

INSTRUCTIONS FOR MAKING A MOTION TO JUVENILE COURT FOR AN ORDER FOR SERVICE BY PUBLICATION

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided is not intended for legal advice but only as a general guide to a civil court process.

If you decide to represent yourself, you will need to do additional research to prepare.

When you represent yourself, you must abide by the following:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders;
 - Any local court rules.

Links to the laws, case law, and court rules can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov by clicking on the “Self Help” link.

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. If you are unsure if this information suits your circumstances, consult a lawyer.

This information is not a complete statement of the law. This covers basic information about service by publication in a North Dakota Juvenile Court action. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.

Who May Use this Packet?

An individual who filed a petition with a North Dakota Juvenile Court and:

- The petition was accepted for filing by the Juvenile Court after a person authorized by the court determined filing the petition was in the best interest of the public and child; **and**
- The individual was unable, after reasonable diligence, to locate a party to serve the Juvenile Court summons; **and**
- The individual wants to request permission from the Juvenile Court to serve the summons on the party by publication in a newspaper.

STEP 1:

REVIEW NORTH DAKOTA COURT RULES RELATED TO ASKING A NORTH DAKOTA JUVENILE COURT FOR PERMISSION TO SERVE A JUVENILE COURT SUMMONS BY PUBLICATION

Rule 6 of the North Dakota Rules of Juvenile Procedure contains the requirements for serving a Juvenile Court summons. Rule 6 is available online at www.ndcourts.gov/legal-resources/rules/ndrjuvp/6. Read the entire rule, but specifically:

“(b) Service by Publication. If after reasonable effort the party cannot be found or the party's post-office address ascertained, whether the party is within or without this state, the court may order service of the summons upon the party by publication under Rule 4 of the North Dakota Rules of Civil Procedure. The hearing must not be earlier than five days after the date of the last publication.”

See also, **Rule 4 of the North Dakota Rules of Civil Procedure**, specifically Rule 4(e) for service by publication requirements. Rule 4 is available online at www.ndcourts.gov/legal-resources/rules/ndrcivp/4.

Rule 7 of the North Dakota Rules of Juvenile Procedure contains the requirements for serving Juvenile Court motions. Rule 7 is available online at www.ndcourts.gov/legal-resources/rules/ndrjuvp/7.

Rule 14 of the North Dakota Rules of Juvenile Procedure contains the requirements for making requests, also called motions, to a Juvenile Court. Rule 14 is available online at www.ndcourts.gov/legal-resources/rules/ndrjuvp/14

See also, **Rule 3.2 of the North Dakota Rules of Court** for additional motion requirements. Rule 3.2 is available online at www.ndcourts.gov/legal-resources/rules/ndrct/3-2.

North Dakota court rules can also be found in print in many North Dakota public and academic libraries. Notes of court decisions related to North Dakota court rules can be found in the print editions of the court rules.

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.

STEP 2:**COMPLETE THE FORMS FOR THE MOTION FOR AN ORDER FOR SERVICE BY PUBLICATION**

Form Title	Purpose
Notice of Motion for an Order for Service by Publication (Jct NoM Svc Pub)	Gives other parties in the Juvenile Court proceeding notice that you, the Petitioner, are asking for permission to serve the summons to a party by publication.
Motion for an Order for Service by Publication (Jct Mot Svc Pub)	Briefly tells the Juvenile Court that you, the Petitioner, are asking for permission to serve the summons on a party by publication.
Brief in Support of an Order for Service by Publication (Jct Brief Svc Pub)	Explains in detail to the Juvenile Court why you, the Petitioner, are making the motion and why the Juvenile Court should agree with you.
Affidavit in Support of an Order for Service by Publication (Jct Aff Svc Pub)	Your, the Petitioner's, sworn, written statement of the facts included in your Brief in Support of an Order for Service by Publication. (Jct Brief Svc Pub).
Order for Service by Publication (Jct Ord Svc Pub)	Proposed order of the court for service of the Juvenile Court summons by publication. The proposed order is not effective until it is signed by the court. (Complete the caption <u>only</u> .)

Complete the caption, or top, of each form with the same information from the caption of the Juvenile Court summons.

You, the Petitioner, must sign and date the completed Affidavit in Support of an Order for Service by Publication (Jct Aff Svc Pub) in the presence of a Notary Public or a Clerk of Court or Deputy Clerk of Court.

