How to Motion the Court for Contempt When a Parent is in Violation of the Parenting Plan

Information Not Legal Advice



How to Motion the Court for Contempt When a Parent is in Violation of the Parenting Plan is information only. The information is not legal advice. The law is different in each state. Some information may not be correct outside Montana. The information is not guaranteed to be up to date. The information can't replace advice from an attorney.

NEED HELP? There are resources available.

The Court Help Program. The Court Help Program assists people representing themselves in court. There are Court Help centers (sometimes called Self-Help Centers) located throughout the state to assist you on a walk-in basis and remote appointments are available if your local Courthouse does not have a Court Help center. Court Help staff are not lawyers and cannot provide legal advice. Staff are informed about the court process and can answer questions as well as review your forms for completeness. Find Court Help services near you: https://courts.mt.gov/SelfHelp/ or call 406-444-9300.



Montana Legal Services Association. Montana Legal Services Association provides free civil legal assistance to low-income Montanans. If you qualify, Montana Legal Services Association may be able to connect you with a variety of services. Visit www.MontanaLawHelp.org, or call MLSA at 1-800-666-6899.

State Bar of Montana. If you are interested in hiring an attorney to advise or represent you, the State Bar Lawyer Referral Service has a list of attorneys all over Montana. The Lawyer Referral Service is available at www.montanabar.org.

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What is the Process?

Violating a Court approved Parenting Plan is the violation of a Court order. If a Court decides a person has violated a Court Order, that person can be held in contempt of Court. A Contempt Order issued by the Court can result in directions to comply with the plan, fines and penalties, or imprisonment.

NOTE: The steps for filing a motion for contempt may be slightly different in your judicial district. Check with the Clerk of District Court at your county courthouse for local requirements.



Step One: Determine if you can resolve the issues
Step Two: Filing with the District Court
Step Three: Serve the Opposing Party
Step Four: Appear before the Court

STEP ONE: Determine whether this is an enforcement issue or if you need to change your plan.

In many cases the violation is a result of different interpretations of the Court Ordered Parenting Plan or a difficulty in following the plan due to a change in circumstances. In those cases, modifying the Parenting Plan may be a more an effective and timely way to resolve your issues. If you would like to pursue a change to your plan, see the **How to Change Your Parenting Plan** form packet. A difference in interpretating your plan may also be resolved through mediation.



MEDIATION: Many parenting plans require mediation if there are issues in complying with the Plan. Review your parenting plan dispute resolution clause to see if your Plan requires mediation. The Court may dismiss your motion for failing to pursue mediation. Mediation can be a cost-effective and timely way to reach an agreement and speed up the dissolution process. Some courts require mediation before holding a hearing. Mediation is a process where a neutral person (called a "mediator") helps people come up with a shared solution. Mediation is confidential and agreements made in mediation will only be filed in Court when everyone agrees. Montana Legal Services Association has a Mediation and Family Transition Project that provides mediation services at no cost.
Contact: mediate@mtlsa.org, 406-594-8535, https://bit.ly/mtfreedivorce

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STEP TWO: Filing with the District Court

What Forms Will I Need? You should use this packet of forms if you have a Court approved Parenting Plan and you want to ask the Court to find the other party in contempt for failing to follow the approved plan and its provisions. Violations may include failure to provide child support, medical support, follow the parenting schedule, or any other provisions in your Court Ordered Parenting Plan.

Forms Checklist for the Clerk of District Court:

- □ **Statement of Inability to Pay Court Costs and Fees**. (Optional) Use this form if you can't afford to pay the court fees. This form may be different based on your local Court preferences.
- □ **MP 801 Motion & Affidavit for Contempt for Parenting Plan Violation**. This will state the violations of your parenting plan and legal grounds for holding the party in contempt.

NOTE: If you were the Petitioner/Co Petitioner 1 on the Court Approved Plan, you will still be the Petitioner/Co Petitioner 1 in the Motion. If you were the Respondent/Co Petitioner 2, you will be the Respondent/Co Petitioner 2, even if you are initiating the motion for contempt.

