



MOTION FOR AN INTERIM ORDER: DOMESTIC RELATIONS

An Informational Guide to a North Dakota State Civil Court Process

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 in this informational guide 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 ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help/glossary.

When you represent yourself, you are held to the 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 the process of making and answering a motion for an interim order in a North Dakota state district court domestic relations case. 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.

WARNING – A motion for interim order can have serious legal consequences. It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a motion for an interim order.

This informational guide is made up of three sections:

First Section: General information about motions for interim orders in domestic relations cases. (Pages 6-14)

Second Section: The **basic** motion for interim orders process from beginning to end. (Pages 15-35)

Third Section: Appendix of formatting examples of common motion for interim order documents. (Available on the North Dakota Legal Self Help Center website)

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INFORMATION ABOUT MOTIONS FOR INTERIM ORDERS IN DOMESTIC RELATIONS CASES

WHAT IS A MOTION FOR AN INTERIM ORDER IN A DOMESTIC RELATIONS CASE?

An interim order is a temporary court order following a required evidentiary hearing. The order is intended to be of limited duration. Generally, an interim order will only be in effect until the court makes a final order in the domestic relations case.

A motion for interim order is a written request to the Court identifying any proposals for resolution of an issue on a temporary basis.

Generally, an interim order may be requested after a domestic relations case has already been started.

Domestic relations cases are family disputes involving the rights and duties of parents, children, husbands and/or wives.

An interim order may include:

- Payment of support,
- Temporary parental rights and responsibilities,
- A parenting schedule of minor children,
- Payment of attorney's fees and costs,
- The use of real or personal property; and/or
- For restraining and eviction regarding property.

An interim order cannot be amended, unless:

- The parties have previously agreed to allow amendments; and/or
- In the event of a material change of circumstances.

DOES THE ND LEGAL SELF HELP CENTER HAVE MOTION FOR INTERIM ORDER FORMS?

No, the ND Legal Self Help Center does not have a packet of forms for making a motion for an interim order. If you decide to represent yourself, you will need to create and prepare your own legal documents.

Names and descriptions of the documents you will need to create and prepare are found throughout this guide. Formatting examples of common motion for interim order documents are found at the end of this guide.

Although the ND Legal Self Help Center does not have forms or instructions for motions for interim orders in North Dakota state district court, a variety of General-Use forms are available as a starting point for creating your own legal documents.

All of the General-Use forms available through the ND Legal Self Help Center are available at www.ndcourts.gov/legal-self-help. Scroll to the “District Court Civil” section.

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 family law 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.

(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.)

IS THERE HELP AVAILABLE FOR CREATING LEGAL DOCUMENTS?

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota.

Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of your civil action.

You and the lawyer must agree in writing to Limited Legal Representation.

WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO MOTIONS FOR INTERIM ORDERS?

Chapter 14-05 of the North Dakota Century Code governs divorce and legal separation.

www.legis.nd.gov/cencode/t14c05.html

Chapter 14-09 of the North Dakota Century Code governs parenting rights and responsibilities, such as custody, visitation, and child support. www.legis.nd.gov/cencode/t14c09.html

Chapter 14-12.2 of the North Dakota Century Code governs enforcement and modification of child support and spousal support orders issued by other states or countries.

www.legis.nd.gov/cencode/t14c12-2.html

Chapter 14-14.1 of the North Dakota Century Code governs child custody and visitation jurisdiction. www.legis.nd.gov/cencode/t14c14-1.pdf

Chapter 14-20 of the North Dakota Century Code governs paternity. Review the entire Chapter. www.legis.nd.gov/cencode/t14c20.pdf

Chapters 14-05, 14-09, 14-12.2, 14-14.1, and 14-20 are Chapters within Title 14 of the North Dakota Century Code. There are many other laws related to families in Title 14. You may find them of interest. www.legis.nd.gov/cencode/t14.html

The North Dakota Rules of Civil Procedure apply to civil matters in North Dakota state district courts. The rules are found at www.ndcourts.gov/legal-resources/rules/ndrcivp.

The North Dakota Rules of Court apply to civil matters in North Dakota state district courts. The rules are found at www.ndcourts.gov/legal-resources/rules/ndrct. See particularly:

- Rule 8.2 (Interim Orders in Domestic Relations Cases), and
- Rule 3.2 (Motions).

The North Dakota Rules of Evidence apply to civil matters in North Dakota state district courts. The rules are found at www.ndcourts.gov/legal-resources/rules/ndrev.

North Dakota case law (court decisions) is useful for interpreting what the law means for your individual circumstances.

When the decision of a case is appealed from a North Dakota State 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.

One way to research case law related to motion for interim order(s), 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. Case law summaries directly follow the text of the Century Code Section. To view the full text of the opinion, go to www.ndcourts.gov and click on “Supreme Court Opinions.”

Laws constantly change through legislation, administrative rulings and case law (court decisions). To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and case law (court decisions). Notes of case law (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 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.

WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A MOTION FOR AN INTERIM ORDER?

*****The following definitions are intended to be helpful, BUT they are not intended to constitute legal advice OR address every possible meaning of the terms in this section.*****

Best Interests of the Child – The 13 factors the District Court uses when deciding the residential responsibility and parenting time arrangements that are in the best interests of the child. The 13 factors are listed in North Dakota Century Code Section 14-09-06.2.

www.legis.nd.gov/cencode/t14c09.pdf

Child support – Money paid by a parent for the financial benefit of a child. Child support is based on guidelines set by the North Dakota Department of Human Services. If a parent can show a different ability to earn income than the guidelines show, the court may order a higher or lower child support payment.

