

Enforcing Your Parenting Plan

Note: Use these instructions and forms to make changes to your Parenting Plan.

These instructions and forms may not be right for your case. They can not take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Do not change these forms. If you change the forms, you might lose language you need.

What Forms Will I Need to Enforce My Parenting Plan?

If the other parent is not following your Parenting Plan ordered by the court, you will need to fill out and file the following forms:

- Petition for Contempt
- Supporting Affidavit
- Order to Show Cause
- Request to Serve Documents
- Contempt Citation
- Affidavit of Inability to Pay (only if you cannot afford filing fees)

The **Petition for Contempt** asks the court to force the other parent to follow your parenting plan and punish the other parent for failing to follow the court's order.

The **Supporting Affidavit** tells the court why you need help enforcing your parenting plan. It explains how the other parent has failed to follow your final parenting plan.

The **Order to Show Cause** will be filled out by the judge. This order schedules a hearing on your Petition for Contempt, and tells the other parent that he or she must show up and tell the court why he or she should not be held in contempt.

The **Request to Serve Documents** should be given to your local sheriff or a process server so the other parent can be given copies of your forms.

The **Contempt Citation** will be filled out by the judge. It tells the other parent what the punishment will be for failing to follow your Parenting Plan. It also tells the other parent how to avoid being punished.

The **Affidavit of Inability to Pay** asks the court to waive filing fees in your case.

What Words Do I Need to Know?



Petitioner- A Petitioner is someone who files an action in court. You are the Petitioner in this contempt action.

Respondent- A Respondent is someone who has been filed against in court. The other parent is the Respondent in this contempt action.

Contempt- Contempt is a finding by a court that someone has failed to follow a court order. In your case, you are asking that the other parent be held in contempt for failing to follow your court-ordered Parenting Plan.

Who Can Use the Forms?

You can use these forms if:

- You have a Parenting Plan ordered by a court;
- The other parent is not following the Parenting Plan; and
- You need the court's help to make the other parent follow the Parenting Plan.

What if the Other Parent Does Not Live in Montana?

If you know where the other parent lives, you will need to contact the sheriff in the county where the other parent lives and ask how much they charge to serve documents on someone. Some states will waive the fee if you have an Order of Inability to Pay, but some may not. You should mail the documents to be served on the other parent to the sheriff of the county where the other parent lives, along with the fee or your Order of Inability to Pay. Once the other parent is served, the sheriff will return your Proof of Service. If you do not know where the other parent lives, it can be very difficult to enforce your parenting plan.

What Do I Do with the Forms?

1 Fill out the Forms

- Fill out all the blanks on the Petition for Contempt, Supporting Affidavit, and Request to Serve Documents.

- Put your name and the other parent's name in the caption of the Order to Show Cause and the Contempt Citation. The caption looks like this:

Montana _____ Judicial District Court <i>Number of the judicial district where you are filing</i> _____ County <i>Name of the county where you are filing</i>	
_____ Petitioner and _____ Respondent	Cause No.: _____ Dept No.: _____ <i>Filled out by Clerk of District Court</i> Name of Form

- Sign, date, and notarize your Supporting Affidavit. Sign and date your Petition for Contempt and Request to Serve Documents.
- Do not put in full birth dates of anyone, the children's full names, or full social security numbers of anyone. You can put in the year of birth for anyone and the children's initials. You will need to use another form called a "sensitive data sheet" to give the court more information. You can get that form from your local court or from the place you got this form.

2 Make Copies

- Make at least two copies of each form once you have them filled out. You will need to have one copy of the forms served on the other parent. You will need to bring the other copy with you to the Show Cause hearing.

3 File Forms at the Courthouse

- File the original Petition for Contempt, Supporting Affidavit, Order to Show Cause, and Contempt Citation with the Clerk of District Court in the county where your original Parenting Plan was filed, or in the county where you live.
- If you can't afford the filing fees, ask the Clerk of District Court for an Affidavit of Inability to Pay. This form may be called something different in your county.
- Give the Clerk of Court a self-addressed, stamped envelope. Be sure to ask the Clerk of Court to mail two copies of the Order to Show Cause to you after the judge signs it. If you do not have an Order of Inability to Pay from the judge, you may be charged a fee for these copies.

