

# **FAMILY COURT MATTER**

## **INSTRUCTIONS**

**For**

### **Request To Have Other Party Held In Contempt of Court**

Use these Instructions to complete the following court forms for contempt:

*Notice of Motion and Motion for Contempt of Court (DIV1402)*

*Affidavit in Support of Motion for Contempt of Court (DIV1403)*

*Order to Show Cause and Appear (DIV1404)*

*Affidavit of Personal Service (DIV1405)*

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

## Important Notices

- You can use these forms if: A Court *Order* exists directing another person to do something, the person has personally received a copy of the *Order*, the person has disobeyed the *Order* and the person did not have a good reason for disobeying the *Order*. Exception: If your *Divorce Decree* orders your ex-spouse to pay you money as part of the division of your property, and not as support, and the money has not been paid, **DO NOT** use the civil contempt process. Instead, go to the division of your court that deals with civil judgments, show them your *Divorce Decree*, and inquire about procedures to docket a judgment against the other party for the amount unpaid. You then can use Collection procedures to try to get the money.
- The court expects every person who appears in court without a lawyer to know the law. If you act as your own lawyer, you must do what a lawyer would do.
- You should see an attorney if you don't know how to answer the questions on these forms or if you think the other party will hire an attorney.
- Court personnel and the county attorney's office cannot help you fill out these forms.
- As you fill out the form(s), you MUST follow all of the instructions.
- Type your answers or print neatly using dark ink.
- If you need more space to answer a question, use an additional full sheet of paper.

# INSTRUCTIONS

## What “Contempt of Court” Means

Only a judge can determine whether someone is in “contempt of court.” “Contempt of Court” is a decision by a judge that someone who has been ordered to do something, knew about the *Order*, and has knowingly, and without good reason, disobeyed the *Order*. Because a judge can order the contemnor (the person who disobeyed) to be put in jail until they or obeys the *Order*, extra safeguards are built into the procedures to ensure that the person who might be put in jail is treated fairly.

**WARNING: When asking the court to find someone in Contempt of Court, it is very important to follow the procedures set out in these instructions. If you do not follow them, the court may not give you what you want, even if the other person has disobeyed the prior order without good reason.**

## *Two-Part Hearing Process Required*

**The court cannot put a person in jail simply because you say the person disobeyed a court order. In most cases there will be several hearings. If you want the court to decide that the person is in contempt and that they be put in jail, then certain forms asking for a first-stage hearing must be served upon (given to) the other person and filed with the court (those forms are listed on the cover page of the these Instructions).**

## *First-Stage Hearing*

At the first hearing, the court will decide if:

1. The person knew the contents of the prior *Order*;
2. The person disobeyed the prior *Order*, but had a good reason for disobeying it;
3. The person disobeyed the prior *Order* and did not have a good reason for disobeying it.

If the court decides that the person obeyed the *Order* or that the person disobeyed the *Order* but had good reason for disobeying it, then the motion for contempt will be denied.

If the court decides that the person disobeyed the prior *Order* and did not have a good reason for disobeying it, and if the court also decides that putting the person in jail will make that person obey the prior *Order*, the court must tell the person that incarceration is a possibility and advise the person to obtain an attorney, and explain that if the person cannot afford an attorney one will be appointed.

If the person wishes to talk with an attorney, a second hearing will be scheduled. If the person waives his/her right to an attorney the court may conduct the hearing at that time. The court may not punish a person and put them in jail for not following the order. That would be a criminal matter. The court may only put someone in jail if the court believes the person has the ability to do what is ordered and willfully refuses to do it and that putting the person in jail will cause the person to obey the prior *Order*.

If the court finds that the person knew the contents of the *Order*, willfully failed to follow it, and that jail or the threat of jail may reasonably cause compliance with the court *Order*, the court may immediately sentence the person to jail or may “stay” (not immediately enforce) the jail sentence to give the person time to “purge” (correct) the prior behavior by doing what the court *Order* required. The court may also require the person to do other things, such as pay money, cooperate in visitation, follow future court orders, etc.

