



LAW OFFICE OF  
**BRYAN FAGAN**  
— PLLC —



# CONTEMPT OF COURT IN HOUSTON, TX

WORK WITH A HOUSTON ATTORNEY

CALL US FOR ALL YOUR FAMILY LAW NEEDS (281) 810-9760

## INTRODUCTION

Thank you for downloading our special report: about Contempt of Court, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

## PROVEN HOUSTON FAMILY LAW ATTORNEY

### ASSISTING WITH CONTEMPT OF COURT CASES

When an individual goes against an order filed from the court, that person can be found in contempt of court. The court has a right and duty to enforce family law orders and there are a series of penalties for those who go against those orders.

The Law Office of Bryan Fagan, PLLC offers aggressive and compassionate counsel for clients who are facing a serious family law matter. Our firm can successfully handle cases in which parents must file for a contempt motion and parents who have been filed against with an understanding approach towards finding a legal solution that meets your specific needs.

A contempt motion can be filed for any of the following violations:

- Denying child custody
- Blocking child visitation
- Failing to adhere to property division agreements
- Refusing to provide spousal maintenance
- Texas Child Visitation Enforcement
- How do I prove the other parent has not paid their court ordered child support?

### WE PROVIDE PROFESSIONAL AND RELIABLE REPRESENTATION

Our Houston family law attorney at the Law Office of Bryan Fagan, PLLC believes that the foundation of a successful attorney-client relationship lies on open and honest communication. When you hire our family lawyer, you can trust that your case will be discussed confidentially and your concerns will be addressed efficiently and effectively. With an A+ Rating by the Better Business Bureau, our firm continuously demonstrates the dedication we have to securing favorable results for clients in all of their family law matters.

## TEXAS CHILD VISITATION ENFORCEMENT

One of the biggest reasons people seek out our help in a divorce or custody case is there are children involved. One scenario that we hear frequently is that a parent will go to pick up the children and the other parent will refuse to release the children, then law enforcement is called.

Generally what law enforcement will tell a parent when they are called is that there is nothing they can do without a court order and that the parent should contact a divorce or family law attorney to help them. This is partly because there is nothing telling law enforcement what parent has a superior right to the children at any given time without a court order.

What a divorce or family law attorney will help them establish through a court order is:

- How decisions are going to be handled for the children for medical, education, and legal issues, etc.
- A visitation order establishing when each parent is supposed to have the children
- Child Support
- Medical Support



Once there is a visitation order in place, this often alleviates some of the problems. This is because each parent knows what is expected of them—it is in black in white. However, this is not always the case; sometimes it is necessary to enforce the visitation order.

If you are married to the child's other parent, a Texas divorce will establish a visitation order. Alternatively, if you are not married or for whatever reason do not want to file for a divorce, then you can file a Suit Affecting the Parent-Child Relationship and this will establish a custody order that includes visitation.

In this article, we will discuss what steps need to be taken in order to enforce your Texas visitation order.

## VISITATION JOURNAL

Once you have a court order that gives you the right to see your children, it is a good idea to start keeping a visitation journal. This is a useful tool should the other parent start making it difficult for you to exercise your visitation.

Having a record will help you when you:

- ☑ Attempt to talk to the other parent about any visitation problems
- ☑ Try to settle the issues in mediation
- ☑ Find it necessary to ask the court to enforce your visitation order

**The Visitation Journal should include:**

- ☑ WHO – was there when you tried to see your children (witnesses). Did you call law enforcement to make a report (what is the report number)?
- ☑ WHAT – happened (no one was home, cars in driveway, did anyone answer the door)
- ☑ WHERE – the location where you tried to pick up your children
- ☑ WHEN – the dates and times you tried to see your children
- ☑ WHY – did the other parent give you a reason for not letting you see the children

## Keep Visitation Journal Updated

Enforcing a court order means that you are asking a judge to make another person follow an order. This can be accomplished in several ways, but it usually involves some sort of punishment.