- Give all your copies to the Clerk of District Court and ask her to stamp them as “Filed.” Keep the copies in a safe place. You should bring the copies with you to your Show Cause hearing.

4 Wait for the Order to Show Cause

- The court will set a hearing date and will fill out and sign your Order to Show Cause. The Clerk of Court will mail you the copies you requested when you filed.

5 Serve the Other Parent

- Have the Petition for Contempt, Supporting Affidavit, and the Order to Show Cause that was filled out by the judge served on the other parent. Sheriffs in Montana will serve the other parent for free if you have an Order of Inability to Pay from the judge. If you do not have this, you will need to pay the sheriff to serve your forms.

- Mail or hand-deliver your original Request to Serve Documents and other documents to the sheriff’s office in the county where the other parent lives.

- Give the sheriff’s office a self-addressed, stamped envelope so they can mail you Proof of Service after they give your forms to the other parent.

Note: When the other parent gets your documents, s/he will be able to file a Response with the Court explaining why s/he disagrees with your Petition for Contempt. S/he will also be able to go to the hearing and tell the Court his or her side of the story.

6 File the Proof of Service

- Once the sheriff returns Proof of Service to you, make a copy and file the original with the Clerk of District Court in the county where you filed your Petition for Contempt. Have the Clerk stamp your copy of the Proof of Service as “Filed.” This step is important. The Judge will need to see proof that the other parent was served before finding him or her in contempt.

7 Go to Your Hearing

- Bring your stamped copies of the documents you filed with the court.
- Arrive at the courthouse at least 15 minutes before your scheduled hearing. Dress like you were going to an important job interview.
- Check with the Clerk of Court’s office to find the right courtroom for your hearing. Go to that courtroom and wait for the judge to call your name and case number. Remember to address the judge as “Your Honor.”
- Be prepared to tell the judge how the other parent has failed to follow your parenting plan and why he or she should be held in contempt.



Where can I get more information?

The Montana Code Annotated (M.C.A.) contains the laws on contempt and Parenting Plans. The law on contempt can be found in Title 3, Chapter 1, Part 5. The laws related to your Parenting Plan can be found in Title 40, Chapter 4. The M.C.A. can be found at your local library or on the Montana State Law Library website at www.lawlibrary.mt.gov. Click on the “State Laws” option near the top of the page and select “MCA” from the list.

Where can I get legal help?

These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low and moderate-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. The referral is free. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-800-710-9827 or by email at mtlawlibrary@mt.gov.

Please take a short survey about these forms.

When you are done with the forms, please take our online survey at this address:

http://www.surveymonkey.com/s.aspx?sm=fCBbhbbJj4MdOWw_2fjsCjlg_3d_3d



Or you can access the survey on the “Forms” page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the forms better. Thank you!

Your name

Your mailing address

City State Zip

Your phone number

Petitioner

Montana _____ Judicial District Court

Number of the judicial district where you are filing

_____ County

Name of the county where you are filing

<p>_____, Petitioner (<i>Your Name</i>), and _____, Respondent (<i>Other Parent's Name</i>).</p>	<p>Cause No.: _____ Dept. No.: _____</p> <p>Petition for Contempt (Failure to Follow Parenting Plan)</p>
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I am asking this Court to hold the other parent in contempt for failing to follow our Parenting Plan ordered by this Court on (*mm/dd/yyyy*): _____.

This request is allowed under Mont. Code Ann. § 3-1-501(e).

Facts

1 Information about Me

Name: _____

Age: _____ Date of Birth (*year only*): _____

Address: _____
City: _____ State: _____ County: _____

2 Information about the Other Parent

Name: _____
Age: _____ Date of Birth (*year only*): _____
Address: _____
City: _____ State: _____ County: _____

3 Information about the Children

We have (#) ____ child(ren) younger than 18 years old:

Child's Initials	Age of Child

If needed, attach additional sheets as Exhibit _____.

4 Parenting Plan

This Court ordered a final parenting plan for our children on (*mm/dd/yyyy*):
_____. A copy of the court's order is attached to
this Petition.

5 Other Parent's Notice of Parenting Plan

The other parent knows about the final parenting plan ordered by this
court.

(*Choose All That Apply*):

The other parent was in court when the Order was made.

