

Visitation Enforcement Kit

If you have a Texas court order that allows you to spend time with your children, but the other parent won't follow the order, this kit can help you enforce that order.

This Kit includes the following documents:

1. **Sample Demand Letter for Visitation** (1 page)
Reminds the other parent of the legal consequences for violating the court order
2. **What Counts as a Denial of Visitation???** (1 page) and **the Visitation Journal** (3 pages)
Documents the denied visitation to prepare your case for court
3. **Court at a Glance** (1 page)
Describes the seven steps to enforcing your order
4. **Step 1: Do Your Homework** (1 page)
Outlines the first step involved in filing your case
5. **Step 2: File your Motion, Set your Hearing** (1 page)
Explains the second step in your case)
6. **Motion for Enforcement of Visitation Order** (9 pages)
The document that's filed to start your legal action.
7. **Step 3: Ask the Judge to sign the Order to Appear** (1 page)
Explains the third step in your case
8. **Order to Appear and Show Cause** (1 page)
Order, signed by a judge ordering the other party to come to court for your hearing
9. **Step 4: Give Legal Notice** (1 page)
Explains the fourth step in your case.
10. **Step 5: Prepare for Hearing** (1 page)
Explains the fifth step in your case.
11. **Sample Testimony** (8 pages)
Can be used as a sample to help you prepare your testimony.
12. **Step 6: Hearing** (1 page)
Describes the sixth step in your case.
13. **Step 7: Decision** (1 page)
Describes the seventh step in your case.
14. **Order for Capias and Setting Bond** (2 pages, an order for the judge to sign, requesting the arrest of the Respondent, if the Respondent was served with legal notice of your hearing, but did not appear in court.)
15. **Capias** (2 pages, issues by the District Clerk, if the judge signed an Order for Capias)
16. **Order on Motion for Enforcement of Visitation Order** (7 page order, signed by the judge after your hearing.)

[DATE]

[Custodial Parent]
[Custodial Parent's Address]

Re: Notice to Exercise Court-Ordered Possession and Access (Visitation)

Dear **[Custodial Parent]**:

I plan to see our **[children / child]**, according to the court-ordered possession and access (visitation) schedule, as written in the most recent court order which was signed by the judge in our case in Cause No. _____ **(cause number)**.

I will be at

[your residence at 6:00 pm]

OR

[the school where our [children /child] is enrolled, when school is dismissed]

OR

[Other fill in the time and place where your visitation is ordered to take place.]

on **[the date designated in the court order for you to take possession]**
to exercise my rights to see our **[children / child]**.

You should have our **[children / child]** ready for my visitation as provided for in the court order.

I will return our **[children / child]** to you as required by the court order.

I intend to continue exercising my possession and access (visitation) rights according to the court ordered schedule from now on.

Interfering with my court-ordered access and visitation rights could result in a contempt action being filed against you. Failure to pay child support is not a justification or defense to a charge of contempt for interference with court-ordered visitation rights. If a court finds you in contempt for denying me court-ordered access to our **[children / child]** the court may sentence you to jail time, and order you to pay a fine, attorney's fees and court costs. It would be best for everyone, especially our **[children / child]**, to avoid such litigation.

Sincerely,
[Your Name]
[Your Address]
[Your Telephone]

WHAT COUNTS AS A DENIAL OF VISITATION???

To enforce your visitation order and ask the court to hold the other parent in contempt, you must follow very specific rules when you try to exercise your visitation.

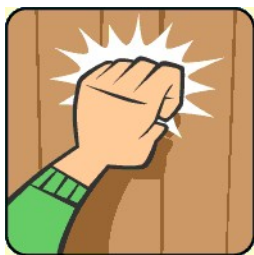
You are not technically denied visitation unless you actually **appear in person at the pick-up location** listed in your court order, even if the other parent has already told you that she will not be there or that she will not be giving you your child.

By not producing the child at the pick-up location at a certain date and time, the other parent is violating the court order. ***However, that parent cannot be required to testify against herself in court, so you have to be able to testify that you were there and she was not.***



Step 1: Look at your court order, or at your Visitation Calendar if one has been prepared for you. Find the next exact date and time that you are supposed to pick up your child.

Step 2: Arrive at the pick-up location at the exact date and time you are supposed to be there. Give yourself plenty of time to get there. If you are early, wait a few minutes.



Step 3: Knock on the door. Wait. Knock on the door again. You must give some indication that you are there and are ready to pick up your child.

Step 4: Try to obtain evidence that you were at the right location at the right date and time. You can take a witness with you to observe what happened. You can go to a nearby convenience store or fast food restaurant and buy a drink or a pack of gum, and keep the receipt showing you were in the area at a certain date and time. Some police departments may be willing to file a report for you.