The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator. The Calculator is available at childsupport.dhs.nd.gov/lawyers/child-support-guidelines.

Custody – See Residential Responsibility.

Decision making responsibility – The responsibility to make decisions concerning the minor child. The term may refer to decisions on all issues or on specific issues, but not child support issues.

Deploying or deployed parent – A deploying, or deployed parent is a uniformed service member who has been notified of orders of movement or mobilization for more than ninety days, but less than eighteen months AND the orders are designated as unaccompanied, not authorized for dependent travel, or do not permit family members to move to the deployment location.

Domestic relations cases – Family disputes involving the rights and duties of parents, children, husband and/or wife.

For example:

- **Divorce** – The only way to legally end your marriage. In other words, the two married individuals become unmarried once their divorce is granted by a court.
- **Legal separation** – A civil court process with requirements that are similar to the requirements for granting a divorce. However, unlike a divorce, legal separation does not end the marriage, but it does end many of the legal responsibilities spouses have to each other, while they are married.
- **Establishing parenting rights and responsibilities** – A civil court process involving parents who were never married to each other, which determines all the rights and responsibilities a parent has concerning the parent's child.
- **Paternity** – The establishment of a father-child relationship.
- **Maternity** – The establishment of a mother-child relationship.

Evidentiary hearing – An evidentiary hearing is similar to a trial, except without a jury. The Moving Party presents their evidence and witnesses, and then the Opposing Party has an opportunity to cross-examine those witnesses and also call their own witnesses who may be cross-examined by the Moving Party. The Judicial Officer weighs all the facts, evidence, and arguments presented at the evidentiary hearing and either grants or dismisses the motion for an interim order.

Ex-Parte Motion for an Interim Order – Also called an emergency or urgent motion. An ex-parte interim order is granted by a judge who makes a decision on the motion based only on the documents and affidavit evidence BEFORE holding the required hearing.

Ex-parte interim orders will only be issued if a court thinks that there are exceptional circumstances present. If the court grants an ex-parte interim order, an evidentiary hearing MUST be held within 30 days of the court granting the ex-parte interim order.

Home state – The state in which a minor child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, home state means the state in which the child lived from birth with a parent. A period of temporary absence of any of the mentioned persons is part of the period.

Marital property – All of the assets and debts owned by either spouse, whether owned jointly or individually.

Material Change in Circumstances – Significant change or changes since the original domestic relations case started, unknown at the time the case started, requiring a resolution of an issue on a temporary basis to serve the best interests of the child.

Obligor – The person ordered by the court to pay child support or spousal support.

Obligee – The person receiving child support or spousal support ordered by the court.

Parental rights and responsibilities – All the rights and responsibilities a parent has concerning the parent's minor child.

Parenting plan – A written plan describing each parent's rights and responsibilities.

Parenting schedule – The schedule of when the minor child is in the care of each parent.

Parenting time – The time when the minor child is to be in the care of a parent. (Also known as visitation.)

Primary residential responsibility – A parent with more than fifty percent of the residential responsibility.

Residential responsibility – A parent's responsibility to provide a home for the child. (Also known as custody.)

Spousal support – Money paid by one spouse to the other after they separate or divorce. (Also known as alimony or maintenance.)

Visitation – See Parenting Time.

WHO ARE THE PARTIES IN A MOTION FOR AN INTERIM ORDER?

Plaintiff: The parent or spouse who is listed as the Plaintiff in the original domestic relations action. For example, the parent who started the action with service of the summons and complaint on the other parent.

Defendant: The parent or spouse who is listed as the Defendant in the original domestic relations action. For example, the parent who filed a written Answer in order to participate in the original case.

Moving Party: The parent or spouse bringing the Motion for an Interim Order. The Moving Party in the motion may be either the Plaintiff or the Defendant.

Opposing Party: The other parent or spouse. In other words, the parent or spouse who is not bringing the motion. (Also called the Non-moving party.)

Real Party in Interest – (Also known as the Statutory Real Party in Interest.) The State of North Dakota is added as a real party in interest to parenting rights and responsibilities actions only when:

- Child support will be established or modified, and a minor child receives assistance through programs administered by the North Dakota Department of Human Services, such as temporary assistance to needy families, Medicaid, and foster care;
- Child support will be established or modified, and an application was made and accepted for services provided by the Child Support Division of the North Dakota Department of Human Services; or
- Child support or spousal support will be established or modified and North Dakota or the Child Support Division of the North Dakota Department of Human Services is required to be involved in proceedings related to support orders of other states or countries under the Uniform Interstate Family Support Act.

WHAT IS THE NORTH DAKOTA RESIDENCY REQUIREMENT FOR A MOTION FOR AN INTERIM ORDER?

The North Dakota residency requirement applies to the original domestic relations case that was started by the Plaintiff, but does not apply to the motion for an interim order itself.

Thus, the Plaintiff, who filed the original domestic relations case, must have been a North Dakota resident for the required amount of time before filing.

