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# WEST VIRGINIA PARENTAL RELOCATION PETITION AND NOTICE

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## **\* IMPORTANT INFORMATION \***

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

You may file a Petition and Notice of Parental Relocation without the assistance of an attorney, and represent yourself in Family Court. However, if the other parent/party objects to your relocation plans, or to your proposals to change the Parenting Plan to accommodate your relocation, 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 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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The Petition and Notice of Relocation form requires you to list the address and telephone number of the residence to which you plan to relocate. **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 with these materials. 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 Circuit Clerk, and not directly on you.

## **INSTRUCTIONS**

**You are required by law to file a Petition and Notice of Relocation if:**

1. You have parental responsibilities under a court ordered Parenting Plan;
2. You plan to change your residence and you will live in the new location for more than 90 days;  
**and**
3. The planned relocation will change the other parent/parties ability to exercise their court ordered parenting time.

**If you are required to file the Petition and Notice, continue reading.**

## Information You Need To Know About the Petition and Notice of Relocation.

1. You must file the Petition and Notice of Relocation at least ninety (90) days prior to moving to your new location, you are also required to provide a copy of the Petition and Notice of Relocation to the other parent or party that has court ordered parenting time. If you cannot provide at least 60 days' notice, you must still give notice, and you must do so as soon as possible.
2. If you believe there is a reason you should not have to give the other parent or party notice of your planned relocation, you **MUST** ask the Family Court to relieve you of the requirement to give notice. A reasonable fear of harm to yourself or your child is one reason the court can relieve you of the requirement to give notice; but not the only reason. Only the Family Court can relieve you of the requirement to give notice.
3. The other parent/party has a right to challenge your relocation plans, and your proposals to change the Parenting Plan to accommodate your relocation.
4. A hearing on your petition will be heard at least thirty (30) days prior to your moving date. You can ask for a quicker hearing.
5. At the hearing, you will have to show you are relocating for a proper purpose, and you will have to show the location you are moving to is a reasonable choice considering the purpose of your relocation. Item 6 discusses the subject of what is a proper purpose for relocation.
6. The law of West Virginia gives us a list of proper purposes for the relocation of a parent who has responsibilities under a Parenting Plan. The items on this list are not necessarily the only proper purposes for which a parent may relocate, but if the purpose for which you want to relocate is not on the list, you have the burden of showing the court why your purpose for relocation is proper. The proper purposes listed in the law are as follows:
  - a. to be close to immediate family members;
  - b. for significant health reasons;
  - c. to protect yourself, your children, or another member of your household from significant risk of harm;
  - d. to pursue a significant employment or education opportunity; and/or
  - e. to be with your spouse who is established in the new location, or who is moving to the new location to pursue a significant employment or educational opportunity, provided however, you must have lived with your spouse for at least one year before you move.
7. If you fail to give 60 days' notice to the other parent/party, and there is no good reason for your failure, the court may determine your failure indicates your relocation is not in good faith, and may require you to pay the expenses and attorney's fees the other parent/party incurred to challenge your relocation.
8. If the other parent/party challenges your relocation, and you do not show your relocation is in good faith, for a proper purpose, and to a reasonable location, the court may modify your Parenting Plan. Such modifications may include a reallocation of primary custodial responsibility. In other words, if the children are living with you, the court may decide they should start living with the other parent/party.

**The following steps explain how to prepare a Petition and Notice of Relocation, serve that petition and notice on the other parent/party, and how to prepare for a hearing if the other parent/party challenges your relocation.**

## **STEP 1. FILL OUT THE PETITION AND NOTICE FORM**

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 use if you make an error.

1. The first form you will complete is the Civil Case Information Statement (SCA-FC-103). Provide your current address and telephone number on the Civil Case Information Statement and the address and telephone number of the other party. If you feel your safety and/or the safety of your children are at risk if the other party is provided your address, you can request the Affidavit for Withholding Identifying Information form (SCA-FC-140) from the Circuit Clerk. Once you file the Affidavit for Withholding Identifying Information, the Circuit Clerk will not release your address or telephone number to the other party.
2. The second form you will complete is the Petition and Notice of Relocation (SCA-FC-131). The information at the top of page 1 is called the "case style." The case style stays the same throughout your case, so you can simply copy the case style information from one of the orders or other documents in your case. As these instructions explain later, you will need the other parent/parties current address to serve your Petition and Notice of Relocation.

After you have completed the case style, write the other parent/parties name after "NOTICE TO."

Most of the remaining items on the notice form are self-explanatory, but the following paragraphs have some important information about some of the items.