The Notary Public, Clerk of Court or Deputy Clerk of Court will require identification sufficient to prove your identity. Generally, photo identification, such as a passport, driver's license or government-issued non-driver identification card, is required. The Notary Public, Clerk of Court or Deputy Clerk of Court may require you to provide additional information or identification credentials necessary to assure your identity.

STEP 3:

FILE THE ORIGINAL, COMPLETED MOTION FORMS WITH THE JUVENILE COURT.

Before filing the original, completed forms with the Juvenile Court:

- Make a copy of each completed form for each party in the Juvenile Court proceeding. Make an additional copy for your records.
- Contact the Juvenile Court and ask if the court will accept your motion forms for filing BEFORE you serve copies on the parties in the Juvenile Court proceeding.
 - If the court will file your motion forms before you serve copies on the parties, continue with Step 3.
 - If the court **will not** file your motion forms before you serve copies on the parties, complete Step 4 first. Once you have completed Step 4, complete Step 3.

Take the original, completed forms to the Juvenile Court where the petition was accepted for filing:

- Notice of Motion for an Order for Service by Publication (JCt NoM Svc Pub);
- Motion for an Order for Service by Publication (JCt Mot Svc Pub);
- Brief in Support of an Order for Service by Publication (JCt Brief Svc Pub);
- Affidavit in Support of an Order for Service by Publication (JCt Aff Svc Pub); and
- Order for Service by Publication (JCt Ord Svc Pub).

You are not required to pay a filing fee. If you are asked to pay a filing fee, contact the Juvenile Court Supervisor or Director for assistance.

If you completed Step 4 before completing Step 3, file your completed affidavit(s) of service of copies of the motion documents with the Juvenile Court when you file your completed motion forms.

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STEP 4:

SERVE COPIES OF THE COMPLETED MOTION FORMS ON THE OTHER PARTIES IN THE JUVENILE COURT PROCEEDING.

Service means giving a copy of each of the completed motion forms from Step 2 to the parties in the Juvenile Court proceeding.

Unless the Juvenile Court orders otherwise, you will not serve copies of motion forms on the party you have not been able to locate.

Proof of service is an important step in the legal process and the document(s) showing proof of service must be filed with the Juvenile Court. If proof of service is not filed, the Juvenile Court will not act on your motion until you show that the parties in the Juvenile Court proceeding were served copies of the motion forms.

Review Rule 7 of the N. D. Rules of Juvenile Procedure. Rule 7 includes the six different methods to serve motion documents. You must decide which of the methods to use. No matter which method you choose, you must prove to the Juvenile Court that copies of the motion forms were served as required by Rule 7.

The most common methods of service of a motion are described below.

1. By Mail:

If you decide to serve copies of the completed motion forms on a party by mail, you must:

- a. Have someone who is at least 18 years of age mail copies of the following completed forms to the party:
 - i. Notice of Motion for an Order for Service by Publication (JCt NoM Svc Pub);
 - ii. Motion for an Order for Service by Publication (JCt Mot Svc Pub);
 - iii. Brief in Support of an Order for Service by Publication (JCt Brief Svc Pub);
 - iv. Affidavit in Support of an Order for Service by Publication (JCt Aff Svc Pub); and
 - v. Order for Service by Publication (JCt Ord Svc Pub).

Copies of the completed forms are mailed to the last known address of the party. Service is complete upon mailing.

- b. The person who mailed the forms must fill out an Affidavit of Service by Mail form and sign the form in front of a clerk of court or a notary public.
- c. File the Affidavit of Service by Mail form with the Juvenile Court. (Make a copy for your records.)

2. By Hand Delivery:

If you decide to serve copies of the completed motion forms on a party by hand delivery, you must:

- a. Have someone who is at least 18 years of age and not a party to the case hand copies of the following completed forms to the party:
 - i. Notice of Motion for an Order for Service by Publication (JCt NoM Svc Pub);
 - ii. Motion for an Order for Service by Publication (JCt Mot Svc Pub);
 - iii. Brief in Support of an Order for Service by Publication (JCt Brief Svc Pub);
 - iv. Affidavit in Support of an Order for Service by Publication (JCt Aff Svc Pub); and
 - v. Order for Service by Publication (JCt Ord Svc Pub).
- b. The person who handed copies of the completed forms to the party must fill out an Affidavit of Service by Hand Delivery form and sign the form in front of a clerk of court or notary public.
- c. File the Affidavit of Service by Hand Delivery form with the Juvenile Court. (Make a copy for your records.)