For example:

- **Divorce and Separation** – may not be granted, unless the plaintiff has been a resident of North Dakota for six consecutive months before they commenced the court action.
- **Parenting Rights and Responsibilities** – a court has the ability to make an initial child custody determination only if the state is the home of the child on the date that the action is started, or was the home state of the child within six months before the action was started, and the child is absent from the state, but a parent continues to live in this state.
 - Note: You should read and familiarize yourself with Section 14-14.1-12 of the North Dakota Century Code.
- **Paternity** – the residency requirement for paternity is very complex. You should review and familiarize yourself with Sections 14-20-36 through 14-20-40 of the North Dakota Century Code to determine whether or not you meet the residency requirements.

EX-PARTE (EMERGENCY) MOTION FOR AN INTERIM ORDER

This informational guide does not provide process information for making a motion for an ex-parte interim order.

A motion for an ex-parte interim order is sometimes referred to as an emergency and/or urgent motion. An ex-parte interim order is granted by a judge who makes a decision on your motion based only on your documents, affidavits of evidence, and without first holding the required hearing.

Ex-parte interim orders will only be issued if a court thinks that there are exceptional circumstances present.

For example:

- A threat of imminent danger to someone or a minor child of such person,
- If a court finds evidence that someone is in need of protection; and/or
- If the court finds evidence that the marital estate requires protection.

If the court grants an ex-parte interim order, an evidentiary hearing **MUST** be held within 30 days of the court granting the ex-parte interim order. The Moving Party **MUST** prove what they alleged in their written ex-parte motion.

You should read and familiarize yourself with Rule 8.2(a) of the North Dakota Rules of Court available at: www.ndcourts.gov/legal-resources/rules/ndrct/8-2.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

You are not required to hire a lawyer to bring a civil action in North Dakota State District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

Lawyer Resources

If you decide to find a lawyer 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.
- The State Bar Association of North Dakota 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. The cost is \$30.00 for a 30 minute consultation with a lawyer.
- 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. You can narrow your search by name or location.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer 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 lawyer 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 legal documents, 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 court appearances for you.

You and the lawyer must agree in writing to Limited Legal Representation.

THE MOTION FOR AN INTERIM ORDER PROCESS IN NORTH DAKOTA

PART ONE: THE MOVING PARTY RESEARCHES THE LAWS & RULES; MAKES DECISIONS; GATHERS INFORMATION

Read this court process information **carefully**. Review the formatting examples of motion for interim order documents at the end of this guide.

If you do not know if you should use this informational guide and formatting examples of motion for interim order documents, consult a lawyer who is licensed to practice in the state of North Dakota.

Research Rule 8.2 of the North Dakota Rules of Court & Other Applicable Laws:

Use the links above to research how the statutes (laws) enacted by the North Dakota Legislature and case law apply to your specific situation.

You can find Rule 8.2 on the North Dakota Supreme Court website under “Legal Resources,” “Rules of Court,” and then by selecting “8.2 Interim Orders in Domestic Relations Cases,” or by clicking here: www.ndcourts.gov/legal-resources/rules/ndrct

Make Decisions:

Review what you are asking the court to decide. Identify your proposal(s) for resolution of the issue(s). Outline how the laws, rules and your facts support what you are asking the court to decide.

Remember, an interim order may include:

- Payment of support,
- Temporary parental rights and responsibilities,
- A parenting schedule of minor children,
- Payment of attorney’s fees and costs,
- The use of real or personal property; and/or
- For restraining and eviction regarding property.

Gather Information:

For example:

- At least one copy of the documents that established the original domestic relations action. In other words, the Summons and Complaint for the domestic relations case.
 - The summons and complaint are the documents that must be served on the Defendant to start a domestic relations case.
 - These documents can be filed with the Court before the motion for an interim order documents are filed, or filed at the same time.
 - Note: If these documents have already been filed with the Court, you do not need to file the summons, complaint, or proof of service of the summons and complaint again.
- Supporting documentation that you plan to refer to in your motion documents.
 - Any supporting documentation to which you refer in your motion documents **must** be served on the Opposing Party and filed with the Court.
- Affidavits of individuals with first-hand knowledge that you plan to refer to in your motion documents.
 - Provide the ***Affidavit of _____ in Support of Motion for Interim Order*** to each individual to complete and return to you.
 - See Appendix E below.
 - Any affidavit to which you refer in your motion documents **must** be served on the Opposing Party and filed with the Court.
 - Note: An evidentiary hearing is required for motions for interim orders.
 - The individual(s) who provided you with an affidavit may be required to attend the evidentiary hearing as a witness. Thus, if someone provides you with their affidavit, you will need to ensure that they're available to attend a scheduled court date where they will speak about what they wrote in their affidavit. You may wish to consider subpoenaing your witness to ensure that they will attend the scheduled hearing.
- Child support calculations, if you plan to request the court require payment of child support.
 - The Calculator is available at childsupport.dhs.nd.gov/lawyers/child-support-guidelines.
 - The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator.
 - Court system and ND Legal Self Help Center staff cannot provide support for the Child Support Guidelines Calculator.

PART TWO: MOVING PARTY CREATES THEIR MOTION FOR INTERIM ORDER DOCUMENTS

The Moving Party is required to create, serve and file their motion for interim order documents.

Create the Following Documents:

- **Notice of Motion for Interim Order –**
 - See Appendix A: Notice of Motion for Interim Order – formatting example below.
 - A written notice that tells all the parties that the Moving Party is requesting an order from the Court.
 - Motions for interim orders require a hearing. Therefore, you will need to request a hearing date from the Clerk of Court in the County where your domestic relations case is filed.
 - When you contact the Clerk of Court, ask if the County requires that you file a proposed Interim Order with your motion documents. (See the information about the “Interim Order (Proposed)” below.
 - You will need to include the hearing time, date and location on the Notice of Motion.

