

# Montana Legal Services Association

## 10 Steps for When the Other Parent Won't Follow Your Parenting Plan



Providing, protecting, and enhancing access to justice.

Rev. 10/10/18



“10 Steps for When the Other Parent Won't Follow Your Parenting Plan.” This document was prepared by Montana Legal Services Association and is intended only for not for profit purposes.

## **10 Steps for When the Other Parent Won't Follow Your Parenting Plan**

If you have a Parenting Plan in Montana, and the other parent is not following it, this article will:

- Outline 10 steps that you can take when the other parent isn't following the Parenting Plan
- Give tips for representing yourself if you do end up going to court.

### **Summary**

It is serious if one parent does not follow the court ordered Parenting Plan. Not following a Parenting Plan can cause stress to the parents and the child. A parent can ask the court to change custody if one parent is not following it. A parent can be held in contempt of court for violating a Parenting Plan. A parent could face criminal charges for not following a Parenting Plan. You must follow your part of the plan, even when the other parent is not following the Parenting Plan. Two wrongs do not make a right.

You have options and steps that you can take when the other parent is not following the Parenting Plan. Usually, you do not want to rush to court or call the police when the other parent is not following a Parenting Plan unless there is an emergency or immediate safety concern.

If you do not have a Parenting Plan, it can be hard to force the other parent to let you see your child. Unmarried parents have equal rights to their children unless there is a Parenting Plan. Without a Parenting Plan, it is not clear when one parent should have custody of the child. If you do not have a Parenting Plan, you can file a Petition for a Parenting Plan.

### **The 10 steps that you can take if the other parent isn't following the Parenting Plan are:**

1. Re-Read your Parenting Plan again carefully before going to court
2. Follow your part of the Plan
3. Talk to a lawyer before going to court
4. Follow the advice of your lawyer
5. Go to mediation, if appropriate
6. Gather evidence
7. File court paperwork
8. Wait for the other parent to file a Response
9. Show up for your Hearing prepared
10. Follow the Judge's Orders

Each situation is different. A lawyer may advise you to take different steps than what we outline. Keep reading to learn more about each step.

"10 Steps for When the Other Parent Won't Follow Your Parenting Plan." This document was prepared by Montana Legal Services Association and is intended only for not for profit purposes.

## **What can I do if the other parent is not following the Parenting Plan?**

There are steps that you can take when the other parent is not following the Plan. Each situation is different. A lawyer may advise you to take different steps than what we outline. The ten steps that you can take if the other parent is not following the Parenting Plan are:

### **Step One: Re-read your Plan again carefully before going to court**

Make sure the other parent really isn't following the plan. Parenting Plan disputes can be confusing. During a parenting case, a judge may order different Parenting Plans. Make sure you are looking at the most recent plan that the judge has ordered. Carefully read the whole plan that the judge most recently ordered to make sure you understand everything correctly.

Most Parenting Plans have a section about mediation. The section about mediation says that the parents must go to mediation if there is a disagreement before they go to court. You may need to request a mediation before going to court. Mediation is often not appropriate if there is or has been domestic violence in the relationship. If there has been domestic violence or child abuse in your case please talk with a lawyer before setting up a mediation.

### **Step Two: Follow your part of the Parenting Plan**

Follow your part of the plan. Two wrongs do not make a right. Generally, the judge will not be pleased if you ask for help enforcing your Parenting Plan if you are not also holding up your end. Following your part of the Parenting Plan may also include requesting a mediation if there is a disagreement. If your child is in immediate physical danger, you can call law enforcement.

### **Step Three: Talk to a lawyer before going to court**

Talk to a lawyer. A lawyer can help you understand your options for what to do when the other parent is not following a Parenting Plan. Lawyers are familiar with the judges and the process. A lawyer can help you understand what facts in your case are most important and relevant. A lawyer can help you understand how to show the court evidence. A lawyer can also help you understand the laws that a judge will look at when reviewing your case.

