

**SELF-HELP
MODIFICATION OF CUSTODY
PACKET**

Includes:

Instructions:

"Motion to Modify Custody"

"Notice of Hearing"

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

Petitioner,

v.

Civil Action No.: _____

Respondent.

MOTION
TO MODIFY CUSTODY

The parties were divorced by an Order of the Court of this county dated _____ regarding support and custody. A copy of that Order is attached to this Motion.

1. The parties are the parents of the following child(ren): _____

2. The most recent custody order of the Court gave custody of the child(ren) to _____
_____.
3. The custody provisions provided in the Order(s) are in the Order(s) attached.
4. There has been a change in circumstances and the parties no longer have a mutual ability to reach shared decisions regarding the best interest of the child(ren) in that: _____

_____.

PRAYER

WHEREFORE, it is prayed:

1. The previous Order of this Court be modified to granting _____ custody of the child(ren);
2. A schedule of visitation be granted to _____.
3. The Court 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 ____ day of _____, 2____.
My commission expires _____.

Notary Public

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

_____,
Petitioner,

v.

Civil Action No.: _____

_____,
Respondent.

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 Motion on this date _____, at _____ o'clock __.m. before the Honorable _____, Family Law Master of the Circuit Court of _____ County, West Virginia, 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

Date: _____

Print Name

Address

City State Zip

CERTIFICATE OF SERVICE

I, _____, Petitioner/Respondent in the foregoing action hereby certify that I have sent a copy of this **Notice of Hearing** to the Petitioner/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 MOTION TO MODIFY CUSTODY

INTRODUCTION

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

You have to make this Motion in the Family Law Master Court of the county where the most recent custody order was entered, even if you have both moved to other counties or states. If you think there is a good reason why the case should be somewhere else, then you need to contact a lawyer.

DIRECTIONS

Go to the Circuit Clerk's office for the county where the most recent custody case was entered. Get a copy of the most recent order in your divorce that dealt with custody or visitation. If there is more than one order that has dealt with custody or visitation, get the others also. If you have a question about whether an order deals with custody or visitation, get it too. It is O.K. to have too many orders. Having one missing could be a problem. Get copies of all the orders that would relate to custody or visitation.

1. Fill out the top of the "Motion . . ." paper and the "Notice of Hearing" paper with the same county, names and civil action number as appears at the top of your last order.
2. Fill out the body of the Motion paper first.
 - a. The first paragraph of the Motion is self-explanatory.
 - b. In #1 put the full legal names of the child(ren). Including their dates of birth and ages is helpful.
 - c. In #2 fill in the blanks with the names of the people with custody of the children.
 - d. #3 does not need any information to be filled in.
 - e. In #4 you need to write down what the problem with the previous custody order is. It is best if you state very specifically the problems that are occurring with custody and that it is not happening like it was supposed to.
 - f. In the PRAYER, you need to fill your name in the first blank and the other parent's name in the second blank.
 - g. Sign your name and write in the date. Then print your name and address on the lines provided. **STOP! Warning: Do not sign the "Verification" part of the Motion on the signature line until you are in front of a Notary Public or the Circuit Clerk. See Section "4 a" below for Further Instructions.**
 - h. Attach the old Orders you got from the Circuit Clerk to the Motion

3. After you have completed the "Motion" papers, call the Family Law Master office and ask for a court hearing date. When you have the court hearing date:
 - a. Fill the date, time, and place in the blanks on the "Notice of Hearing" paper.
 - b. Put the name and address of the other party (or if they have an attorney, send it to their attorney) on the "To" lines of the "Notice of Hearing" paper. (If you have questions about filling in the other blanks on the Notice form ask the Circuit Clerk.)
 - c. Fill in the blanks in the "Certificate of Service" section.
4. Then take the Motion and the Notice of Hearing papers to the Circuit Clerk's office.
 - a. **Now, in front of the Circuit Clerk or Notary Public, sign the verification which is at the end of the Motion papers.**
 - b. There may be other forms that need to be attached to these papers, the Circuit Clerk will be able to tell you which other forms you will need.
 - c. Ask the Circuit Clerk to "file" the Motion and Notice of Hearing in your court file 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, tell the clerk to give you an "application for a fee waiver". Fill in your income and expenses and you may be approved for a waiver of fees.

5. Be sure to go to the hearing and be prepared to tell your story.
 - a. If you need witnesses, they can 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 to tell the story.)
 - 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 unless you waive the ten day period. **DO NOT WAIVE THE TEN DAY PERIOD UNLESS** 1) you are positively certain you know what the Family Law Master decided and 2) you are satisfied with the decision.

If you have further questions, you should see a lawyer. The West Virginia State Bar has a lawyer referral service. You may call that number, 558-7991. That lawyer will give you a one-half hour consultation for a minimal charge.

Prepared by:

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