

Worksheet to Organize Evidence for Answer to Motion to Modify Primary Residential Responsibility

Motions to Modify Primary Residential Responsibility require the parent making the motion to prove with specific facts and supporting evidence that the custody situation meets the legal requirements to modify the judgment.

If the other parent doesn't want the judgment modified, they must prove the custody situation doesn't meet the legal requirements to modify the judgment.

This worksheet is a way for you to organize what you need to prove with your facts and your evidence to support your facts that show the legal requirements aren't met to modify the judgment.

The parent making the motion must make a **written** prima facie case that they meet the requirements to modify the primary residential responsibility awarded in your current judgment.

If the judge or judicial referee decides the parent making the motion made a written prima facie case, then an evidentiary hearing is scheduled. At the hearing, both parents present the evidence they referenced in their motion and answer to motion. If you filed any declarations or affidavits of other people to support your answer to motion, those people must be available to appear as witnesses at the evidentiary hearing.

The legal requirements the parent making the motion need to prove are listed below. For each, include any facts you believe apply to your answer to motion and can help your argument not to modify the judgment. Include a brief description of the evidence you believe supports each of your facts.

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))

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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)

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

Modification is necessary to serve the best interests of the child(ren) (N.D.C.C. § 14-09-06.6(6)) – Each Best Interest Factor is Listed on Pages 3-9.

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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

List the Facts that Apply & Help Your Argument

Brief Description of Supporting Evidence

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

List the Facts that Apply & Help Your Argument

Brief Description of Supporting Evidence

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	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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)

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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)

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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)	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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	
List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence

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

List the Facts that Apply & Help Your Argument	Brief Description of Supporting Evidence