

INSTRUCTIONS FOR RETURN TO MOTION FOR PARENTING TIME (VISITATION) ASSISTANCE

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.

A glossary with definitions of legal terms is available at www.ndcourts.gov/ndlshc.

This information is not a complete statement of the law. This covers basic procedure for responding to a request to a North Dakota District Court to assist with a visitation problem. 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.

(In 2009 the North Dakota State Legislature changed the term “visitation” to “parenting time” and changed the term “custody” to “residential responsibility.”)

IMPORTANT NOTICES

Warning: You cannot use these forms unless there is already a court order giving you or the other party visitation rights. You cannot use these forms to change who has primary custody.

The court expects every person who appears in court without a lawyer to know and follow the law. The judge will not be able to give you any help in court.

District courts in North Dakota use local rules to conduct proceedings. You are responsible for knowing local rules for the court in which you are appearing. You should see a lawyer if you do not know the local rules.

ND Legal Self Help Center and Court staff **cannot** help you fill out the form(s) in this packet.

You **must** fill out all forms included in this packet you **must** follow the instructions included with this packet.

You should see a lawyer if you don't know how to answer the questions on these forms or if you think the other party will hire a lawyer.

(All of the forms and instructions are available online at www.ndcourts.gov/ndlshc.)

INSTRUCTIONS

Type your answers or print neatly using dark ink.

<p style="text-align: center;">STEP 1: RETURN TO MOTION FOR VISITATION ASSISTANCE FORM (FORM 5)</p>

Fill out the Return to Motion for Visitation Assistance form (FORM 5) included in this packet.

This form tells the Court and the other party your response to the the type of visitation problem described by the other party.

FILLING IN THE TOP PART OF THE FORM (this is known as "the caption"):

NOTE: The information to fill in the top part of the form can be found at the top of your current visitation order or your divorce or paternity judgment. Be sure to copy the information EXACTLY as it is on your current order.

Write the name of the county where your case is located and the case number, which is also called the "civil number."

Fill in the date of your response.

On the line marked "plaintiff," write the name of the plaintiff as listed on your current visitation order or divorce or paternity judgment.

On the line marked "name of defendant," write the name of the defendant as listed on your current visitation order or divorce or paternity judgment.

Write the full name and street address of the other party.

FILLING OUT THE REST OF THE FORM:

NOTE: The instructions which follow are numbered the same as the questions on the Return to Motion for Visitation Assistance form (FORM 5).

Review questions 1-8 which ask for your response to the other party's request for help with a visitation issue. You do not need to check off every box.

1. Under Subpart I, check box 1 if you are responding to the other party's request to have you obey the existing visitation order. PROVIDE YOUR RESPONSE IN THE SPACE PROVIDED, ATTACHING ADDITIONAL SHEETS IF NECESSARY. LABEL THE ADDITIONAL PAGE(S) I (1).

2. Under Subpart II, check box 2 if you are responding to the other party's claim that a change of the visitation schedule is in the best interests of the minor child(ren). PROVIDE YOUR RESPONSE IN THE SPACE PROVIDED, ATTACHING ADDITIONAL PAGES IF NECESSARY. LABEL THE ADDITIONAL PAGE(S) II.
3. For questions 3-9 provide your response separately for each of the claims and requests made by the other party. Attach additional sheets if necessary and label the additional page with the same number as the question on the form.

DATE AND SIGN THE RETURN TO MOTION FOR VISITATION ASSISTANCE (FORM 5) AND ATTACH ALL ADDITIONAL PAGES SECURELY 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, or 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.

<p style="text-align: center;">STEP 2A:</p> <p style="text-align: center;">FILL OUT THE AFFIDAVIT IN SUPPORT OF RETURN TO MOTION FOR VISITATION ASSISTANCE AND CONFIDENTIAL INFORMATION FORMS (FORMS 6a, 6b)</p>
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Fill out the Affidavit in Support of Return to Motion for Visitation Assistance form (FORM 6a) and the Confidential Information Form (FORM 6b), which are included in this packet.