**Item 7.** This is where you explain the purpose of your relocation. If necessary, review the earlier explanation of proper purposes for relocating, because completing item 7 correctly is very important. If item 7 doesn't provide enough space for you to explain the purpose of your relocation, use an additional sheet of paper, label it with your name, and "More Information on Item 7," and attach it to your notice form.

**Item 8.** In this item, you propose how the Parenting Plan should be changed to accommodate your relocation. Review your Parenting Plan and think about how it will have to change if you relocate, then explain those changes in item 8. If you need more room, use a properly labeled additional sheet of paper. You should prepare a new Parenting Plan (SCA-FC-121) that addresses the changes needed for both you and the other parent/party, if you relocate.

**Item 9.** This item is a bit difficult to understand, but the law requires it to be included in the notice. Think about how the other parent/party could reasonably accommodate the Parenting Plan changes you have proposed in item 8. If you can't figure out what to write in item 9, just write "I don't have any such information at this time." If the other parent/party challenges your relocation, the court will discuss this subject at the hearing. You may want to continue to think about item 9 when preparing for a hearing.

After you have completed the first two pages of the Petition and Notice, sign and date it on page 2. You now have two more parts of the Petition and Notice to complete, the Verification, and the Certificate of Service, both of which appear on page 3. You must sign the Verification before a Notary Public. Deputy Circuit Clerks can also attest your signature on the Verification. The Certificate of Service will verify that you mailed your Petition and Notice to the other parent/party. Decide when you are going to mail the Petition and Notice and fill out the Certificate of Service with that date and the name and address information for the other parent/party. When you are finished with the Petition and Notice, you should have a completed, signed, dated Petition and Notice that includes a Verification signed before an authorized official, and a completed Certificate of Service. Next you will need to make three copies of the Civil Case Information Statement and the Petition and Notice, including the Verification and Certificate of Service. You will mail one copy to the other parent/party, and keep one copy for yourself, and take one to the Family Court Judge's office. You are now ready to mail a copy of the Petition and Notice to the other parent/party, and file the original in the Circuit Clerk's Office. This is discussed in Step 2.

**Item 10.** You are required to request a hearing on your Petition and Notice of Relocation at least thirty (30) days before the date you intend to move. If a hearing is needed immediately or less than thirty (30) days prior to your moving date, you will need to request an immediate/emergency hearing. You will need to explain why you need a hearing immediately for your relocation.

## **STEP 2. MAIL A COPY OF THE PETITION AND NOTICE TO THE OTHER PARENT/PARTY. FILE THE ORIGINAL IN THE CIRCUIT CLERK'S OFFICE.**

Mail a copy of your Petition and Notice to the other parent/party by first class mail, then go to the Circuit Clerk's Office and file the original. You can, if you prefer, serve the other parent/party by personal service. You can use any individual over the age of eighteen that is not a party to this case. This individual will need to fill out the West Virginia Return of Service form (SCA-FC-132). There is an \$85.00 filing fee for this Petition and Notice. What happens next is the hearing on your relocation. Hearings are discussed in Step 3.

## **STEP 3. HEARINGS ON RELOCATION.**

You are required to request a hearing date on your Petition and Notice of Relocation.

If you need to proceed quickly with your relocation, ask for an expedited hearing.

Once you provide your Petition and Notice of Relocation to the Family Court, the Family Court will set a date and time for the hearing, and notify each of you by order. Step 4 explains how to prepare for a hearing.

## **STEP 4. PREPARING FOR A HEARING.**

At a hearing, you will need to prove your relocation is in good faith, for a proper purpose, and to a location that is reasonable to achieve the purpose of your move. You also should be prepared to propose specific ways in which the custodial responsibilities under the current court-ordered Parenting Plan should be changed as a result of your relocation. You also may need to show how the other parent/ party can reasonably accommodate the Parenting Plan changes you are proposing. How you will present your case, and what you will need to prove will depend on the particular nature of your relocation plans, the changes you are proposing in the Parenting Plan, and the other parent/party's response to your plans and proposals. Here are some tips to help you prepare for a hearing.

Allow plenty of time to prepare.

Make a plan for how you will present your case. Generally speaking, you can prove your case by your testimony, by the testimony of other witnesses, and by documents or records. List the things you want to prove, and for each item, list how you will prove it, by witness testimony, or a document, for example.

Make sure you have requested all necessary witness subpoenas. If you know you will need a witness to testify at the 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 for service by the sheriff the fee is \$30 per subpoena, unless your fees have been waived. You should request witness subpoenas at least 10 days before the hearing. If you cannot afford to pay the subpoena fees, you may qualify for the fee waiver. You can obtain the fee waiver form from the Circuit Clerk's Office.

Step 5 explains what happens after the hearing.

## **STEP 5. 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.