- **Motion for Interim Order –**
 - See Appendix B: Motion for Interim Order – formatting example below.
 - A short, specific purpose, written request to the Court in an existing domestic relations case, for an interim order.
 - In other words, a short, written request of your proposal, which, if granted by the Court, would result in an interim order.

- **Brief in Support of Interim Motion –**
 - See Appendix C: Brief in Support of Motion for Interim Order – formatting example below.
 - A written document that explains why the Moving Party filing the motion for interim order should have the motion granted by the court.
 - In other words, an explanation as to why the court should grant your proposal.
 - A list of the Moving Party’s version of the facts related to the motion for interim order.
 - An explanation of each law, case law or court rule that supports the Moving Party’s argument(s) and an application of each to the Moving Party’s specific set of facts.

- **Affidavit in Support of Interim Motion –**
 - See Appendix D: Affidavit in Support of Motion for Interim Order – formatting example below.
 - Your, the Moving Party’s, written statement of the facts. Your written statement is made under oath, in front of an authorized officer.
 - Facts that you refer to in the brief should also appear in the affidavit.
 - The affidavit must be signed by you, the Moving Party, in the presence of a notary public.

- **Financial Statement and Affidavit –**
 - See Appendix K: Financial Statement and Affidavit – formatting example below.
 - An itemized financial statement, which is required for **all** motions for interim orders.
 - Also available online, in Appendix B of the North Dakota Rules of Court.

- **Confidential Information Form –**
 - See Appendix L: Confidential Information Form – formatting example below.
 - Review [Rule 3.4](#) of the North Dakota Rules of Court. Lists the full confidential information that is not allowed to appear in documents filed with the court. This form is not a part of the public court record.
 - Also available online, in Appendix H of the North Dakota Rules of Court.

Document you May be Required to Create:

- **Interim Order (Proposed) –**
 - See Appendix M: Interim Order (Proposed) – formatting example below.
 - This is your proposed interim order for the Court to sign, if the Court grants your requests in your motion for an interim order.
 - If the Court grants the requests in your motion for an interim order and uses your proposed order, the judicial officer assigned to your case will date and sign your proposed order.
 - When you contact the Clerk of Court to schedule an evidentiary hearing on your motion, ask if the County requires that you file a proposed Interim Order with your motion documents.

PART THREE: MOVING PARTY ARRANGES FOR SERVICE OF COPIES OF THE DOCUMENTS ON OPPOSING PARTY

The Moving Party is required to serve copies of motion for an interim order documents on the Opposing Party.

Service is providing copies of your completed interim order documents and other supporting documents on the Opposing Party.

The Moving Party will also be required to complete and file an Affidavit of Service. An Affidavit of Service provides the District Court with proof that you served the Opposing Party.

The District Court **will not** act on your motion documents, unless you file proof of service with the court.

The Moving Party is required to serve one copy of each of the following documents on the Opposing Party:

- Notice of Motion for Interim Order;
- Motion for Interim Order;
- Brief in Support of Motion for Interim Order;
- Affidavit in Support of Motion for Interim Order;
- Financial Statement and Affidavit;
- Interim Order (Proposed) – only if required by the County; and
- All other supporting documentation, including affidavits of others with first-hand knowledge.

DO NOT serve a copy of the Confidential Information Form on the Opposing Party.

Service by Mail:

You may arrange for service of the copies of the documents by mail by an individual who is at least 18 years old.

- Put the copies in an envelope;
- Either:
 - Address the envelope with the Opposing Party's last known address; OR
 - If you know the Opposing Party is currently represented by a lawyer, address the envelope with the lawyer's address; and
- List your address as the return address on the envelope.

The individual who is at least 18 years old takes the envelope to a United States Post Office and mails the envelope. Postage must be prepaid.

Service by mail is complete upon mailing.

Complete the Affidavit of Service by Mail:

See Appendix F: Affidavit of Service by Mail below.

The individual who took the envelope to a United States Post Office and mailed it must complete the Affidavit of Service by Mail.

Caption:

- Complete the Caption exactly as the Caption of the Notice of Motion form is filled out.

Paragraphs 1-6:

- Follow the directions on the form.

Date and Signature:

- DO NOT date and sign the form until your signature can be witnessed by a Notary Public or Clerk of Court.
- Fill in the County and State where the form was signed.
- Fill in the printed name, address, and telephone number.

Make ONE COPY of the completed Affidavit of Service by Mail form for your records. You will file the original with the Clerk of District Court in Step Four.

Additional Service Information for Motions:

There are other service options available for motions. Go to www.ndcourts.gov/legal-self-help/service-in-a-civil-action. See the “Service After a Civil Action Has Started” section.

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PART FOUR: MOVING PARTY FILES THEIR INTERIM MOTION DOCUMENTS WITH THE CLERK OF COURT

The Moving Party is required to file their original motion for an interim order documents and other supporting documents with the Clerk of District Court:

The original, completed:

- Notice of Motion for Interim Order;
- Motion for Interim Order;
- Brief in Support of Motion for Interim Order;
- Affidavit in Support of Motion for Interim Order;
- Financial Affidavit / Itemized Financial Statement;
- Interim Order (Proposed) – only if required by the County;
- Confidential Information Form;
- Affidavit of Service; and
- All other supporting documentation, including affidavits of others with first-hand knowledge.

Neither party will be required to pay a filing fee.

