

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

Plaintiff,

v.

Civil Action No. _____

Defendant.

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 the ____ day of _____, 199_, at ____ o'clock __.m, before the Family Law Master of the Circuit Court of _____ County, West Virginia, in the _____ County Courthouse, in the City of _____, 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, but if you do not appear, the Court may nonetheless grant the relief requested.

(signature)

(date)

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

Plaintiff,

v.

Civil Action No. _____

Defendant.

MOTION TO ESTABLISH CUSTODY AND/OR VISITATION

1. The parties are the parents the following child or children:

(list each child and his or her date of birth)

2. By Order entered in this case on _____ (date), the Court recognized that the defendant is the father of the minor child or children listed above, and established the defendant's child support obligation.

3. The Court has not entered an order in this action establishing the custodial or visitation rights of the parties.

4. The undersigned party desires to obtain custody or visitation rights with regard to the minor child or children listed above.

5. The plaintiff defendant (check one and mark through other) is and has been the primary caretaker of the minor child or children.

6. The following facts should also be considered by the Court in establishing custody and/or visitation: _____

_____.

WHEREFORE, the following relief

is requested:

A. That the Court enter an Order granting custody of the minor child or children to the plaintiff defendant (check one and mark through other).

B. That the Court enter an Order granting visitation rights with regard to the minor child or children to the plaintiff defendant (check one and mark through other).

Signature

Name -- type or print

Street or P.O. Box

City State Zip

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF _____, TO-WIT:

The undersigned named in the foregoing Motion, after being first duly sworn, says that the facts and allegations contained therein are true, except so far as they are stated to be on information, and that, so far as they are stated to be on information, he or she believes them to be true.

(signature)

Taken, subscribed and sworn to before me this _____ day of
day of _____, 199__.

My commission expires: _____

Notary Public

INSTRUCTIONS FOR SELF-HELP CUSTODY/VISITATION PACKET

INTRODUCTION --

These forms were prepared to help people who have been involved in cases where child support has been set by the Court, but where custody or visitation was not established. Usually, these cases were first brought by the Child Support Enforcement Division of the West Virginia Department of Health and Human Resources (formerly known as the Child Advocate Office).

People involved in custody or visitation disputes are almost always better off with a lawyer. If you can afford a lawyer, you should probably have a lawyer handle this case for you. Even before using this form, you should talk with a lawyer to see if you can appropriately proceed by yourself and to get some helpful advice. By making this form available to you, West Virginia Legal Services Plan, Inc., does not represent that this is the right thing for you to do in your case.

DIRECTIONS FOR COMPLETING THE FORMS --

First, get a copy of the most recent order in your case. The name and case number of the case should appear at the top of the first page. You will need to copy the name and case number from the order onto your Notice of Hearing form.

Next, fill in the other party's name and mailing address in the lines following the word "TO:" on the Notice of Hearing.

You will then need to contact the Family Law Master's office and ask for a hearing to be scheduled. Have the name and case number of your case available when you call. Explain to the Family Law Master's assistant that you are asking for a modification of an existing Court order to establish custody or visitation, and that you will be representing yourself. The Family Law Master's assistant will then give you a hearing date and time. Write this date and time in the appropriate blanks on the Notice, and fill in the blanks for the county and city where the hearing will be held. Sign and date the Notice form at the bottom of the page.

On the Motion form, again copy the name and case number of your case, exactly as they appear on your existing order. In the blanks in paragraph 1, fill in the names and birth dates of the child or children involved in this case. In paragraph 2, fill in the blank with the date of the Court's order that first identified the defendant as the father of the child or children.

In paragraph 4, check the box or boxes to show what you want the Court to do. If

you want the Court to decide both custody and visitation, check both boxes.

In paragraph 5, check the box to show who has been primarily responsible for taking care of the children on a day-to-day basis. In figuring out who has been the primary caretaker, you should consider which parent has prepared meals and fed the children; bathed, groomed and dressed the children; purchased, cleaned and cared for children's clothing; provided medical care, including taking the children to the doctor; arranged for the children to spend time with other children; arranged for babysitters when neither parent could watch the children; put the children to bed at night and cared for the children during the night; got the children up and ready in the morning; and disciplined and taught the children.

