
**PETITION FOR SUPPORT
&
ALLOCATION OF CUSTODIAL RESPONSIBILITY**

*** IMPORTANT INFORMATION ***

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

You may file a Petition for Support and Allocation of Custodial Responsibility 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.

INSTRUCTIONS

The Petition for Support and Allocation of Custodial Responsibility Packet contains these Instructions, a Petition form, a Bureau for Child Support Enforcement Application, Financial Statement Form, and Income Withholding Form, a Civil Case Information Statement form, and a Certificate of Service form. You can use these forms to petition the Family Court to grant you custodial responsibility for a child, and / or to require another person to help support a child.

Read these instructions carefully, and write clearly when you fill out the forms. If the instructions are not followed, or if the forms are not properly completed, your case may be harmed, or delayed. It's best to read all of the instructions before you start filling out the forms. You may want to make a couple of copies of the blank forms before you start filling them out. You can use these spare copies to practice on, or if you make an error.

The forms require 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. This affidavit form is not included in this Packet. 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 parties' court papers will be served through the Family Court, and not directly on you.

STEP 1. FILL OUT THE FORMS.

Fill out the Petition first. Begin at the top of page 1. Leave the "Civil Action No." blank. Fill in the Petitioner and Respondent(s) names and addresses. There is space for listing two Respondents. If you, the Petitioner, are not the parent of the children who are the subject of the petition, the case will have two Respondents, the children's parents. Provide your current address and phone number unless you are filing the Affidavit for Withholding Identifying Information which is discussed in the introduction to these instructions. Provide a current address and phone number for the Respondent(s) if you can.

After filling in the Petitioner and Respondent information at the top of the page, you can begin filling out the Petition, which involves filling in blanks and checking items that apply to your case. Make certain you read all items carefully, and fully understand what you're doing when you check an item or fill in a blank. After you have filled out the Petition, you will need to fill out a BCSE Application and Income Withholding Form, a Financial Statement Form, and a Civil Case Information Sheet form.

After you have completed filling out your forms, you will take them to the Circuit Clerk's Office to file them, and arrange for the Petition to be served on the respondent. You will need copies of the completed originals. The Circuit Clerk's Office will make copies for you, but they are required by law to charge fifty cents a page, so you may want to have your copies made elsewhere. You will need three copies of your Petition; one to be served on the respondent, one for the Bureau of Child Support Enforcement, and one for your records. The original of your Petition will be filed with the Circuit Clerk. You will need two copies of the completed Case Information Statement; you will file the original and both copies with the Circuit Clerk. You will need two copies of the BCSE form and Financial Statement Form; you will file the original and a copy with the Circuit Clerk, and you'll keep a copy.

STEP 2. AT THE CIRCUIT CLERK'S OFFICE.

At the Circuit Clerk's Office, you will file your papers and arrange for your Petition to be served on the respondent.

You can serve your Petition on the local Bureau for Child Support Office by mailing them a copy by first class mail. This will save you money. To do this, you will need to fill out the Certificate of Service form included in this packet. This form verifies that you mailed your Petition to the BCSE. You will file the original of the completed Certificate of Service in the Clerk's Office, and keep a copy for your records. The next three paragraphs describe the methods that can be used to serve your Petition on the respondent.

Personal Service By The Sheriff's Department. The papers are delivered to the respondent by the Sheriff's Department. The Circuit Clerk's Office arranges this type of service after you pay a \$20 fee. If you cannot afford to pay this fee, read the last paragraph in this section.

Personal Service By Private Process Server. The law permits persons other than members of the Sheriff's Department to deliver legal papers, but, service cannot be made by a party to the case, and the person serving the papers must be 18 years of age or older. For this type of service to be valid, the person who serves the papers must complete an affidavit which states the papers were served, and this affidavit must be filed in the Circuit Clerk's Office without delay.

Personal Service By Certified Mail. This type of service is arranged through the Circuit Clerk's Office. The Circuit Clerk's Office mails the petition and financial statement to the Respondent by certified mail, restricted delivery, return receipt requested. You pay the fee of \$20.00 and provide the mailing address of the Respondent. If the mailing is accepted, the Clerk's Office will receive the return receipt postcard with the signature of the person who accepted the mailing. If a person other than the Respondent accepts the mailing and signs the receipt, you don't have good service, and your case will not go forward. The Respondent has 20 days from the date the divorce papers were delivered to serve you with an Answer.

