

Contempt Petition

*** IMPORTANT INFORMATION ***

YOUR RIGHTS MAY BE BETTER PROTECTED WITH THE HELP OF AN ATTORNEY.

You may file a Petition for Contempt without the assistance of an attorney, and represent yourself in Family Court, **BUT** your rights may be better protected with the help of an attorney.

The staffs of the Circuit Clerk's Office and the Family Court are prohibited by law from providing legal advice.

Please notify the Circuit Clerk's Office in advance if you require any special arrangements to fully participate in court proceedings; for example, a language interpreter, hearing or visual aids, or accommodations for physical access.

The Contempt Petition Packet contains Instructions and a Contempt Petition form. Read the instructions carefully, and please write clearly when you fill in the form. If the instructions are not followed, or if the form is not properly completed, your Contempt Petition may be dismissed, or delayed. It's best to read all of the instructions before you start filling out the form. You may want to make a couple of spare copies of the blank form before you start filling it out. You can use these copies to practice on, or if you make an error.

The petition form requires you to provide your name, address, and telephone number. **If you believe your safety, liberty, or health, or the safety, liberty, or health of your children would be put a risk by the disclosure of this information, you may file an affidavit to have the information withheld from all persons except court employees who require the information to carry out their duties.** The affidavit you need to file is the Affidavit for Withholding Identifying Information. You can obtain the affidavit at the Circuit Clerk's Office. You can complete and file the affidavit in the Circuit Clerk's Office at any time, or you can ask the Family Court Judge to enter an order allowing you to withhold the information. If your identifying information is withheld, the other party's papers will be served through the Family Court, and not directly on you.

If the person you name in your Contempt Petition does not live in West Virginia, the Family Court may have limited power to enforce the order you believe is being violated.

STEP 1. DETERMINE IF A CONTEMPT PETITION IS RIGHT FOR YOUR SITUATION.

The first thing you need to do is determine if filing a Contempt Petition is the correct legal action for your situation. For example, if what you want to do is request the court to change the terms of an order, a Contempt Petition is not the correct course of action. To request a change in the terms of a court order, you need to file a Petition for Modification. Modification Packets are available in Family Court and Circuit Clerk offices.

If you want the court to enforce the terms of an order you believe is being violated, filing a Contempt Petition may be the correct legal action. When you file a Contempt Petition, you are asking the court to hold the person named in the petition in contempt of court for failing to obey a court order; and you are asking the court to force that person to obey the order. These are some examples of failures to obey a court order. This is only a listing of a few examples, and does not cover all possibilities. 1. Failure to pay child support, or spousal support. 2. Failure to make payments ordered to carry out equitable distribution of marital property. 3. Failure to follow the terms of a court ordered Parenting Plan.

If you believe filing a Contempt Petition is the correct course of action for your situation, proceed to Step 2.

STEP 2. OBTAIN A COPY OF THE ORDER.

You will need a copy of the court order you believe is being violated, because a copy of the order must be attached to your Contempt Petition. If you do not have a copy of the order, obtain one from the Circuit Clerk's office.

STEP 3. FILL OUT THE PETITION FORM.

You must provide all requested information. The failure to provide all information required on the petition form may prevent you from obtaining a hearing before the court.

Tips on filling out the petition form.

1. Be certain you provide a complete and current address for the person you want the court to hold in contempt. The sheriff's department must serve the Petition on that person by delivering it in person. To do that, the sheriff's department must have a good address. If the sheriff's department cannot find the person and serve the petition, the case will not proceed.
2. If you are claiming the person named in your petition has failed to obey an order requiring the payment of child support, spousal support, or separate maintenance, you **must**: **A.** List the due dates and amounts of payments you claim were not made. **B.** State the total amount past due as of the date you sign the petition. **C.** Attach to your petition a copy of the court order which required the payments you claim have not been made.
3. If you are claiming the person named in your petition has failed to obey the terms of a court ordered Parenting Plan, you **must**: **A.** Explain how the person failed to obey the terms of the court ordered plan. Your explanation must be specific, and you must provide dates on which you

claim the person did not obey the terms of the plan. B. Attach to your petition a copy of the court ordered Parenting Plan.