Ordinarily, the Court will give custody of a child to the parent who has been the primary caretaker of the child. The Court can award custody to the other parent where the primary caretaker is shown to be unfit. "Unfitness" means that the parent is unable or unwilling to (1) feed and clothe the child appropriately; (2) adequately supervise the child and protect him or her from harm; (3) provide decent housing; (4) avoid extreme discipline, child abuse and other mistreatment of the child; or (5) refrain from serious immoral behavior under circumstances that would affect the child. You should be aware that the courts do not consider normal sexual activity outside the presence of the children to be enough to find a parent unfit, even if the parent is not married to his or her sexual partner.

The Court can follow the request of an older child about where he or she wants to live. Generally, the Court will respect the wishes of a child who is at least fourteen years old, and it may consider the wishes of children under the age of fourteen, particularly if they are mature and have good reasons for their choices. The closer a child is to the age of fourteen, the more weight the Court will give his or her wishes. If you want to have a child under the age of fourteen to tell the Court about his or her wishes (or about anything else), you will need to file a request with the Court in advance. The Court will not automatically allow children under fourteen years old to testify.

In paragraph 6, you can include any additional information that you believe will be helpful to the Court in deciding on your request for custody or visitation. If you are claiming that the other party is unfit to have custody or visitation, you will need to explain briefly how he or she is unfit. If you are basing a request for custody on the wishes of the child, you should explain that fact as well. If you do not have enough room in the space provided, you can add another page.

On the next page, check all boxes that apply. If you want the Court to make a decision about custody, check the box beside item A and then mark who you want to have custody. If you want the Court to award visitation, you should check the box beside item B and mark who you want to have visitation rights. If you want to ask for custody, but also ask for visitation in case you don't get custody, you may do so by marking both items A and B, and by adding at the end of item B the words if custody is not awarded

to that party.

Before signing your Motion, go back over it and make sure it is completely true. When you sign it, you will be swearing under oath that everything in it is the truth. You will want to make sure that there are no mistakes.

Next, sign your name and fill in the blanks for your name and address. You will then need to sign the Motion again, in front of a notary public. The notary public will fill out the blanks in the 'verification' part of the Motion form

FILING AND SERVING YOUR PAPERS --

After you have completed the forms, you will need to file them and arrange to have them served on the other party. Because the papers must be served on the other party at least 20 days before your hearing, you will want to make sure you move as quickly as possible after you get your hearing date to have the papers filed and served. Take the original and two copies of the completed forms to the Circuit Clerk's office in the Courthouse of the county where the case must be heard. You should also keep a copy for your own records.

When you take the papers to the Clerk's office, you can ask the Clerk to have the papers served on the other party by certified mail. Ordinarily, there is a fee for having your papers served in this way, but you may qualify for a waiver of the fee. The Clerk can give you a form to fill out to see if you qualify for a waiver. Because the practice is different from county to county, you may want to ask the Clerk whether they will notify you when the papers have been served or whether you will need to check back to make sure they have been served.

YOUR HEARING --

If your papers are served at least 20 days before the hearing, you should be able to go forward with the hearing as scheduled. At your hearing, you will have the opportunity to explain to the Family Law Master what you want and why you believe you are entitled to it. In presenting your case to the Family Law Master, it is generally a good idea to focus on what is best for the children, rather than on what you want for yourself. For example, if you are seeking visitation, it is probably more effective to point out ways that the visitation would be good for the children, rather than pointing only to the ways that visitation would be good for you.

In addition to telling your own story, you will have the right to present witnesses and other evidence (such as photographs or documents). If necessary, your witnesses can be subpoenaed, to require them to attend. Having a subpoena issued can be a good idea where witnesses might prefer not to attend or where they have to miss work in order to

attend. As a general rule, you cannot say what someone else has told you; that person has to be in Court to say it himself or herself. You will need to ask questions of your witnesses to help them bring out the points you want them to talk about, just like a lawyer would do if you were being represented by a lawyer.

The other party will also have a chance to tell his or her side of the case, and to present witnesses and other evidence. Each side also will have a chance to cross-examine anyone who testifies for the other side. If the other party testifies or presents another witness, you may want to ask questions to try to show that he or she is mistaken, telling only part of the story, or not telling the truth.

After the hearing, the Family Law Master will make a recommended decision, in writing, which will be mailed to you. If neither party files a paper asking the Circuit Judge to review this decision, it can become final in 13 days after it is mailed. If you disagree with the recommended decision of the Family Law Master, you can appeal the decision to the Circuit Judge within 13 days after the decision is mailed. This time limit starts when the decision is mailed – NOT when you receive your copy of it.

If you have further questions, you should consult with a lawyer.