

State of North Dakota

In District Court

County of _____

_____ Judicial District

Plaintiff,
vs

Defendant.

Case No. _____

**Brief in Support of Motion to Modify
Primary Residential Responsibility
(No Written Agreement)**

Statement of Facts

1. The (*choose one*) ☐ Plaintiff/☐ Defendant brings this motion to modify primary residential responsibility in the above-captioned case, which was an action for (*choose one*):

☐ divorce.

☐ legal separation.

☐ establishing parenting rights and responsibilities.

☐ establishing paternity.

☐ other _____.

2. This motion to modify primary residential responsibility applies to the following child(ren) for whom primary residential responsibility was awarded in the above-captioned case (*list each child's initials and year of birth; this must match Paragraph 2(b) of your Motion to Modify Primary Residential Responsibility*): _____
_____.

3. The current judgment in this case was entered (*date*) _____, and awards primary residential responsibility to (*choose one*) ☐ Plaintiff/☐ Defendant.

4. Additional facts are stated in the Declaration in Support of Motion to Modify Primary Residential Responsibility, filed with this Motion and incorporated by reference.

Law and Argument

5. North Dakota Century Code Section 14-09-06.6(1) allows a court to consider modification of primary residential responsibility after two years from the date of entry of the order establishing primary residential responsibility, or after two years from the date of entry of the order on a motion to modify primary residential responsibility. North Dakota Century Code Section 14-09-06.6(1) allows a court to consider modification of primary residential responsibility if the parenting plan includes a time frame earlier than two years.

6. *(Choose and complete one):*

☐ It has been two years or more since the current *(choose and complete the same checkbox as Paragraph 2(c) of your Motion)* ☐ Judgment/☐ _____ Amended Judgment awarding primary residential responsibility was entered.

☐ It **has not** been two years or more since the current *(choose and complete the same checkbox as Paragraph 2(c) of your Motion)* ☐ Judgment/☐ _____ Amended Judgment awarding primary residential responsibility was entered, **however** paragraph _____ of the *(choose one, fill in the number)* ☐ Judgment/☐ _____ Amended Judgment allows modification **before** two years when *(state the specific event/circumstances listed in your judgment):*

The description of the event or circumstances that occurred is stated in Paragraph 4 of the Declaration in Support of Motion to Modify Primary Residential Responsibility, filed with this Motion and incorporated by reference.

7. Before a court will grant an evidentiary hearing, the party requesting modification must show, in writing:

(a.) There is a significant or material change in circumstances that justifies modification of primary residential responsibility, which is based on facts occurring since the current judgment was entered, or the court did not know about at the time the current judgment was entered (N.D.C.C. § 14-09-06.6(6));

(b.) The changed circumstances had an adverse effect on the child(ren), or there was a general decline in the child(ren)'s condition (Kunz v. Slappy, 2021 ND 186, ¶¶ 25, 28, 985 N.W.2d 408; Johnshoy v. Johnshoy, 2021 ND 108 ¶¶ 9, 13, 961 N.W.2d 282); **and**

(c.) Modification is necessary to serve the best interests of the child(ren) (N.D.C.C. § 14-09-06.6(6)).

8. Before the court can grant an in-person hearing, the court must find that the party's written request for modification establishes a prima facie case justifying modification of the primary residential responsibility awarded in the current judgment (N.D.C.C. § 14-09-06.6(4)).

9. " . . . [A] prima facie case requires only enough evidence to permit a factfinder to infer the fact at issue and rule in the moving party's favor. A prima facie case is a bare minimum and requires facts which, if proved at an evidentiary hearing, would support a change of custody that could be affirmed if appealed. Allegations alone do not establish a prima facie case, and affidavits supporting the motion for modification must include competent information, which usually requires the affiant have firsthand knowledge. Affidavits are not competent if they fail to show a basis for actual personal knowledge, or if they state conclusions without the support of evidentiary facts."

(Schoenberg v. Schoenberg, 2024 ND 148, ¶ 10, 10 N.W.3d 98)

10. "In determining whether a prima facie case has been established, the district court must accept the truth of the moving party's allegations and may not weigh conflicting

allegations. ... If the moving party's allegations are supported by competent, admissible evidence, the court may conclude the moving party failed to establish a prima facie case only if: (1) the opposing party's counter-affidavits conclusively establish that the moving party's allegations have no credibility; or (2) the moving party's allegations are insufficient on their face, even if uncontradicted, to justify modification. Unless the counter-affidavits conclusively establish the movant's allegations have no credibility, the district court must accept the truth of the moving party's allegations."

(Grigg v. Grigg, 2015 ND 229, ¶ 10, 869 N.W.2d 411)

11. There is a significant or material change in circumstances that justifies modification of primary residential responsibility, which is based on facts occurring since the current judgment was entered, or facts the court did not know about at the time the current judgment was entered. The explanation and facts supporting the significant or material change in circumstances are stated in Paragraph 5 of the Declaration in Support of Motion, filed with this Motion and incorporated by reference.

