



## MOTION FOR AN EX-PARTE (EMERGENCY) INTERIM ORDER

### A Research Guide for a North Dakota State Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts.

**The information provided in this research guide IS NOT a complete statement of the law.** This information is intended as a starting point for your research into motions for ex-parte (emergency) interim orders in family law cases in North Dakota state district court. This information is not intended for legal advice and cannot replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

The self-represented individual must make all decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. Use at your own risk.

*(Neither the North Dakota Legal Self Help Center nor the North Dakota Court System have forms or instructions available specifically for motions for ex-parte interim orders. If you represent yourself, you will need to create your own ex-parte motion legal documents, or retain an attorney to do so.)*

*The basic steps in the ex-parte motion process start on Page 5. The steps include the names and general descriptions of some of the legal documents you will need to create and prepare.)*

### OVERVIEW OF MOTIONS FOR EX-PARTE (EMERGENCY) INTERIM ORDERS:

#### What is a Motion for an Interim Order?

After a domestic relations case has begun, any party in the case may make a motion for an interim order. A motion for an interim order cannot be used to start a case.

A motion for an interim order is a written request for a temporary order for support, parental rights and responsibilities, attorney's fees and costs, and use of property.

The other party may answer the motion for an interim order with their own written requests.

A hearing is required. At the hearing, both parties present evidence to support their requests in the motion and the answer to motion.

The interim order, if signed by the court, is in effect until there is a different or final decision in the case.

## What is a Motion for an Ex-Parte (Emergency) Interim Order?

Ex-parte means without notice to or argument from the other party.

A motion for an ex-parte interim order is filed with the court without first giving written notice to the other party or giving the other party the chance to respond.

Ex-parte interim orders are rarely granted and will only be issued if the judge decides that there are exceptional circumstances present.

### **Exceptional Circumstances Include:**

- A threat of imminent danger to someone or a minor child of such person,
- If a court finds evidence that someone is in need of protection; and/or
- If the court finds evidence that the marital estate requires protection.

An ex-parte interim order is granted by a judge who makes a decision on the motion based only on your documents, affidavits of evidence, and before holding the required hearing.

If the judge grants an ex-parte interim order, an evidentiary hearing **MUST** be held within 30 days of the court granting the ex-parte interim order.

The party who made the motion **MUST** prove what they alleged in their written motion for an ex-parte interim order.

## What is a Domestic Relations Case?

Before any party can request an interim order, a domestic relations case must have already begun with service of the summons and complaint, or summons and petition.

Domestic relations cases are family disputes involving the rights and duties of spouses, parents, children, etc.

For example:

- Divorce – The only way to legally end a marriage. The two married individuals become unmarried once their divorce is granted by a court.
- Legal separation – A process similar to the requirements for granting a divorce. However, unlike a divorce, legal separation does not end the marriage, but it does end many of the legal responsibilities spouses have to each other, while they are married.
- Establishing parenting rights and responsibilities – A process involving parents who were never married to each other, which determines all the rights and responsibilities a parent has concerning the parent's child, including custody and visitation.
- Paternity – The establishment of a father-child relationship.

## MOTIONS FOR EX-PARTE (EMERGENCY) INTERIM ORDERS LEGAL RESEARCH RESOURCES

### **NORTH DAKOTA STATUTES:**

*(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found online at [www.legis.nd.gov/general-information/north-dakota-century-code](http://www.legis.nd.gov/general-information/north-dakota-century-code).)*

**Chapter 14-05: Divorce.** (Includes Legal Separation.)

[www.legis.nd.gov/cencode/t14c05.html](http://www.legis.nd.gov/cencode/t14c05.html)

**Chapter 14-09: Parent and Child.**

[www.legis.nd.gov/cencode/t14c09.html](http://www.legis.nd.gov/cencode/t14c09.html)

**Chapter 14-12.2: Uniform Interstate Family Support Act.**

[www.legis.nd.gov/cencode/t14c12-2.html](http://www.legis.nd.gov/cencode/t14c12-2.html)

**Chapter 14-14.1: Uniform Child Custody Jurisdiction and Enforcement Act.**

[www.legis.nd.gov/cencode/t14c14-1.html](http://www.legis.nd.gov/cencode/t14c14-1.html)

**Chapter 14-20: Uniform Parentage Act.**

[www.legis.nd.gov/cencode/t14c20.html](http://www.legis.nd.gov/cencode/t14c20.html)

### **NORTH DAKOTA CASE LAW:**

*(When the decision of a case is appealed from a North Dakota District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)*

One way to research case law related to motions for interim orders is to use the print version of the North Dakota Century Code to locate the short summaries of case law after each Section. Case law summaries directly follow the text of the Century Code Section. To view the full text of the opinion, go to [www.ndcourts.gov](http://www.ndcourts.gov), click on the “Supreme Court Opinions” link and enter the case name or case citation.