These forms tell the Court and the other party your response to the other party's claims and requests.

AFFIDAVIT IN SUPPORT OF RETURN TO MOTION FOR VISITATION ASSISTANCE (FORM 6a)

FILLING IN THE TOP PART OF THE FORM (this is known as "the caption"):

Fill in the top part of the form **EXACTLY** as you filled out the top of the Return to Motion for Visitation Assistance form (FORM 5).

FILLING OUT THE REST OF THE FORM:

Fill in your full name in the space provided.

FOR QUESTIONS 1 through 4:

1. Check off whether a Protection or Restraining Order **is** or **is not** currently in effect in any State involving you and the other party or the children of this case. If a Protection or

Restraining Order **IS** in effect, fill in the County, State, and Civil Number found on the Protection or Restraining Order.

2. List the child's initials, year of birth, and your relationship (e.g., mother, father, grandparent) to each child involved in this case. If more room is needed, attach another sheet of paper and make a note of that on the form.
 - **DO NOT** list the child's name or full date of birth. You will list each child's full information on the Confidential Information Form (FORM 6b).
3. Write the name of the state in which the children currently live and the month and year when they first started living there. Also list the name of the person with whom the children live and that person's relationship to the children (mother, father, grandparent). Finally, list the address of the children (including street address, city, and state). Check the correct response to whether or not you have attended a children of divorce class.
4. Describe as clearly and as completely as possible your response to the visitation problems as identified by the other party in their notice of motion, motion, brief, and affidavit(s) for visitation assistance, including dates, times, witnesses, and other information that will be helpful to the Court in resolving the problem.

FOR QUESTIONS 5-15, CHECK OFF ONLY THOSE THAT WERE CHECKED OFF IN YOUR RETURN TO MOTION FOR VISITATION ASSISTANCE (FORM 5). ATTACH ADDITIONAL PAGES IF NECESSARY AND LABEL EACH PAGE WITH THE SAME NUMBER OF THE QUESTION ON THE FORM:

5. Check box 5 if applicable. Then tell the Court why it is in the best interests of the child(ren) that the visitation order remain the same.
6. Check box 6 if applicable. Then tell the court why your response is in the best interests of the minor child(ren).
7. Check box 7 if applicable. Then fill in the same schedule as you did on Question 3 of the Return to Motion for Visitation Assistance form.
8. Check box 8 if applicable. Then fill in the same schedule as you did on Question 4 of the Return to Motion for Visitation Assistance form.
9. Check box 9 if applicable. Then tell the Court why your response is in the best interests of the minor child(ren).

NOTE: Not all counties have visitation exchange centers. The Court can grant this request only if a visitation exchange center exists in your county.

WARNING: You and the other party will probably be required to pay for the fees and costs of this service.

10. Check box 10 if applicable. Then tell the Court your response to the other party's request.
11. Check box 11 if applicable. Then tell the Court your response to the other party's request.
12. Check box 12 if applicable. Then tell the Court your response to the other party's request.
13. Check box 13 if applicable. Then tell the Court the total amount of court costs and attorney fees you paid and why the other party should have to pay you for those court costs and attorney fees.
14. Check box 14 if applicable. Then tell the Court the total amount and type of other expenses you have because of the denied visitation.
15. Check off box 15 ONLY if there is other information you think would be helpful to the Court in deciding this case.

DO NOT DATE AND SIGN YOUR "AFFIDAVIT" UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR THE CLERK OF COURT. MAKE SURE TO BRING IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR CLERK OF COURT. A Notary Public can usually be found at a bank and sometimes at the courthouse.

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, or 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.

CONFIDENTIAL INFORMATION FORM (FORM 6b)

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.