## ***Revocation Hearing***

If the Court sentences the person to jail, but gives the person a chance to purge the contempt and the person does not do what they were supposed to do to cure the problem, you may wish to have the person jailed. If you want the person jailed, then certain forms asking for a hearing for revocation of the stay must be served upon (given to) the other person and filed with the court.

At the revocation hearing the court will decide one of the following:

1. The person has purged (cured) the contempt; OR
2. The person has not purged (cured) the contempt, but jailing the person is not necessary to cause obedience and, therefore, the person will not be jailed; OR
3. The person has not purged (cured) the contempt, and jailing the person is necessary to make the person obey the *Order* and, therefore, the person should be immediately jailed.

If the court decided to order the person to jail, that person must stay in jail until they purge the contempt by obeying the court *Order* (for example, by paying overdue support, or allowing visitation, or agreeing to follow all future court Orders). It is often said that the person in jail “holds the keys to the jail” because that person controls when they are released.

# Step 1

## Fill Out the *Notice of Motion and Motion for Contempt of Court Form* for the First-Stage Hearing

Fill out the *Notice of Motion and Motion for Contempt of Court* form. This form tells the court and the other party what you think the other party has done to disobey an existing court Order, what you are asking for from the court, and the date and time of the hearing.

**FILL IN THE TOP PART OF THE FORM (this is known as “the caption”):**

**NOTE:** The information to fill in the top part of the form can be found at the top of your current custody order or your divorce or paternity decree or other existing Order. Be sure to copy the information EXACTLY as it is on your current Order.

- Write the case number, which is also called “the court file number.”
- On the line marked “Name of Petitioner,” write the name of the Petitioner as listed on your current Order or divorce or paternity decree.
- On the line marked “Name of Respondent,” write the name of the Respondent as listed on the current Order or divorce or paternity decree.
- On the “TO” line, write the full name and street address of the other party.

**Do not fill in the date, time, name of judge and location of the hearing yet. You will do that as part of Step 3.**

## FILL OUT THE REST OF THE FORM:

**NOTE:** The instructions that follow are numbered the same as the paragraphs/questions on the *Notice of Motion and Motion* form.

1. Write in the name of the other party that you are asking the court to find in contempt. Write in the paragraph numbers that the other party has not obeyed and the date of that Order. After the word “by,” write in what the other party did that violated the Order. Include the paragraph number and the actual language from the Order that sets forth the specific duty or obligation.
2. You do not need to answer this question UNLESS you are asking for something else from the court besides a finding of contempt (for example, compensatory visitation or a change in the Order). List any other requests you are making of the court.
3. You do not have to write anything for this paragraph/question.

**Read the *Verification and Acknowledgment* carefully. By signing your name you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the court or if you are**

**-serving or filing this document for an improper purpose, the court can order you to pay money to the other party or impose other sanctions.**

**Date and Sign the *Notice of Motion and Motion Form*.**

## Step 2

### Fill Out the *Affidavit in Support of Motion Form*

Fill out the *Affidavit in Support of Motion* form, which tells the court and the other party what you are asking for from the court and WHY you are asking for it.

- Fill in the top part of the form (caption) the same way you did on the *Notice of Motion and Motion* form.

**NOTE: The instructions that follow are numbered the same as the paragraphs/questions on the *Affidavit in Support of Motion* form.**