You may also research case law by topic at [www.ndcourts.gov](http://www.ndcourts.gov). Click on the “Supreme Court Opinions” link, the “By Topic” link, and then on the links that correspond to your research topic.

## **NORTH DAKOTA COURT RULES:**

*(Court rules govern how a dispute makes its way to state court and how the dispute is conducted. All of the court rules are found online at [www.ndcourts.gov/legal-resources/rules](http://www.ndcourts.gov/legal-resources/rules).)*

At minimum, review the following:

**North Dakota Rules of Civil Procedure:** [www.ndcourts.gov/legal-resources/rules/ndrcivp](http://www.ndcourts.gov/legal-resources/rules/ndrcivp).

**North Dakota Rules of Court:** [www.ndcourts.gov/legal-resources/rules/ndrct](http://www.ndcourts.gov/legal-resources/rules/ndrct). See particularly:

- Rule 8.2 (Interim Orders in Domestic Relations Cases),
- Rule 3.2 (Motions), and
- Rule 3.4 (Privacy Protection for Filings Made with the Court).

**North Dakota Rules of Evidence:** [www.ndcourts.gov/legal-resources/rules/ndrev](http://www.ndcourts.gov/legal-resources/rules/ndrev).

## **LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULES AND RULINGS, AND COURT DECISIONS.**

To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law.

Legal advice can only be given by a lawyer licensed to practice in North Dakota who has agreed to represent you. Legal advice includes interpreting how the laws and rules apply to your circumstances.

## **LIBRARY RESOURCES: (Not all legal resources are available online.)**

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. ([www.odin.nodak.edu/](http://www.odin.nodak.edu/))

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

[A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.

[Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

[The Legal Answer Book for Families](#), Emily Doskow, Marcia Stewart, NOLO, 2014.

Objections at Trial, Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.

Represent Yourself in Court: How to Prepare & Try a Winning Case, Paul Bergman, Sara Berman, NOLO, 2016.

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

### **OTHER LEGAL RESEARCH RESOURCES:**

How to Research a Legal Problem: A Guide for Non-Lawyers, American Association of Law Libraries. ([www.aallnet.org](http://www.aallnet.org))

## **BASIC COURT PROCESS FOR MOTIONS FOR EX-PARTE (EMERGENCY) INTERIM ORDERS (Making a Motion & Answering a Motion):**

### **Parties in a Motion for an Ex-Parte Interim Order:**

Plaintiff: The parent or spouse who is listed as the Plaintiff in the original domestic relations action. For example, the parent who started the action with service of the summons and complaint on the other parent.

Defendant: The parent or spouse who is listed as the Defendant in the original domestic relations action. For example, the parent who filed a written Answer in order to participate in the original case.

Moving Party: The parent or spouse bringing the Ex-Parte Motion for an Interim Order. The Moving Party in the motion may be either the Plaintiff or the Defendant.

Opposing Party: The other parent or spouse. In other words, the parent or spouse who is not bringing the motion. (Also called the Non-moving party.)

### **Moving Party – Motion for Ex-Parte Interim Order Documents to Start the Motion:**

The following documents must be filed with the Court:

- Domestic Relations Case Summons and Complaint and Proof of Service of Summons and Complaint on the other party
  - The summons and complaint are the documents that must be served to start a domestic relations case.
  - These documents must be filed before the ex-parte interim motion documents are filed, or filed at the same time.