Step 5: Immediately write down what happened in your visitation journal. Write down the date, time, and place where you tried to pick up your child. If you have a witness, write down his or her name. If you have a receipt or other evidence, keep it safe.

VISITATION JOURNAL (Use this journal to document your attempts to exercise your court ordered visitation. An accurate and complete Visitation Journal can help you explain your case to the court.)

My name is: _____.

I am the child's father. mother. _____.
(other, please print your relationship to the child.)

My child's name is/ My children's names are:

Child's Name	Child's Birthday (month, day, and year)

The child/ren live(s) with *(print name of person child/ren live with):*

_____.

I have court orders allowing me to see my child/ren on specific days and at specific times. My court order states a specific location for me to pick up my children.
(If you do not have a court order, or your order does not include specific days and times for your visitation, or if your order does not include a specific location for you to exchange your child/ren with the other parent, you will need to go back to court to get an order that includes these things, before a court can enforce your order.)

I have tried to see my children, according to my court order, but the child's other parent did not allow me to see the child/ren.

This journal records the times I tried to see my child/ren, according to the court ordered schedule. I tried to see my child/ren on the following dates, but was not allowed to.
(Complete the charts with information about when you tried to see your child/ren, according to your court schedule, but were not allowed to. You can copy and add additional charts, if you need to.)

Date	Month: _____ Day: _____ Year: _____
Day <i>(check one.)</i>	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____
Witnesses <i>(List names of people who were there when you tried to see your child/ren.)</i>	
What happened? <i>(no one home, wouldn't let me see child/ren, etc)</i>	

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place (ex. Mother's residence, McDonald's, etc.)	
Address	Street Address: _____ City, State: _____
Witnesses (List names of people who were there when you tried to see your child/ren.)	
What happened? (no one home, wouldn't let me see child/ren, etc)	

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place (ex. Mother's residence, McDonald's, etc.)	
Address	Street Address: _____ City, State: _____
Witnesses (List names of people who were there when you tried to see your child/ren.)	
What happened? (no one home, wouldn't let me see child/ren, etc)	

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____
Witnesses <i>(List names of people who were there when you tried to see your child/ren.)</i>	
What happened? <i>(no one home, wouldn't let me see child/ren, etc)</i>	

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____
Witnesses <i>(List names of people who were there when you tried to see your child/ren.)</i>	
What happened? <i>(no one home, wouldn't let me see child/ren, etc)</i>	

Court at a Glance, Enforcement Kit

There are basically 7 steps in enforcement cases.

Step 1: Do your Homework.



Step 2: File your Motion, and set your hearing

Step 3: Ask the Judge to sign the Order to Appear



Step 4: Give Legal Notice

Tell the other party what you want.
(Process server or Post Office does this for you.)



Step 5: Prepare for Hearing

More homework.



Step 6: Hearing

Ask the judge for what you want, and explain why you should get it.



Step 6: Decision



- The Judge decides whether or not you should get what you asked for.
- You give the judge an Order to sign.
- The order needs to say exactly what the judge decided.



Step 1: Do your Homework

For Step One, you'll need the following:

- Civil Case Information Sheet (you'll get this from the District Clerk's office.)
- Motion for Enforcement of Visitation Order

1. Civil Case Information Sheet (get this when you are at the District Clerk's Office.)

- Complete it.
- Make a copy for your records. (The District Clerk will keep the original.)

2. Motion for Enforcement of Possession or Access

- Read through the Motion for Enforcement of Visitation Order and Order to Appear very carefully. Fill in your case information in the blank spaces. Check only those boxes that apply in your case. If you're not sure what to put in the blanks, talk to a lawyer.
- Sign the last page of the Motion for Enforcement of Possession or Access, **in front of a notary.**
- Make a copy for yourself and for every party in your case (The District Clerk will keep the original.)

3. Filing Fee

- Be prepared to pay a filing fee to the clerk when you file your papers.
- Call the District Clerk to find out how much you'll have to pay.
- If you can't afford to pay, you can file an Affidavit of Inability to Pay Costs, which asks the court to waive the filing fees.
- You can get this form from the this website's (www.TexasLawHelp.org) alphabetical list of forms

4. Learn how to set the hearing, and have the judge sign your Order to Appear

- Call the judge's court coordinator,
 _____ (name), at
 _____ (phone).
- Explain that you're filing a Motion to Enforce, and you need know :
 1. What the procedure is to get the judge to sign the Order to Appear, and
 2. What the procedure is to set the motion for a hearing.
- Write the instructions down here:

STEPS 2 - 4 will be completed the same day and at the courthouse



Step 2: File your Motion, and set your hearing

For Step Two, you'll need the following:

- Civil Case Information Sheet (get this from the District Clerk's Office)
- Motion for Enforcement of Visitation Order
- A check or money order for your filing fee (or the Affidavit of Inability to Pay Costs)

1. File your papers with the District Clerk's Office in the county where you got the order that you're trying to enforce.

