

# INSTRUCTIONS FOR FILING A MOTION FOR MODIFICATION OF AN EXISTING ORDER

*More information is located in the Lummi Code of Law 3.05.020*

A separate instruction sheet explains all the types of motions that can be filed after judgment is entered. Read that instruction sheet: "Instruction for Post-Order Proceedings (Modification, Reconsideration, Relief From Judgment, Correction)" to make sure that you wish to proceed by filing a "Motion for Modification of an Existing Order."

1. The case must have been heard originally in the Lummi Tribal Court.
2. The court must have continuing jurisdiction over the matter. The matter cannot have been dismissed by the court.
3. Prepare the "Motion for Modification of an Existing Order" and the "Notice Of Motion For Modification" (court forms are available).
4. If you have a copy of the original order, please attach a copy to your "Motion for Modification of an Existing Order." If you do not have it, you must at a minimum provide the Court Case Number for the case.
5. Review the information sheet: "ACCESS TO THE COURTS – Information For Parties About Civil Cases," and follow the instructions for service of a summons in order to serve the motion and notice. You have responsibility for service of the summons and motion.
6. The opposing party will have 21 days to respond.

**SHORTENED TIME – alternative.** If you are requesting a shortened time (from 21 days) for the opposing party to respond, you can file an "Ex Parte Application for Hearing on Shortened Time." A court form is available. If the court finds good cause to shorten the time, then the "Notice of Motion for Modification" form served on the opposing party needs to be changed to show the shortened time the judge is setting for a response.

INFORMATION SHEET – MODIFICATION OF EXISTING ORDER

Court Form XO – 02 6/23/11

Lummi Tribal Court  
2616 Kwina Road  
Bellingham, WA 98226  
(360) 384-2305

**INSTRUCTIONS FOR POST-ORDER PROCEEDINGS  
(MODIFICATION, RECONSIDERATION, RELIEF FROM JUDGMENT, CORRECTION)**

There are court forms available for each of the following procedures. Please request the appropriate form from the Clerk of Court's Office.

**I. MOTION FOR MODIFICATION OF AN EXISTING ORDER (Form XO-03)**

1. In some types of cases, the Court retains jurisdiction over a case after entering a "final order" – such as in child support or child custody cases. The matter cannot have been dismissed by the Court. The original case must have been heard in the Lummi Tribal Court. Unless the Lummi Code provides for a different procedure for the specific type of case (e.g. Child Support), the general rule that applies is LCL 3.05.020:

3.05.020 Modification of Existing Orders

In any case where the court has continuing jurisdiction, a party may move the court for an order modifying a previously entered order, judgment, or decree.

(a) A motion to modify shall be served in the same manner as a complaint, and shall include a notice that the person seeking the modification may be granted the relief he desires if the opposing party fails to appear or respond in writing.

(b) Unless shortened by the court on a showing of good cause, the time to answer a motion to modify will be the same as for answering a complaint.

2. There is a separate instruction sheet to assist in filing this type of motion: "Instructions for Filing a Motion for Modification of an Existing Order."

**II. MOTION FOR RECONSIDERATION OF JUDGMENT (Form XO - 04 )**

Within 7 days after a judgment is final, a party may request the Court to reconsider a final judgment. The period is calculated from the date that the order is file-stamped by the Clerk's Office. LCL 3.09.010(a) governs this procedure. The party requesting reconsideration must show good cause for the Court to reconsider its order. If good cause is shown, the judge may grant a new hearing or reconsider and change the judgment.

**III. MOTION FOR RELIEF FROM JUDGMENT (Form XO- 05)**

Within a reasonable period, no later than one year after the entry of an order, a party may request the Court to provide relief from a final judgment. The period is calculated from the date that the order is file-stamped by the Clerk's Office. LCL 3.09.010(b) governs this procedure. The party requesting relief from judgment must show one of the following:

(b) On the motion of a party and upon terms that are just, the court may relieve a party from a final judgment for the following reasons:

(1) The original judgment was based on or reached as a result of mistake or excusable neglect; or

(2) There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case;

(3) Fraud;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

**IV. MOTION FOR CORRECTION OF CLERICAL MISTAKE (Form XO - 06)**

At any time, a party can request the Court to correct a clerical mistake in a judgment or order arising from oversight or an omission.

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2  
3 **IN THE TRIBAL COURT**  
4 **FOR THE LUMMI NATION, WASHINGTON**

5  
6 \_\_\_\_\_  
7 **Plaintiff / Petitioner,**

8 and

9 \_\_\_\_\_  
10 **Defendant / Respondent.**

Original Case No.: \_\_\_\_\_

**MOTION FOR MODIFICATION OF  
EXISTING LUMMI TRIBAL COURT ORDER**

11 **I. MOTION**

12 The under-signed party requests the court to issue an order modifying an existing order entered on  
13 \_\_\_\_ / \_\_\_\_ / \_\_\_\_ by the Lummi Tribal Court. I am the  Plaintiff / Petitioner  Defendant  
14 / Respondent in this case. The existing order provides that: \_\_\_\_\_

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17 I request the following modification to that order: \_\_\_\_\_

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24 The basis for my request is (*attach additional sheets if needed*): \_\_\_\_\_

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The original order  is  is not attached. *(It is preferred that the original order be attached if it is available.)*

**II. DECLARATION**

I swear under penalty of perjury under all applicable civil and criminal laws that the statements in this Motion and any attachments to this Motion are true and correct to the best of my knowledge, information and belief, formed after reasonable inquiry.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

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4 **IN THE TRIBAL COURT  
FOR THE LUMMI NATION, WASHINGTON**

5  
6 \_\_\_\_\_  
7 vs. Plaintiff / Petitioner,  
8 \_\_\_\_\_  
9 Defendant / Respondent

Case No.: \_\_\_\_\_

**NOTICE OF MOTION FOR MODIFICATION**

10 **TO: OPPOSING PARTY:**

11 **YOU ARE HEREBY GIVEN NOTICE** that a Motion for Modification of an Existing Order has  
been filed in the above-named court. A copy is attached to this Notice.

12 If you fail to appear or respond in writing within **21 days** after the date this notice was served on  
13 you, the Petition for Modification may be granted.

14 Dated: \_\_\_\_\_

15 \_\_\_\_\_  
REQUESTING PARTY'S SIGNATURE

16 \_\_\_\_\_  
[PRINTED NAME]

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19  
20 **FILE ORIGINAL OF YOUR RESPONSE  
21 WITH THE CLERK OF THE COURT AT:**

**SERVE A COPY OF YOUR RESPONSE TO:**

22 Lummi Nation Tribal Court  
23 2616 Kwina Road  
24 Bellingham, WA 98226

Requesting Party: \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

25 **NOTICE OF MOTION FOR MODIFICATION OF  
EXISTING ORDER**

Court Form XO - 03 6/23/11

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