You will describe the facts of your situation and use as many details as possible to support your contempt motion. To have the Court enforce a Plan it is your responsibility to prove:

1. The parent you are complaining against has violated the provisions of the Parenting Plan, and
2. The parent can comply with these provisions.

- □ **MP 801.2 Order to Show Cause for Contempt of Court for Parenting Plan Violation.** This is filled out by the Court and will be sent to you if the Court determines that it will hold a hearing to review your Motion for Contempt.
- □ **MP 801.4 Order for Contempt of Court for Parenting Plan Violation.** The Court will use this form to issue its decisions on the Motion for Contempt.

Once you have completed the documents, and before you file your documents with the Court, make at least two sets of copies. One is for your records and the other will help with Service of Process in Step Two.

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STEP THREE: Order to Show Cause and Service of Process

Once you have filed, the Court will review your documents and decide whether to issue a Show Cause Hearing. The Court will notify you of the date and time in the **Order to Show Cause for Contempt of Court for Parenting Plan Violation (MP 801.2)** returned to you.

IMPORTANT: YOU MUST SERVE THE OTHER PARTY AT LEAST 14 DAYS PRIOR TO THE SHOW CAUSE HEARING DATE

The most reliable way to do that is through formal service by the Sheriff.

Service by Sheriff is accomplished by hand delivering or mailing the following documents to the Sheriff in the County where the other party resides:

- □ **Request for Service of a Motion for Contempt of Court for Parenting Plan Violation MP 801.3**
- □ **Motion & Affidavit for Contempt for Violating a Court ordered Parenting Plan MP 801**
- □ Copy of the Court's **Order to Show Cause MP 801.2**

The same form can be used for a hired private process server. The original **Request to Serve the Motion for Contempt MP 801.3** will be given back to you, and you must file it with the Clerk of Court.

Step FOUR: Appear Before the Court.

The time and date of your hearing will be on your **Order to Show Cause for Contempt of Court for Parenting Plan Violation (MP 801.4)** form. You must attend that hearing and bring all your evidence. The Judge will decide whether to find the other party in contempt. You may be given a copy of the order right then, or you may be mailed a copy of the order later. If the Judge schedules another hearing to determine if the other party has complied with the order, you should plan on going to that hearing and telling the Judge what, if anything, the other party has done since the order was signed.

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_____
Name

_____
Mailing Address

_____
City State Zip Code

_____
Phone Number

_____
E-mail

☐ Petitioner/Co Petitioner 1 ☐ Respondent/Co Petitioner 2

MONTANA ____JUDICIAL DISTRICT COURT, _____ COUNTY

_____ Petitioner/Co Petitioner 1, and _____ Respondent/Co Petitioner 2	**Case No:** _____ *(leave blank, the clerk will write in)* **Statement of Inability to Pay Court Costs and Fees**

I have a good cause of action or response but am unable to pay filing or other court fees. I request the court waive the costs and fees. I provide the following information.

My full legal name is: _____.

Birth month: _____ year: _____.

Choose One:

☐ I am represented by an entity that provides free legal services to low-income persons.

OR

☐ I am represented by a volunteer/pro bono attorney, and am financially eligible for free legal services. (*Attach a certificate of eligibility from legal aid organization to this form.*)

OR

☐ I receive one or more of these benefits: (*Check the box for <u>each</u> benefit you receive*.)

☐ SNAP ☐ TANF ☐ SSI ☐ Medicaid ☐ WIC ☐ LIHEAP

If you checked any one of the three boxes above, skip to the end of this form, and sign the declaration on page 3. You don't need to fill out the remainder of the form.

If you did not check a box above, you may still qualify for a fee waiver. Please continue to fill out pages 2 and 3 of this form so the court has the information it needs to decide if you qualify for the fee waiver.