- Take your documents (and your copies) to the District Clerk's Office.
- Tell the clerk you're there to file a Motion to Enforce, and hand the clerk all of your documents. (Place the original on top, and the copies of each document behind the original.)
- The clerk will "file stamp" your papers, noting the date when you filed your Motion.
- The clerk will give you your copies, but will keep the original for the court's file.
- Make sure to keep a copy of everything for yourself.

2. Set the Hearing

- Follow the Court Coordinator's instructions to set a hearing to have your motion heard. (You should have written them in **Step One: Do your Homework.**)
- Be sure to set your case at least 20 days from the date you file your motion. This will give you enough time to give the other parties legal notice. The parties must have at least 10 days' notice for a contempt hearing.

In the interest of *(List children)*:

- 1 Name: _____
- 2 Name: _____
- 3 Name: _____
- 4 Name: _____

§
 §
 § **Cause No:**
 §
 § In the _____ District County Court of:
 § _____ County, TX

MOTION FOR ENFORCEMENT OF VISITATION ORDER

1. DISCOVERY LEVEL

Discovery should be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure. *[Discovery is a procedure that can be used by parties in a lawsuit to find out information about the other party.]*

2. PARTIES

Petitioner [You]
I am the Movant.

My name is _____
[PRINT your full name]

I live at _____
[address].

I am the child/ren's *[CHECK one.]*
 mother. father. _____ .

I am the child/ren's *[CHECK one.]*
 Joint Managing Conservator. Possessory Conservator.

Respondent

The child lives with the Respondent. The Respondent in this case is the child's:

mother. father. _____ .

Respondent is the child/ren's *[CHECK one.]*
 Joint Managing Conservator. Possessory Conservator

The Respondent's name is:

[PRINT Respondent's full name]

Process should be served on respondent at the following address:

[PRINT the address where you want Respondent to be served.]

3. Children

My child's name is/ My children's names are:

Child's Name	Sex (male or female)	Child's Birthday (month, day, and year)

4. JURISDICTION

This court has continuing, exclusive jurisdiction of this case as a result of prior proceedings.

5. CONTEMPT

CONTEMPT BASED ON DENIAL OF POSSESSION

(Check this box, and complete the following section, if the Respondent has denied your court ordered visitation.)

This Court signed an order called: _____
(Print the name of the order that you are trying to enforce.)

on _____ date.
(Print the date the judge entered your court order. This is either the date you appeared in court, or the date the judge signed the order. It is usually the earlier date.)

The Court ordered Respondent to make the children available to me as set forth in the attached order, labeled Exhibit A. *(attach a copy of the order to this motion. At the top of the order, write: Exhibit A.)*

The Respondent has refused to comply with this court's order. The Respondent disobeyed the court order by failing to surrender the minor child(ren) to me on the following dates for court-ordered periods of possession and access:

Date	Month: _____ Day: _____ Year: _____
Day <i>(check one.)</i>	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____

Date	Month: _____ Day: _____ Year: _____
Day <i>(check one.)</i>	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____

Date	Month: _____ Day: _____ Year: _____
Day <i>(check one.)</i>	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place <i>(ex. Mother's residence, McDonald's, etc.)</i>	
Address	Street Address: _____ City, State: _____

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place (ex. Mother's residence, McDonald's, etc.)	
Address	Street Address: _____ City, State: _____

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place (ex. Mother's residence, McDonald's, etc.)	
Address	Street Address: _____ City, State: _____

Date	Month: _____ Day: _____ Year: _____
Day (check one.)	<input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday <input type="checkbox"/> Sunday
Time	_____ : _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Place (ex. Mother's residence, McDonald's, etc.)	
Address	Street Address: _____ City, State: _____

I ask the Court to hold the Respondent in contempt, and to jail, and fine the Respondent for each violation listed above.

I believe that, based on the Respondent's behavior, the Respondent will continue to disobey the court order. I ask the Court to hold Respondent in contempt, and to jail and fine Respondent for each additional failure to comply with the court order from the date of this filing to the date of the hearing on this motion.

In the event that the Court decides not to jail the Respondent, or the Court orders a partial commitment for the Respondent, I ask the Court to place Respondent on community supervision for five years on release from jail or suspension of commitment.

CONTEMPT BASED ON THE FAILURE TO DISCLOSE A RESIDENTIAL ADDRESS

(Check this box, and complete the following section, if the Respondent was court ordered to notify you of changes in his/her address, but has refused to do so.)

