

## **INSTRUCTIONS FOR DETERMINING PARENTING RIGHTS AND RESPONSIBILITIES WITH AN AGREEMENT ON ALL ISSUES**

### **IMPORTANT! READ BEFORE USING THIS PACKET**

**ND Legal Self Help Center staff and court employees cannot help you fill out the forms in this packet. If you are unsure how to proceed, you should consult a lawyer.**

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you will have to abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc).

*This information is not a complete statement of the law. This covers basic procedure for asking a North Dakota District Court to determine parenting rights and responsibilities of the minor child(ren) of unmarried parents when the parents agree on all issues. If the forms do not fit your circumstances, consult a lawyer. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.*

**You may only use these forms if your answer to ALL of the following statements is “Yes.”**

1. Both parents agree on all issues and there are no issues on which they disagree.
2. The parents of the minor child(ren) have **never** been married to each other.
3. All of the minor children have lived in North Dakota with a parent for at least the past 6 months (or since birth); **\*OR\*** Within the past 6 months, North Dakota was the home state of all of the children and one parent still lives in North Dakota.
4. There is no other custody, visitation, divorce or paternity order from a North Dakota court or court of another state.
5. This is the only legal action pending between the parents regarding the minor children.
6. The father of the child or children is recognized as the father by a signed acknowledgement of paternity, a court order, or an adoption order.
7. Neither parent is currently in the military; **\*OR\*** one or both parents are currently in the military but not deploying or deployed.
8. There is no domestic violence protection order or disorderly conduct restraining order in effect regarding either parent.

**If you answered “No” to any of the above, you may not use this forms packet.**

**Caution Regarding Domestic Violence.** Domestic violence protection orders and disorderly conduct restraining orders generally do not allow communication between the person protected by the order and the person the order is against.

This packet of forms is designed to be used by unmarried parents who represent themselves and agree on all issues. The parents must be in communication with each other to share information, make decisions and complete the forms before filing with the Clerk of Court. If there is a domestic violence protection order or disorderly conduct restraining order in effect against either parent, you may not use these forms.

If there is no domestic violence protection order or disorderly conduct restraining order in effect, but you are concerned about the impact of domestic violence on you or your child(ren), this packet of forms may not be suitable. Before using this packet of forms, you are strongly urged to consult a lawyer and to contact a domestic violence intervention center in your area to help you navigate your situation. CAWS North Dakota can help you find a domestic violence intervention center in your area. The phone number is (888) 255-6242; the website is [www.cawsnorthdakota.org](http://www.cawsnorthdakota.org).

### **North Dakota Laws Related to Parenting Rights and Responsibilities:**

[Chapter 14-09 of the North Dakota Century Code](#) relates to parents and children. This Chapter includes many of the requirements for determining parenting rights and responsibilities. Many child support requirements are also included in this Chapter.

[Chapter 14-14.1 of the North Dakota Century Code](#) is the Uniform Child Custody Jurisdiction and Enforcement Act. This Chapter governs when a North Dakota district court has the authority to make binding decisions on determining parenting rights and responsibilities.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws apply to your situation.

## **Forms in the Packet:**

**See the individual form for instructions on completing the form.**

<b>Form Title</b>	<b>Description</b>
Form 1: Summons	Notifies the Defendant that the Plaintiff started the process for an order to determine parenting rights and responsibilities. <u>The summons must be signed and dated by the clerk of court to be valid.</u>
Form 2: Complaint	Gives the court information about the Plaintiff and Defendant, and their children. Tells the court what the Plaintiff is asking for from the court.
Form 3: Settlement Agreement	A written, signed and notarized agreement of the Plaintiff and Defendant determining all the parenting rights and responsibilities to the minor child(ren).
Form 4: Confidential Information Form	Lists the full confidential information that is not allowed to appear in other documents filed with the court. This form is a part of the court record that is not seen by the public.
Form 5: Admission of Service	Proof that copies of the completed Form 1: Summons, and Form 2: Complaint were delivered to and accepted by the Defendant.
Form 6: Affidavit of Proof for Stipulated Judgment	The Plaintiff's written, signed and notarized statement of the facts and the court's authority (jurisdiction) to decide the action.
Form 7: Findings of Fact, Conclusions of Law and Order for Judgment (Proposed)	Findings of Fact are the Court's written determination of the facts made from the evidence presented. Conclusions of Law are the rulings of law made by the Court based on, or in connection with, the Findings of Fact. These are your <u>proposed</u> findings of fact and conclusions of law, which are based on the Settlement Agreement.
Form 8: Judgment (Proposed)	A written order of the judge's decision. Parenting rights and responsibilities are not determined until the judgment is signed and filed. This is your <u>proposed</u> judgment, which is based on the Settlement Agreement
Form 9: Notice of Entry of Judgment	A required notice from the Plaintiff to the Defendant. Served on the Defendant within 14 days after the judgment is entered.