3. By Office Service:

If you decide to serve a party by leaving copies of the completed motion forms at the party's office, you must:

- a. Have someone who is at least 18 years of age and not a party to the case leave copies of the following completed forms at the party's office:
 - i. Notice of Motion for an Order for Service by Publication (JCt NoM Svc Pub);
 - ii. Motion for an Order for Service by Publication (JCt Mot Svc Pub);
 - iii. Brief in Support of an Order for Service by Publication (JCt Brief Svc Pub);
 - iv. Affidavit in Support of an Order for Service by Publication (JCt Aff Svc Pub); and

- v. Order for Service by Publication (JCt Ord Svc Pub).
- b. The copies of the completed documents must be left with a clerk or other person in charge.
- c. If there is no one in charge of the office, the copies of the completed documents must be left in a conspicuous place.
- d. The person who left copies of the completed forms at the party's office must fill out the Affidavit of Office Service and sign the form in front of a clerk of court or notary public.
- e. File the Affidavit of Office Service with the Juvenile Court. (Make a copy for your records.)

The following affidavits of service forms are included with these instructions.

Service Form Title	Description
Affidavit of Service by Mail (Juv Ct Rule 7 ASM)	Proof that copies of the completed motion forms were served by mail on the party or parties listed in the Affidavit of Service.
Affidavit of Service by Hand Delivery (Juv Ct Rule 7 AHS)	Proof that copies of the completed motion forms were served by hand delivery on the party or parties listed in the Affidavit of Service.
Affidavit of Office Service (Juv Ct Rule 7 AOS)	Proof that copies of the completed motion forms were served by office service on the party or parties listed in the Affidavit of Service.

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STEP 5:

AFTER THE MOTION FORMS ARE FILED AND SERVED.

Each party has 14 days to respond to the motion.

This does not include the day of service. If a party responds to your motion, the party states in writing whether they agree or disagree with your motion for an order for service of the Juvenile Court summons by publication.

The judicial referee or judge assigned to your motion may decide to schedule a hearing, or to make a decision without a hearing.

If the judicial referee or judge decides to hold a hearing, you will be notified by mail. If the judicial referee or judge decides to make a decision without a hearing, you will receive copies by mail of documents signed by the judicial referee or judge. The documents will tell you what the judicial referee or judge decided.

IF YOUR MOTION IS GRANTED

Review Rule 4(e) of the North Dakota Rules of Civil Procedure for service by publication requirements. Rule 4 is available online at www.ndcourts.gov/legal-resources/rules/ndrcivp/4.

Contact the official newspaper for the county where you will publish service of the summons. You will need to publish the redacted summons one time per week for three consecutive weeks.

To redact the summons, remove the following information:

- Full names of the child, or children, and all parties. Leave only the initials of the child, or children, and all parties.
- Full date of birth of the child, or children. Leave only the year of birth.

The hearing cannot be held earlier than five days after the date of the last publication.

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE INTEREST OF _____, DOB _____, A CHILD.

(Petitioner)

PETITIONER,

vs

(Respondents)

RESPONDENTS.

)
)
)
)
)
)
)
)
)
)

Case No. _____

**NOTICE OF MOTION FOR AN ORDER
FOR SERVICE BY PUBLICATION**

PLEASE TAKE NOTICE that a Motion for an Order for Service by Publication has been submitted to the court, a copy of which is attached or accompanies this notice and that said motion will be acted upon by the court.

Dated this _____ day of _____, 20_____.

(Petitioner's Signature)

(Printed Name)

(Address)

_____ (_____) _____
(City, State, Zip Code) (Telephone)

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE INTEREST OF _____, DOB _____, A CHILD.

(Petitioner)

PETITIONER,)

vs)

(Respondents)

RESPONDENTS.)