PART FIVE: OPPOSING PARTY CALCULATES DEADLINE; RESEARCHES THE LAWS & RULES; MAKES DECISIONS; GATHERS INFORMATION

Read this court process information **carefully**. Review the formatting examples of answer to interim motions documents at the end of this guide.

If you do not know if you should use this guide and formatting examples of answer to motion for interim order documents, consult a lawyer who is licensed to practice in North Dakota.

Calculate your deadline to answer the motion for an interim order:

The Opposing Party must calculate their deadline to answer the motion.

If the Opposing Party **does not bring any new issues** to the court's attention, the Opposing Party must file and serve their response **no later than 7 days** prior to the hearing.

If the Opposing Party **brings new issues**, other than those discussed in the Moving Party's initial motion, to the court's attention, the Opposing Party must file and serve their response **no later than 14 days** prior to the hearing.

Remember, issues include:

- Payment of support,
- Temporary parental rights and responsibilities,
- A parenting schedule of minor children,
- Payment of attorney's fees and costs,
- The use of real or personal property; and/or
- For restraining and eviction regarding property.

When calculating days for filing and service:

- Do not include the day of the event that triggers the start of the period;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Research Rule 8.2 of the North Dakota Rules of Court & Other Applicable Laws:

Use the links above to research how the laws enacted by the North Dakota Legislature and case law apply to your situation.

Make decisions:

Make an outline of the facts and arguments you want to include in your response.

Make a copy of the Moving Party's motion for interim order documents on which to make your own notes. Review ALL of the motion for interim order documents and make an outline of the facts and arguments you want to include in your response.

You may find the "Answering a Motion – Checklist" useful as a general guide.

([www.ndcourts.gov/legal-self-help/answering-a-motion.](http://www.ndcourts.gov/legal-self-help/answering-a-motion))

Gather Information:

For example:

- At least one copy of the documents that established the original domestic relations action. In other words, the original Summons and Complaint.
 - The summons and complaint are the documents that must be served to start a case to establish custody.

- Supporting documentation that you plan to refer to in your answer to motion documents.
 - Any supporting documentation to which you refer in your answer to motion documents **must** be served on the Moving Party and filed with the court.
- Affidavits of individuals with first-hand knowledge you plan to refer to in your answer to motion documents.
 - Provide the ***Affidavit of _____ in Support of Answer to Motion for Interim Order*** to each individual to complete and return to you.
 - See Appendix I below.
 - Any affidavit to which you refer to in your answer to motion documents **must** be served on the Moving Party and filed with the Court.
 - Note: An evidentiary hearing is required for motions for interim orders.
 - The individual(s) who provided you with an affidavit may be required to attend the evidentiary hearing as a witness. Thus, if someone provides you with their affidavit, you will need to ensure that they're available to attend a scheduled court date where they will speak about what they wrote in their affidavit. You may wish to consider subpoenaing your witness to ensure that they will attend the scheduled hearing.
- Child support calculations, if the Moving Party requested payment of child support in their motion, or you plan to request payment of child support in your answer.
 - The Calculator is available at childsupport.dhs.nd.gov/lawyers/child-support-guidelines.
 - The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator.
 - Court system and ND Legal Self Help Center staff cannot provide support for the Child Support Guidelines Calculator.

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PART SIX: OPPOSING PARTY CREATES THEIR DOCUMENTS TO ANSWER THE INTERIM MOTION

The Opposing Party is required to create, serve and file their documents to answer the motion for interim order.

Create the Following Documents:

- **Answer Brief to Motion for Interim Order –**
 - See Appendix G: Answer Brief to Motion for Interim Order – formatting example below.
 - A written document that explains why the Opposing Party is answering the motion for interim order.
 - In other words, an explanation as to why the court should grant your proposal, rather than the Moving Party’s proposal.
 - A list of the Opposing Party’s version of the facts related to the motion for interim order.
 - The Opposing Party’s response to each argument in the Moving Party’s brief in support of interim motion.
 - An explanation of each law, case law or court rule that supports the Opposing Party’s argument(s) and an application of each to the Opposing Party’s specific set of facts.

- **Affidavit in Support of Answer to Motion for Interim Order –**
 - See Appendix H: Affidavit in Support of Answer to Motion for Interim Order – formatting example below.
 - Your, the Opposing Party’s, written statement of the facts. Your written statement is made under oath, in front of an authorized officer.
 - Facts that you refer to in the answer brief should also appear in the affidavit.
 - The affidavit must be signed by you, the Opposing Party, in the presence of a notary public.

- **Financial Statement and Affidavit –**
 - See Appendix K: Financial Statement and Affidavit – formatting example below.
 - An itemized financial statement, which is required for **all** motions for interim orders.
 - Available online, in Appendix B of the North Dakota Rules of Court.

- **Confidential Information Form –**

- See Appendix L: Confidential Information Form – formatting example below.
- Review [Rule 3.4](#) of the North Dakota Rules of Court. Lists the full confidential information that is not allowed to appear in documents filed with the court. This form is not a part of the public court record.
- Available online, in Appendix H of the North Dakota Rules of Court.

Document you May be Required to Create:

- **Interim Order (Proposed) –**

- See Appendix M: Interim Order (Proposed) – formatting example below.
- This is your proposed interim order for the Court to sign, if the Court grants your requests in your answer to motion for an interim order.
- If the Court grants the requests in your answer to motion for an interim order and uses your proposed order, the judicial officer assigned to your case will date and sign your proposed order.
- Contact the Clerk of Court of the County where your domestic relations case is filed. Ask if the County requires that you file a proposed Interim Order with your answer to motion documents.