- The other parent was given a copy of the Order.
- The other parent followed the Order in the past. This shows that the other parent knew about the Order.
- The other parent knew about the Order because:

6 Failure to Follow Plan

The other parent has failed to follow our Parenting Plan. I explain the other parent's failure to follow our Parenting Plan in my Supporting Affidavit, which I am filing with this Petition.

Legal Basis

1 Jurisdiction

This Court ordered a final parenting plan in this action. This Court has exclusive and continuing jurisdiction under Mont. Code Ann. § 40-7-202.

2 Civil Contempt

- a. Montana law says that disobeying any lawful judgment, process, or order of the court is in contempt of the court's authority. Mont. Code Ann. § 3-1-501(1)(e).
- b. Contempt can be criminal or civil. Contempt is civil if the purpose for imposing a penalty is to force compliance with a court order. The penalty can be ended or avoided by complying with the court's order in civil contempt. Mont. Code Ann. §3-1-501(3).
- c. My Motion for Contempt should be granted to force the other parent's compliance with the final parenting plan ordered by this court.

3 Interference with Parent-Child Contact

- a. Montana law says that it is not in the child(ren)'s best interest when one parent does not allow the other parent to see the child(ren) or tries to keep the other parent from seeing the child(ren). Mont. Code Ann. § 40-4-219(3).
- b. The law says the offense of interference with parent-child contact happens when someone given parent-child contact under a parenting plan knowingly or purposely prevents, obstructs, or frustrates the rights of another person given parent-child contact under the parenting plan. Mont. Code Ann. § 45-5-631(1).
- c. The punishment for a conviction of interference with parent-child contact may be a fine of \$500 or less, or imprisonment in the county jail for 5 days or less, or both. Mont. Code Ann. § 45-5-631(2).
- d. My Motion for Contempt should be granted to remind the other parent that preventing, obstructing, or frustrating my contact with the child does not serve the best interests of our minor child(ren) and is considered an offense under Montana law.

I respectfully ask this Court to:

- 1. Schedule a hearing and order the other parent to appear and show why my Petition for Contempt should not be granted;
- 2. Hold the other parent in civil contempt for failing to follow our Parenting Plan; and
- 3. Order any other relief the Court deems is just and proper.

Date: _____

Your Signature

Print Name

Your name

Your mailing address

City State Zip

Your phone number

Petitioner

Montana _____ Judicial District Court
Number of the judicial district where you are filing

County
Name of the county where you are filing

<p>_____, Petitioner,</p> <p>and</p> <p>_____, Respondent.</p>	<p>Cause No.: _____ Dept. No.: _____</p> <p>Supporting Affidavit</p>
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STATE OF MONTANA)
) : ss
COUNTY OF _____)

(*Your Name*): _____ says that:

1. This affidavit is in support of my Petition for Contempt for failing to follow our parenting plan. The other parent has not allowed me to see our child(ren), or the other parent has tried to keep me from seeing our child(ren).
2. The other parent has done these things to prevent, frustrate, or obstruct my contact with the child(ren):



3. My Petition for Contempt should be granted because preventing, obstructing, or frustrating my contact with the child(ren) is not in the child(ren)'s best interests.

Date (*mm/dd/yyyy*): _____

Signature

Print Name

SIGNED AND SWORN to before me on (*mm/dd/yyyy*): _____.

(Seal)

Name (*printed*): _____
Notary Public for the State of Montana.
Residing at _____
My Commission Expires _____

Montana _____ Judicial District Court
Number of the judicial district where you are filing

_____ County
Name of the county where you are filing

<p>_____, Petitioner,</p> <p>and</p> <p>_____, Respondent.</p>	<p>Cause No.: _____ Dept. No.: _____</p> <p>Order to Show Cause</p>
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Based on the Petitioner's Petition for Contempt and Supporting Affidavit, this Court finds good cause for hearing the Petition for Contempt (Failure to Follow Parenting Plan).

This Court orders:

1. A hearing in this matter is scheduled for:
 - Date: _____
mm/dd/yyyy
 - Time: _____
 - Place: _____ County Courthouse

2. **To the person who did not file the Petition for Contempt in this case:**
You should go to the scheduled hearing and tell the Court if there are any reasons why the other parent's Petition should not be granted. If you do not appear, the Court may grant the other parent's Petition by default judgment.