The Moving Party must create and prepare the following motion for ex-parte interim order documents:

- Motion for Ex-Parte Interim Order
  - A required, short, written request to the Court to issue an ex-parte order for a specific purpose without first giving notice to the other party.
- Brief in Support of the Motion for Ex-Parte Interim Order
  - A required, written document that explains why the Court should grant the Moving Party's motion for an ex-parte interim order.
  - A list of the Moving Party's version of the facts related to the motion for an ex-parte interim order. These facts must also appear in the affidavit supporting the motion.
  - An explanation of each law, case law or court rule that supports the Moving Party's argument(s) and an application of each to the Moving Party's specific set of facts.
- Moving Party's Affidavit Supporting the Motion for Ex-Parte Interim Order
  - A written statement of the facts, about which the Moving Party has first-hand knowledge. Facts referred to in the brief should also appear in the affidavit.
  - Must give specific facts that show exceptional circumstances exist that would justify issuing the ex-parte order.
- Financial Statement and Affidavit
  - All motions for interim orders must include this document.
  - See Appendix B of the North Dakota Rules of Court for a Financial Statement and Affidavit form. [www.ndcourts.gov/legal-resources/rules/ndrct/appendix-b](http://www.ndcourts.gov/legal-resources/rules/ndrct/appendix-b)
- Other Supporting Documents (Other supporting affidavits, exhibits, etc.)
  - Other individuals who have first-hand knowledge of the facts may provide written affidavits.
  - Relevant documents/exhibits that support the arguments made in the Brief may be included.
- Confidential Information Form
  - Review Rule 3.4 of the North Dakota Rules of Court for information that is not allowed to appear in documents filed with the Court.
  - See Appendix H of the North Dakota Rules of Court for a Confidential Information form. [www.ndcourts.gov/Media/Default/Legal%20Resources/rules/ndrct/Appendix-H.pdf](http://www.ndcourts.gov/Media/Default/Legal%20Resources/rules/ndrct/Appendix-H.pdf).

The Moving Party may be required to create and prepare the following document:

- Ex-Parte Interim Order (Proposed)
  - The Moving Party's proposed ex-parte interim order for the Court to sign, if the Court grants the requests in the Moving Party's motion for an ex-parte interim order.
  - If the Court grants the requests in the Moving Party's motion for an ex-parte interim order and uses the proposed order, the judge will date and sign the proposed order.

**Moving Party – Filing the Motion for Ex-Parte Interim Order Documents With the Clerk of Court:**

The Moving Party files their motion for ex-parte interim order documents with the clerk of district court of the North Dakota County where the domestic relations case is filed.

The documents are filed using the same case number as the domestic relations case.

The Moving Party will not be required to pay a filing fee.

**If There has been an Appearance in the Case by the Opposing Party**

If there has been an appearance in the case by the Opposing party, or if the Moving party has knowledge that the Opposing party is represented by a lawyer, the Moving Party must notify the court.

After receiving notice of the appearance or representation, the court must attempt to hold an emergency hearing, either in person or by telephonic conference, at which both the Moving and the Opposing parties may be heard, before issuing any order. The issuance of an order following an emergency hearing will in no manner affect a party's right to a further hearing on the merits.

**The Judge Assigned to the Case Reviews the Motion for Ex-Parte Interim Order**

The judge assigned to the case will determine if the motion for an ex-parte interim order documents meet the requirements for requesting an ex-parte interim order.

**If the Judge Grants the Ex-Parte Interim Order, the Moving Party MUST Get a Hearing Date**

If the judge grants the ex-parte interim order, a hearing on the order must be held within 30 days.

The Moving Party will be required to get a hearing date within the 30 day deadline and arrange for personal service of the ex-parte interim order and a notice of the hearing on the Opposing party.

### **Moving Party – MUST Arrange to Serve the Ex-Parte Interim Order and Notice of Hearing**

After the Moving Party gets a hearing date, the Moving Party must arrange for personal service of the following on the Opposing Party:

- Copy of the Ex-Parte Interim Order (signed and dated by judge); and
- Notice of Hearing.

Serving (giving) copies of the ex-parte interim order and notice of hearing is an essential step in the legal process.

The requirements for personal service are in Rule 4 of the North Dakota Rules of Civil Procedure. The Rule 4 requirements are included in the service information and instructions to start a civil action available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action).

The Court requires proof that the ex-parte interim order and notice of hearing were served.

An affidavit of service is the proof of service. However, if a sheriff served the documents, a certificate of service is the proof of service.

The document(s) showing proof of service must be filed with the clerk of district court.