PART SEVEN: OPPOSING PARTY ARRANGES FOR SERVICE OF COPIES OF THE ANSWER TO MOTION DOCUMENTS ON MOVING PARTY

The Opposing Party is required to serve copies of the answer to motion for an interim order documents on the Moving Party.

Service is providing copies of your completed answer to motion for an interim order documents and other supporting documents on the Moving Party.

The Opposing Party will also be required to complete and file an Affidavit of Service. An Affidavit of Service provides the District Court with proof that you served the Moving Party.

The District Court **will not** act on your answer to motion documents, unless you file proof of service with the court.

The Opposing Party is required to serve one copy of each of the following documents on the Moving Party:

- Answer Brief to Motion for Interim Order;
- Affidavit in Support of Answer to Motion for Interim Order;
- Financial Statement and Affidavit;
- Interim Order (Proposed) – only if required by the County; and

- All other supporting documentation, including affidavits of others with first-hand knowledge.

DO NOT serve a copy of the Confidential Information Form on the Moving Party.

Service by Mail:

You may arrange for service of the copies of the documents by mail by an individual who is at least 18 years old.

- Put the copies in an envelope;
- Either:
 - Address the envelope with the Moving Party's last known address; OR
 - If you know the Moving Party is currently represented by a lawyer, address the envelope with the lawyer's address; and
- List your address as the return address on the envelope.

The individual who is at least 18 years old takes the envelope to a United States Post Office and mails the envelope. Postage must be prepaid.

Service by mail is complete upon mailing.

Complete the Affidavit of Service by Mail:

See Appendix J: Affidavit of Service by Mail below.

The individual who took the envelope to a United States Post Office and mailed it must complete the Affidavit of Service by Mail.

Caption:

- Complete the Caption exactly as the Caption of the Notice of Motion form is filled out.

Paragraphs 1-6:

- Follow the directions on the form.

Date and Signature:

- DO NOT date and sign the form until your signature can be witnessed by a Notary Public or Clerk of Court.
- Fill in the County and State where the form was signed.
- Fill in the printed name, address, and telephone number.

Make ONE COPY of the completed Affidavit of Service by Mail form for your records. You will file the original with the Clerk of District Court in Step Four.

Additional Service Information for Motions:

There are other service options available for motions. Go to www.ndcourts.gov/legal-self-help/service-in-a-civil-action. See the “Service After a Civil Action Has Started” section.

PART EIGHT: OPPOSING PARTY FILES THEIR ANSWER TO INTERIM MOTION DOCUMENTS WITH THE CLERK OF COURT

The Opposing Party is required to file their original answer to motion for an interim order documents and other supporting documents with the Clerk of District Court:

The original, completed:

- Answer Brief to Motion for Interim Order;
- Affidavit in Support of Answer to Motion for Interim Order;
- Financial Statement and Affidavit;
- Interim Order (Proposed) – only if required by the County;
- Confidential Information Form; and
- All other supporting documentation, including affidavits of others with first-hand knowledge.

Neither party will be required to pay a filing fee.

PART NINE: PREPARE FOR THE EVIDENTIARY HEARING OF THE MOTION

An evidentiary hearing is similar to a trial, except without a jury.

The Moving Party presents their evidence and witnesses, and then the Opposing Party has an opportunity to cross-examine those witnesses and also call their own witnesses who may be cross-examined by the Moving Party.

The Judicial Officer weighs all the facts, evidence, and arguments presented at the evidentiary hearing and either grants or dismisses the motion for interim order.

If you need special assistance at the hearing:

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court’s office as soon as possible.

Review pre-trial or trial guidebooks for self-represented individuals:

Preparing for an evidentiary hearing is often a complex and confusing process.

Review pre-trial and trial guidebooks for self-represented litigants. Your local public or academic library may have resources available.

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. (www.odin.nodak.edu)

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

[A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.

[Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

[The Legal Answer Book for Families](#), Emily Duskow, Marcia Stewart, NOLO, 2014.

[Objections at Trial](#), Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.

[Represent Yourself in Court: How to Prepare & Try a Winning Case](#), Paul Bergman, Sara Berman, NOLO, 2016.

[North Dakota Century Code Annotated](#), Lexis Nexis, Creation Date c1959 – present.

[North Dakota Court Rules Annotated](#), Lexis Nexis, Creation Date c1990 – present.

Gather documentation:

You will be required to prove the allegations that you made in your motion documents or your answer to motion documents. Gather the documentation you believe will prove your allegations.

For example:

- At least one copy of the original petition and/or complaint that began the domestic relations case.
- Copies of the motion documents filed with the Court and served on the Opposing Party.
- Copies of the answer to motion documents filed with the Court and served on the Moving Party.
- Copies of the supporting documentation filed with the Court.

- List of witnesses, including the individuals whose affidavits were filed with the Court in support of the motion and the answer to motion.

Review the North Dakota Rules of Evidence carefully:

The North Dakota Rules of Evidence governs whether or not your evidence will be admitted for consideration at the hearing. The Rules also govern how you object to evidence the Opposing Party wants to admit at the hearing.

The starting point for admitting evidence at the hearing is whether the evidence is **relevant**. You must show a **reasonable connection** between the evidence you want the Judicial Officer to consider and the legal claim you are trying to prove.