Visitation enforcement is a legal tool that helps the non-custodial parent when that parent:

- ☑ is being denied access to their children
- ☑ has a conflict with the co-parent
- ☑ has an on-going conflict during exchanges

**The most frequent issues that arise with respect to the visitation order that lead to enforcement are:**

- ☑ Trying to change dates and times of visitation
- ☑ One of the parents arrives late on several occasions
- ☑ A parent says that visitations are going to stop
- ☑ A parent designates another person to handle the pick-up and drop off, often the new lover
- ☑ The non-custodial parent is not paying child support and the custodial parent decides because of that they can withhold visitation
- ☑ The custodial parent withholds the children because of problems with the other parent's family or friends
- ☑ One of the parents changes address and does not update their information with the other parent or the court
- ☑ One of the parents makes changes to the child's routine or schedule and wants the other parent to follow it such as enrolling them in an activity that interferes with visitation.



## ENFORCEMENT AND MODIFICATION REMEDIES

A parent may seek enforcement of the court order allowing access to the child by filing an enforcement or modification and asking the court to:

- Change the visitation plan
- Increase visitation
- Schedule and enforce additional visits
- Ask for attorney fees
- Hold the primary parent in contempt of court which may include jail time
- Change custody, in extreme cases

### Contempt

Contempt is used to enforce a court's order after the party has failed to perform an act they were ordered to do.

Civil contempt is the method by which the court seeks to obtain compliance with its order. This empowers the court to:

- Jail the offending party until the party complies with the court's order
- Impose a fine on the offending party

## WHAT FACTS AND STEPS ARE NEEDED FOR AN ENFORCEMENT CASE

If the visitation order provides that the person attempting to exercise their possession of a child is to pick that child up at the other parent's home or other location, to support a finding of contempt, that person must strictly comply with the order and appear at the designated date, time, and place.

It is insufficient that the other spouse has called and informed them that they may not have possession.

In summary, for your visitation attempts to count in an enforcement case in Texas you must:

- physically go to the place where you are supposed to meet or pick up your children listed in the court order
- at the correct time ordered by the court
- knock on the door
- wait
- if the other parent will not let you see your children, or the children are not there,
- then there is a violation.

What I like to tell my clients and potential clients is that they must:

- Be at the correct place
- At the correct time

Things that can mess up a visitation enforcement case include:

- Not showing up because the other parent tells you over the telephone you cannot have the children.
- If you do not try to pick up the children at the correct place and time, you have not followed the order so there is nothing to enforce.

## WHAT IF THE CHILD REFUSES TO GO?

One of the most frequently asked questions in regards to the enforcement of possession and access is the situation where the child refuses to go with the parent attempting to exercise their possession.

We get this from both parents trying to exercise their visitation and from parents wanting to prevent visitation.



- ☑ having the child ready to go
- ☑ the child walks out on the porch
- ☑ then the child refuses to go with the parent attempting to exercise their possession.

This situation comes up frequently and appellate courts have taken differing views as to whether the parent with primary possession can be held in contempt when the child refuses to go.

**Ex Parte Morgan, 886 S.W.2d 829 (Tex.App.-Amarillo 1994, orig. proceeding)**

The Amarillo court indicates that there is no such thing as passive contempt. If a parent has the children ready to go and they refuse to go, the custodial parent could not be held in contempt.

**Ex Parte Rosser, 899 S.W.2d 382 (Tex.App.-Houston [14th Dist.] 1995, orig. proceeding)**

However, the Houston court of appeals came down on the issue differently. In "Ex Parte Rosser," the custodial parent had the obligation to:

- ☑ effectively drag the kid to the visiting parent's car, kicking and screaming, or
- ☑ go directly to jail, unless that parent can affirmatively show "an involuntary ability to compel the visitation."

