

FINANCIAL CASES



Contravention Proceedings Kit

Respondent
FAMILY COURT OF WESTERN AUSTRALIA

You need this kit if

You have received notification that someone has made an application to the Court saying that you have disobeyed a financial order, (an order not affecting children).

For more information about contravention proceedings read the attached “Parenting Cases Contravention Proceedings Kit”.

What forms will I need?

There are no forms for you to complete, however if you choose to, you may lodge an affidavit.

If you have recently changed address, you should complete a Form 8 Notice of Address for Service.

How do I complete the affidavit?

If you decide that you want to lodge an affidavit, ask Court staff for a blank Affidavit Form. This form comes with detailed instructions. Read the attached “Parenting Cases Contravention Proceedings Kit” for more information about how to complete the affidavit.

What happens next?

The case has been listed for a Contravention Hearing.

Read the ‘What happens on the day of the hearing’ section of the attached “Parenting Cases Contravention Proceedings Kit” for more information about what to expect during the contravention hearing.

At the end of the contravention hearing the Judicial Officer will decide the penalty for the contravention. Information about the penalties for failing to comply with a financial order can be found on the Form 18.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.

The Family Court respects your right to privacy and the security of your information.

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PARENTING CASES



Contravention Proceedings Kit

Respondent
FAMILY COURT OF WESTERN AUSTRALIA

You need this kit if

You have received notification that someone has made an application to the Court saying that you have disobeyed a parenting order.

If you have received notification that someone has made an application saying that you have disobeyed a financial order, see the fact sheet attached.

What forms will I need?

There are no forms for you to complete, however if you choose to, you may lodge an affidavit.
If you have recently changed address, you should complete a Form 8 Notice of Address for Service.

How do I complete the affidavit?

If you decide that you want to lodge an affidavit, ask Court staff for a blank Affidavit Form. This form comes with detailed instructions.

There are many rules about affidavits. It is important to follow them, staff have been instructed not to accept affidavits which are not in the correct format.

- The affidavit **must be typed** not hand written.
- The affidavit **must be divided into numbered paragraphs**. Each paragraph must deal with only one aspect of the subject matter. It is suggested that each paragraph contains not more than about six lines.
- The affidavit **must contain all of the evidence upon which you are relying**. The Judicial Officer cannot take into account any facts which have not been included on the affidavit.
- The affidavit **must contain facts, not arguments or comments**. You will be given the opportunity to present arguments and make comments in Court.
- Your signature must be witnessed by a Justice of the Peace (JP), a Lawyer or Notary Public.

You should always try to seek legal advice before signing an affidavit.

Make two copies of the affidavit. Post or bring the forms and copies into the registry. By posting the documents you may avoid a queue. The registry staff will return the two copies. One is for you to keep and the other must be served on the other party.

Information about how to serve documents is available from the registry in the “Service Kit”.

Where do I find a Justice of the Peace?

There is usually a JP at the Family Court of WA between 9:30am and 1:00pm. If a JP is not available you may find one at the Justices’ Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices’ Association on 1300 657 788 or visit their web page www.justice.wa.gov.au.

What happens next?

The case has been listed Contravention Conference with a Registrar:

- This conference will be held *approximately* three weeks after you file your application.
- The purpose of the contravention conference is to identify the issues in your case, so that the Registrar can decide the best way to run the final hearing. It also provides you with an opportunity to resolve your dispute.
- The Registrar does not decide the outcome of your case at the contravention conference.
- You will be given instructions at the end of the Conference, telling you what you must do before your hearing.

After your conference, your case will be listed for a final hearing before a Judicial Officer:

- The final hearing may not be held for several weeks.
- You must follow the instructions the Registrar gave you at the contravention conference.
- At the end of the hearing the Judicial Officer will make a decision. They may not deliver this decision on the day of the hearing.
- You will be told when the Judicial Officer will deliver their reasons for the decision.

Solving the problem outside of Court

If you and the other party come to an agreement, you can draft a new set of parenting orders. You will need to apply to the Court to have this agreement made into a legally binding consent order. For more information about how to do this, contact your Case Coordinator or ask for a copy of the “Consent Order Kit” from the Registry.

What happens on the day of the conference?

Check the Court list noticeboard to see where the conference is to be held. Report to the Court Officer on that floor. The Registrar will call each party into a conference room to begin discussions.

At the end of the conference the Registrar will make ‘procedural’ orders setting out what you must do before the next hearing.

You may have to file more documents with the Court. You must file these documents by the due date. Failing to file documents by this date may affect what happens at trial.

You will also be told the date of your next hearing after the conference.

What happens on the day of the hearing?

Check the Court list to see in which Court your case is to be heard. Make sure you are seated before the time set for your matter.

If you are not present when your case is called orders may be made in your absence. There may be more than just your case listed on the same day. The Judicial Officer will find out which cases are ready to proceed and where possible will advise the order of the hearing.

There will be a lunch break between 1:00pm and 2:15pm and the Court will normally finish by about 4:30pm. If your case is not finished, you will have to come back on another day.

When your case is called walk forward and stand behind the microphone on the left hand side of the desk in front of the Judicial Officer. If you have a lawyer they will show you where to sit. The Judicial Officer will find out whether you are pleading ‘guilty’ or ‘not guilty’.

The Judicial Officer will then ask the other party to move into the witness stand. They will be asked to confirm what they have said in their affidavit. As their evidence is being given you should note down any questions you wish to ask.

The other party will then be asked questions by you or your lawyer, this is called cross examination. If the other party has any witnesses, you will be given the opportunity to do the same to them. If you do not ask questions in cross examination, the Judicial Officer will assume that you agree with their version of events.

Once the other side and their witnesses have finished giving evidence it is your turn. If you did not submit an affidavit you will have to give your evidence orally. You do not have to give evidence, but remember; the Judicial Officer can only rely on the evidence given, if you choose not to give any evidence, the Judicial Officer will assume it is because the other party's version of events is true. You should bring your witnesses to Court so that they can be cross examined. If they do not come their evidence is likely not to be included.

When their evidence is finished the Judicial Officer will ask both sides to summarise. It is too late at this point to give any more evidence. The only evidence the Judicial Officer will consider is that contained in the affidavits and the answers given in the witness stand.

The Judicial Officer will then give the decision, although occasionally the reasons for the decision will be given at a later date. Do not interrupt the Judicial Officer when the decision is being given.

If you are found 'guilty' then the Judicial Officer will ask the other party what they think the penalty should be. The Judicial Officer will include this in their final decision. The Judicial Officer may order make up time with the children or a penalty. For further information see the Form 18.

This will usually be the end of the case, but if lawyers are involved there may be an argument about who has to pay legal fees.

A decision by a Judicial Officer can only be appealed if there has been an error of law or mistake of fact. You should seek legal advice if you want to appeal a decision.

Child minding service

There is a free child minding service on level three. Please arrive in plenty of time to settle your child. The service is closed between 1:00pm and 2:00pm and your child can only remain in the service for three hours.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to Court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about Court forms and the Court process, but cannot give you legal advice.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

Personal safety

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a Court if there is an existing or pending family violence order involving themselves or their children.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

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