### **Opposing Party – MUST Attend the Hearing to Present Objections and Make Requests**

When the Opposing Party is served a copy of the ex-parte interim order and notice of hearing, if the Opposing Party objects, the Opposing Party must appear at the hearing to have their objections heard by the Court.

At the hearing, the Moving Party must prove the allegations they made in their motion for an ex-parte interim order.

At the hearing, the Opposing Party may challenge the Moving Party's evidence, present their own evidence, and make their own requests for the interim order.

### **Opposing Party – MUST Give Notice of Intent to Cross-Examine**

If the Moving Party filed affidavits from other people with their motion for an ex-parte interim motion, the Opposing Party may cross-examine those people at the hearing.

To ensure the people who provided affidavits to the Moving Party attend the hearing, the Opposing Party **MUST give written notice to the Moving Party at least 24 hours before the hearing.** Otherwise, the people who provided affidavits are not required to appear.

See Page 29 of the Motion for Interim Order: Domestic Relations Informational Guide for more information.



## **Moving Party & Opposing Party – Attend the Hearing**

Organize the information, documents, etc. that you think you will need for the hearing. At minimum, prepare an outline of your remarks and arguments.

### Arrive Early to the Courthouse on the Date of the Hearing:

Do not miss your hearing date and time.

If you have a serious, unavoidable reason you cannot get to court on the date and time scheduled for the hearing, call the courthouse as soon as you can.

### Conduct of the Hearing:

The judge hears both sides and then issues a final interim order. Sometimes, the final interim order is issued at the end of the hearing. Often, the final interim order is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
  - Each party gives an opening statement. Usually, the Moving Party goes first.
- Moving Party Presents Witnesses and Evidence
  - The Moving Party presents their case first.
  - The Opposing Party may cross-examine witnesses and object to the Moving Party's evidence.
- Opposing Party Presents Witnesses and Evidence
  - The Opposing Party presents their case after the Moving Party.
  - The Moving Party may cross-examine witnesses and object to the Opposing Party's evidence.
- Closing Arguments
  - Each party gives a closing statement. Usually the Opposing Party goes first.

The judge will decide if the Moving Party proved the allegations they made in their motion for an ex-parte interim order. The judge will decide whether to allow the ex-parte interim order to continue as-is, to allow the ex-parte interim order to expire without granting a new interim order, or to grant a different interim order.

## GENERAL-USE TEMPLATE FORMS:

The North Dakota Legal Self Help Center **does not** have forms or instructions available for motions for ex-parte interim orders. If you decide to represent yourself, you will need to create your own legal documents, or retain an attorney to do so.

Although the ND Legal Self Help Center does not have forms or instructions for motions for ex-parte interim orders, the General-Use motion template forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

**If you are the Moving Party**, you may find the General-Use motion template forms available at [www.ndcourts.gov/legal-self-help/making-a-motion](http://www.ndcourts.gov/legal-self-help/making-a-motion) useful as a starting point for creating your own motion for ex-parte interim order legal documents.

**If you are the Opposing Party**, you may find the General-Use motion template forms available at [www.ndcourts.gov/legal-self-help/answering-a-motion](http://www.ndcourts.gov/legal-self-help/answering-a-motion) useful as a starting point for creating your own answer to motion for ex-parte interim order legal documents.

Legal Services of North Dakota created a Family Law Manual for lawyers. The Family Law Manual is available at [www.legalassist.org/?id=128&page=ND+Family+Law+Manual](http://www.legalassist.org/?id=128&page=ND+Family+Law+Manual). There are examples of documents available under the "Adoption" section. You may find the examples of interest for general formatting purposes.

*(The reference to the Legal Services of North Dakota Family Law Manual is for formatting only. Including this reference does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the Family Law Manual. Use at your own risk.)*

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of the action. You and the lawyer must agree in writing to Limited Legal Representation.

You are responsible for the information on the documents you file with the court.

## ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:

You are not required to hire an attorney to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

### Attorney Resources

If you decide to find an attorney to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is [www.legalassist.org](http://www.legalassist.org).
- The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is [www.sband.org](http://www.sband.org).
- For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at [www.ndcourts.gov/Lawyers](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.

### Limited Legal Representation

Attorneys licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. You pay for the part of the case the attorney handled. For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make the court appearance for you.

You and the attorney must agree in writing to Limited Legal Representation.