Case No. _____

**MOTION FOR AN ORDER FOR
SERVICE BY PUBLICATION**

PETITIONER hereby moves the court for an Order in accordance with Rule 6 of the North Dakota Rules of Juvenile Procedure and Rule 4 of the North Dakota Rules of Civil Procedure, providing as follows:

1. Granting Petitioner permission to serve a redacted Summons in the above case on _____ (name of respondent) by publication in the official newspaper for _____ County, North Dakota, one time per week for at least three weeks.
2. Rescheduling the hearing dated _____, 20____ if the last date of publication of the redacted Summons is less than five (5) days before the hearing date.

Dated this ____ day of _____, 20_____.

(Petitioner Signature)

(Printed Name)

(Address)

(City, State, Zip Code) (_____) (Telephone)

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE INTEREST OF _____, DOB _____, A CHILD.

(Petitioner))

PETITIONER,)

vs)

(Respondents))

RESPONDENTS.)

Case No. _____

**BRIEF IN SUPPORT OF MOTION FOR AN
ORDER FOR SERVICE BY PUBLICATION**

Pursuant to Rule 3.2 of the North Dakota Rules of Court, the Petitioner submits this Brief in Support of the Motion for an Order for Service by Publication.

FACTS

1. The facts are stated in the Affidavit of _____ (petitioner), which is filed with the Motion for an Order for Service by Publication and incorporated by reference.

LAW AND ARGUMENT

2. Rule 6 of the North Dakota Rules of Juvenile Procedure provides:

If after reasonable effort the party cannot be found or the party's post-office address ascertained, whether the party is within or without this state, the court may order service of the summons upon the party by publication under Rule 4 of the North Dakota Rules of Civil Procedure. The hearing must not be earlier than five days after the date of the last publication.

(N.D.R.Juv.P. 6(b))

3. As stated in the Affidavit of _____ (*petitioner*), the
Petitioner performed a diligent search to locate _____ (*respondent*)
in order to comply with the service requirements of Rule 6 of the North Dakota Rules of
Juvenile Procedure.

4. The Petitioner, after making reasonable efforts, is unable to find _____
(*respondent*) or ascertain his/her post-office address for service of the Summons in this case.

CONCLUSION

5. The Petitioner respectfully requests that court enter an order consistent with the
Petitioner's motion.

Dated this _____ day of _____, 20_____.

(*Petitioner's Signature*)

(*Printed Name*)

(*Address*)

(*City, State, Zip Code*)

(_____)_____
(*Telephone*)

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE INTEREST OF _____, DOB _____, A CHILD.

(Petitioner)

PETITIONER,)

vs)

_____))

_____))

_____))

(Respondents))

RESPONDENTS.)

Case No. _____

AFFIDAVIT OF _____
IN SUPPORT OF MOTION

I, _____ (petitioner), the

undersigned, being first sworn, on my oath state as follows:

1. I am the Petitioner in the above entitled action.
2. I make this Affidavit in support of my Motion for an Order for Service by Publication of the redacted Summons on the Respondent, _____, pursuant to Rule 6(b) of the North Dakota Rules of Juvenile Procedure and Rule 4(e) of the North Dakota Rules of Civil Procedure.
3. To the best of my knowledge, information and belief, the last reasonably ascertainable address of the Respondent is: _____

_____.

4. I made the following diligent efforts to locate the Respondent in order to serve the summons and petition in the above entitled action: *(list dates, names and results of contacts/attempts to locate respondent. Attach supporting documentation.)*

(Paragraph 4, continued)

5. I made the following attempts to serve the Respondent: *(list dates and results of service attempts. Attach supporting documentation.)*

6. I state that after diligent inquiry and attempts to serve the Respondent, service of the summons and petition cannot be made on the Respondent pursuant to Rule 6(a) of the North Dakota Rules of Juvenile Procedure.

7. I understand that if the court orders service of the redacted summons by publication, I must arrange for a copy of the summons and petition to be mailed to the Respondent's last reasonably ascertainable address no later than fourteen (14) days after the first publication of the redacted summons.

8. I state, under penalty of perjury, that the information contained in this Affidavit in support of my Motion for an Order for Service by Publication, is true and correct.

Dated this _____ day of _____, 20____

(Petitioner Signature)

(Printed Name)

(Address) (City, State, Zip Code) (Telephone Number)

Signed and sworn to before me on _____, 20____ by

_____.

(Notary Public or Clerk of Court)

If Notary, my commission expires: _____

STATE OF NORTH DAKOTA

IN JUVENILE COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE INTEREST OF _____, DOB _____, A CHILD.