12. The changed circumstances have had an adverse effect on the child(ren), or there was a general decline in the child(ren)'s condition. The facts supporting the adverse effect on the child(ren), or the general decline in the child(ren)'s condition are stated in Paragraph 6 of the Declaration in Support of Motion, filed with this Motion and incorporated by reference.

13. The best interest factors listed in North Dakota Century Code Section 14-09-06.2 support modifying primary residential responsibility as necessary to serve the best interests of the children as follows in Paragraphs 14 through 26.

14. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(a) – The love, affection, and other emotional ties existing between the parents and child(ren) and the ability of each parent to provide the child(ren) with nurture, love, affection, and guidance (*choose one; Paragraph 14 continues on next page*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(a) are stated in Paragraph 8 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

15. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(b) – The ability of each parent to assure that the child(ren) receives adequate food, clothing, shelter, medical care, and a safe environment (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(b) are stated in Paragraph 9 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

16. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(c) – The child(ren)'s developmental needs and the ability of each parent to meet those needs, both in the present and in the future (*choose one; Paragraph 16 continues on next page*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(c) are stated in Paragraph 10 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

17. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(d) – The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child(ren) has/have lived in each parent's home, and the desirability of maintaining continuity in the child(ren)'s home and community (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(d) are stated in Paragraph 11 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

18. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(e) – The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child(ren) (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(e) are stated in Paragraph 12 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

19. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(f) – The moral fitness of the parents, as that fitness impacts the child(ren) (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(f) are stated in Paragraph 13 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

20. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(g) – The mental and physical health of the parents, as that health impacts the child(ren) (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(g) are stated in Paragraph 14 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

21. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(h) – The home, school, and community records of the child(ren) and the potential effect of any change (*choose one; Paragraph 21 continues on next page*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(h) are stated in Paragraph 15 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

22. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(i) – the child(ren) is/are of sufficient maturity to make a sound judgment related to their preferences (*select all that apply*):

☐ The following child(ren) **is/are sufficiently mature** to make a sound judgment about their preferences related to modifying primary residential responsibility (*list the initials of the child(ren)*): _____. Each child's preference is (*for each child, list their initials and their preference*):

☐ The following child(ren) **is not/are not sufficiently mature** to make a sound judgment about their preferences related to modifying primary residential responsibility (*list the initials of the child(ren)*): _____.

The facts supporting factor 14-09-06.2(1)(i) are stated in Paragraph 16 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

23. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(j) – Evidence of domestic violence, as defined by N.D.C.C. § 14-07.1-01 (*choose one*):

☐ The (*choose one*) ☐ Plaintiff/☐ Defendant committed domestic violence, which involved at least one incident of domestic violence resulting in serious bodily injury or involved the use of a dangerous weapon; or there is a pattern of domestic violence committed by (*choose one*)

☐ Plaintiff/☐ Defendant within a reasonable time of this motion to modify.

☐ Domestic violence has not occurred and is not at issue in this motion to modify.

☐ Other (*briefly state*) _____.

The facts supporting factor 14-09-06.2(1)(j) are stated in Paragraph 17 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

24. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(k) – The interaction and interrelationship, or the potential for interaction and interrelationship, of the child(ren) with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child(ren)'s best interests, either positively or negatively (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state why*) _____.

The facts supporting factor 14-09-06.2(1)(k) are stated in Paragraph 18 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

25. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(l) – The making of false allegations not made in good faith, by one parent against the other, of harm to a child (*choose one*):

- ☐ Favors Plaintiff.
- ☐ Favors Defendant.
- ☐ Does not favor Plaintiff or Defendant.
- ☐ Does not apply.
- ☐ Other (*briefly state why*) _____.

The facts supporting factor 14-09-06.2(1)(l) are stated in Paragraph 19 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

26. Best Interest Factor N.D.C.C. § 14-09-06.2(1)(m) – Any other factors relevant to the best interests and welfare of the child(ren) and this motion to modify primary residential responsibility (*choose one; Paragraph 26 continues on next page*):

- ☐ There are **no other factors** relevant to the best interests and welfare of the child(ren).

☐ There are other factors not already addressed in Paragraphs 13 through 24 that are relevant to the best interests and welfare of the child(ren). The other factors are (*briefly state the other factor(s)*):

The facts supporting the other factors under 14-09-06.2(1)(m) are stated in Paragraph 20 of the Declaration in Support of Motion, which is filed with this Motion and incorporated by reference.

Conclusion

27. Based on all of the above and the declarations filed in support of this motion, (*choose one*) ☐ Plaintiff/☐ Defendant respectfully requests the Court enter an order finding that the (*choose one*) ☐ Plaintiff/☐ Defendant met their initial burden of establishing a prima facie case for modifying primary residential responsibility awarded in the current judgment and ordering an evidentiary hearing.

Dated _____.

(*Moving Party Signature*)

(*Printed Name*)

(*Address*)

(*City, State, Zip Code*)

(*Telephone Number*)

(*Email Address*)