



## RELOCATING OUT OF STATE WITH CHILDREN

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

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

The information provided in this research guide is intended as a starting point for your research into relocating out of North Dakota with your children. The information provided in this research guide is not intended for legal advice and cannot replace the advice of competent legal counsel licensed in the state.

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.

(Primary residential responsibility means a parent with more than 50% of the residential responsibility. Please note that in 2009 the North Dakota State Legislature changed the term “custody” to “residential responsibility” and changed the term “visitation” to “parenting time.”)

### **OVERVIEW OF RELOCATING OUT OF STATE WITH CHILDREN:**

**When a parent granted primary residential responsibility** by a North Dakota district court wishes to relocate the residence of their children out of the state of North Dakota, that parent must have 1) the consent of the other parent (if the other parent was granted parenting time); or 2) an order from a North Dakota district court.

An order of a North Dakota district court is not required if 1) the other parent has not exercised parenting time for one year; or 2) has moved to another state and is more than 50 miles from the parent with primary residential responsibility.

**When a parent granted equal residential responsibility** by a North Dakota district court wishes to relocate the residence of their children out of the state of North Dakota, that parent must have 1) the consent of the other parent; or 2) an order from a North Dakota district court allowing the move and awarding the relocating parent primary residential responsibility.

### **Relocation When Primary Residential Responsibility is Not Already Established:**

When the parent who wants to relocate with the children does not already have primary residential responsibility, that parent may first be required to prove to the court that they should be granted primary residential responsibility.

## **NORTH DAKOTA STATUTES RELATED TO RELOCATING OUT OF STATE WITH CHILDREN:**

*(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by North Dakota Legislature. The NDCC is found online at <http://www.legis.nd.gov/general-information/north-dakota-century-code>. \*\*These are not the full chapters and sections contained in the NDCC, please follow the links to view the laws in full.\*\*)*

**Chapter 14-09**      **Parent and Child**      <http://www.legis.nd.gov/cencode/t14c09.html>

- See specifically, Section 14-09-07: Residence of child, for relocation requirements.
- See also, Section 14-09-06.2: Best interests and welfare of child – Court considerations – Factors.

## **NORTH DAKOTA CASE LAW RELATED TO RELOCATING OUT OF STATE WITH CHILDREN:**

*(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.)*

**Review the North Dakota Supreme Court opinions related to NDCC Section 14-09-07.** The opinions include additional factors the district court must consider when you request to change the residence of a child out of state. The factors are called the Stout-Hawkinson test.

**The four factors of the Stout-Hawkinson test are:**

1. Prospective advantages of the move in improving the custodial parent's and the child's quality of life;
2. Integrity of the custodial parent's motive for relocation, considering whether the motive is to defeat or deter visitation by noncustodial parent;
3. Integrity of the noncustodial parent's motives for opposing the move; and
4. Potential negative impact on the relationship between the noncustodial parent and the child, including whether there is a realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the noncustodial parent's relationship with the child if relocation is allowed, and likelihood that each parent will comply with such alternate visitation.

One way to research case law related to NDCC Section 14-09-07, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of

the Century Code. The case law summaries are located directly following 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 “Opinions” link and enter the case name or case citation.

Another way to research case law related to relocating the residence of a child out of state, is to search by topic at [www.ndcourts.gov](http://www.ndcourts.gov). Click on the “Opinions” link, the “By Topic” link, and then on the link for “Divorce/Child Cust. & Support.”

### **NORTH DAKOTA COURT RULES RELATED TO RELOCATING OUT OF STATE WITH CHILDREN:**

*(Court rules govern how a dispute makes its way to court and how the dispute is conducted. All of the court rules are found online at <http://www.ndcourts.gov/Rules/>. \*\*These are not the full rules contained in the North Dakota court rules, please follow the links to view the rules in full.\*\*)*

**Rule 6 of the North Dakota Rules of Civil Procedure: Computing and Extending Time; Time for Motion Papers.** <http://www.ndcourts.gov/court/rules/CIVIL/rule06.htm>

**Rule 3.2 of the North Dakota Rules of Court: Motions.**  
<http://www.ndcourts.gov/court/rules/NDROC/rule3.2.htm>

**Rule 8.1 of the North Dakota Rules of Court: Family Mediation Program.**  
<http://www.ndcourts.gov/court/rules/NDROC/rule8.1.htm>

- See Section 8.1(c)(1) for clerk referrals in post-judgment proceedings.