1. Write in your name at paragraph/question 1.
2. Check off whether you are the Petitioner or Respondent in this case as listed on your *Divorce Decree* or other existing *Order*.
3. On the blank line, fill in the name of the person you would like to have found in contempt.
4. Fill in the date of the *Judgment and Decree* or *Order* that the other person has disobeyed. Mark a copy of the *Decree* or *Order* as “Exhibit A” and attach the copy of the *Order* to this *Affidavit*. Fill in the page and paragraph number(s) of the *Order* that the other party has disobeyed. If there is more than one order, refer to Exhibit A, page \_\_\_\_, paragraph \_\_\_\_, then to Exhibit B, page \_\_\_\_, paragraph \_\_\_\_, etc.
5. On the blank line, fill in the date that the other party was mailed or given a copy of the *Order* that the party disobeyed. Check off which evidence of service exists. You will probably need to look through the court file for evidence of service. There should be an *Affidavit of Service* if the *Order* was mailed or handed to the other party. There may be an *Admission of Service*, which is a paper signed by the other party admitting that they received a copy of the *Order*. The other party may have admitted receiving a copy by signing an admission of receipt of copy statement on the *Order* or *Decree*. If the party signed an admission on the *Order* itself, your copy of the *Order* attached as “Exhibit A” should show that signature. That proves service. If your proof of service is not on the *Order* itself, get a copy of the *Affidavit of Service* or *Admission of Service* and attach it to the *Affidavit in Support of Motion*. The *Affidavit of Service* or *Admission of Service* should be in the court file. To obtain a copy go to the Court Administrator’s office where the *Order* was issued. There will be a fee for obtaining a copy. If the *Affidavit* or *Admission of Service* is not in the court file, it may be in the office file of the attorney who represented the party who asked the court for the *Order*. The attorney’s name and address should be in the *Order*. Contact the attorney’s office for a copy of the *Affidavit of Service*.

**IMPORTANT: If you cannot prove that the other party received a copy of the *Order* or *Decree*, the court cannot find the other person in contempt.**

- For the remaining paragraphs, fill out only those that apply to your situation.
  - 7-9 These are for non-payment of child support.
  - 10-12 These are for non-payment of spousal maintenance.
  - 13-15 These are for failure to return property the Court awarded to you.
  - 16 This is for denial of parenting time/visitation
  - 17 This is for everything other than situations covered by paragraphs 7-16.
- Reminder: The court cannot find the other party in contempt for failing to pay money (other than child support and spousal maintenance). See the IMPORTANT NOTICES page of these instructions for information on obtaining a judgment.

Sign the *Affidavit in Support of Motion* under penalty of perjury. By signing your name under penalty of perjury, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are filing these documents just to harass the other party or without good legal reason, or if you mislead the court, the court can make you pay money to the other party. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

## Step 3

### Fill Out the *Order to Show Cause and Appear* Form

The *Order to Show Cause and Appear* is an order that tells the other party they must appear in court to explain to the judge why an order for contempt should not be entered against him or her.

- Fill in the top part of the form (caption) the same way you did on the *Notice of Motion and Motion* form.
  - After “STATE OF MINNESOTA,” fill in the name and address of the person you want to be found in contempt.
1. Fill in the name of the other person and check off whether he or she is the Petitioner or Respondent in this case. Fill in:
    - The date, time, and court number (Fill this in later, as part of Step 4)
    - The paragraph(s) the other person violated (same as on your *Affidavit* form).
    - The date of the Order that the other person violated (same as on your *Affidavit* form).
    - State exactly what the other party was ordered to do by copying the exact words from the Order the person violated.
  2. You do not need to write anything for paragraph/question 2 through 5.

**Do not date or sign this order – the judge will do that.**

## Step 4

### Obtain from Court Administrator Hearing Date, Time and Location

Notice: Read through Steps 4 and 5 now.

When your *Notice of Motion and Motion and Motion* and *Affidavit in Support of Motion* have been completed, go to the Court Administrator's office. The Court Administrator/Deputy will help you get a court date and time for your hearing. The hearing date should be scheduled no later than 60 days after the issuance of the notice of motion or order to show cause.

Fill in the date, time, location, name of the judge and room number of the hearing on the first page of the *Notice of Motion and Motion* form. Fill in the date, time, location and room number on the *Order to Show Cause* form.

## Step 5

### Make Copies of Forms

- Make **two** copies of the *Notice of Motion and Motion* form and all attachments, and **two** copies of your *Affidavit in Support of Motion* form and all attachments.
- Keep **one** copy of each form for yourself (make sure to bring your copies with you to Court on the day of your hearing).
- Step 7 tells you how to serve the other party. Step 6 tells you how to file the forms with the court.

## Step 6

### Filing the Forms With the Court and Get Judge's Signature on the Order to Show Cause and Appear Form

You must file your documents with the court and you will need to pay the filing fee. You can contact the Court Administrator's office to find out the amount of the filing fee.

