WEST VIRGINIA MODIFICATION OF CHILD SUPPORT, SPOUSAL SUPPORT, AND TIME SPENT WITH THE CHILDREN INSTRUCTIONS AND FORMS

*** IMPORTANT INFORMATION ***

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

You may file a Petition for Modification 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.

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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.

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INSTRUCTIONS

The Modification Packet contains the following forms: Instructions for Modifications (SCA-FC-200), Petition for Modification (SCA-FC-201), Bureau for Child Support Enforcement Application and Income Withholding (FDVCSAP), Civil Case Information Statement (SCA-FC-103), Financial Disclosure (SCA-FC-106), and Certificate of Service (SCA-FC-314).The Parenting Plan forms are not included, but can be obtained at the Circuit Clerk's Office or online at www.courtswv.gov. Read these instructions carefully, and please write clearly when you fill in the forms. If the instructions are not followed, or if the forms are not properly completed, your modification case may be harmed, or delayed. It's best to read all of the instructions before you start filling out forms.

These instructions will tell you about serving papers on the "other parties" in the case. Your spouse or ex-spouse, for example, will often be referred to as the "opposing party;" and the Bureau of Child Support Enforcement (BCSE) would in most instances be referred to as one of the "other parties."

You will need copies of your completed forms for various purposes. You can have copies made in the Circuit Clerk's Office, or elsewhere. The law requires the Circuit Clerk to charge one dollar per page. You may want to make a couple of spare copies of each blank form you'll be filling out. You can use these spare copies to practice on, or use if you make an error.

The forms in this packet require you to provide your name, address, and telephone number. **If you believe the safety, liberty, or health of you or your children would be put at 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 (SCA-FC-140). This affidavit form is not included in this packet. You can obtain the affidavit form 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 Circuit Clerk, and not directly on you.

STEP 1. FILL OUT THE FORMS

Fill out the Petition form first. Start at the very top of page 1. The information at the top of page one is called the "case style." For example, if you have been the Respondent, you are still the Respondent. If you want, you can look at one of the Orders from your case, and copy the case style.

After filling in the information at the top of page 1, you are ready to fill out the Petition. Filling out the Petition is a matter of checking the right boxes, and filling in blanks. Make certain you read carefully, and fully understand what you're doing when you check a box or fill in a blank. Complete the Petition down to, but not including the signature line. Don't sign the Petition until you are before a Notary Public or Deputy Circuit Clerk.

In addition to your Petition, you will need to fill out a BCSE Application and Income Withholding form, a Financial Disclosure form (modification of child support and alimony cases only), a Parenting Plan (modification of parenting time cases only), a Certificate of Service, and a Civil Case Information Statement. Make two copies of the completed Case Information Statement; you will file the original and both copies with the Circuit Clerk. Make two copies of the BCSE form; you will file the original and a copy with the Circuit Clerk, and you will keep a copy for your records. In child support and alimony cases, **if** there has been a change in your financial situation, such as an increase or decrease in your income and/or the other party's income, you will then need to file your financial disclosure and all supporting documentation. You will need three copies of your financial disclosure and supporting documentation. You will file the original, serve a copy on the other party, and you will keep a copy for your records. In cases involving a change in time spent with children or decision making responsibilities, you will need to have three copies of your proposed parenting plan. You will file the original, serve a copy on the other party, and keep a copy for your own records.

Next you will need to file your papers in the Circuit Clerk's Office, and arrange to have the papers served on the other parties. How to do this is explained in Step 2.

Remember to always keep a copy of everything you file with the Circuit Clerk for your personal records.

STEP 2. AT THE CIRCUIT CLERK'S OFFICE

The first step at the Circuit Clerk's Office is to pay the filing fee. The fee for filing a Petition for Modification is $85. THIS FEE IS NOT REFUNDABLE UNDER ANY CIRCUMSTANCES. If you cannot afford to pay this fee, read the last paragraph in Step 2 before continuing.

After you have paid your filing fee, or had it waived, you are ready to file your Petition and other forms. The forms you will file, and how you will have them served is explained below.

1. File original and two copies of the Civil Case Information Statement.
2. File original and one copy of the following forms for each party being served:
    a. Petition for Modification;
    b. Certificate of Service;
    c. BCSE Application and Income Withholding form;
    d. Financial Disclosure form (modification of child support and alimony cases only); and
    e. Parenting Plan (modification of parenting time cases only).

3. Don't forget to keep a copy of everything you file for your own records.
4. Decide how you want to serve your papers.

The simplest and most common type of service for a Petition for Modification is certified mail, restricted delivery, return receipt requested. To have your papers served this way, you tell the Deputy Circuit Clerk you want certified mail service, pay a $20 fee for each party served, and the Circuit Clerk's Office handles the service. If the BCSE is a party, you don't have to serve them by certified mail. You can save some money by mailing a copy of your Petition to the BCSE office by first class mail. The following paragraphs explain other ways your papers can be served.

Personal Service by the Sheriff's Department. The papers are delivered by the Sheriff's Department. This type of service is arranged through the Circuit Clerk's Office. The fee is $25 for each party being served.

Acceptance of Service. If a party is willing to voluntarily accept the papers, you can simply hand the papers to that person; or that person can pick the papers up in the Circuit Clerk's Office. The person accepting the papers must sign an Acceptance of Service form, and the form must be filed in the Circuit Clerk's Office.

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 a West Virginia Return of Service which states the papers were served, **and** this Return of Service **must** be filed in the Circuit Clerk's Office.

After you've filed your papers, and arranged for service, you should think about one more item before you leave the Clerk's Office. If you know you will need to subpoena witnesses for the hearing on your Petition, you should take care of this while you're at the Clerk's Office. To learn how to do this, read the following paragraph entitled "Witness Subpoenas." After you're finished in the Circuit Clerk's Office, you need to 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, you need to make **certain** that witness will attend. If you are 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.

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 and to provide proof of your income by tax returns, pay stubs, or government assistance. 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 3. PREPARING FOR THE HEARING

Make sure the opposing party has been served. Wait seven business days after filing your Petition, and check with the Circuit Clerk's Office to confirm service. If the opposing party has not been served, the hearing will not be held by the Family Court.

After your Petition has been filed, and the other parties have been served, you will receive an Order from the Family Court. This Order will state the place, date, and time of your hearing, and it will order you and the opposing party to file certain information, documents, and records before the hearing.

You MUST gather all of these documents and records, make copies, and file the copies in the Circuit Clerk's Office on the date ordered by the Family Court. IF YOU DO NOT, YOUR HEARING MAY BE CANCELLED!

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 2 for information on witness subpoenas.

Make a plan for how you will present your case for modification at the hearing. At the hearing, you will be required to make a case to the Court why the amount of child support, or spousal support should be changed, or why the arrangements for time spent with the children should be changed.

To make a case for a support change, you need to show that your financial circumstances, and/or the opposing party's financial circumstances have changed in such a way that support should be increased or decreased. These types of cases are generally made by showing increases and/or decreases in income and/or expenses by **15% or more.**

To make a case for a change in time spent with children or decision making responsibilities, you would need to show, for example, that your circumstances, and/or the opposing party's circumstances have changed in such a way that one of you is able to spend more or less time with the children. With regard to support and time spent with the children, you can show changes in circumstances by your testimony, by the testimony of other witnesses, or by documents or records.

Make a plan for how you will present your case. It's best to write things down. List what you want to prove, and for each item you want to prove, list how you will do so, 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.