## **Definitions:**

**Decision making responsibility** – the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specific issues, but not child support issues.

**Deploying or deployed parent** – a deploying or deployed parent is a uniformed service member who has been notified of orders of movement or mobilization for more than ninety days but less than eighteen months **AND** the orders are designated as unaccompanied, not authorized for dependent travel, or do not permit family members to move to the deployment location.

**Home state** – the state in which a child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, home state means the state in which the child lived from birth with a parent. A period of temporary absence of any of the mentioned persons is part of the period.

**Obligor** – the person ordered by the court to pay child support.

**Obligee** – the person receiving child support ordered by the court.

**Parental rights and responsibilities** – all the rights and responsibilities a parent has concerning the parent's child.

**Parenting plan** – a written plan describing each parent's rights and responsibilities.

**Parenting schedule** – the schedule of when the child is in the care of each parent.

**Parenting time** – the time when the child is to be in the care of a parent. (Also known as visitation.)

**Primary residential responsibility** – a parent with more than fifty percent of the residential responsibility.

**Residential responsibility** – a parent's responsibility to provide a home for the child. (Also known as custody.)

## **The Parties:**

The parent starting the action to determine parenting rights and responsibilities between unmarried parents is called the **Plaintiff**. The other parent is called the **Defendant**.

The parent who will be listed as Plaintiff to this action should be a parent who can answer “Yes” to Statement #3 on page 1 of these instructions. If neither parent can answer “Yes” to Statement #3, you may not use this packet of forms.

**THE STEPS FOR COMPLETING THE PACKET ARE ON PAGES 5 THROUGH 10.**

**REVIEW ALL OF THE STEPS BEFORE USING THE PACKET.**

**Step One:**

**Review the Forms and Instructions; Gather Information and Make Decisions**

**Review the forms and instructions:**

Read these instructions carefully. Review the individual forms and their instructions carefully. Determine if the forms apply to your situation. If you do not know if you should use this packet of forms, consult a lawyer who is licensed to practice in North Dakota.

**Gather information:**

Both parents should gather information to help make decisions about the following:

- Residential responsibility of the minor child(ren). (Also known as custody.)
- Parenting time, including scheduling. (Also known as visitation.)
- Decision making responsibility.
- Child support, including wages and other earnings information.
- Medical coverage, including health insurance premiums, copays, deductibles, etc.

**Complete your child support calculations:**

If you already have a Child Support Order, get a copy of the Order to include with the completed packet of forms. You do not need new child support calculations.

If you do not already have a Child Support Order, you need to complete your child support calculations before either parent signs the Settlement Agreement.

The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator. You will find the Calculator at <http://www.nd.gov/dhs/services/childdiscovery/progserv/guidelines/guidelines.html>.

The Child Support Division may be able to provide some assistance with your child support calculations. (701-328-5440; 800-231-4255) Court personnel and staff of the ND Legal Self Help Center cannot assist with child support calculations.

Proceed to the Child Support Guidelines Calculator. You can complete your child support calculations in Excel or on paper. Read and follow the instructions carefully!

If the parents will have equal residential responsibility, you must calculate child support amounts for both parents.

If one parent will have primary residential responsibility (more than 50% of the residential responsibility), you must calculate the child support amount for the parent with less than 50% of the residential responsibility.

**WARNING:** If you plan to ask the court to allow a parent to pay a different amount of child support than the Child Support Guidelines Calculator amount, you are strongly urged to consult a lawyer for assistance. The Calculator amount is presumed to be the correct amount of child support. The parent asking for a deviation from the Calculator amount must prove they meet one of the limited exceptions for deviation, and the deviation is in the best interests of the child(ren). See [North Dakota Century Code Section 14-09-09.7](#) and [North Dakota Administrative Code Section 75-02-04.1-09](#).

**Step Two:**  
**Fill out the “Summons” Form**

The Summons (Form 1) tells the Defendant that the Plaintiff has filed a lawsuit against him or her asking the North Dakota District Court to determine parenting rights and responsibilities between unmarried parents. The Summons also tells the Defendant that if he or she does not file a written Answer to your lawsuit, the Court may give the Plaintiff everything they ask for in the lawsuit.

Filling out this form is required even though you and the other parent agree on all issues in the action to determine parenting rights and responsibilities between unmarried parents.

Instructions for completing the Summons are attached to the form.