**HELPFUL DOCUMENTS AND ACTIONS YOU CAN TAKE FOR YOUR ENFORCEMENT CASE INCLUDE:**

- ☑ A copy of all court orders having to do with your case
- ☑ Send notice to the other parent (a letter) stating that you will exercise your visitation as it is ordered going forward and you will be at the correct place and time to exercise your visitation.
- ☑ Arrive at least 15 minutes early at the visitation place
- ☑ wait for around 15 minutes past the designated time if the other parent is late
- ☑ Call the police and make a report if no visitation occurs.
- ☑ Get a copy of the report number from the police
- ☑ Make three reports in a row with the police
- ☑ After three reports, hire an attorney to file a visitation enforcement case on your behalf.

**Demand Letter**

One of the suggestions I make to clients and potential clients is that perhaps they should start their visitation enforcement case by first sending a demand letter to the other parent. My experience is that it can sometimes be the quickest and easiest way to getting visitation going again

This letter can either be written by the parent or an attorney representing the parent. Typically, the letter will:

- ☑ Inform the parent denying visitation of the denied parent's intent to see the children as ordered in the visitation order
- ☑ Address the parent's plan to be at the pickup location at the time listed in the order
- ☑ State the children should be ready for visitation as provided in the order and that the children will be returned as required in the order
- ☑ Describe the parent's plan to continue visitation going forward as ordered for now on.
- ☑ Inform the other parent that if the visitation is interfered with, it will be necessary to seek court intervention by filing an enforcement and asking the parent denying the visitation be held in contempt, pay court cost, penalties, and attorney fees for violating the court order.

**WITNESSES CAN BE HELPFUL**

Witnesses can be helpful if your case goes to court. If you bring someone with you during the pick-up of your children:

- ☑ they will be available to testify in court if necessary
- ☑ They can prevent your ex from making anything up about you. I have had cases where this has been a concern.



Document your witnesses:

- Name
- Address
- Phone number and
- Dates when they were present that you tried to exercise visitation

It would be a good idea, if possible, to use someone other than your boyfriend or girlfriend. The less connected the witnesses to you or your ex, the more credible they will appear in court.

### **OBTAIN EVIDENCE - MAKE A PURCHASE FROM A STORE NEARBY**

Instead of calling the police, you can also make a purchase from a store nearby and keep the receipt to show the time and date you were in the area. Keep this receipt and attach it to your visitation journal.

I tell my clients and potential clients that having a record of at least three denials within a brief time span is helpful when trying to enforce their rights in court.

### **VISITATION EXCHANGE TIPS**

Some rules to keep in mind when you are exchanging your children with the other parent. Do not:

- discuss conflict
- send someone else to pick up the children without telling the other parent ahead of time
- bring your new girlfriend or boyfriend, (there is a good chance this will likely upset the other parent). This one of the biggest reasons I see former clients of mine come back for round two.
- use the kids as messengers to pass information to the other parent
- yell, scream, or get angry if your visitation is denied. Remain calm and document the denial in your visitation journal.
- pump the kids for information about what happened when they were with the other parent.

If there is a chance your ex might make something up about you such as being physically violent, it is probably a good idea to bring a witness.

### **WHEN IN DOUBT, FOLLOW THE ORDER**

If a parent does not follow the order, ultimately, they may be held in contempt. It is not uncommon for a parent to schedule things such as doctors' appointments or activities like baseball or scouts that interfere with visitation.

One parent does not like the child's activities because it is interfering with their visitation. These scheduled activities are not a reason for skipping a parent's visitation. A judge may order someone in contempt for not following the order.

#### **Help Understanding the Order**

If you need help understanding your court order, an attorney can explain it to you. The Law Office of Bryan Fagan, PLLC will be happy to offer you a free consultation to answer your questions regarding the order and discuss enforcing visitation if that is needed.

