

Asking the Court to Appoint a Lawyer for You in a Lawsuit to Terminate Your Parental Rights

Note: Use these forms and instructions to ask the court to appoint a lawyer for you in a lawsuit requesting termination of your parental rights, and/or for adoption of your child. You may have a right to be represented by a lawyer if a court is considering terminating your parental rights.

These instructions and forms may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Print the forms in this packet single-sided, with writing on one side of the page. Do not change these forms. If you change the forms, you might lose language you need.

Who Can Use These Forms?

You can use these forms if you are low-income and someone has asked the court to terminate your parental rights and/or let him or her adopt your child. These forms are designed for use only in termination or adoption lawsuits where the State of Montana is not part of the case. If the State of Montana through the Department of Public Health and Human Services has filed the lawsuit to terminate your parental rights, then these forms are not right for you. [NOTE: If the State is the petitioner in the lawsuit, you can ask the judge to appoint a public defender to represent you in that lawsuit, and you don't need these forms.] These forms are intended for use when an individual has filed a termination or adoption lawsuit against you. Usually that individual is your child's other parent, step-parent, or other relative. If a court has already terminated your parental rights by court order, these forms are not right for you.

What Forms Will I Need to Ask the Court to Appoint a Lawyer for Me?

You will need to fill in and file with the court the following forms to ask the court to appoint a lawyer to represent you:

- Respondent's Motion and Supporting Brief to Appoint Counsel

- Affidavit of Inability to Pay Filing Fees and Other Costs
- Order Appointing Counsel

The **Motion and Supporting Brief to Appoint Counsel** is for you to complete and sign. It asks the court to appoint a lawyer to represent you. It also explains why the court is required to appoint a lawyer for you. After you complete the Motion and Supporting Brief, you must send a copy of it to the Petitioner(s) and any other Respondents.

The **Affidavit of Inability to Pay** is a form you can use to ask the court for permission to not pay the fees the court charges for you to file documents and participate in a lawsuit. Courts may use different names for this form. The Affidavit of Inability to Pay Costs requires you to provide information about your income and expenses. After you fill out the affidavit and sign it, the clerk of court will give it to the judge to review. If the judge decides that you cannot afford to pay the filing fee, the judge will allow you to file documents and participate in the lawsuit without paying the filing fee. You must be low-income to have a lawyer appointed to represent you.

The **Order Appointing Counsel** is for the judge to fill in, except for the caption that you will fill in. The Order tells you that a lawyer has been appointed to represent you.

What Words Do I Need to Know?



A **Petitioner** is someone who files a termination or adoption lawsuit in court. If someone has asked the court to terminate your parental rights and/or to let him or her adopt your child, that person is the Petitioner. If more than one person is seeking termination and/or adoption, there will be more than one petitioner in the lawsuit.

A **Respondent** is someone who is required to answer, or respond, to a petition. If someone has asked the court to terminate your parental rights and/or to let him or her

adopt your child, you are the Respondent. There may be more than one respondent in a case. For example if a child's grandparents are asking to adopt the child, both of the child's parents could be respondents.

Where Should I File My Motion?

You file your Motion and Supporting Brief to Appoint Counsel in the district clerk's office for the court where the lawsuit was filed. You can find the name of the court at the top of the petition.

How Do I Use These Forms?

1 Fill in the Forms

- Fill in all of the blanks in the Motion form.
 - Sign and date the Motion.
- Fill in all the blanks on the Affidavit of Inability to Pay Fees and Other Costs.
- Sign and date the Affidavit of Inability to Pay Fees and Other Costs in front of a notary.
- Fill in just the caption, the court and case information, on the Order Appointing Counsel form. The caption looks like this:



| | | |
|-------------------------|---|---------------------------------|
| MONTANA | _____ | JUDICIAL DISTRICT COURT, |
| | <small>(number of district in which your county is located)</small> | |
| | _____ | COUNTY |
| | <small>(name of your county)</small> | |
| In re _____, |) | |
| (the child's initials): |) | Case No. _____ |
| _____ |) | |
| Petitioner, |) | |
| and |) | |
| _____ |) | |
| Respondent |) | ORDER APPOINTING COUNSEL |
| |) | |

2 Make Copies

- Make two copies of your Motion and Supporting Brief to Appoint Counsel. You will need additional copies if there is more than one Petitioner or more than one Respondent. You will need one copy of each document for each Petitioner and Respondent.
- Make one copy of the Order to Appoint Counsel and your Affidavit of Inability to Pay Filing Fees and other Costs.

