

Responding to a
**Request for Help to Resolve
Visitation Problem**

**Court Personnel Cannot Help You Fill out the Form(s) in
this Packet.**

Opposing Party's Copy

Important Notices

1. The court expects every person who appears in court without a lawyer to know and follow the law. The judge will not be able to give you any help in court.
2. District courts in North Dakota use local rules to conduct proceeding. You are responsible for knowing local rules for the court in which you are appearing. You should see a lawyer if you do not know the local rules.
3. Court staff cannot help you fill out the form(s) in this packet.
4. You must fill out all forms included with this packet and you must follow the instructions included with this packet.
5. You should see a lawyer if you do not know how to answer the questions on these forms or if you think the other party will hire a lawyer.
6. Type your answers or print neatly using dark ink.

INSTRUCTIONS

STEP 1

RETURN TO MOTION FOR VISITATION ASSISTANCE FORM

Fill out the “Return to Motion for Visitation Assistance” form (FORM 5) included in this packet. This form tells the Court and the other party your response to the visitation problem described by the other party.

FILLING IN THE TOP PART OF THE FORM (this is known as “the caption”):

NOTE: The information to fill in the top part of the form can be found at the top of your current visitation order or your divorce or paternity judgment. Be sure to copy the information EXACTLY as it is on your current order.

8. Write the name of the county where your case is located and the case number which is also called the “civil number.”
9. On the line marked “plaintiff,” write the name of the plaintiff as listed on your current visitation order or divorce or paternity judgment.
10. On the line marked “name of defendant,” write the name of the defendant as listed on your current visitation order or divorce or paternity judgment.
1. Write the full name and street address of the other party.
2. Fill in the date of your response.

FILLING OUT THE REST OF THE FORM:

NOTE: The instructions which follow are numbered the same as the questions on the Return to Motion for Visitation Assistance form.

Review questions 1-8 which ask for your response to the other party's request for help with a visitation issue. You do not need to check off every box.

1. Under Subpart I, check box 1 if you are responding to the other party's request to have you obey the existing visitation order. **Provide your response in the space provided, attaching additional sheets if necessary. Label the additional page(s) I (1).**
2. Under Subpart II, provide your response to the other party's claim that a change of the visitation schedule is in the best interests of the minor child(ren). **Provide your response in the space**

provided, attaching additional pages if necessary. Label the additional page(s) ii.

3. For questions 3-9 provide your response separately for each of the claims and requests made by the other party. Attach additional sheets if necessary and label the additional page with the same number as the question on the form.

Date and sign the return to motion for visitation assistance form and attach all additional pages securely to the form.

- ! WARNING: By signing your name you are telling the Court that you are telling the truth. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court could find you in contempt or you may be prosecuted for not telling the truth.**

<p>STEP 2A FILL OUT THE “AFFIDAVIT IN SUPPORT OF RETURN TO MOTION FOR VISITATION ASSISTANCE” FORM</p>

Fill out the “Affidavit in Support of Return to Motion for Visitation Assistance” form (FORM 6) included in this packet. This form tells the Court and the other party your response to the other party's claims and requests. Fill in the top part of the form the same way you did on your "Return to Motion for Visitation Assistance" form (FORM 5) in Step 1.

- ! Write the name of the county where your case is located and the case number which is also called the “Court file number.”**
- ! On the line marked “name of plaintiff,” write the name of the plaintiff as listed on your current visitation order or divorce or judgment.**
- ! On the line marked “name of defendant,” write the name of the defendant as listed on your current visitation order or divorce or paternity judgment.**
- ! Fill in your full name as it appears on the caption in the space provided.**

FILLING OUT THE REST OF THE FORM:

FOR QUESTIONS 1-4

1. Check off whether a Protection or Restraining Order **is** or **is not** currently in effect in any State involving you and the other party or the children of this case. If a Protection or Restraining Order IS in effect, fill in the County, State, and Court File Number found on the Protection or Restraining Order.
2. List the name, birth date, and your relationship (e.g., mother, father, grandparent) to each child involved in this case. If more room is needed, attach another sheet of paper and make a note of that on the form.
3. Write the name of the state in which the children currently live and the month and year when they first started living there. Also list the name of the person with whom the children live and that person's relationship to the children (mother, father, grandparent). Finally, list the address of the children (including street address, city, and state). Check the correct response to whether or not you have attended "Children of Divorce."
4. Describe as clearly and as completely as possible your response to the visitation problems as identified by the other party in his/her Motion, Brief, and Notice of Motion for Visitation Assistance, including dates, times, witnesses, and other information that will be helpful to the Court in resolving the problem.