### **Step Four: follow the advice of your lawyer**

It is almost always a good idea to follow the advice of your lawyer. Ask questions if you don't understand something. Following the advice of your lawyer will usually save you time, money, stress, and help keep you out of trouble. If you have questions about working with a lawyer, read our article "What to Know When Hiring a Lawyer."

### **Step Five: Go to mediation if appropriate**

"10 Steps for When the Other Parent Won't Follow Your Parenting Plan." This document was prepared by Montana Legal Services Association and is intended only for not for profit purposes.

Mediation may help you if the other parent is not following the Parenting Plan. Going to mediation before going to court is most likely following your part of the Parenting Plan. Some Parenting Plans will say who the mediator will be. If your plan does not say who the mediator will be, you and the other parent can pick someone or ask the court to appoint someone. You will need to contact the mediator and set up a time for mediation. You and the other parent can ask the mediator to have someone with you for support, like a friend, parent, or counselor. The mediator has the choice of who may be allowed to sit in on a mediation. Learn more by reading our article on Mediation.

### **Step Six: Gather evidence**

Unless your lawyer tells you something different, it may be a good idea to gather evidence that the other parent is not following the Parenting Plan. Evidence can be many things. You can keep a record of missed or late visits. Make sure you include the date, time, and place where the exchange was supposed to happen. You may also want to keep a calendar or date book with all of these marked down. You may want to bring a witness who can testify that the other parent is not following the Parenting Plan. Text or online messages may be evidence. It is a good idea to talk to a lawyer about what kind of evidence will help you, how to gather it, and how to best present it to the court.

### **Step Seven: File court paperwork**

It is a good idea that you talk to a lawyer before filing court paperwork. Follow the advice of your lawyer before, during and after you file court paperwork. Generally, the court paperwork that you file will be a written motion for a hearing to show cause. The “Motion to Show Cause” asks the court to schedule a hearing for the other parent to explain why they have not followed the plan. In your Motion to Show Cause, you will need two things: a Brief and an Affidavit.

The Brief is where you make a legal argument on why you are asking the court to hold a hearing. Your legal argument must be based on what the law says and the facts of your case. As an example, a brief might say, “The Parenting Plan ordered by this court says that I will get my child on weekends. The other parent has not allowed me to see my child on weekends. I have shown up at the agreed on exchange location 3 times, and the other parent never arrived. The other parent is not following the Parenting Plan, and should be ordered to show cause why they are not following the plan.”

The Brief will talk about facts in the Affidavit. An Affidavit is a sworn statement only about facts. You do not make an argument in an Affidavit. An Affidavit will have statements like, “I arrived at the McDonalds parking lot on this specific date and time for our scheduled exchange, but the other parent did not show up.” A lawyer can help you decide what information to put in your Motion to Show Cause, Brief, and Affidavit. You will need to file your Motion to Show Cause with the court overseeing the parenting case, and serve the other party. You can download a blank Motion Packet with Brief and Affidavit.

“10 Steps for When the Other Parent Won’t Follow Your Parenting Plan.” This document was prepared by Montana Legal Services Association and is intended only for not for profit purposes.

### **Step Eight: Wait for other parent to file a Response**

The other parent will have 14 calendar days, starting the day after they are served, to file a written Response to Motion. The other parent must serve you with a copy of their Response to Motion that they file with the court. In the Response to Motion, the other parent can explain why they disagree with your Motion to Show Cause. Generally, if the other parent files a Response to Motion, the court will schedule a hearing.

Wait at least 14 calendar days after the other parent was served before moving ahead. Start counting the 14 days beginning the day after the other parent is served. Weekends and holidays are included in the 14 days. It is a good idea to call the Clerk of District Court where your parenting case is to double check to see if the other parent has filed a Response. When someone does not file a Response to a Motion within 14 calendar days, the other parent can usually ask for a default judgment.

A default judgment is when the judge makes a decision without the other party filing an Answer or Response. You can ask for a default judgment by using a Motion Packet. In your Motion for a Default, you can ask the court to set a hearing because the other parent has not filed a Response to your Motion within 14 calendar days after being served.