3 File the Forms at the Courthouse

- Go to the office of the clerk of district court where the lawsuit was filed.
- Hand your original Motion and Supporting Brief to Appoint Counsel to the clerk
- Ask the clerk to date-stamp your copies of the Motion, to show the date the Motion was filed. The date-stamped copy of each is for you to keep. Mail another copy of the Motion to each Petitioner and to any other Respondent. Be sure to take your copies of the Motion with you to your hearing.
- Give the Order Appointing Counsel to the clerk. Ask the clerk to lodge the Order Appointing Counsel in the file. “Lodging” means that the clerk will not officially file the document in your court file, but will just keep the Order Appointing Counsel inside the court file so the judge can look at it in the future. If the clerk will not lodge the Order Appointing Counsel, you will need to keep the Order Appointing Counsel in a safe place until your hearing. You will need to take the Order Appointing Counsel with you to the hearing so you can ask to give it to the judge then.

4 Mail your Motion and Supporting Brief to Appoint Counsel

- On the same day you file with the Clerk of Court your Motion and Supporting Brief to Appoint Counsel, mail a copy of your Motion and Supporting Brief to Appoint Counsel to each Petitioner and any other Respondent. It's best to mail the documents on the same date as you put

in the “certificate of service” section at the end of the Motion. Mail the documents to the name and address for each petitioner as shown on the court papers filed by each petitioner. If there is another respondent besides you, mail the documents to the name and address for each respondent as shown on the court papers filed by each respondent. The name and address for each party in the lawsuit is usually in the top left hand corner of the first page of the court paper filed by that party. If the petitioner or other respondent has a lawyer, this will be the lawyer’s address.

- It is a good idea to have proof that you actually mailed your Motion to each petitioner and any other respondent, or their attorneys. You can get proof by using the United States Postal Service’s “Certificate of Mailing.” The post office charges more for the Certificate of Mailing than a regular letter. The post office receipt that you get from the post office is your proof that you actually mailed your Motion to the correct address on a certain date. Be sure to keep the post office receipt, and take it with you to your hearing.

5 The Court May Hold a Hearing

The court may choose to hold a hearing on your motion to appoint counsel. If the court decides to have a hearing the clerk of court will notify you in writing of the date and time of the hearing. Be sure to attend the hearing.

Where Can I Get More Information?

The laws of Montana are called the Montana Code Annotated or “MCA.” The laws about termination of parental rights and adoption begin in the MCA at Title 42, Chapter 1. An easier way to write one of those laws is § 42-1-101, MCA. The symbol § means section. The MCA can be found at your local library or on the Montana State Law

Library website at courts.mt.gov/library. Click on the “Laws” option on the right side of the page on that website, and then click on “MT Laws - MCA.”

Where Can I Get Legal Help?



These organizations may be able to help you:

- **Montana Legal Services Association** (MLSA) gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service** (LRIS) refers people to Montana lawyers who might be able to help, for a fee. Call LRIS at 1-406-449-6577, or go to montanabar.org. Click on “Need Legal Help?” then “Lawyer Referral.”
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at lawlibrary.mt.gov. Or you can contact a Reference Librarian at (800) 710-9827 or by email at mtlawlibrary@mt.gov.

(your address)

(city, state zip code)

(your phone number)

MONTANA _____ **JUDICIAL DISTRICT COURT,**
(number of district in which your county is located)
_____ **COUNTY**
(name of your county)

| | |
|--|--|
| <p>In re:</p> <p>_____, Initials of Minor Child(ren),</p> <p>_____,</p> <p style="text-align: right;">Petitioner,</p> <p>and</p> <p>_____,</p> <p style="text-align: right;">Respondent.</p> | <p>Cause No.: _____ Department No. _____</p> <p style="text-align: center;">Respondent's Motion and Supporting Brief to Appoint Counsel</p> |
|--|--|

Motion

I, _____, Respondent, respectfully
(print your full name)

request that the Court enter an Order appointing counsel for me in this matter. I am indigent and cannot afford to hire counsel to represent me. I have separately filed an affidavit about my income and expenses. I do not want my parental rights to be terminated.