For questions 5-14, check off only those that were checked off In your return to motion for visitation assistance (form 5). Attach additional pages if necessary and label each page with the same number of the question on the form.

5. Check box 5 if it applies. Then tell the Court why it is in the best interests of the child(ren) that the visitation order remain the same.

Under Subpart II, provide your response to the other party's claim that a change of the visitation schedule is in the best interests of the minor child(ren).
6. Check box 6 if it applies. Then tell the court why your response is in the best interests of the minor child(ren).
7. Check box 7 if it applies. Then fill in the same schedule as you did on Question 3 on Return to Motion for Visitation Assistance form.
8. Check box 8 if it applies. Then tell the court why your response is in the best interests of the minor child(ren).

NOTE: Not all counties have visitation exchange centers. The Court can grant this request only if

a visitation exchange center exists in your county.

! **WARNING:** You and the other party will probably be required to pay for the fees and costs of this service.

9. Check box 9 if it applies. Then tell the Court your response to the other party's request.
10. Check box 10 if it applies. Then tell the Court your response to the other party's request.
11. Check box 11 if it applies. Then tell the Court your response to the other party's request.
12. Check box if it applies. Then tell the Court the total amount of Court fees and costs you paid and why the other party should have to pay you for those fees and costs or your response to the other party's request.
13. Check box 13 if it applies. Then tell the Court the total amount and type of other expenses you have because of the other party's actions or your response to the other party's request.
14. Check off box 14 only if there is other information you think would be helpful to the Court in deciding this case.

Do not date and sign your "affidavit" until you are in the presence of a notary public or the clerk of court. Make sure to bring identification to show to the notary public or clerk of court. A Notary Public can usually be found at a bank and sometimes at the courthouse.

! **WARNING:** By signing your name you are telling the Court that you are telling the truth. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court could find you in contempt or you may be prosecuted for not telling the truth.

<p>STEP 2B HAVE THOSE WITH PERSONAL KNOWLEDGE OF YOUR VISITATION DISPUTE FILL OUT "AFFIDAVIT OF _____" FORM</p>

You may have those with personal knowledge of your visitation dispute fill out an "Affidavit" (FORM 7) which is a written statement in which the facts stated are sworn to be true. If you do not have any one with personal knowledge of the visitation dispute, YOU NEED NOT FILL OUT OR FILE THIS FORM. If you have more than one person making a statement, photocopy the "Affidavit" for each person before you continue to Step 2B. Fill in the top part of the form the same way you did on your "Return to Motion for Visitation Assistance" form (FORM 5) in Step 1:

- ! Write the name of the county where your case is located and the case number, which is also called the “civil number.”
- ! On the line marked “name of plaintiff,” write the name of the plaintiff as listed on your current visitation order or divorce or judgment.
- ! On the line marked “name of defendant,” write the name of the defendant as listed on your current visitation order or divorce or paternity judgment.
- ! Fill in the name of the person giving the sworn statement. **STOP.** The person giving the sworn statement must fill out the rest of the form.

**Have the individual with personal knowledge
Read this instruction and fill out the rest of the form:**

First, fill in your name, and your county and state of residence. In the space provided, describe all relevant personal knowledge you have regarding the visitation dispute. Be specific; attach additional pages if necessary. **Warning: The judge will not consider the Statement unless you attend the hearing. If you do not attend the hearing, your statement may not be considered.**

Do not date and sign your affidavit until you are in the presence of a notary public or the clerk of court. Make sure to bring identification to show the notary public or clerk of court. A notary public can usually be found at a bank and sometimes at the courthouse.

- ! **WARNING: By signing your name, you are telling the court that you are telling the truth. If you are not telling the truth or if you are misleading the court or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you may be prosecuted for not telling the truth.**

<p>STEP 3 MAKE COPIES OF FORMS</p>
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1. Make two copies of the “Return to Motion for Visitation Assistance” form (FORM 5).
2. Make two copies of “Affidavit in Support of Return to Motion for Visitation Assistance” form (FORM 6).
3. Make two copies of “Affidavits” (FORM 7), if any.
4. Keep one copy of each form for yourself.
5. Step 4 tells you how to send the second copy of each form and other documents to the other party. Step 6 tells you what to do with the originals of the forms.