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I. INCOME

What do you do for work? _____ Who is your employer? _____

What is your household's annual income, before taxes? _____ How many people are in your household? ___
(*The tables below will help you answer these questions, if you are not sure what to put in the blanks.*)

If you are unemployed, when were you last employed (Month, Year)? _____ Your job? _____

Are you married? ☐ Yes ☐ No ☐ Separated ☐ Getting Divorced NOTE: If you are not married, if you and your spouse are separated, or if one of you is filing for dissolution of marriage, you do not need to provide your spouse's income below.

Fill in the chart below with the income received by you, and by your spouse, if applicable. Put a "0" in each blank if you or your spouse don't receive the income listed.

Income Sources	**Amount YOU receive per month *before* taxes**	**Amount YOUR SPOUSE receives per month *before* taxes**
Employment	$	$
Retirement/Pension	$	$
Workers' Compensation	$	$
Social Security	$	$
Unemployment	$	$
Government Benefits	$	$
Child Support Received	$	$
A person or agency pays my rent or other monthly expenses and the amount is: _____	$	$
Other Income—e.g., rental income, stocks, investments, etc.—describe: _____	$	$
Total here:	$	$

What is your household size? How many persons, if any, depend on you financially? If none, then write "N/A" below. Attach another page if needed and check here to tell the court you attached another page: ☐

Dependents (Initials Only)	**Age**	**Relationship to You**
1.		
2.		
3.		
4.		
5.		

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II. ASSETS (*Complete this Section to the best of your ability.*)

What property do you and your spouse own? Include your spouse's property if you are married and not separated and not filing for dissolution. Fill in the chart below, only listing items that you could sell for $600 or more. If you don't own an item listed, write "N/A" in the "Value" column for that item. "Value" means the total amount the item(s) identified in a column would sell for, minus the amount you still owe on the item(s), if anything.

Asset	Value
Cash (This includes the money in your savings and checking accounts)	$
Vehicle 1: provide year, make and model _____	$
Vehicle 2: provide year, make and model _____	$
Home where you live now	$
Real estate or other homes/mobile homes (Not including the home you are living in now)	$
Recreational vehicle(s) such as snowmobile, ATV, camper/RV, boat, motorcycle, etc.	$
Guns or other collections	$
Other Item(s) worth more than $600—describe: _____	$

III. DEBTS AND EXTRAORDINARY EXPENSES (*Complete this Section to the best of your ability.*)

What bills do you and your spouse pay each month? Fill in the chart below.

Monthly Expenses	Value
Housing Expense: Mortgage or Rent	$
General Household Expenses: Utilities, Phone/Internet/Cable, etc.	$
Insurance Expenses, Healthcare Costs and/or Medical Debt(s)	$
Childcare Expenses	$
Other Extraordinary Expenses: e.g., Collection actions, Student Loans—describe:	$

IV. ADDITIONAL INFORMATION *(This Section is optional.)*

If you have additional information that you want the court to consider about your inability to pay court costs, write that information under your signature below or attach an extra page. Check here if you attached another page: ☐

V. DECLARATION *(This Section is Required.)*

I declare under penalty of perjury and under the laws of the State of Montana that the information in this document is true and correct. I understand that it is a crime to give false information in this document.

Date: _____ City: _____ State: _____

Your Signature: _____

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Court Use Only

MONTANA ____ JUDICIAL DISTRICT COURT _____ COUNTY

_____ Petitioner/Co Petitioner 1, and _____ Respondent/Co Petitioner 2	**Case No:** _____ (*leave blank, the clerk will write in)* **Order Regarding Statement of Inability to Pay Court Costs**

Warning! Read carefully the section checked below.
It is a court order.

☐ Waiver of court costs is **Granted**. Declarant shall proceed without payment of court fees or costs.

☐ Temporary Waiver of court costs is **Granted**. Declarant may file without payment of court fees or costs, but the Court may determine at a later time that the declarant has the ability to pay all fees or costs and will require declarant to do so.

☐ Temporary Waiver of fees is **Granted**. Declarant may file without payment of court fees or costs, but must appear before the Court at _____ a.m/p.m. on the _____ day of _____ and show cause why the declarant lacks the ability to pay all fees or costs.