Both parties are required to obey the Summons. **Read it carefully!**

Take the completed summons form to the clerk of district court of the North Dakota county where you intend to file the completed packet of forms. The clerk of district court must sign the summons before you complete Step Four.

### **Step Three:**

#### **Fill out the “Complaint” Form**

Fill out the Complaint (Form 2). The Complaint is divided into three parts. The first part gives the Court information about both parents and your minor child(ren). The second part tells the Court and the Defendant what the Plaintiff is asking for from the Court. The third part is the Plaintiff’s sworn statement to the Court that the Plaintiff is telling the truth.

Instructions for completing the Complaint are attached to the form.

**WARNING:** By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court of 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 perjury.

### **Step Four:**

#### **Make Copies of “Summons” and “Complaint” Forms; Serve Defendant**

##### **Make Copies of Completed “Summons” and “Complaint” Forms:**

Make TWO copies of the completed Summons (Form 1) and TWO copies of the completed Complaint (Form 2). Keep one copy for yourself. You will send or give one copy to the Defendant, along with the original Admission of Service (Form 5).

##### **Serve One Copy of the Completed “Summons” and “Complaint” Forms on the Defendant:**

Fill out the caption of the Admission of Service. Send or give the following to the Defendant:

- One copy of the completed Summons;
- One copy of the completed Complaint; and
- The original Admission of Service.

Ask the Defendant to do the following:

- On the Admission of Service, fill in the Defendant’s full, legal name and the date the Defendant received their completed copies of the Summons and Complaint;
- Sign the Admission of Service;
- Make a copy of the Admission of Service for the Defendant’s records; and
- Return the original, completed Admission of Service to you.

Make a copy of the original, completed Admission of Service for your records.

**WARNING:** Once the Defendant receives copies of the completed Summons and Complaint, and the Defendant dates and signs the Admission of Service, neither parent can take your minor child(ren) from North Dakota without the written permission of the other parent or an order of the Court. (This does not include taking your minor child(ren) from North Dakota for temporary periods.) If a parent disobeys this temporary restraining provision, that parent may be in contempt of court.

**Step Five:**  
**Fill out the “Settlement Agreement” Form**

**Fill out the Settlement Agreement ONLY if both parents agree on all issues. If agreement has not been reached on every issue, you may not use this packet of forms.**

The Settlement Agreement (Form3) tells the Court that the parents have reached an agreement settling all of the issues involved in this action to determine parenting rights and responsibilities between unmarried parents. It also tells the Court exactly what the terms of the agreement are.

Instructions for completing the Settlement Agreement are attached to the form.

**DO NOT sign and date the Settlement Agreement until after the Defendant dates and signs the Admission of Service.** The Settlement Agreement is not completed until the date from the Admission of Service (Form 5) is filled in.

**DO NOT sign and date the Settlement Agreement until you are in the presence of a Notary Public or Clerk of Court.**

**Step Six:**  
**Fill out the “Confidential Information Form”**

Court records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is required to remain confidential, even if it is part of a public court record.

Each parent is solely responsible for making sure confidential information does not appear in the documents they prepare.

Fill out the Confidential Information Form (Form 4). This form must contain the full confidential information that is referenced in the completed packet of forms.

Instructions for completing the Confidential Information Form are attached to the form.

## **Step Seven:**

### **Get Signatures; Make Copies**

#### **Get Defendant's Signatures on the Settlement Agreement and Confidential Information Form:**

If the Defendant has not already signed the completed Settlement Agreement (Form 3) in the presence of a notary public or clerk of court, send or give the original, completed Settlement Agreement to the Defendant.

If the Defendant has not already signed the completed Confidential Information Form (Form 4), send or give the original, completed Confidential Information Form to the Defendant.

Ask the Defendant to do the following:

- Sign the Settlement Agreement in the presence of a notary public or clerk of court.
- Sign the Confidential Information Form.
- Make a copy of each for the Defendant's records.
- Return the original, signed and notarized Settlement Agreement and the original, signed Confidential Information Form to you.

#### **Make Copies of the Settlement Agreement and Confidential Information Form:**

After the Defendant returns the original, completed Settlement Agreement and Confidential Information Form with the Defendant's signatures, make a copy of each for your records.

**Proceed to Step Eight after you have completed all the forms from Steps One through Seven. The forms must also be signed by you and the Defendant as indicated on the forms and in the instructions.**

## **Step Eight:**

### **Fill out the "Affidavit of Proof for Stipulated Judgment" Form**

This form packet is designed to be presented to a North Dakota District Court without requiring an in-person hearing. Evidence is presented by affidavit, which is a sworn statement of the facts of the action.