(Petitioner)

PETITIONER,)

vs)

(Respondents)

RESPONDENTS.)

Case No. _____

ORDER FOR SERVICE BY PUBLICATION

1. The Petitioner, having moved the court for an Order for Service by Publication, and

2. The court having considered the Motion and the supporting Brief and Affidavit of

_____ (petitioner),

3. NOW THEREFORE, it is hereby ORDERED that the Petitioner shall publish a redacted Summons in the official newspaper for _____ County, North Dakota, one time per week for a total of at least three consecutive weeks, and the Petitioner shall cause a copy of the summons and petition to be mailed to the Respondent's last reasonably ascertainable address no later than fourteen (14) days after the first publication.

Dated this ____ day of _____, 20____.

BY THE COURT:

(Juvenile Court Judge/Judicial Referee)

IN JUVENILE COURT, _____ COUNTY, STATE OF NORTH DAKOTA

_____,
Petitioner

CASE # _____

vs.

**AFFIDAVIT OF SERVICE
BY MAIL**

_____,
Respondent

STATE OF NORTH DAKOTA COUNTY OF _____

I, _____ (Person Serving Documents), being first duly sworn, depose and say that I am at least 18 years of age, and on _____ (Date), pursuant to Rule 7 of the N.D. Rules of Juvenile Procedure, I served the Notice of Motion for an Order for Service by Publication, Motion for an Order for Service by Publication, Brief in Support of an Order for Service by Publication, Affidavit in Support of an Order for Service by Publication, and proposed Order for Service by Publication in the above entitled case, on the following party by placing a true and correct copy of each in an envelope to the last known address of:

and depositing the envelope, with sufficient postage, in the United States mail at the Post Office located in _____ (City), _____ (State).

(Signature of Person Who Mailed Envelope)

Dated: _____

Subscribed and sworn to before me this _____
day of _____, 20 _____

Clerk or Notary Public _____ County, North Dakota

If notary, my commission expires: _____

IN JUVENILE COURT, _____ COUNTY, STATE OF NORTH DAKOTA

Petitioner

CASE # _____

vs.

**AFFIDAVIT OF SERVICE
BY HAND DELIVERY**

Respondent

STATE OF NORTH DAKOTA COUNTY OF _____

I, _____ (*Person Serving Documents*), being first duly sworn, depose and say that I am at least 18 years of age and not a party to or interested in the action, and on _____ (*Date*), pursuant to Rule 7 of the N.D. Rules of Juvenile Procedure, I served the Notice of Motion for an Order for Service by Publication, Motion for an Order for Service by Publication, Brief in Support of an Order for Service by Publication, Affidavit in Support of an Order for Service by Publication, and proposed Order for Service by Publication, in the above entitled case, by personally handing to and leaving a true and correct copy of each with the following person:

(*Signature of Person Who Served Documents*)

Dated: _____

Subscribed and sworn to before me this _____

day of _____, 20 _____

Clerk or Notary Public _____ County, North Dakota

If notary, my commission expires: _____

IN JUVENILE COURT, _____ COUNTY, STATE OF NORTH DAKOTA

_____,
Petitioner

CASE # _____

vs.

AFFIDAVIT OF OFFICE SERVICE

_____,
Respondent

STATE OF NORTH DAKOTA COUNTY OF _____

I, _____ (Person Serving Documents), being first duly sworn, depose and say that I am at least 18 years of age, and on _____ (Date), pursuant to Rule 7 of the N.D. Rules of Juvenile Procedure, I served the Notice of Motion for an Order for Service by Publication, Motion for an Order for Service by Publication, Brief in Support of an Order for Service by Publication, Affidavit in Support of an Order for Service by Publication, and proposed Order for Service by Publication, in the above entitled case, by delivering them, in person, to the office of the party to be served:

_____ (Name of Party Served), located at:
_____ (Address),

during normal business hours for that office where I: (Choose One)

_____ left the documents with _____ (Name), who is a person in charge.

(OR)

_____ left the documents in a conspicuous place in the office, specifically _____, because there is no person in charge.

(Signature of Person Who Served Documents)

Dated: _____

Subscribed and sworn to before me this _____ day of _____, 20 _____

Clerk or Notary Public _____ County, North Dakota

If notary, my commission expires: _____