The court orders, attached as Exhibit A, state that "EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE THE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER, THE

COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OR UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS."

As of today, Respondent has failed and refused to comply with the order and has willfully disobeyed the order of the Court by failing to notify the court and me of the changes in residence address and phone number, and failing to surrender the minor child/ren to me on the above described dates.

I have been unable to exercise my rights of possession because I do not know where to pick up or return the child.

I ask the Court to hold Respondent in contempt, and to jail and fine Respondent for each violation alleged above. Further, I believe, based on the Respondent's behavior, that Respondent will continue to disobey the order. I ask the Court to hold Respondent in contempt, and to jail and fine Respondent for each failure to comply with the court order from the date of this filing to the date of the hearing on the motion.

I ask that the Respondent be confined in the county jail until Respondent complies with the Court order. If the Court decides not to jail the Respondent, I ask the Court to place Respondent on community supervision for five years on release from jail or suspension of commitment.

4. SETTLEMENT ATTEMPTS *(Check all that apply.)*

I have tried to resolve this matter without court intervention.

I acquired Respondent's present residence address, and sent a letter to Respondent asking Respondent to contact me about this situation, but we were unable to reach an agreement.

I attempted to settle this case in mediation.

5. BOND FOR CONFORMANCE

I ask the Court to order a bond to secure Respondent's compliance with the Court's order granting possession of or access to the child/ren.

6. MAKE UP VISITS

I ask the court to order additional time when I can have access or possession of the child/ren to compensate for those periods denied by Respondent.

7. CLARIFICATION

I ask that, if the court finds that any part of the order I am trying to enforce is not specific enough to be enforced by contempt, the Court enter a clarifying order that clearly specifies the duties imposed on Respondent, giving Respondent a reasonable time within which to comply.

8. PRAYER

I ask that Respondent be held in contempt and punished; that if the court decides not to jail Respondent, that the Court order Respondent to participate in a program of community supervision, that the Court order Respondent to pay the costs of court to the Clerk of the Court; that the Court order a bond or security for Respondent's future compliance with the Court's orders; that the Court clarify any part of its prior order found not specific enough to be enforced by contempt; that the Court enter such further orders as it deems just, equitable, and appropriate for the purpose of facilitating compliance with the Court's visitation and possession orders, that the Court enter such further orders as it finds are in the child/ren's best interests, that the Court enter such further orders as it deems necessary to transition the parties back to the previously orders possession and access schedule; and for attorney's fees, expenses, costs, and interest and further relief as authorized by law.

Respectfully Submitted,

(Print your full name.)

(Don't sign your name, until you are in front of a notary.)

SUBSCRIBED TO AND SWORN before me on this the ____ day of _____, 20____

Notary Public, State of Texas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Enforcement of Visitation Order; and Order to Appear and Show Cause were served on Respondent,

_____ ,

(Print Respondent's name.)

In accordance with the Texas Rules of Civil Procedure on this the _____ day of _____, 20____

Petitioner



Step 3: Ask the Judge to sign the Order to Appear

For Step Three, you'll need the following:

- Order to Appear
- Motion for Enforcement with Exhibits

1. Order to Appear

- Follow the court coordinator's instructions to ask the judge sign the Order to Appear. Make sure and give the judge your Motion for Enforcement **and** Order to Appear
- You should have written the instructions down in **Step One: Do your Homework.**
- After the judge signs the Order to Appear, make enough copies for yourself and all of the parties in your case. (The clerk will keep the original.)
- Proceed to Step Four: Give Legal Notice

In the interest of (*List children*):

1 Name: _____

2 Name: _____

3 Name: _____

4 Name: _____

§

§

§

§

§

§

Cause No:

In the _____ District County Court of:

_____ County, Texas

ORDER TO APPEAR AND SHOW CAUSE

Today, the Court heard Movant’s application. IT IS ORDERED that the Clerk shall issue notice to Respondent,

(Print Respondent’s name.)

to appear and Respondent is ORDERED to appear, by reporting to:

<i>Name of</i>	
<i>Courthouse:</i>	
<i>Courthouse Address:</i>	
<i>Court room:</i>	
<i>Date:</i>	
<i>Time:</i>	

to show cause why Respondent should not be held in contempt of Court as alleged in the application filed herein.

SIGNED this the _____ day of _____, 20_____.

DISTRICT JUDGE



Step 4: Give Legal Notice

Tell the other party what you want.

For Step Four, you will need the following:

- Copies of all of the documents you have filed
- Order to Appear, signed by the judge

You must give legal notice to all of the parties in your case. If you don't know who the parties are in your case, you should talk to a lawyer.