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the Court Administrator/Deputy for an **In Forma Pauperis** application. You need to fill out this application and sign it under penalty of perjury. This application will be reviewed by a judge who will determine whether you must pay a filing fee. If the judge does not sign the form waiving the fee, you must pay the filing fee or the Court Administrator cannot accept your forms.

The Court Administrator/Deputy will arrange for the judge to review the *Order to Show Cause* and return it to you if the judge signs it.



## Step 7

### Serve Notice on the Other Party at Least 21 Days Before the Hearing Date

You must arrange for the other party to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called “service of process.” Service of process **MUST** be completed at least 21 days before the hearing date, (unless the judge has issued an Order stating some other requirement). For example, if the hearing is September 30, the other party must be handed the papers on or before September 9.

Ask a friend or relative or other person who is over the age of 18 to help you with service. For an Order to Show Cause, the person serving the papers must bring the signed Order to Show Cause with them. The person must hand a copy of the *Notice of Motion and Motion, Affidavit in Support* and *Order to Show Cause* directly to the other party. Another person (such as a child or roommate) cannot accept the papers for the other party.

If you do not have a friend or family member who will give the documents to the other party, you could call a private process server (look in the yellow pages under “process server”) or the sheriff in the county where the other party lives to serve the papers. Private process servers and the sheriff charge a fee to serve papers.

**WARNING: You cannot give the documents to the other party. Someone else over the age of 18 must hand-deliver the documents directly to the other party. The documents cannot be mailed to the other party.**

**Note: When the other party is not in the state of Minnesota, you may have the person served outside of Minnesota. However, if the person does not personally attend the hearing, the judge cannot find the person in contempt of court.**

## Step 8

### The Person Who Handed the Forms to the Other Party Must Fill Out the *Affidavit of Personal Service Form*

The *Affidavit of Personal Service* proves to the court that the other party received a copy of the *Notice of Motion and Motion, Affidavit in Support of Motion*, and *Order to Show Cause*. The person who handed the forms to the other party should fill out the *Affidavit of Personal Service* by following these instructions:

- Fill in the top part of the form (caption) the same way as on the *Notice of Motion and Motion* form.
- After “I,” fill in the name of the person who handed the forms to the other party.
- Fill in the date of birth of the person who handed the forms to the other party.
- Fill in the date the documents were handed to the other party.
- Fill in the name of the other party.
- Fill in the address of where the other party was served.

The person who delivered the forms must sign the *Affidavit of Personal Service* under penalty of perjury. By signing the *Affidavit* under penalty of perjury, the server is stating that the information in the *Affidavit* is true to the best of their knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

- **After it has been signed, make one copy of the *Affidavit of Personal Service* for your records.**

**Note: You must file the signed *Affidavit of Personal Service* with the court.**

## **Step 9**

### **Receive the Other Party's Response**

If the other party is going to respond to your *Motion for Contempt of Court*, by law they must respond at least 7 days before the hearing. The other party will respond by mailing or delivering a written response to you. If the other party responds but it is not at least 7 days before the hearing, the court has the option of not looking at or considering the other person's papers during the court hearing.

## **Step 10**

### **Appear in Court**

Regardless of whether the other person does or does not respond in writing, YOU must go to court on the date set for the hearing and be on time. Bring with you to the hearing your copies of the papers and any witnesses you want to talk to the judge. If you have been served with a response, you should write your response to it and be prepared to give that information to the judge and a copy to the other party at the hearing.

## **Step 11**

### **Order for Contempt**

After the hearing the judge will issue an *Order*. The judge may issue the *Order* at the end of the hearing or may send a copy of the *Order* to you in the mail.

If the court determines that the other party is in Contempt of Court, and decides to give the person a second chance to obey the *Order* before putting him/her in jail, the court then sets a return date to review the other party's compliance with the new *Order*. If the other party does not obey the new *Order*, you will want to appear in court on the new date to tell the judge. If the court has not set a return date to review the other party's compliance, you may bring a *Motion* to ask the court to impose the jail sentence because the person failed on his/her second chance. If you want the person jailed, ask for a second hearing following steps outlined herein for the first hearing.