subsequent proceedings for modification, enforcement or termination of the Order;  
and it is further

**[Applicable to temporary orders]: This Order shall expire** [check applicable box]:  
on the following date [specify]: upon issuance of a further or final order in this case.

**AND IT IS FURTHER ORDERED that**

ENTER

Dated:

\_\_\_\_\_  
Judge of the Family Court

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed ]: \_\_\_\_\_
- Order received in court on [specify date(s) and to whom given]: \_\_\_\_\_