1. Go back to the District Clerk's Office

- Now that the judge has signed your Order to Appear, you need to file it in the District Clerk's office.
- Tell the clerk you're there to file the Order to Appear, and hand the clerk the original and copies. (Place the original on top, and the copies of the document behind the original.)
- The clerk will "file stamp" your papers, noting the date when you filed the Order to Appear.
- The clerk will give you your copies, but will keep the original for the court's file.
- Make sure to keep a copy of everything for yourself.
- Tell the clerk you want to have a constable serve the Order to Appear and Motion for Enforcement of Possession or Access (with Exhibits) on the parties in your case.
- Make sure the clerk will process the citation, and give it to the constable to serve the other party. If not, you'll need to give the citation to the constable to serve the other party. Ask the clerk how to do that.
- The constable will file a **Return of Citation** to show the court the party was served. ***The Return of Citation has to be in the court file for at least 10 days before you have a hearing.***



Step 5: Prepare for Hearing

More homework.

For Step Five, you will need the following:

- Papers for *Step 7: Decision*

1. Prepare for the Hearing

- Talk to your witnesses. Prepare questions for them, or have them prepare a statement to tell the judge.
- Review the documentation that shows the judge your visitation has been denied.
- Review the local rules for your county. Ask the clerk if your county has any special local rules, and where you can find them.
- Review your papers for *Step 5: Decision*. Make sure they are correct.

SAMPLE TESTIMONY, CONTEMPT VISITATION ENFORCEMENT

GENERAL INFORMATION

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

1. My name is _____
(state your full name.)
2. I live at: _____
(state your address, street, city and state.)
3. I am the father / mother of:

(state your children's names and ages.)
4. A court order granted me visitation with my child/ren. It was signed on _____ date.
5. In that order, the child/ren's mother /father, _____,
(state the other parent's name)
was named the parent who has the right to decide where the child/ren live(s)
6. I was awarded a Possession schedule in my court order that looks like:

*(Explain your understanding of what your visitation should be)
(1st, 3rd, and 5th Friday of each month, beginning at _____ time, and ending at _____.....)
(Be sure to mention weekly visits, too, if you were awarded those in your order. Wed/ Thurs 6-8pm? Or overnight?)*
7. The Respondent and I have never modified (legally changed) the court ordered visitation schedule with my children.
8. I have tried to exercise my scheduled visitation with my child/ren on a regular basis since the court order was signed. *(make this statement only if it is true in your case.)*
9. I have not been receiving my visitation according to the court order.

BACKGROUND

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

1. Was there any time when you did not attempt to exercise your visitation? If yes, explain why.(During the period of _____ to _____, I was unable to attempt to exercise my court ordered visitation because _____.)

2. If there were any prior restrictions, did you comply with them? (The court order required that I _____ before I could visit with the child, and I complied with those requirements.)

3. If you had a step-up (tiered) schedule, what stage were you able to complete?(There were ____ number of steps to my visitation order, and I was on the ____ step when the other parent denied my visitation.)

4. Did the Custodial Parent ever voluntarily give you more access (contact) with your child than the court order called for? If yes, this may have accelerated the tiered (step-up) visitation schedule.(The first step of the order required the other parent to supervise my visits, but the other parent skipped this step, and allowed me to spend time with my child unsupervised....)

HAS CUSTODIAL PARENT FAILED TO NOTIFY YOU OF ADDRESS CHANGES?

(Do not make these statements unless they apply in your case.)

1. At the time of the original order, the other parent lived at _____ address.

2. S/he is/is not living at that address at this time.

3. The other parent has not ever notified me of his/her address changes.

4. The other parent has moved ___ times since the original court order.

5. When the other parent fails to notify me of address changes, I find his/her address by _____.

6. I do/do not have the other parent’s current address at this time.

7. I am asking the court to hold the other parent in contempt for failing to notify me of address changes on _____, _____, and _____ dates.

NOTICE/INTENT LETTER BEFORE ENFORCEMENT

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

Did you notify the other parent, in writing, that you intended to exercise your visitation according to your court order?

If you sent a letter, Introduce the letter into evidence *(You should ask the court reporter to mark the letter as Exhibit 1 before the judge calls your case.)*

1. This is a true and correct copy of the notice/letter of intent I sent to the other parent on _____ date, requesting my visitation. It has been marked as Movant's Exhibit 1.
2. I sent the letter by (standard mail, and by certified mail, return receipt requested.)
3. This is the USPO green card attached to the letter I sent to the other parent by certified mail, return receipt requested.
4. _____ signed the green card for the certified letter.

OR

5. The letter I sent by certified mail, return receipt requested, was returned to me unclaimed. This the actual certified letter I sent to the Custodial Parent with the green card still attached.
6. The copy of the letter I sent by regular mail did / did not come back to me.