#### **Hire an Attorney and File a Motion to Enforce the Court Order**

If the demand letter and showing up at the other parent's residence does not remedy the situation, then you will need to hire an attorney to help you with enforcing the order. This will involve:

### **FILING A MOTION TO ENFORCE WITH THE COURT**

This motion will tell the court:



- ☑ The parties to the case
- ☑ The child involved
- ☑ What order you are asking the court to enforce
- ☑ The violations of the order
- ☑ What remedy you are seeking such as jail time, makeup time, and attorney fees

## SETTING A HEARING

Once the paperwork is filed, you or your attorney will need to get a court date for the hearing. This can be accomplished by calling the court and getting a date.

### Serving the Other Parent with the Paperwork

You must give the other parent legal notice, which includes:

- ☑ Copy of the paperwork you filed
- ☑ When the hearing date of the case is

Once the parent is served with this information, the citation showing the party was served will need to be filed with the court at least 10 days prior to having the hearing.

## THE HEARING

On the day of the court hearing, you should:

- ☑ Arrive early
- ☑ Go to the courtroom
- ☑ Sit down and wait for the judge to call your case
- ☑ You and the other parent will be sworn in
- ☑ Your attorney will be told to proceed
- ☑ Your attorney will ask you and the other parent questions
- ☑ Then the other parent will have their chance to testify or present evidence
- ☑ After the judge has finished hearing testimony and reviewing the paperwork, they will make a decision.

## HOW DO I PROVE THE OTHER PARENT HAS NOT PAID THEIR COURT ORDERED CHILD SUPPORT?

This article addresses obtaining evidence showing the other parent has not paid their court ordered child support in Harris and Montgomery County in Texas.

Generally, a day does not go by where I do not receive a call from a parent who is upset because the other parent is not helping to financially support their child. If this is a case that involves Court Ordered child support. One remedy is to bring a "motion to enforce by contempt."

In a nutshell a "motion to enforce by contempt" is a request for help from the Court alleging the other parent has failed to obey an earlier Court Order. If the court finds the parent has violated the Courts Order, The Court may find that parent in contempt.

If this happens sometimes a Court may do, include sanctioning the violating parent with money damages, jail, putting the parent on probation, and forcing the violating parent to pay the other parents attorney's fees.

Once the parent who is not paying child support is served with a "motion to enforce by contempt" the next step is to have a hearing and put on evidence that they have failed to pay child support.



In order to prepare for the hearing one of the steps is to gather evidence of the violating parent's failure to pay child support. This has gotten easier because more and more courts are requiring child support payments go through the Office of the Attorney General.

If this is the case, then it means the Office of the Attorney General will have a record of all payments that have been made. One of my first steps as an attorney helping my client to bring an enforcement case is to obtain a copy of this record. These records are now available online. If the client is comfortable with computers and the internet they may have already set up an account on the Office of the Attorney Generals website. If they have set up an account, then I ask them to print out or download a copy of the child support record for me. However, if they do not have an account then I will email/fax the Office of Attorney General letting them know I am now attorney of record for my client and after a week or two and I will have access to the records online.

One of my next steps is looking at the child support order and figuring out how much how should have been paid and how often it should have been paid. I then prepare an excel sheet of all the payments that should have been paid along with all the payments that have been made. Once that is done, I have a good tool showing how many times the child support order has been violate that I can present to the Judge.

On the day of the hearing in an enforcement case evidence generally will consist of admitting 1) A copy of the Office of Attorney Generals record of child support payments 2) Some sort of spread sheet showing what was supposed to have been paid and what was paid 3) Testimony from the parent who was supposed to be receiving child support that no other payments were received directly.







LAW OFFICE OF  
**BRYAN FAGAN**  
— PLLC —

## **WE'RE HERE FOR YOU**

When it comes to your financial future, your peace of mind matters. No matter where you are in the divorce process, we are always available to help you protect your assets and safeguard your future. As a Texas law firm exclusively devoted to divorce and family law, our experienced divorce attorneys will explain your options and support you throughout the process. Please contact us at (281) 810-9760 if you would like to schedule a free confidential consultation

**CALL US FOR ALL YOUR FAMILY LAW NEEDS**

**(281) 810-9760**