3. **To the person who filed the Petition for Contempt:** You must go to the hearing and tell the Court why your Petition should be granted. You must also personally serve a copy of this Order to Show Cause on the other parent at least ten (10) days before the hearing.

Date: _____

DISTRICT COURT JUDGE

Your name

Your mailing address

City State Zip

Your phone number

Petitioner

Montana _____ Judicial District Court

Number of the judicial district where you are filing

County

Name of the county where you are filing

Petitioner,

and

Respondent.

Cause No.: _____

Dept. No.: _____

Request to Serve Documents

To the Sheriff of _____ County:

Please serve (*full name of other parent*) _____ with the attached Petition for Contempt, Supporting Affidavit, and Order to Show Cause (original and one copy).

I have also attached (*Choose One*):

My Order of Inability to Pay Filing Fees which waives the fee for service in this matter.

or

\$ _____ to cover the fee for service in this matter.

1. Here is a brief description of how the other parent looks:

2. The other parent:

does not carry a weapon.

carries a weapon.

3. At present, the person to be served can be found:

At his/her home: _____.

Times person is at home: _____.

At his/her place of work: _____.

Times person is at work: _____.

Other: _____.

Times person is at this address: _____.

Please serve these papers as soon as possible. Please return the original Order to Show Cause to me at the address above, along with proof that service was made.

Date: _____

Your Signature

Print Name

Record of Service (for Sheriff's use only)

I hereby certify that (Choose One):

- I personally served the Order to Show Cause and the accompanying documents listed herein on the non-moving party by delivering a copy of said Order and documents to him/her personally on (mm/dd/yyyy:) _____ in the County of _____, State of _____.
- After due effort, I was unable to locate or serve the non-moving party in the County of _____, State of _____.

DATED this _____ day of _____, 20____.

Sheriff

By: _____
Deputy Sheriff

Montana _____ Judicial District Court

Number of the judicial district where you are filing

_____ County

Name of the county where you are filing

<p>_____, Petitioner (<i>Your Name</i>), and _____, Respondent (<i>Other Parent's Name</i>).</p>	<p>Cause No.: _____ Dept. No.: _____</p> <p>Contempt Citation</p>
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A Petition for Contempt was filed with this Court on (*mm/dd/yyyy*): _____.

A Show Cause Hearing was held on (*mm/dd/yyyy*): _____.

The Respondent did not/ did appear.

After considering all evidence and pleadings, the Court finds the following:

Facts

- 1 The Respondent was properly served with a Petition and Order to Show Cause in this case on (*mm/dd/yyyy*): _____.
- 2 This Court ordered a final parenting plan for the Petitioner and Respondent on (*mm/dd/yyyy*): _____.

3 The Respondent knew about the final parenting plan ordered by this Court.

4 The Respondent has violated the final parenting plan ordered by this Court by:

5 The Respondent's last violation happened within three years of this proceeding.

Conclusions of Law

1 This Court has jurisdiction over this cause.

2 The Respondent is in contempt for violating the final parenting plan ordered by this Court.

3 The Respondent's violations can be punished under Mont. Code Ann. § 3-1-501.

Contempt Citation

The Court orders (*Choose All That Apply*):

- The Respondent to serve _____ days in the county jail.
This time begins on (*mm/dd/yyyy*): _____
and ends on (*mm/dd/yyyy*): _____.
Respondent must report to (*specify place*): _____
by (*time*): _____ on (*mm/dd/yyyy*): _____.

- The Respondent to perform _____ hours of community service.
 This service begins on (mm/dd/yyyy): _____
 and ends on (mm/dd/yyyy): _____.
 Respondent must report to (specify place): _____
 by (time): _____ on (mm/dd/yyyy): _____.
- The Respondent must pay a fine of \$ _____,
 by (mm/dd/yyyy): _____.
 This fine should be made payable to _____
 _____.

Conditions for Avoiding Contempt

The Respondent can avoid the above punishment by (Choose All That Apply):

- Following the current Parenting Plan.
- Other:
- Respondent must appear before this Court for a hearing to determine whether Respondent has followed the terms and conditions for avoiding contempt. This hearing will be held on (mm/dd/yyyy): _____.

Date: _____

 District Court Judge