STEP 4
SERVE RETURN TO MOTION FOR VISITATION ASSISTANCE
AT LEAST 13 DAYS BEFORE THE HEARING DATE

You must arrange for the other party to receive your reply and complete copies of all documents

you have prepared for the hearing. This is called “service of process.” You may serve process by

following these instructions:

1. Place 1) one copy of the completed “Return to Motion for Visitation Assistance” form (FORM 5); 2) one copy of the completed “Affidavit in Support of Return to Motion” form (FORM 6); and 3) one copy of each “Affidavit” (FORM 7), if any. Write your return address and the last known address of the other party on the front of the envelope. Place the correct amount of postage on the envelope (you may want to take the envelope to the post office to be weighed to make sure you put on the right amount of postage);
2. The envelope containing the forms must be mailed to the other party (or his/her attorney if there is one) **at least 13 days before the hearing date**. You should have someone else who is over the age of 18 mail the forms.

! Warning: if your forms are not mailed to the other party (or his/her attorney) at least 13 days before the hearing date, your reply may not be considered by the court.

STEP 5
THE PERSON WHO MAILED THE ENVELOPE
FILLS OUT THE “AFFIDAVIT OF SERVICE BY MAIL” FORM

After the envelope containing the forms has been mailed to the other party, then the person who

placed the envelope in the mail must fill out the “Affidavit of Service by Mail” form (FORM 8)

included in this packet. This form proves to the Court that the papers were mailed to the other

party.

1. Fill in the top part of the “Affidavit of Service” form the same as you did for the "Return to Motion for Visitation Assistance" form (FORM 5).
2. After “COUNTY OF” fill in the name of the county where the person was when the person signed the Affidavit of Service by Mail.
3. Fill in the name of the person who mailed the envelope, and the date on which it was mailed.
4. Fill in the name of the person to whom the documents were mailed (the other party).
5. Fill in the other party’s last known address.
6. Fill in the name of the city and state where the post office was located from which the documents were mailed.
7. **The person who mailed the envelope must not sign the “affidavit of service by mail” until he/she is in the presence of a notary public or the clerk of court. Make sure the person brings identification to show to the notary public or clerk of court.**
8. After it has been signed, make one copy of the Affidavit of Service by Mail (FORM 8) for your records.

<p>STEP 6 FILING THE FORMS WITH THE COURT</p>

AT LEAST 13 DAYS BEFORE THE HEARING DATE, take the original of the “Return to Motion for Visitation Assistance” (FORM 5); the original of the “Affidavit in Support of Return to Motion” (FORM 6); the original “Affidavit(s)” (FORM 7), if any; and the original of the “Affidavit of Service by Mail” (FORM 8) to the Clerk of Court’s Office in the county where your case is located. Tell the Clerk of Court that you wish to file the documents.

STEP 7
APPEAR AT THE HEARING

You must go to Court on the date set for the hearing. If you do not go to Court, you will lose the case. Be sure to be on time. Bring to the hearing:

- ! your copy of the Return to Motion for Visitation Assistance (FORM 5), Affidavit in Support of Return to Motion (FORM 6), and supporting Affidavits (FORM 7), if any;
- ! any evidence you want the judge to know about (such as pictures, documents, receipts, bills, etc.); and
- ! any witnesses you want to talk to the judge and anyone having signed an affidavit (See Step 2B).
- ! **WARNING: Some district courts in North Dakota follow "Affidavit Practice," which means all evidence MUST be submitted in the form of an affidavit. CHECK THE LOCAL RULES OF THE DISTRICT COURT IN WHICH YOU ARE APPEARING. If the court in which you are appearing requires affidavits, anyone having knowledge about your situation must submit their testimony in an "Affidavit," which shall contain their sworn and notarized statement and must be served with all other documents listed in STEP 4. Anyone who has signed an affidavit must appear with you at the hearing.**

The judge will not allow you to use as evidence (and will not look at) any documents (such as letters, notes, or statements) written by someone other than yourself unless the person who wrote the document is in Court at the hearing.

If you want the judge to hear what someone else has to say about your case, that person **MUST** be in Court -- YOU cannot tell the judge what that person said or has to say. You may force someone to attend the hearing by serving a document (subpoena) commanding a person to appear prior to the date of the hearing.