Confidential information includes:

- Social security numbers
- Taxpayer identification numbers
- Birthdates
- Full name of a minor child
- Financial-account numbers

Since the Affidavit in Support of Return to Motion for Visitation Assistance form (FORM 6a) includes references to confidential information, you must prepare a Confidential Information form. The form must contain the full confidential information that is referenced in the documents.

FILLING IN THE TOP PART OF THE FORM (this is known as "the caption"):

Fill in the top part of the form **EXACTLY** as you filled out the top of the Return to Motion for Visitation Assistance (Form 5).

FILLING OUT THE REST OF THE FORM:

"Full Information" Column: Fill in the full information for each parent and minor child. If you do not know the information, write or type "unknown."

"Redacted" Information Column: Fill in the shortened information as it appears in the Affidavit for each parent and minor child. If shortened information does not appear in the Affidavit, write or type "Not Applicable" or "N/A."

DATE AND SIGN THE CONFIDENTIAL INFORMATION FORM (FORM 6b).

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, or 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 2B:
HAVE THOSE WITH PERSONAL KNOWLEDGE OF YOUR
VISITATION DISPUTE FILL OUT "AFFIDAVIT OF _____" (FORM 7)**

You may have those with personal knowledge of your visitation dispute fill out an "Affidavit of _____" (FORM 7), which is a written statement in which the facts stated are sworn to be true. If you have more than one person making a statement, photocopy the "Affidavit of _____" (FORM 7)" for each person before you continue.

If you do not have any one with personal knowledge of the visitation dispute, YOU NEED NOT FILL OUT OR FILE THIS FORM.

FILLING IN THE TOP PART OF THE FORM (this is known as "the caption"):

Fill in the top part of the form **EXACTLY** as you filled out the top of the Return to Motion for Visitation Assistance (Form 5).

STOP! The person giving the sworn statement must fill out the rest of the form.

HAVE THE INDIVIDUAL WITH PERSONAL KNOWLEDGE READ THIS INSTRUCTION AND FILL OUT THE REST OF THE FORM:

First, fill in your name, and your county and state of residence. In the space provided, describe all relevant personal knowledge you have regarding the visitation dispute. Be specific; attach additional pages if necessary. **WARNING: THE JUDGE WILL NOT CONSIDER THE STATEMENT UNLESS YOU ATTEND THE HEARING. IF YOU DO NOT ATTEND THE HEARING, YOUR STATEMENT MAY NOT BE CONSIDERED.**

DO NOT DATE AND SIGN YOUR AFFIDAVIT UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR THE CLERK OF COURT. MAKE SURE TO BRING IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR CLERK OF COURT. A Notary Public can usually be found at a bank and sometimes at the courthouse.

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, or 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.

<p>STEP 3: MAKE COPIES OF FORMS</p>

Make TWO copies of each of the following forms:

- Return to Motion for Visitation Assistance form (FORM 5);
- Affidavit in Support of Return to Motion for Visitation Assistance form (FORM 6a); and
- Supporting "Affidavit(s)" (FORM 7), if any.

Keep one copy of each form for yourself.

Make ONE copy of the Confidential Information Form (FORM 6b) for yourself.

Step 4 tells you how to send the second copy of each form and other documents to the other party. Step 6 tells you what to do with the originals of the forms.

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STEP 4:
SERVE RETURN TO MOTION FOR VISITATION ASSISTANCE ON THE OTHER PARTY
AT LEAST 13 BUSINESS DAYS BEFORE THE HEARING DATE

You must arrange for the other party to receive your reply and complete copies of all documents you have prepared for the hearing. This is called "service of process." You may serve process by following these instructions:

1. Place ONE copy of each of the following in an envelope:
 - Completed Return to Motion for Visitation Assistance form (FORM 5);
 - Completed Affidavit in Support of Return to Motion for Visitation Assistance form (FORM 6a); and
 - Completed Supporting "Affidavit(s)" (FORM 7), if any.

NOTE: DO NOT mail a copy of the Confidential Information Form (FORM 6b).

