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# WEST VIRGINIA EXPEDITED MODIFICATION OF CHILD SUPPORT

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## \*IMPORTANT INFORMATION\*

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

You may prepare and file a Petition for Expedited Modification of Child Support 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 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 forms in this packet require you to list your 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 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

A Petition for Expedited Modification of Child Support (SCA-FC-226) asks the court to change the amount of child support. If you want the court to enforce a child support order because someone is not paying child support, you need to file a Contempt Petition (SCA-FC-251). The forms and instructions for filing a Contempt Petition are available in Circuit Clerk and Family Court offices.

A Petition for Expedited Modification of Child Support can be used ONLY to ask the court to modify child support. If you want to ask the court to modify an order in any other way, such as change a Parenting Plan, or change spousal support, you must file a regular Petition for Modification (SCA-FC-201). The forms and instructions for filing a regular Petition for Modification are available in Circuit Clerk and Family Court offices.

Even if you want to ask the court to modify child support, you **MUST** meet certain requirements before you can file a Petition for Expedited Modification of Child Support. Read the following paragraphs to determine if you can file a Petition for Expedited Modification of Child Support.

**A Petition for Expedited Modification of Child Support can be filed ONLY if:**

- 1. One or both parents have experienced a substantial change in financial circumstances. The substantial change must be an increase or decrease of income resulting from a change in employment status such as loss of job, promotion, raise, or new job. You CANNOT file this petition if the decrease of income is the result of you voluntarily quitting your job.**
- 2. The court can consider your Petition for Expedited Modification of Child Support only if the substantial change in one or both parents' financial circumstances will result in a new child support amount that is more than 15% different from the current child support amount.**

**If you meet ALL of the requirements for filing a Petition for Expedited Modification of Child Support, continue reading.**

These instructions will tell you how to fill out the Petition for Expedited Modification of Child Support (SCA-FC-201) form, and the Civil Case Information Statement (SCA-FC-103). These instructions will also tell you how to file the Petition in the Circuit Clerk's Office and prepare for a hearing. Read these instructions carefully. If these instructions are not followed, or if the Petition form is not properly completed, your case may be harmed, delayed, or dismissed. It's best to read all of the instructions before you start filling out forms. When you fill out the forms, write or print the information carefully so it can be read and understood. You may want to make a couple of spare copies of the blank Petition form before you start filling it out. You can use these spare copies to practice on, or use if you make an error.

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

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 in your case. Provide your current address and telephone number on the Civil Case Information Statement. Fill in the address and the telephone number of the other party. If you feel your safety or the safety of your children is at risk if the other party is provided your address, you can request the Affidavit for Withholding Identifying Information 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. As these instructions explain later, you will need the other parent's current address to serve your Petition.

Completing the Petition form requires you to fill in the blanks and provide information. All of the requested information is important, so be sure you complete every item that applies to your situation. After you have completed the form, sign and date it, but don't sign the Verification until you are before a Notary Public. Deputy Circuit Clerks can also witness your signature on the Verification. Then file your completed Petition in the Circuit Clerk's Office, Step 2 discusses how to do this. Before you go to the Circuit Clerk's Office, you may want to have a copy made of your completed and verified Petition. If you are attaching any documents to the Petition, you should make two sets of copies of the documents. You can have copies made in the Circuit Clerk's Office, but the law requires the clerk to charge one dollar per page.

## **STEP 2. AT THE CIRCUIT CLERK'S OFFICE.**

At the Circuit Clerk's Office, you will do the following: 1. File the original of your Petition and the Civil Case Information Statement and the copies of any documents you have attached to the Petition, and pay the \$35 filing fee. Keep the copy of the Petition and the original documents for your records. If you cannot afford to pay the filing fee, read the next paragraph. 2. Obtain a certified copy of your Petition; obtain a certified copy of the current child support order you want modified and the child support calculations on which the order is based. After you are finished in the Circuit Clerk's Office, you will take or mail your certified copies and other documents to the Family Court. Step 3 explains how to do this.

### What to do if you cannot afford to pay fees.

If you cannot afford to pay fees, ask a Deputy Circuit Clerk for an affidavit to waive fees and costs. You can fill out the affidavit in the Circuit 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. TAKE OR MAIL YOUR PAPERS TO THE FAMILY COURT.**

Next you must see to it that your papers get to the Family Court. You can take the papers there, or you can mail them. The following are the papers you need to get to the Family Court: 1. The certified copy of your Petition. This is the certified copy you obtained from the Circuit Clerk's Office after you filed the original of your Petition. 2. The certified copy of the child support order you want modified, and the support calculations on which the order was based. You obtained these items at the Circuit Clerk's Office when you filed your Petition. 3. Copies of any documents you filed with your Petition. These are the documents that prove the substantial change in the financial circumstances of you and/or the other parent. After your Petition and other papers have been received by the Family Court, the Family Court Judge will review them and make certain decisions. This is explained in Step 4.

## **STEP 4. THE FAMILY COURT REVIEWS YOUR PETITION.**

At the Family Court your Petition and documents will be reviewed, and based on the information you have provided, the amount of child support will be tentatively recalculated. If this tentative recalculation results in more than a 15% change in the amount of child support, you and the other parent will each receive a Notice showing the tentative recalculation figures. What happens after you receive the Notice is explained in Step 5. You will be notified if the change is less than 15%. If you have not met the requirement, you can file a regular Petition for Modification.

## **STEP 5. WHAT HAPPENS AFTER YOU RECEIVE THE NOTICE OF RECALCULATION?**

When you receive the tentative recalculation Notice, the other parent will receive the Notice and a copy of your Petition. The local office of the Bureau of Child Support Enforcement will also receive the Notice. The Notice will inform the other parent and the Bureau of Child Support Enforcement they have 14 days from the date of service to contest the tentative recalculation and request a hearing. If either one requests a hearing, all parties will receive an order stating the date, time, and place of the hearing. How to prepare for a hearing is discussed in Step 6.

If neither the other parent nor the Bureau of Child Support Enforcement requests a hearing within 14 days, the Family Court Judge will prepare a Default Order setting child support at the amount stated in the Notice. Everyone involved will receive copies of the Order.

## **STEP 6. PREPARING FOR A HEARING.**

If a hearing is held, the subject will be the changes in the financial circumstances of you and/or the other parent. You will need to prove what you stated in your Petition. Here are some tips on getting ready 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 a service fee of \$25 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, read the last paragraph in Step 2.

Step 7 explains what happens after the hearing.

## **STEP 7. 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.