### **Step Ten: Show up to your hearing prepared**

A hearing is when both parents will meet with the judge in a formal setting. The court will issue an order scheduling the hearing. Usually, the order will have information about what the hearing will be about. The order will also say the time of the hearing, and how long it will last.

You will want to make sure that you stick to the point of the hearing and not bring up other issues. Usually, if the judge orders a show cause hearing, that hearing will be about the Motion and Response filed by the parents. Make sure you have carefully read and understood the Motion, Brief, and Affidavit you filed and any court papers the other parent filed in response.

The judge may question both parents about the facts they stated and legal arguments they made in the Motion and the Response. You will have an opportunity to testify and explain your side of the story as well as present evidence. You (or your lawyer if you have one) will get the chance to question the other parent. When one parent questions the other parent that is called cross examination. The other parent (or their lawyer if they have one) will get a chance to do the same.

### **Here are some tips for representing yourself at a hearing:**

1. Show up at least 15 minutes early.
2. Dress like you're going to an important job interview.
3. Always address the judge as "Your Honor" or "Judge."

4. Be respectful to everyone. That includes the other parent, judge, and other people in the court.
5. Bring the court documents you and the other parent filed. Make sure the court papers are organized.
6. Bring your evidence. Make sure that your evidence is organized so that you can easily find it. You don't want to make the hearing more stressful if you have to dig through papers.
7. Bring an outline of what you want to say. You can also bring questions that you want to ask the other parent.
8. Do not bring your children.
9. Wait your turn to speak. You do not want to interrupt the other parent and especially the judge.
10. Speak clearly when it is your time. Make sure the judge and other parent can understand you. You won't get what you want if the judge cannot understand or hear you.
11. Ask questions. If you do not understand something, you have the right to ask for more information so that you understand. Just remember to be respectful, as hearings can be stressful.
12. Make sure you understand what to do next before you leave.
13. Be respectful to everyone and call the judge "Your Honor" or "Judge" each time you speak to them.

The judge may issue orders during the hearing. For example, the judge may order the other parent to show up at the exchange location at a certain time and date. A judge may order the parent to do other things. Judges will often also need more time so they can write up an order. You must follow all orders by a judge. That includes what they order you to do during a hearing, and any orders they issue that are in writing.

### **Step Ten: Follow the Judge's Orders**

It is very important to follow all orders the judge makes. In parenting cases, the judge may order mediation, that both parents follow the Parenting Plan, or other things. The judge will often want you and the other party to work out a Parenting Plan that both parents follow. If the other parent still will not follow the Parenting Plan, you will want to talk to a lawyer. At that point, your case has become legally complicated.

### **Summary:**

You have options and steps that you can take when the other parent is not following the Parenting Plan. Even if the other parenting is not following the Parenting Plan, you want to make sure that you follow your part of the plan. Usually, you do not want to rush to court or call the police when the other parent is not following a Parenting Plan unless there is an emergency or immediate safety concern.

The 10 steps that you can take if the other parent isn't following the Parenting Plan are:

"10 Steps for When the Other Parent Won't Follow Your Parenting Plan." This document was prepared by Montana Legal Services Association and is intended only for not for profit purposes.

11. Re-Read your Parenting Plan again carefully before going to court
12. Follow your part of the Plan
13. Talk to a lawyer before going to court
14. Follow the advice of your lawyer
15. Go to mediation, if appropriate
16. Gather evidence
17. File court paperwork
18. Wait for the other parent to file a Response
19. Show up for your Hearing prepared
20. Follow the Judge's Orders

Each situation is different. For example, if there is or has been domestic violence between the parents, mediation may not be appropriate. It is serious if the other parent does not follow the Parenting Plan, so you want to make sure that you talk to a lawyer. A lawyer may advise you to take different steps than what we have talked about on this page. It is almost always a good idea to follow your lawyer's advice. If you have questions, talk to a lawyer.

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.