**Please be aware that the Court may still request an in-person hearing before making a final decision.**

Fill out the Affidavit of Proof for Stipulated Judgment (Form 6). This is the Plaintiff's notarized (sworn) statement of the facts of the action.

Instructions for completing the Affidavit of Proof for Stipulated Judgment are attached to the form.

**DO NOT sign and date the Affidavit of Proof for Stipulated Judgment until you are in the presence of a Notary Public or Clerk of Court.**

**Step Nine:**

**Fill out the “Findings of Fact, Conclusions of Law and Order for Judgment” AND the “Judgment” Forms**

Findings of fact are the Court’s written determination of the facts made from the evidence presented in the motion. This explains what facts the Court found to be true.

Conclusions of law are the rulings of law made by the Court based on, or in connection with, the findings of fact. These are the legal consequences of the facts the Court found to be true.

The Findings of Fact, Conclusions of Law and Order for Judgment (Form 7) are your **PROPOSED** findings of fact, conclusions of law and order for judgment for determining parenting rights and responsibilities. The Judge or Referee assigned to your action will ultimately decide whether or not to grant your requested parenting rights and responsibilities. The Judge or Referee will also decide whether or not to use your proposed findings of fact, conclusions of law and order for judgment.

The Judgment (Form 8) is your **PROPOSED** judgment for determining parenting rights and responsibilities. If the Judge or Referee assigned to your action grants parenting rights and responsibilities and uses your proposed findings of fact, conclusions of law and order for judgment, the Clerk of Court will sign and date your proposed judgment.

Fill out the Findings of Fact, Conclusions of Law and Order for Judgment and the Judgment.

Instructions for filling out the Findings of Fact, Conclusions of Law and Order for Judgment and the Judgment are attached to the forms.

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## **Step Ten:**

### **File All of the Completed Forms with the Clerk of Court**

Take or mail the completed **ORIGINAL** of each of the following documents to the Clerk of Court's Office in the County where your action is located:

- Summons (Form 1);
- Complaint (Form 2);
  - Include any additional sheets.
- Settlement Agreement (Form 3);
  - Include any copies of birth certificates, additional sheets and/or child support calculations.
- Confidential Information Form (Form 4);
- Admission of Service (Form 5);
- Affidavit of Proof for Stipulated Judgment (Form 6);
- Findings of Fact, Conclusions of Law and Order for Judgment (Proposed) (Form 7); and
  - Include any additional sheets.
- Judgment (Proposed) (Form 8).
  - Include any additional sheets.

You will need to pay a filing fee. The filing fee for an action to determine parenting rights and responsibilities is currently \$80.

If you cannot afford to pay the filing fee, the judge may waive it under certain circumstances. Forms and instructions to request an order to waive filing fees are available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc) by clicking on the "Other Forms" link. File the completed forms when you file your action. If your request is not granted by the Court, you must be prepared to pay the filing fee or the Clerk of Court cannot accept your documents.

The original documents will be kept in the court file. The Clerk of Court will assign a case number to your case and send you a letter telling you the case number and the date that your documents were filed.

**After the Court reviews all of the paperwork, the Court might require a hearing.** If the Court requires a hearing, you will be notified of the date, time and location of the hearing. You must attend the hearing. If you fail to attend the hearing the Court may not grant parenting rights and responsibilities. If the Court approves the Settlement Agreement, the Clerk of Court will send you and the Defendant a copy of the Judgment telling you the judge signed the Findings of

Fact, Conclusions of Law, and Order for Judgment and the Judgment has been filed which means parenting rights and responsibilities are granted and are final.

If the Court does not require a hearing and the Court approves the Settlement Agreement, the Clerk of Court will send you and the Defendant a copy of the Judgment telling you the judge has signed the Findings of Fact, Conclusions of Law, and Order for Judgment and the Judgment, has been filed which means parenting rights and responsibilities are granted and are final.

If you need a certified copy of the judgment you may obtain one for a fee through the Clerk of Court's office.

**WARNING: PARENTING RIGHTS AND RESPONSIBILITIES ARE NOT GRANTED AND FINAL UNTIL THE JUDGMENT HAS BEEN FILED.**

**Step Eleven:**

**Serve the Notice of Entry of Judgment on the Defendant; File Proof of Service**

Within 14 days after the judgment is entered, the Plaintiff must serve a Notice of Entry of Judgment (Form 9) on the Defendant. Fill out the form and follow the instructions for service on the Defendant. You must include a copy of the Judgment when you serve the completed Notice of Entry of Judgment.

After service is complete, file the original completed Notice of Entry of Judgment and proof of service on the Defendant with the Clerk of Court.