While you're at the Circuit Clerk's Office, you may want to arrange for witness subpoenas if you think you will need to require a witnesses to come to the hearing on your Petition. The following paragraph explains how to do this. After you're finished in the Circuit Clerk's Office, the next thing you need to do is prepare for your hearing. How to do this is explained in Step 3.

WITNESS SUBPOENAS

If you know you will need a witness to testify at a hearing, and you're not certain the witness will voluntarily show up, you will need to subpoena that witness. Witness subpoenas are handled through 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 \$25 per subpoena, unless your fees have been waived. If you do not request witness subpoenas at the time you file your Petition, you should make certain you do so at least 10 days before the hearing. If you cannot afford to pay the subpoena fees, read the next paragraph.

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. The Court will review your request for waiver of fees at a later hearing and will determine your eligibility even if the clerk has approved your waiver. Criminal charges can be filed against you if you provide false information on this affidavit.

STEP 3. PREPARING FOR THE HEARING.

After the opposing party has been served with your Petition, you will receive an Order from the Family Court. This Order will state the place, date, and time of your hearing. Make sure you allow plenty of time to prepare for the hearing. These are some of the things you will need to do to prepare.

Make sure you have requested all necessary witness subpoenas. You need to request these subpoenas at least 10 days before the hearing. Return to Step 3 for information on witness subpoenas.

Make sure you have filed the Financial Statement Form with all the supporting documentation and the Proposed Parenting Plan Form (the Parenting Plan Packet is available at the Circuit Clerk's Office.

You MUST also file the following information with your Financial Statement:

1. A copy of your 3 most recent wage or salary stub showing gross pay, deductions for taxes and other items, and net pay for a normal pay period, and for the year-to-date;
2. Copies of your and your spouse's complete income tax returns for the two years immediately preceding the date the petition was filed, together with copies of the federal Form W-2 for those years; and a copy of the Form W-2 for the most recent year for which that form is available, even if a tax return has not yet been filed for that year;
3. For self-employed persons and business owners, a copy of a current financial statement showing gross income, expenses, and net income;
4. Copies of any invoices or receipts showing the cost of any extraordinary medical expenses for the party or the children, of any child care expenses, and of any expenses necessitated by the special needs of the children.

AND

You MUST also complete a Parent Education Class. **Deadlines:** You must pay the Parent Education fee when you file your Petition, unless your fees have been waived. You should complete Parent Education before your first hearing. If you do not, your case may be delayed.

Make a plan for how you will present your case at the hearing. How you will present your case, and what you will need to prove will depend on the claims you have made in your Petition and the relief you have requested from the court. These are some examples of the types of things you might need to prove. If you are asking for support, you will need to show your income and expenses, and you will need to show the respondent has the financial ability to pay the support you are requesting. To make a case relating to the allocation of custodial responsibility, you will need to show why it is in the child's best interest for the court to grant you custodial responsibility, and why the respondent should not have custodial responsibility.

When you begin preparing for your hearing, review your Petition, think about the facts you have alleged, and the things you are asking the court to do, and decide what you need to prove and how you can prove it. Generally speaking, you can prove things by your testimony, by the testimony of other witnesses, and by documents or records. Make a plan for how you will present your case. It's best to write things down. List 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.

Step 4 explains what happens after the hearing.

STEP 4. WHAT HAPPENS AFTER THE HEARING?

The Family Court Judge will consider the evidence presented at the hearing, and make a decision. That decision will be written down in an Order, and copies will be sent to the parties.

End

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA

IN RE:
The Marriage / Children Of:

Case No. _____
Judge: _____

_____, and _____
Petitioner (First/Middle/Last) Respondent (First/Middle/Last)

**PETITIONER'S CIVIL CASE INFORMATION STATEMENT
DOMESTIC RELATIONS CASES**

PETITIONER'S IDENTIFYING INFORMATION	IMPORTANT NOTICE
<p>MAIL ADDRESS _____</p> <p>City / State / Zip Code _____</p> <p>() _____ <input type="checkbox"/> Male / <input type="checkbox"/> Female</p> <p>Phone Number _____</p> <p>Social Security Number _____ Date of Birth _____</p> <p>Race: <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> Black <input type="checkbox"/> Unknown <input type="checkbox"/> White</p>	<p><input type="checkbox"/> Check this box if you wish to keep the information in this box CONFIDENTIAL because you fear for your safety and/or the safety of your children.</p> <p>If the box above is checked, this page is sealed in the file and NOT TRANSMITTED with the Petition and Summons.</p> <p>You must complete the form, Affidavit To Withhold Identifying Information, and file it at the Circuit Clerk's Office.</p>

List all minor children affected by this action:

Name	Date of Birth	Social Security Number
	/ /	- -
	/ /	- -
	/ /	- -
	/ /	- -

YES NO Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- IF YES, SPECIFY:
- Wheelchair accessible hearing room and other facilities;
 - Interpreter or other auxiliary aid for the hearing impaired;
 - Reader or other auxiliary aid for the visually impaired;
 - Spokesperson or other auxiliary aid for the speech impaired;
 - Other: _____

Original and _____ copies of petition enclosed/attached.