2. Write your return address and the last known address of the other party on the front of the envelope. Place the correct amount of postage on the envelope (you may want to take the envelope to the post office to be weighed to make sure you put on the right amount of postage);
3. The envelope containing the forms must be mailed to the other party (or the other party's attorney, if there is one) **at least 13 days before the hearing date**. You should have someone else who is over the age of 18 mail the forms.

WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR THE OTHER PARTY'S ATTORNEY) AT LEAST 13 DAYS BEFORE THE HEARING DATE, YOUR REPLY MAY NOT BE HEARD BY THE COURT.

STEP 5:
THE PERSON WHO MAILED THE ENVELOPE
FILLS OUT THE "AFFIDAVIT OF SERVICE BY MAIL" FORM (FORM 8)

After the envelope containing the forms has been mailed to the other party, then the person who placed the envelope in the mail must fill out the Affidavit of Service by Mail form (FORM 8) included in this packet. This form proves to the Court that the papers were mailed to the other party.

1. Fill in the top part of the "Affidavit of Service by Mail" form the same as you did for the Return to Motion for Visitation Assistance" form (FORM 5).

2. After "COUNTY OF" fill in the name of the county where the person was when the person signed the Affidavit of Service by Mail.
3. Fill in the name of the person who mailed the envelope and the date on which it was mailed.
4. Fill in the name of the person to whom the documents were mailed (the other party).
5. Fill in the other party's last known address where the documents were mailed.
6. Fill in the name of the city and state where the post office was located from which the documents were mailed.
7. **THE PERSON WHO MAILED THE ENVELOPE MUST NOT SIGN THE "AFFIDAVIT OF SERVICE BY MAIL" UNTIL HE/SHE IS IN THE PRESENCE OF A NOTARY PUBLIC OR THE CLERK OF COURT. MAKE SURE THE PERSON BRINGS IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR CLERK OF COURT.**
8. After it has been signed, make one copy of the Affidavit of Service by Mail for your records.

STEP 6: FILE THE FORMS WITH THE COURT
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AT LEAST 13 DAYS BEFORE THE HEARING DATE, take the following forms to the Clerk of Court's Office in the county where your case is located:

- Original of completed Return to Motion for Visitation Assistance form (FORM 5);
- Original of completed Affidavit in Support of Return to Motion for Visitation Assistance form (FORM 6a);
- Original of completed Confidential Information Form (FORM 6b); and
- Originals of completed Supporting "Affidavit(s)" (FORM 7), if any.

Tell the Clerk of Court that you wish to file the documents.

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**STEP 7:
APPEAR AT THE HEARING**

You must go to Court on the date set for the hearing. If you do not go to Court, you will lose the case. Be sure to be on time.

Bring to the hearing:

- Your copies off the completed forms you filed with the Clerk of Court's Office;
- Any evidence you want the judge to know about (such as pictures, documents, receipts, bills, etc.); and
- Any witnesses you want to talk to the judge and anyone having signed an affidavit (See Step 2B).

WARNING: Some district courts in North Dakota follow "Affidavit Practice," which means all evidence MUST be submitted in the form of an affidavit. CHECK THE LOCAL RULES OF THE DISTRICT COURT IN WHICH YOU ARE APPEARING. If the court in which you are appearing requires affidavits, anyone having knowledge about your situation must submit their testimony in an "Affidavit," which shall contain their sworn and notarized statement and must be served with all other documents listed in STEP 4. Anyone who has signed an affidavit must appear with you at the hearing.

The judge will not allow you to use as evidence (and will not look at) any documents (such as letters, notes, or statements) written by someone other than yourself unless the person who wrote the document is in Court at the hearing.

If you want the judge to hear what someone else has to say about your case, that person MUST be in Court – YOU cannot tell the judge what that person said or has to say. You may force someone to attend the hearing by serving a subpoena on that person prior to the date of the hearing.

(A Subpoena Information Guide is available online at www.ndcourts.gov/ndlshc.)