4. If you are claiming the person named in your petition has failed to obey other terms and conditions of a court order, you **must**: **A. Explain how the person failed to comply with the terms and conditions of the order. Your explanation must be specific, and must include the dates upon which you claim these failures to obey occurred.** **B. Attach to your petition a copy of the order.**

5. After you have finished filling out the form, you **must** sign the petition, and you **must** sign the Verification at the end of the form. You **must** sign the Verification before a Notary Public, or other authorized public official such as a Deputy Circuit Clerk.

STEP 4. TAKE OR MAIL YOUR PETITION TO THE FAMILY COURT.

These are the papers you need to take or mail to the Family Court.

1. Your completed and verified Petition.
2. Copy of the order you believe is being violated.
3. Copies of any documents you believe will prove the order is being violated.

STEP 5. THE FAMILY COURT JUDGE REVIEWS YOUR PETITION.

The Family Court Judge will review your Petition and any documents you file with it, and determine whether to hold a hearing.

The Family Court Judge does not have to hold a hearing. The judge may dismiss your Petition without a hearing if: 1. You have failed to completely and properly fill out and verify the Petition. 2. The judge determines the information you have provided in your Petition fails to make a sufficient case that the person you name has violated a court order.

If the Family Court Judge determines your Petition requires a hearing, a hearing date and time will be set, a Notice of Contempt Hearing / Rule to Show Cause will be issued, the person named in your Petition will be served with a copy of your Petition and the Notice / Rule, and you will receive a copy of the Notice / Rule. **When you receive the Notice / Rule, you MUST immediately go to the Circuit Clerk's Office and pay the \$20 fee for personal service of the Petition and Notice / Rule on the opposing party. If you do not do this, the opposing party will not be served, and if the opposing party is not served, there will be no hearing, and your contempt case will end before it starts.** If you cannot afford to pay the \$20 fee, read the following paragraph. The Notice / Rule will state the date, time, and place of the hearing, and it will inform the person named in your Petition that he or she is required to come to the hearing. At the hearing, you and the person named in your Petition each will be given an opportunity to present your side of the case. Step 6 explains how to prepare for a hearing.

What to do if you cannot afford to pay fees.

If you cannot afford to pay fees, you should ask a Deputy Circuit Clerk for an affidavit to waive fees and costs. You can fill out the affidavit in the clerk's office. The affidavit requires you to list some basic information about your financial situation. A Deputy Clerk can review your completed affidavit while you wait, and tell you if you meet the legal requirements to have your fees and costs waived. If you don't meet these requirements, you must pay fees and costs, but you can ask the Court to review your affidavit later. Criminal charges can be filed against you if you provide false information on this affidavit.

STEP 6. HOW TO PREPARE FOR A HEARING.

If the Family Court Judge decides to hold a hearing on your Petition, you will need to prepare for the hearing. The following paragraphs explain what you should do to make sure you are ready to present your case.

1. Witnesses If you need a witness to testify at the hearing, and you are not certain the witness will come to the hearing voluntarily, you need to obtain a witness subpoena to require that witness will attend. You should request witness subpoenas at least 10 days before the hearing. Witness subpoenas are handled by the Circuit Clerk's Office. To obtain a witness subpoena, you need to provide the Deputy Circuit Clerk with the name and address of the witness, and pay a Clerk's fee of 50¢ per subpoena, and a service fee of \$20 per subpoena. If you cannot afford to pay the fees, read the last paragraph in Step 5.

2. Make a plan for how you will present your case. At the hearing, you will be required to show the person named in your Petition has failed to obey the order you claim is being violated. Depending on the nature of your case, you may need to show that money has not been paid, or that the person has failed in some other way to obey the terms of an order. You prove these things by your testimony, by the testimony of other witnesses, or by documents and records. Make a plan for how you will present your case. Make a list of the things you want to prove, and for each thing you want to prove, list how you will prove it, by witness testimony, or a document, for example.

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