PETITIONER: _____

Case No. _____

RESPONDENT: _____

Days To Answer: _____ Type of Service: _____

1. RESPONDENT'S IDENTIFYING INFORMATION	
MAIL Address _____	
City / State / Zip Code _____	
() - _____	<input type="checkbox"/> Male / <input type="checkbox"/> Female
Phone Number _____	/ / _____
Social Security Number _____	Date of Birth _____
Race: <input type="checkbox"/> American Indian/Alaskan Native	<input type="checkbox"/> Hispanic
<input type="checkbox"/> Asian or Pacific Islander	<input type="checkbox"/> Black
<input type="checkbox"/> Unknown	<input type="checkbox"/> White

2. TYPE OF CASE RELIEF
(Check All That Apply)

- Divorce Without Children
- Divorce With Children
- Grandparent Visitation
- Annulment
- Separate Maintenance
- Child Support Only
- Child Custody Without Divorce
- Paternity
- Modification
- Contempt
- Infant Guardianship
- Other (specify): _____

3. YES NO Is either party seeking child support or alimony?
4. YES NO Is a Domestic Violence Protective Order in effect now?
5. YES NO Is there an active Child Protective Services (CPS) investigation of the children or was an investigation conducted in the last year prior to filing this action?
6. I am proceeding without an attorney.

OR

I have an attorney. (Complete attorney information below.)

Attorney Name: _____

Firm: _____

Address: _____

Telephone: () _____

Dated: _____

Signature _____

_____ . The Petitioner, at this
address: _____ . Someone
else, whose name, _____ relationship to the children, and address are:

1. During the last five years, if any of the children have lived at addresses other than the address you just listed, list those other addresses below, and list the name and relationship to the children of all adults other than the parents who lived at these addresses with the children. *If there is not enough room in the following space, use an additional sheet of paper.* I have attached additional sheet(s).

2. *Check all of the following items that apply.*

- a. Has the Petitioner been a party or witness in any other proceeding, in any state, concerning the allocation of custodial responsibility for the children? Yes No
- b. Is the Petitioner aware of any other proceeding, past or present, in any state, concerning allocation of custodial responsibility for the children? Yes No
- c. Is the Petitioner aware of any other person, other than the parties to this case, who has physical custody of, or claims any custodial right concerning the children?
 Yes No

3. *Check all of the following items that apply.*

- a. The children have resided in West Virginia for at least 6 months preceding the filing of this case, or from birth, if less than six months old.
- b. The Petitioner believes it is in the best interest of the children for a West Virginia court

to assume jurisdiction of this case, because one or both of the parents have a significant connection to West Virginia, and West Virginia is the location of a substantial number of witnesses and / or other sources of evidence relating to the children's current or future care and personal relationships.

- c. The children are now present in West Virginia, and have been abandoned here.
- d. The children are now present in West Virginia, and the Petitioner believes it is necessary for a West Virginia court to assume jurisdiction of this case on an emergency basis to protect the children, because the children have been subjected to or threatened with mistreatment or abuse, or have otherwise been neglected, or are depending on persons other than their parents.
- e. The Petitioner believes no other state has jurisdiction over this case, and it would be in the children's best interest for a West Virginia court to assume jurisdiction.
- f. Another state has declined to assume jurisdiction over this case on the ground West Virginia is the more appropriate place to decide matters relating to the allocation of custodial responsibility, and for this reason, the Petitioner believes it would be in the children's best interest for a West Virginia court to assume jurisdiction.

4. *Check all of the following items that apply.*

- a. The county in which this case has been filed is the county in which the children currently reside.
- b. The county in which this case has been filed is the county in which: the first Respondent currently resides; the second Respondent currently resides.
- c. The county in which this case has been filed is the county in which the Petitioner currently resides, and: the first Respondent is currently a nonresident of West Virginia; the second Respondent is currently a nonresident of West Virginia.