Brief

The Montana Supreme Court has held that indigent parents like me are entitled to court-appointed counsel in termination proceedings. *In the Matter of the Adoption of A.W.S. and K.R.S.*, 2014 MT 322, 377 Mont. 234, 339 P.3d 414. In that case, the district court had terminated a mother’s rights after the children’s stepmother filed a petition for adoption. The Montana Supreme Court reversed the termination of the mother’s rights, and remanded the case to the district court to appoint counsel for the mother, if she was found financially eligible. The Court considered Article II, Section 4, of the Montana Constitution and concluded that “Montana’s right to equal protection requires that counsel be appointed for indigent parents in termination proceedings brought under the Adoption Act.” *A.W.S.*, 2014 MT 322, ¶26.

Request for Relief

Wherefore, I, Respondent _____, respectfully request this Court to enter an Order appointing counsel for me in this proceeding.

Dated this _____ day of _____, 20____.

(date) (month) (year)

(Your signature)

(print your name)

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 20____, a true and correct copy of this document was sent to the following persons, by:

- depositing the same in the U.S. Mail with postage pre-paid;
- or
- personally delivering this document to the following individual(s).

(Name
and Address
of Petitioner(s))

(Name
and Address of other
Respondent, if any)

Signature of Respondent

(your name)

(your address)

(city, state zip code)

(your phone number)

MONTANA _____ **JUDICIAL DISTRICT COURT,**
(number of district in which your county is located)
_____ **COUNTY**
(name of your county)

| | |
|--|--|
| <p>In re:</p> <p>_____, Initials of Minor Child(ren),</p> <p>_____, Petitioner,</p> <p>and</p> <p>_____, Respondent.</p> | <p>Cause No.: _____ Department No. _____</p> <p>Affidavit of Inability to Pay Filing Fees and Other Costs</p> |
|--|--|

I, _____, being first duly sworn, upon oath depose and say:

1. I am the Respondent in the above-entitled proceeding.

2. I have a good cause of action and am unable to pre-pay the costs or to procure security to secure the same. I respectfully request the Court to appoint an attorney to represent me in this matter. See Attachment A.

Dated: _____, _____.

Respondent

SUBSCRIBED AND SWORN to before me by _____
this __ day of _____ 20 _____.

Notary Public for the State of Montana

Residing at _____

My Commission expires _____

ATTACHMENT A

INDIGENCY QUESTIONNAIRE

CAUSE NUMBER _____

1. Name _____ DOB _____

2. Address _____

3. Telephone _____

4. Single _____ Married _____ Separated _____ Divorced _____

5. Employed? Yes _____ No _____ Self Employed? _____ Yes _____ No _____

a. Employer's Name & Address _____

b. Your employment income? Monthly \$ _____

6. If unemployed, when last employed _____ Job _____

7. Dependents? Spouse _____ Number of children _____

Others (Specify): _____

8. If married, is spouse employed? Yes _____ No _____

a. Employer's Name & Address _____

b. Does spouse have any other income? Monthly \$ _____ (alimony, interest, rent, etc.)

9. Do you have any other income from other sources? Yes _____ No _____

If yes: Monthly \$ _____ Sources _____

10. Do you have a car? Yes _____ No _____ Is it paid for? Yes _____ No _____

a. If not, how much do you owe? \$ _____

b. Year, Make, and Model _____

11. Do you own any land or other real estate, or are you buying any? Yes _____ No _____

a. What is its approximate value? \$ _____

b. How much did you pay for it? \$ _____ When? _____

c. Is it paid for? Yes _____ No _____

d. If not, how much do you owe? \$ _____

12. Do you have any:

a. Cash or savings? Yes ___ No ___ Amount? \$ _____

Name of Bank _____

b. Checking accounts? Yes ___ No ___ Amount? \$ _____

Name of Bank _____

c. Stocks or bonds? Yes ___ No ___ Value? \$ _____

d. Other property? Yes ___ No ___ Value? \$ _____

(for example, trailer, boat, camper, motorcycle, guns, tools, collections, etc.)

Describe: _____

STATE OF MONTANA)

ss.

COUNTY OF _____)

The undersigned, being first duly sworn, deposes and says: That he/she is the person named above, that he/she has read the foregoing questions and information and knows the same to be true of his/her own knowledge, and that if any part of the above is made falsely the undersigned is subject to prosecution for perjury.

Signature of Respondent

Subscribed and sworn to before me this ___ day of _____, 20___.

Signature, Notary Public for the State of Montana

Printed Name of Notary _____

Residing at _____

My Commission expires _____

COURT USE: Request Approved _____ Denied _____ Date _____

JUDGE _____

