

SELF-HELP
CUSTODY OR VISITATION PETITION
PACKET

Includes:

Instructions:
"Motion to Establish Custody or Visitation"

"Notice of Hearing"

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In Re the children of:

_____,
Petitioner,

and

Civil Action No.: _____

_____,
Respondent.

**PETITION TO ESTABLISH CUSTODY
OR TO ESTABLISH VISITATION**

1. The parties are the parents of the following child(ren): (Please state each child's full legal name, date of birth, and check one status box. If you need to add more children please write "See Attached" and attach a sheet of paper with the same information.)

 born during marriage paternity established by court order paternity admitted other (explain)

 born during marriage paternity established by court order paternity admitted other (explain)

 born during marriage paternity established by court order paternity admitted other (explain)

 born during marriage paternity established by court order paternity admitted other (explain)

2. The last state in which the child(ren) lived for six months in a row is West Virginia.

3. The child(ren) or the respondent live in the same county as listed at the top of this page.

4. The petitioner is a fit and proper person to have visitation with the child(ren).
(Check this box if you are trying to establish visitation.)

5. The petitioner is a fit and proper person to have custody of the child(ren).
(Check this box only if asking for custody and only if true.)

6. The petitioner is the primary caretaker of the child(ren).
(Check this box only if asking for custody and only if true.)

7. The respondent is not a fit and proper person to see the care, health, maintenance, and education of the child(ren).
(Check this box only if asking for custody and only if true.)

PRAYER

WHEREFORE it is prayed that the Court:

- [] 1. Grant the petitioner custody of the child(ren);
- [] 2. Order visitation according to the schedule ordered by the court.
- 3. Set child support based upon the income shares child support formula.

_____ Date: _____
Signature

Print Name

Address

_____ City State Zip

VERIFICATION

The undersigned named in the foregoing pleading, after being first duly sworn, says that the facts and allegations therein contained are true, except insofar as they are therein stated to be on information and belief, and that insofar as they are therein stated, they are believed to be true.

Signature

_____ Taken, sworn to and subscribed before me this date _____.

My commission expires _____.

Notary Public

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

In Re the children of:

_____,
Petitioner,
v.
_____,
Respondent.

Civil Action No.: _____

NOTICE OF HEARING

TO: _____

You will please take notice that there will be a hearing in the above-styled civil action on the relief sought in the attached Petition on this date _____, at ___ o'clock __.m. before the Honorable _____, Family Law Master of this Circuit Court in the _____ County Courthouse, _____, West Virginia, at which time and place you may appear and take such action as may be necessary to protect your interests. You are not required to appear. However if you do not appear the Court may give the relief sought in the attached motion even if you do not appear.

Signature

Print Name

Address

City State Zip

Date: _____

CERTIFICATE OF SERVICE

I, _____, Petitioner in the foregoing action hereby certify that I have sent a copy of this **Notice of Hearing** to the Respondent at the above address by depositing a true copy of the same in the U.S. Mail, postage prepaid, this date _____.

Signature

INSTRUCTIONS FOR SELF HELP CUSTODY OR VISITATION ORDER

INTRODUCTION

The following forms were prepared to help people who have difficulty affording a lawyer but need to get simple custody or visitation problems before the Family Law Master for resolution.

You should file this Petition in the Family Law Master Court or Circuit Court of the county where the child or the other parent lives, if the child has not lived in West Virginia for the last six months you should call a lawyer to be sure where to file these papers. If you think there is a good reason why the case should be somewhere else, then you need to contact a lawyer first.

DIRECTIONS

1. Fill out the top of the "Petition . . ." paper and the top portion of the "Notice of Hearing" paper as follows.
 - a. Fill in the first blank at the top of each form with the name of the county where you want the case heard. To use this form, you need to pick the county where the other parent lives or where the child lives. If you do not want to use those counties, you need to consult with a lawyer.
 - b. Make yourself the "petitioner" and the other parent the "respondent". Fill in the blanks with your name and the other parent's name.
 - c. The Circuit Clerk will fill in the Civil Action Number when you take the papers in to file.

2. Fill out the body of the "Petition" paper first.
 - a. Fill in the blanks of Paragraph 1 of the Petition by putting the full legal names of the children. Include their dates of birth and ages. Check just one of the boxes, the one that applies to that child.
 - b. Paragraphs 2 and 3 do not need any information filled in. If Paragraph 3 is not true, consult with a lawyer.
 - c. Paragraphs 4 through 7 are self-explanatory, check the ones that are appropriate.
 - d. In the Prayer section, Paragraphs 1 and 2 check the appropriate box or both boxes that tell the court what you want in your case.
 - e. **STOP!! Do not sign the Petition papers until you are in front of a Notary Public (the Circuit Clerk is probably a Notary Public).**

3. *After you have completed the "Petition" papers, call the Family Law Master office and ask for a court hearing date.*

4. When you have the court hearing date:
 - a. Put the name and address of the other party on the "To" lines of the "Notice" paper..
 - b. Fill it in on the "Notice of Hearing" paper with the hearing date, time, name of Judge, county name and city name.

(If you have questions about filling in the other blanks on the Notice form ask the Circuit Clerk.)

5. Then take the Petition and the Notice of Hearing papers to the Circuit Clerk's office.
 - a. In front of the Circuit Clerk, sign the verification which is attached to the end of the Petition papers.
 - b. There are a few other papers that have to be filled out at the Circuit Clerk's office to file with these papers, the Circuit Clerk will be able to give you the correct forms.
 - c. **Ask the Circuit Clerk to file the Petition and to mail a copy, certified return receipt mail, to the other parent.**

***Note:** If the Circuit Clerk or Family Law Master wants to charge you any fees, and if you are low income, ask the clerk to give you an application for a "fee waiver". Fill in this application with your income and expenses. If you are income eligible, the Clerk should approve this request to file your case without paying any court fees.*

6. **Be sure to go to the hearing and be prepared to tell your story.**
 - a. If you need witnesses, they should be subpoenaed. Ask the Circuit Clerk. Subpoenaing witnesses is a good idea if they have to miss work. (Remember, as a general rule you cannot say what someone else told you. That person has to be there themselves.)
 - b. At the end of the hearing the Family Law Master will make a ruling in writing and send it to you. You have the right to appeal that ruling to the Circuit Judge. In the hearing you will be asked if you want to "waive" (give up) the ten day period. **We advise DO NOT WAIVE THE TEN DAY PERIOD.** Only waive the ten day period if 1) you are positively certain you know what the Family Law Master decided and 2) you are satisfied with the decision.

You are always better off to have a lawyer. If you can afford a lawyer you should have a lawyer do this for you. Even before using this form, you should contact a lawyer to see if your case is a case in which it is appropriate to proceed by yourself, and to get some helpful advice. By preparing this form for the public we do not represent that this is the right thing for you to do in your case. The West Virginia State Bar has a lawyer referral service. You may call that number, (304) 558-7991. That lawyer will give you a one-half hour consultation for a minimal charge. To speak to a lawyer for legal information you may call 1-800-642-3617 Tuesdays 6 p.m. to 8 p.m.

Prepared by:
West Virginia Legal Services Plan, Inc.