5. *Check all of the following items that apply.*

- a. The Petitioner is 18 or older. The first Respondent is 18 or older. The second Respondent is 18 or older.
- b. The Petitioner has not been declared legally incompetent. The first Respondent has not been declared legally incompetent. The second Respondent has not been declared legally incompetent.
- c. The Petitioner is not incarcerated. The first Respondent is not incarcerated. The second Respondent is not incarcerated.

d. ___ The Petitioner is in need of support for the care and upbringing of the children.

6.

Answer item a. ONLY if you are a parent of the children .

a. ___ Prior to the parents' separation, both parents performed a reasonable share of the caretaking and parenting functions for the children. For this reason, the Petitioner believes it is appropriate for the parents to continue to share the authority for making significant decisions relating to the children's care and upbringing. The Petitioner also believes custodial responsibility for the children should be allocated in proportion to the time each parent spent in caretaking and parenting functions before the separation.

Answer item b. ONLY if you are NOT a parent of the children .

b. ___ The Petitioner performs the caretaking and parenting functions for the children. For this reason, the Petitioner believes it is appropriate for the Petitioner to have the authority for making significant decisions relating to the children's care and upbringing. The Petitioner also believes custodial responsibility for the children should be allocated to the Petitioner alone.

Answer item c. ONLY if you are a parent of the children .

c. The other parent has: ___ abused, neglected, or abandoned one or more of the children; ___ sexually assaulted or abused one or more of the children; ___ engaged in acts of domestic violence; ___ repeatedly interfered with Petitioner's access to, or contact with one or more of the children; ___ repeatedly made false reports or accusations of domestic violence or child abuse; ___ . For these reasons, the Petitioner believes: ___ It is in the children's best interest that the authority for making significant decisions relating to the children's care and upbringing be allocated to the Petitioner alone. ___ The court should impose limits on the other parent's custody of, and contact with the children. ___ The other parent should not be allocated any custodial responsibility, or permitted any contact with the children unless the court specifically finds such custodial responsibility or contact will not endanger the children, or the Petitioner.

Answer item d. ONLY if you are NOT a parent of the children .

d. The Mother has: ___ abused, neglected, or abandoned one or more of the children; ___ sexually assaulted or abused one or more of the children; ___ engaged in acts of domestic violence; ___ failed to support one or more of the children For these reasons, the Petitioner believes: ___ It is in the children's best interest that the authority for making significant decisions relating to the children's care and upbringing be allocated to the Petitioner alone. ___ The court should impose limits on the Mother's custody of, and

contact with the children. ___ The Mother should not be allocated any custodial responsibility or permitted any contact with the children unless the court specifically finds such custodial responsibility or contact will not endanger the children, or the Petitioner.

Answer item e. ONLY if you, the Petitioner, are NOT a parent of the children .

e. The Father has: ___ abused, neglected, or abandoned one or more of the children; ___ sexually assaulted or abused one or more of the children; ___ engaged in acts of domestic violence; ___ failed to support one or more of the children . For these reasons, the Petitioner believes: ___ It is in the children’s best interest that the authority for making significant decisions relating to the children’s care and upbringing be allocated to the Petitioner alone. ___ The court should impose limits on the Father’s custody of, and contact with the children. ___ The Father should not be allocated any custodial responsibility, or permitted any contact with the children unless the court specifically finds such custodial responsibility or contact will not endanger the children, or the Petitioner.

7. THEREFORE, based on the facts set out in this petition, the Petitioner requests the Court to grant whatever relief the Court deems appropriate, and to grant the following particular relief:

- a. ___ Order _____ to pay a reasonable amount of money for the support of the children.
- b. ___ Prohibit _____ from threatening, harassing, annoying, or abusing the Petitioner or the children, or in any way interfering with the Petitioner’s or children’s personal safety.
- c. ___ Order _____ to maintain health insurance for the children, and to assist with the children’s health care expenses that are not covered by insurance or by a government medical card.

Petitioner’s Signature

Date

You must sign the Verification on the next page before a Notary Public.

VERIFICATION

I, _____, after making an oath or affirmation to tell the truth, say that the facts I have stated in this Petition are true of my personal knowledge; and if I have set forth matters upon information given to me by others, I believe that information to be true.

Signature

Date

This Verification was sworn to or affirmed before me on the ____ day of _____,
20____.

Notary Public / Other official

My commission expires:_____.