ATTEMPTS TO EXERCISE VISITATION

Describe what you do when you arrive to exercise the visitation. (Do you arrive on time, knock at the door, etc...? What kind of conversation, if any, do you have with the other parent when you try to exercise your visitation? Do you argue with the other parent at this time? What does s/he do? What do you do then?)

PROVE-UP FOR EACH DENIAL

I'd like to tell the court about some specific dates when the other parent did not allow me to see the child/ren.

Day of week	Date	Weekly/Weekend, etc.

1. _____ date was a day of court ordered visitation for me.
2. I tried to pick up my child/ren on _____ date.
3. I went to _____ (place) to pick my child/ren up.
4. That address was/was not the other parent's current address at the time.
5. I arrived at _____ time.
6. I was ...(alone?) (Accompanied by _____ witness?)
7. The other parent did /did not surrender the child/ren at _____ time on _____ date.
8. (Explain what happened. (Did anyone answer the door? Did it appear to you that anyone was home? Was there a car in the driveway? Could you hear a television or any other noise inside?)

9. I waited _____ (minutes/hours) before leaving.

10. Explain what you did after that. (Did you update your visitation log?)

Day of week	Date	Weekly/Weekend, etc.

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2. I tried to pick up my child/ren on _____ date.
3. I went to _____ (place) to pick my child/ren up.
4. That address was/was not the other parent's current address at the time.
5. I arrived at _____ time.
6. I was ...(alone?) (Accompanied by _____ witness?)
7. The other parent did /did not surrender the child/ren at _____ time on _____ date.
8. (Explain what happened. (Did anyone answer the door? Did it appear to you that anyone was home? Was there a car in the driveway? Could you hear a television or any other noise inside?)

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9. I waited _____ (minutes/hours) before leaving.

10. Explain what you did after that. (Did you update your visitation log?)

PATTERN OF BEHAVIOR

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

- 1. Since the order was entered, granting me visitation with the child/ren, I have noticed a pattern of behavior by the other parent, with regard to my visitation.
- 2. Describe the pattern: *(These denials of my court ordered visitation began on or around --- date and continued until the present. OR My Christmas visitation is denied every year...)*

- 3. The other parent has shown a pattern of being unreasonable with regard to my visitation:

STEPS YOU HAVE TAKEN TO RESOLVE DISPUTE BEFORE FILING ENFORCEMENT

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

- 1. I tried to resolve these visitation problems with the other parent before I filed this motion to enforce my visitation.
- 2. I tried to discuss these issues with the other parent. I sent letters to the other parent. I asked the other parent to attend mediation.
- 3. (Explain what happened when you tried to resolve the problems before coming to court.)
- 4. Have you taken any parent education classes to help you resolve these issues with the other parent?
Do you feel like you benefitted from taking these classes?
Do you believe the other parent would benefit from taking these classes?

REQUEST FOR MAKE-UP PERIODS

- 1. I am asking the court to order additional periods of make-up visitation to compensate me for the times when the other parent denied my child to me.
- 2. I am asking for _____ days of make up visitation.
- 3. (Describe the make up periods you are requesting the court to order.)

- 4. I believe these requests are fair and reasonable and in my child/ren’s best interest.

REMEDIES REQUESTED TODAY

(These issues may or may not apply in your case. Make only those statements that apply to your case.)

1. I am asking the Court to enforce the _____ order (dated ____) so I can see my child/ren according to my court order.

2. I am asking the Court to hold _____ (the other parent) in contempt for each denial.

3. I am asking the court to hold the other parent in contempt for each failure to notify me of her/his change in address.

4. I am asking the court to assess appropriate jail sentences for each criminal contempt violation. I ask that the jail sentences run concurrently, with a max. sentence not to exceed 18 months in jail.

5. But I am asking the court to suspend the other parent's sentence, and order the other parent to:
 - Strictly and fully comply with the visitation order
 - Surrender the child/ren for court-ordered make-up visits
 - Post a reasonable bond
 - Attend a Cooperative Parenting Program, and/or counseling
 - Be placed on community supervision and monitor her/his compliance with the terms of the court order



Step 6: Hearing

Ask the judge for what you want, and explain why you should get it.