You should familiarize yourself with the North Dakota Rules of Evidence.

An Evidence Research Guide is available at www.ndcourts.gov/legal-self-help by scrolling to the “District Court Civil” section.

Notice of Intent to Cross Examine Affidavit Witnesses:

See Appendix N: Notice of Intent to Cross Examine Witnesses – formatting example below.

Rule 8.2(e)(2) of the North Dakota Rules of Court governs the use of evidence in support of or in opposition to an interim order. You can find Rule 8.2(e)(2) here: www.ndcourts.gov/legal-resources/rules/ndrct/8-2

Evidence used in support of or in opposition to an interim order **must be** presented by affidavit, unless the Court allows otherwise.

- The Moving Party and the Opposing Party must each include their own affidavit in support of their motion or answer to motion.
- For the Moving Party to present evidence from other individuals with first-hand knowledge, see Appendix E: Affidavit of _____ in Support of Motion for Interim Order – formatting example below.
- For the Opposing Party to present evidence from other individuals with first-hand knowledge, see Appendix I: Affidavit of _____ in Support of Answer to Motion for Interim Order – formatting example below.

If you choose to present evidence from other individuals with first-hand knowledge by affidavit, you must make the individual who provided you with the affidavit available for cross-examination by the other party.

In other words, you must ensure that the individual who provided you with the affidavit is available to attend the evidentiary hearing so that the Opposing Party may question them regarding the affidavit.

If the Moving Party wishes to cross-examine any of the individuals who provided affidavits to the Opposing Party regarding their affidavit:

- The Moving Party must notify the Opposing Party **in writing** at least 24 hours before the start of the evidentiary hearing.
- If the Moving Party **does not** give 24 hours' notice to the Opposing Party, the Moving Party may be considered to have waived their right to cross-examination.

If the Opposing Party wishes to cross-examine any of the individuals who provided affidavits to the Moving Party regarding their affidavit:

- The Opposing Party must notify the Moving Party **in writing** at least 24 hours before the start of the evidentiary hearing.
- If the Opposing Party **does not** give 24 hours' notice to the Moving Party, the Opposing Party may be considered to have waived their right to cross-examination.

Note: Both the Moving Party and the Opposing Party are required to attend the evidentiary hearing. Neither the Moving Party nor the Opposing Party are required to receive notice of intent to cross examine from the other party.

Subpoenas:

If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

A Subpoena Informational Guide is available at www.ndcourts.gov/legal-self-help by scrolling to the "District Court Civil" section.

Organize the information, documents, etc. that you think you will need for the hearing:

At minimum, prepare an outline of your remarks and arguments. List the evidence you believe will prove each of your arguments.

PART TEN: THE EVIDENTIARY HEARING

The evidentiary hearing is an examination of the facts and law, presided over by the Judicial Officer assigned to your case.

The Moving Party and Opposing Party each have an opportunity to tell their side of the facts and argue how the laws apply to the situation.

The Judicial Officer weighs the facts, evidence, and arguments presented by the Moving Party and Opposing Party and either grants or dismisses the motion for interim order.

If you need special assistance at the hearing:

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

Do not be late:

Do not be late for your evidentiary hearing. If you have a serious, unavoidable reason why you cannot go to the evidentiary hearing on the scheduled day or will be late, call the Clerk of District Court's office as soon as possible.

Be aware that even if you contact the Clerk of District Court's office, the Judicial Officer may decide to hold the evidentiary hearing without you.

Bring the information, documents, etc. that you prepared for the hearing:

Bring all of the files, paperwork, etc. that you gathered and organized while preparing for the evidentiary hearing.

Bring the outline of what you want to say.

Before the hearing begins:

Organize your files and paperwork on your assigned table in the courtroom so you can easily locate information as needed throughout the hearing.

Conduct of the hearing:

In general, an evidentiary hearing proceeds in the following order:

- The evidentiary hearing begins when everyone in the courtroom is asked to rise when the Judicial Officer comes into the courtroom:

- The Judicial Officer begins the evidentiary hearing by identifying any documents that were submitted to the Clerk of District Court and identifying the names of the parties.
- Opening Statements:
 - If the Judicial Officer allows opening statements, the Moving Party usually goes first.
 - An opening statement describes the issues that a party will discuss and states what the party expects to prove during the hearing.
- The Moving Party Presents their Case:
 - The Moving Party has the burden of proving the allegations that they made in their motion for interim order documents.
 - The Moving Party may call individuals with first-hand knowledge to testify.
 - The Moving Party may testify on their own behalf.
 - The Opposing Party may object to the evidence presented by the Moving Party.
 - The North Dakota Rules of Evidence govern how to object to evidence and how the Moving Party may respond to objections to their evidence.
- The Opposing Party has the Option to Cross-Examine the Moving Party's Witnesses:
 - After the Moving Party finishes direct questioning of their witnesses, the Opposing Party has the chance to ask these witnesses questions. This is called cross-examination.
 - If the Moving Party testifies on their own behalf, the Opposing Party may cross-examine the Moving Party.
 - The Opposing Party may only ask questions about the topics covered during the Moving Party's direct questioning of the witnesses.
- The Opposing Party Presents their Case:
 - The Opposing Party presents their evidence, including witnesses with first-hand knowledge.
 - The Moving Party may object to the evidence presented by the Opposing Party.
 - The North Dakota Rules of Evidence govern how to object to evidence and how the Opposing Party may respond to objections to their evidence.
- The Moving Party has the Option to Cross-Examine the Opposing Party's Witnesses:
 - After the Opposing Party finishes direct questioning of their witnesses, the Moving Party has a chance to cross-examine those witnesses.
 - If the Opposing Party testifies on their own behalf, the Moving Party may cross-examine the Opposing Party.