Warning! If this third box is checked, you must come to court on the date ordered above. If you don't come, the judge will deny your request to waive court costs, and you will have to pay the court costs.

☐ Waiver of Fees and costs is **Denied**. Waiver is denied based on the following:

_____

_____

_____

Ordered this _____ day of _____, 20_____.

_____
Presiding Judge or Standing Master

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IMPORTANT: Refer to the Court approved Parenting Plan in filling this out. You are still the Petitioner/Respondent/Co Petitioner if that was your status in the Court Approved Parenting Plan.

_____

Name

_____

Address

_____

City State Zip Code

_____

Phone Number

_____

E-mail Address

☐ Petitioner/Co Petitioner 1

☐ Respondent/Co Petitioner

MONTANA _____ JUDICIAL DISTRICT COURT _____ COUNTY

_____ Petitioner/ Co Petitioner 1 and _____ Respondent/ Co Petitioner 2	**Case No:** _____ *(Fill in the same number on your Parenting Plan)* **Motion & Affidavit for Contempt of Court** **for Parenting Plan Violation**

WARNING: The party making this application will be responsible to appear and present legal evidence at a hearing to support this request. A frivolous petition will result in appropriate censure and sanctions, including possible contempt, loss of custody, or visitation rights.

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1. Identification of the Parties

Petitioner/Co Petitioner 1:

Name: _____

Address: _____

Phone: _____ Email:_____

Respondent/Co Petitioner 2:

Name: _____

Address: _____

Phone: _____ Email:_____

2. **Parenting Plan.** A Prior Court Approved Parenting Plan was approved by Court Order in _____ County on _____ (Date).

3. **Violation.** The parenting plan violations are described below. This is where you will request that the Court hold the other Parent in Contempt and describe the facts of your situation. Use as many details as possible to support your contempt motion. The Court will use this information to determine if the party is in violation of the Parenting Plan. In seeking to have the Court exercise its power to enforce a decree it is your responsibility to prove the following information:

    a. **Parenting Plan Provision(s): _____**

    _____

    b. **Description of the Violation(s)**:

_____

_____

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_____

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_____

_____

c. Statement that the violating Parent can comply with the Provision(s):

_____

_____

_____

_____

_____

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4. **Request.** I request that the Court hold the ☐ Petitioner/Co Petitioner 1 **OR** ☐ Respondent/Co Petitioner 2 in contempt of court for violating our Court Approved Parenting Plan. The Court will compel them to:

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I declare under penalty of perjury and under the laws of the state of Montana that the information in this document is true and correct. I understand that it is a crime to give false information in this document.

The undersigned hereby deems this to be in the best interests of said children and further agrees, should a hearing be held, that he/she is subject to any revision of the Parenting Plan Decree as it may pertain to support, custody, and visitation rights of said children.

Dated this _____day of _____, 20___.

Your Signature: _____

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MONTANA _____JUDICIAL DISTRICT COURT_____ COUNTY

_____, Petitioner/Co Petitioner 1 and _____, Respondent/Co Petitioner 2	**Case No:** _____ *(Fill in the same number on your Parenting Plan)* **Order to Show Cause for Contempt of Court** **for Parenting Plan Violation**

----------Court Will Complete Below this line----------

A Motion for Contempt of Court to Enforce a Parenting Plan was filed on: _____, in _____ County. Having reviewed the motion and supporting affidavit, IT IS HEREBY ORDERED that the parties appear before this Court:

Address: _____

Date: _____

Time: _____

*NOTICE: You must serve the other party no less than 14 days before this date.

Both Petitioner/Co Petitioner 1 and Respondent/Co Petitioner 2 must appear and present information regarding the alleged violations of the Court Ordered Parenting Plan.

IT IS FURTHER ORDERED that a copy of the Motion & Affidavit for Contempt for Violating a Court ordered Parenting Plan **MP 801** and a copy of this Order to Show Cause **MP 801.2** shall be served upon the parent with alleged violation(s) **not less than 14 days prior** to the hearing date above.