For Step Four, you need the following:

- Paperwork for *Step Seven: Decision*
1. Go to the courthouse
 - Arrive early.
 - Ask the District Clerk if you need to pull your case file to take to the docket, or does the judge already have it for your hearing.
 2. Go to the courtroom.
 - Let the clerk (seated next to the judge's bench) know you have arrived for your hearing. Ask the clerk if he or she needs any of your papers, or if the judge prefers for you to give your papers to the judge.
 3. Sit down and wait for the judge to call your case.
 - Sometimes the judge calls roll. When he calls your case (by your name or your Cause Number), stand up, and tell the judge you are the Petitioner, and how much time you think your case will take. Then, sit down, and wait to be called again.
 - If he isn't calling roll, then stand before his bench when you are called.
 - The judge will swear you in, and may ask you to "proceed" with your testimony, or may ask you questions.
 - Answer the judge truthfully, courteously, and respectfully.
 - The judge needs to know how the other party violated the court order. Be sure to stick to the facts. Be respectful of the other party. Be businesslike.
 - If you have witnesses to call or evidence to present, you will do so at this time. (After you call each witness, the other party can ask questions of them.)
 - The other party may call his or her witnesses, and you can ask questions of them.

Step 7: Decision



For Step Seven, you need the following:

- Order on Motion for Enforcement of Possession or Access
- *Capias*
- The Judge decides whether or not you should get what you asked for.
- You give the judge an Order to sign.
- The order needs to say exactly what the judge decided.

1. After the judge has finished hearing your testimony and reviewing your papers, she will make a decision in your case.
2. When the judge makes the decision (ruling) make sure you write down everything the judge says. You will need to fill in the **Order on Motion for Enforcement of Visitation Order** based on what the judge says.
3. If the other party was served with your motion and the Order to Appear, but did not appear at the hearing, you can ask the judge to sign a ***Capias***. The *Capias*, orders law enforcement to arrest the other party for failing to come to court, as ordered. Once the party is arrested, you can reset your hearing on the Motion for Enforcement, Contempt, and law enforcement will bring the party in for the hearing.
4. If the other party appears at your hearing, you do NOT need the *capias*, throw it away, and complete the Order on Motion for Enforcement of Visitation Order.

In the interest of *(List children)*: §
 §
 1 Name: _____ § Cause No:
 2 Name: _____ §
 3 Name: _____ § In the _____ District County Court of:
 4 Name: _____ § _____ County, Texas

Order for Capias and Setting of Bond

On this day the Court heard Movant’s Motion for Enforcement. Movant appeared and requested that a capias be issued for the arrest of Respondent for failure to appear.

The Court, after reviewing the pleadings and hearing the argument from Movant, finds that this matter was duly and properly set for hearing on _____ date at _____ time at _____ location, and Respondent failed to appear.

The Court further finds that Respondent was personally served with timely notice to appear at the above time, place, and date.

The Court further finds that the request for writ of capias should be granted.

The Court further finds that there is evidence that a cash bond of \$250 would not be reasonable under the circumstances, and that a reasonable cash bond of \$250 would be reasonable, conditioned on Respondent’s promise to appear in court for a hearing as required by the Court without further service of notice.

The Court finds that a writ of capias should be issued for the arrest of Respondent.

IT IS ORDERED that the clerk of this Court issue a writ of capias, directed to the sheriff or any peace officer of any county within the state of Texas, commanding that sheriff or peace officer to take the body of

_____, Respondent,
(Print Respondent’s name.)

and bring the Respondent before this Court to answer the allegations of the Motion for Enforcement of Visitation Order previously served on Respondent.

IT IS ORDERED that the detaining authority shall notify the Court of Respondent’s arrest immediately following Respondent’s arrest.

IT IS ORDERED that Respondent shall be permitted to post a cash bond only of Two-Hundred-fifty dollars (\$250), such sum to be deposited in the registry of this Court, subject to forfeiture in accordance with law if Respondent fails to appear for hearing on the court date following release from custody.

If Respondent attempts to post bond, IT IS ORDERED that the detaining authority contact the Court before Respondent's release to determine the date and time of the hearing and include such information in the bond conditions.

SIGNED on _____.

JUDGE PRESIDING

In the interest of (*List children*):

§
§
§
§
§

1 Name: _____
2 Name: _____
3 Name: _____
4 Name: _____

Cause No:

In the _____ District County Court of:
_____ County, Texas

Capias

STATE OF TEXAS)

TO ANY PEACE OFFICER OF THE STATE OF TEXAS:

You are COMMANDED to arrest:

(*Print the Respondent's name.*)

who is the Respondent in a Motion for Enforcement of Visitation Order,

and immediately bring the above named person before the

_____ Court of _____ County, Texas,

at the courthouse of that county, in _____, Texas,
to answer a pending charge of failure to appear to answer a charge of contempt of
court.

Respondent's Identifying information:

Driver's License: _____

Date of Birth: _____

Race: _____

Sex: _____

You shall notify the issuing court of Respondent's arrest immediately following
the arrest.

Bail has been set for the release of Respondent as a cash bond only in the
reasonable minimum amount of two-hundred-fifty dollars (\$250).