### **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 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 and North Dakota court rules 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 and rules apply to your situation.

**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. (<http://www.odin.nodak.edu/>)

Following are library resources that may be of interest to you:

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))

**REVIEW YOUR NORTH DAKOTA COURT ORDER:**

Review your North Dakota court order that established residential responsibility and parenting time.

Your North Dakota court order may include requirements for changing the residence of a child.

Your court order may also require you to take certain steps, such as mediation, to resolve disputes before you ask the court to resolve the dispute.

Review your order carefully!

**PROCESS FOR A MOTION FOR AN ORDER TO RELOCATE:**

Carefully review the “Motions” Section of the Guide to Civil Action at [www.ndcourts.gov/ndlshc/](http://www.ndcourts.gov/ndlshc/). Click on the “Guide to Civil Action” link.

When asking the court for an order in an existing case, it is done in writing in the form of a motion.

The “Motions” Section provides the basic process for making a motion for an order in an existing case. The “Motions” Section also provides basic the process for answering a motion.

**Important information about serving and filing motion and answer to motion documents is found in the “Motions” Section at the link above. Review the process thoroughly!**

**Caution! When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.**

### **FORMS FOR A MOTION FOR AN ORDER TO RELOCATE:**

The ND Legal Self Help Center does not have forms or instructions available for making a motion to relocate your children out of North Dakota. If you decide to represent yourself, you will need to create your own legal documents.

**Generally, the parent making the motion must create and prepare the following motion documents:**

- Notice of motion
  - A required written notice that tells all parties that a request for an order will be made to the court.
- Motion
  - A required short, written request to the Court in an existing case for an order for a specific purpose.
- Brief in support of motion
  - A required written explanation of why the court should grant your request. A brief takes the specific rules and laws that support the request and explains how they apply to the facts of your particular situation. Facts referred to in the brief should also appear in the affidavit.
- Your affidavit to support the motion
  - A written statement made under oath in front of an authorized officer. Facts referred to in the brief should also appear in the affidavit. The affidavit must be signed in the presence of a notary public by the individual making the statement.
- Other supporting documents (settlement agreements, other affidavits, exhibits, etc.)
- Proof of service of the motion documents on the other parties.

**Generally, the parent answering the motion must create and prepare the following answer to motion documents:**

- Answer brief to motion
  - A required written document that takes the rules and laws that support your response to the moving party's request and explains how your version of the facts applies to the situation that led to the motion. Facts referred to in the answer brief should also appear in your affidavit in support of your answer brief.
- Your affidavit to support the answer brief
  - A written statement made under oath in front of an authorized officer. Facts referred to in your answer brief should also appear in the affidavit. The affidavit

must be signed in the presence of a notary public or clerk of court by the individual making the statement.

- Other supporting documents (settlement agreements, other affidavits, exhibits, etc.)
- Proof of service of the motion documents on the other parties.

### **General-Use forms:**

Although the ND Legal Self Help Center does not have forms or instructions for making a motion to relocate your children out of North Dakota, a variety of General-Use forms are available in the Guide to a Civil Action. You may find the General-Use forms of interest as a starting point for creating your own legal documents.

- Notice of Motion form
- Notice of Hearing on Motion form
- Brief in Support of Motion form
- Answer Brief to Motion form
- Caption and Signature form
- Affidavit form

The Guide to a Civil Action is available at [www.ndcourts.gov/ndlshc/](http://www.ndcourts.gov/ndlshc/) by clicking on the "Guide to Civil Action" link.

You may find the forms in the Legal Services of North Dakota Family Law Manual of interest. The Legal Services of North Dakota Family Law Manual contains a variety of divorce forms that were created for lawyers to use as examples in family law cases. The Legal Services of North Dakota website is [www.legalassist.org](http://www.legalassist.org).

*(References to the Legal Services of North Dakota Family Law Manual are for your convenience only. The ND Legal Self Help Center does not endorse, warrant, or accept responsibility for the content or uses of the Family Law Manual. You must independently determine the legal sufficiency of the forms in the Family Law Manual. Use at your own risk.)*

### **ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:**

You are not required to hire an attorney to access the 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 city by clicking on "Cities" in the blue NAVIGATION box in the upper left of the webpage.

### **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.