

**SELF-HELP**

**VISITATION ENFORCEMENT/MODIFICATION**

**PACKET**

Includes:

Instructions:

"Motion to Modify Visitation or in the Alternative to Modify Custody"

"Notice of Hearing"

\_\_\_\_\_,  
Petitioner,

v.

Civil Action No.: \_\_\_\_\_

\_\_\_\_\_,  
Respondent.

\_\_\_\_\_  
MOTION TO MODIFY VISITATION OR  
IN THE ALTERNATIVE TO MODIFY CUSTODY  
\_\_\_\_\_

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

2. The parties are the parents of the following child(ren): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The most recent custody order of this Court gave custody of the child(ren) to \_\_\_\_\_  
\_\_\_\_\_

4. The Court gave visitation to \_\_\_\_\_  
\_\_\_\_\_

5. The provisions of visitation provided in the Order(s) are in the Order(s) attached.

6. The party with custody of the child(ren) has failed to comply with the required visitation in that  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. There has been a change of circumstances that require the visitation provisions to be changed in  
that \_\_\_\_\_

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PRAYER

WHEREFORE it is prayed that the Court:

- A. Order the visitation provisions of the previous Order of this Court to be followed.
- B. Order the visitation provision of the previous Order of this Court to be modified to the

following: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- C. In the alternative, if the previous visitation provisions cannot be enforced or modified so that the person with custody complies with them, change custody of the child[ren] to \_\_\_\_\_

D. Set child support based upon the current 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 \_\_\_\_\_.

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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 the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ 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 VISITATION ENFORCEMENT/MODIFICATION

## INTRODUCTION

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.

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

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. Paragraph 1 of the Motion is self-explanatory.
  - b. In Paragraph 2 put the full legal names of the child(ren). Including their dates of birth and ages is helpful.
  - c. Paragraphs 3 and 4 are self-explanatory. Fill in the blanks.
  - d. Paragraph 5 does not need any information to be filled in.
  - e. Check the box at Paragraph 6 if the problem is that the other parent does not comply with the existing visitation order. It is best if you state very specifically the days, etc. of visitation that were ordered by the Court, and what the other parent did that resulted in the visitation not happening like it was supposed to.
  - f. Check the box at Paragraph 7 if you need a change in the visitation order because

someone has moved, because working schedules have changed, or because other provisions of the current court order are causing problems and need to be changed. Be specific about what the provisions were that are not working and why they are not working. You can attach another sheet of paper with further explanation if you want.

- g. In the Prayer section check the box for Paragraph "A" if you have checked the box for Paragraph 6.
  - h. Check the box for Paragraph "B" if you have checked the box for Paragraph 7. If you check Paragraph "B", you need to state very specifically the new visitation provisions that you would like.
  - i. Check Paragraph "C" and write your name in the blank if you do not have custody, but would like custody if visitation cannot be worked out.
  - j. Sign your name and date the Motion. Then print your name and address on the lines provided. **STOP! Warning: Do Not Sign Your Name to the Part That Says "Verification". You must Sign Your Name on this Section in Front of the Circuit Clerk. See Section "4a" of These Instructions.**
  - k. Attach the 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, county, and place in on the "Notice of Hearing" paper.
  - b. Put the name and address of the other party 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 "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 accompany these papers, the Circuit Clerk will be able to give you those forms.
  - c. Ask the Circuit Clerk to file the Motion and Notice of Hearing 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.)
  - 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.

Prepared by:

West Virginia Legal Services Plan, Inc.