- The Moving Party may only ask questions about the topics covered during the Opposing Party’s direct questioning of their witnesses.
- **Closing Arguments:**
 - If the Judicial Officer allows closing arguments, the Moving Party usually goes first.
 - A closing argument is a summary of the evidence presented at the hearing and an argument to the Judicial Officer on how the motion for interim order should be decided.

The Judicial Officer May Decide the Interim Motion at the End of the Hearing OR Decide at a Later Date:

- At the end of the evidentiary hearing, the Judicial Officer may make a final decision on the motion for interim order or may decide to make a final decision at a later date.
 - If the Judicial Officer makes a final decision at the end of the hearing, the Judicial Officer may require the party who won the motion for interim order to prepare the interim motion order.
 - If the Judicial Officer DOES NOT make a final decision at the end of the evidentiary hearing, the Judicial Officer will make a decision at a later date. If this is the case, both parties will receive the Judicial Officer’s decision in writing.
- Generally, the prevailing party (i.e. the party who won the motion for interim order) is assigned to prepare the proposed interim order for the Judicial Officer to sign.

PART ELEVEN: AFTER THE EVIDENTIARY HEARING

Proposed Interim Order:

See Appendix M: Interim Order (Proposed) – formatting example below.

Review Rule 54 of the North Dakota Rules of Civil Procedure and Rule 7.1 of the North Dakota Rules of Court carefully!

The interim order is the written order of the judge’s or judicial referee’s decision in the motion for an interim order.

The proposed interim order must be served on all parties, and proof of service filed with the Clerk of District Court.

- For service instructions and affidavit of service forms, go to <https://www.ndcourts.gov/legal-self-help/service-in-a-civil-action> and review the instructions and forms under “Service After a District Court Civil Action Has Started.”

The judge or judicial referee will decide whether the proposed interim order is appropriate. If the judge or judicial referee decides it is appropriate, the clerk of court will sign and date the interim order.

Notice of Entry of Interim Order:

Review Rule 58 of the North Dakota Rules of Civil Procedure.

Within 14 days after the interim order is entered, the prevailing party must serve notice of entry of the interim order on the other Party. A copy of the interim order must be included with the notice of entry of interim order.

- For service instructions and affidavit of service forms, go to <https://www.ndcourts.gov/legal-self-help/service-in-a-civil-action> and review the instructions and forms under “Service After a District Court Civil Action Has Started.”

After service is complete, the prevailing party must file the original Notice of Entry of Interim Order and proof of service on the other party with the Clerk of District Court.

Proposed Findings of Fact, Conclusions of Law and Interim Order:

You may also be required to provide proposed findings of fact and conclusions of law.

If so, review Rule 52 of the North Dakota Rules of Civil Procedure and Rule 7.1 of the North Dakota Rules of Court carefully!

Findings of fact are the judge’s or judicial referee’s written determination of the facts made from the evidence presented. This explains what facts the judge or judicial referee found to be true.

Conclusions of law are the rulings of law made by the judge or judicial referee based on, or in connection with, the findings of fact. These are the legal consequences of the facts the judge or judicial referee found to be true.

The proposed findings of fact, conclusions of law and interim order would also need to be served on all parties, and proof of service filed with the Clerk of District Court.

- For service instructions and affidavit of service forms, go to <https://www.ndcourts.gov/legal-self-help/service-in-a-civil-action> and review the instructions and forms under “Service After a District Court Civil Action Has Started.”

The judge or judicial referee would decide whether the proposed findings of fact, conclusions of law and interim order are appropriate. If the judge or judicial referee decides they are appropriate, the judge or judicial referee will sign and date the findings of fact, conclusions of law and interim order.

It is important to note, that the interim order and, if applicable, findings of fact and conclusions of law are not official until signed and dated by the judge or judicial referee.

APPENDIX OF FORMATTING EXAMPLES OF COMMON MOTION FOR INTERIM ORDER DOCUMENTS

Formatting examples of the motion for interim order documents listed below are found at the North Dakota Legal Self Help Center website.

Moving Party Motion Documents

- **Appendix A: Notice of Motion for Interim Order**
- **Appendix B: Motion for Interim Order**
- **Appendix C: Brief in Support of Motion for Interim Order**
- **Appendix D: Affidavit in Support of Motion for Interim Order**
- **Appendix E: Affidavit of _____ in Support of Motion for Interim Order**
- **Appendix F: Affidavit of Service by Mail**

Opposing Party Answer to Motion Documents

- **Appendix G: Answer Brief to Motion for Interim Order**
- **Appendix H: Affidavit in Support of Answer to Motion for Interim Order**
- **Appendix I: Affidavit of _____ in Support of Answer to Motion for Interim Order**
- **Appendix J: Affidavit of Service by Mail**

Motion Documents for Both Parties

- **Appendix K: Financial Statement and Affidavit**
- **Appendix L: Confidential Information Form**
- **Appendix M: Interim Order (Proposed)**
- **Appendix N: Notice of Intent to Cross Examine Witnesses**

This North Dakota Legal Self Help Center resource was created by Katelyn Williams, as part of the University of North Dakota School of Law Externship Program, Spring 2019.