If the Respondent attempts to post bond, you shall contact the issuing court
before his or her release to determine the date and time of the hearing and include that
information in the bond conditions.

Return this writ immediately, showing how you have executed it.

ISSUED on _____.

Clerk of the _____ Court of
_____ County, Texas

By _____
Deputy

Officer's Return

I received this writ on _____ at _____ .M. and
executed it on _____ at _____ .M. by
_____.

FEES:

Making arrest: \$ _____

Mileage: \$ _____

Taking bond: \$ _____

Commitment: \$ _____

Total: \$ _____

_____ County, Texas

By _____
Deputy

In the interest of (*List children*):

1 Name: _____

2 Name: _____

3 Name: _____

4 Name: _____

§

§

§

§

§

§

Cause No:

[Empty box for Cause No.]

In the _____ District County Court of:

_____ County, Texas

ORDER ON MOTION FOR ENFORCEMENT OF VISITATION ORDER

1. DATE OF HEARING

The Court held a hearing on Movant’s Motion for Enforcement of Visitation on this date: _____.

2. APPEARANCES

The following people were present:

The Movant’s name is _____.

The Movant was present, and represented himself.

The Respondent’s name is _____.

The Respondent:

- was present, and represented herself
- was present, and was represented by an attorney
- was not present, but appeared through her attorney.
- did not appear, though respondent was duly and properly served, and wholly made default.

3. RECORD

A Court reporter recorded today’s hearing

4. JURISDICTION.

The Court, after examining the record and evidence and finds that it has jurisdiction over this case, the children, and the parties, that all notice requirements have been satisfied, and all legal requirements have been met to hear this case.

5. JURY

A jury was waived , and all questions of law and fact were presented to the Court.

7. FINDINGS

After considering the record, evidence, testimony, and arguments, the Court makes the following FINDINGS:

Respondent is NOT in contempt.

OR

Respondent IS found to be in contempt.

Respondent was able to comply with the order titled:

_____,
(Print title of the order that is being enforced.)

dated _____,
(Print date order was signed.)

but knowingly, willfully and without justification failed and refused to obey the order by:

failing to surrender possession of the child(ren) on the following dates:

(List the dates the Respondent denied visitation.)

AND/OR *(CHECK ALL THAT APPLY.)*

failing to disclose to Movant: *(Check all that apply.)*

Respondent's residential address

Respondent's home telephone number

Respondent's mailing address

the name of Respondent's employer

Respondent's work address

Respondent's work telephone

Respondent's driver's license number

The Court specifically finds that Respondent is in contempt for each separate violation listed above. The Court further finds that on the day of this hearing, the Respondent has the ability to comply with the prior order of the Court.

8. RELIEF GRANTED

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Respondent, is in contempt of court for each separate violation listed above.

(The Court will complete this section.)

Sentence:

Respondent, _____,
shall be confined in the county jail of Williamson County, Texas, for a period not to exceed eighteen months or until Respondent has complied with the following orders, whichever comes first. IT IS ORDERED that Respondent:

IT IS FURTHER ORDERED that Respondent not be given good conduct credit for time spent in the county jail.

Suspended Sentence/Probation: IT IS ORDERED that this sentence shall be suspended and Respondent is placed on community supervision for a period of _____, on the following terms and conditions:

1.

2. IT IS ORDERED that Respondent pay \$ _____ dollars, taxed as costs, by cash, cashier's check, or money order to _____, the District Clerk of _____ County, Texas at _____ (address) by _____ time on _____ date.

3. IT IS ORDERED that Respondent report to the community supervision officer as follows:

4. IT IS ORDERED that Respondent obtain counseling on cooperative parenting skills from

By _____ (date)

5. IT IS ORDERED that Respondent pay a community supervision fee of \$_____ dollars by cash, cashier's check, or money order to the Court through

during the period of community supervision beginning on the first day of the month following this order, and on the first day of each month thereafter, so long as community supervision is ordered.

Deferred Sentencing: The court defers sentencing of Respondent until the date of the next review hearing.

9. ADDITIONAL PERIODS OF POSSESSION (VISITATION)

IT IS FURTHER ORDERED that Movant shall have additional periods of possession to compensate for the periods of possession denied as follows:

9. REVIEW HEARING

IT IS ORDERED Respondent shall appear on _____
(Print month, day and year.)
at _____ o'clock _____ .m., in Room _____ of the _____
County Courthouse, located at _____
(Print street, city, state and zip code address of courthouse.)

for further review of this order. Respondent has been given notice to appear and no further notice need issue.

9. RELIEF NOT GRANTED

All relief requested, and not expressly granted is denied.

Signed this _____ day of _____, 20_____.

DISTRICT JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

Movant

Respondent