DATED this _____day of _____, 20___ .

Signature: _____

DISTRICT COURT JUDGE/STANDING MASTER

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_____
Name

_____
Mailing Address

_____
City, State, Zip Code

_____
Phone Number

_____
E-mail Address

☐ Petitioner/Co Petitioner 1

☐ Respondent/Co Petitioner 2

MONTANA ____ JUDICIAL DISTRICT COURT_____ COUNTY

_____, Petitioner/ Co Petitioner 1 and _____, Respondent/Co Petitioner 2	**Case No:** _____ *(Fill in the same number on your Parenting Plan)* **Request for Service of Process for a Motion for Contempt** **Parenting Plan Violation** ☐ **By Sheriff** ☐ **By Private Process Server**

Dear _____
(Title, County)

A. Request for Service of Process. Please serve upon the other party.

☐ **Motion for Contempt of Court for Violating a Court Ordered Parenting Plan MP 801**

☐ **Order to Show Cause for Contempt in Violating Parenting Plan MP 801.2**

☐ (Recommended) Copy of the Prior **Court Approved Parenting Plan MP 300**

☐ _____

☐ _____

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B. Service Fees. Please see the attached:

☐ The ☐ Petitioner/Co Petitioner 1☐ Respondent/Co Petitioner 2's Affidavit and Order of Inability to Pay Filing Fees waives the fee for service in this matter.

OR

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

C. Details for Locating the Respondent.

1. Physical Description of Respondent: _____ft____inches. Hair color: _____
   Eye color: _____ Other appearance notes: _____
2. Respondent ☐ does or ☐ does not carry a weapon
3. At this time, the Respondent can be found (choose all that apply):

☐ At their residence**:** _____

Times normally at this address: __:__ to __:__
__:__ to __:__

Other:_____

☐ At their place of employment: _____

Times normally at this address: __:__ to __:__
__:__ to __:__

Other:_____

☐ Other Location: _____

Times normally at this address: __:__ to __:__
__:__ to __:__

Other Details:_____

D. Proof of Service

Please return the Request for Service to me at the address above, along with Proof of Service or a statement that you were unable to locate the other party.

Dated this _____ day of _____, 20 _____.

Signature: _____

☐ Petitioner/Co Petitioner 1 ☐ Respondent/Co Petitioner 2

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MONTANA ____ JUDICIAL DISTRICT COURT
Number of the judicial district where you are filing

_____ COUNTY
Name of the county where you are filing

_____, Petitioner/Co Petitioner 1 and _____, Respondent/Co Petitioner 2	**Case No:** _____ *(Fill in the number from your Parenting Plan)* **Order for Contempt of Court** **for Parenting Plan Violation**

A Motion for Contempt of Court to Enforce a Parenting Plan was filed in this Court on _(mm/dd/yyy): _____. The Court held a hearing on the Motion on (mm/dd/yyyy): _____. Having reviewed the matter, the Court finds the following:

FACTS

1. The ☐ Petitioner/Co Petitioner 1 ☐ Respondent/Co Petitioner 2:
   - was properly served the Motion for Contempt and Order to Show Cause,
   - ☐ did / ☐ did not appear at the hearing, and
   - knew about the Court Approved Parenting Plan, and
   - could comply with the Court Approved Parenting Plan.
   -

AND

☐ is ☐ is not in violation of the following Parenting Plan provisions.

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Violation details may be described here:

_____

_____

_____

_____

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this cause.
2. The ☐ Petitioner/Co Petitioner 1 ☐ Respondent/Co Petitioner 2 is in contempt for violating the Parenting Plan ordered by this Court
3. The violations can be punished under MCA § 3-1-501 and § 3-1-520.

IT IS HEREBY ORDERED that the Party in violation is given the following punishments:

_____

_____

_____

_____

_____

The Party in violation may do all of the following to avoid the punishment for contempt:

_____

_____

_____

_____

_____

DATED this ____ day of_____, 20__.

_____
District Court Judge/ Standing Master

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