

# Instructions to Start a Parenting Responsibility Case (Custody & Visitation) When the Parents Don't Agree

## Serve Summons and Complaint – Personal Service

ND Legal Self Help Center Staff and Court employees can't help you fill out forms. If you're unsure how to proceed, consult a lawyer.

ND Legal Self Help Center forms aren't official court forms. Judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

Don't include these instructions when you serve or file the completed form(s).

**All of the Forms Must be Filled out Completely!!** Don't leave any of the paragraphs within the form unanswered.

If a section of the form doesn't apply to you, type or write "N/A" or "Not Applicable".

If a form isn't completely filled out, it could result in the clerk not accepting your form for filing, or the court may send the form back to you to complete.

**Follow and Carefully Read All Instructions!** There are boxes () before each step. Check each box as you finish the step. Don't go on to the next step **until** the previous step is completed.

### Forms for Common & Uncomplicated Circumstances Only

Forms are available **only** for parenting responsibility cases involving common and uncomplicated circumstances. If these forms don't work for your situation, you need to create your own documents, or [retain a lawyer](#) to create the documents for you.

### Caution Regarding Domestic Violence

Domestic violence protection orders and disorderly conduct restraining orders generally don't allow communication between the party protected by the order and the party the order is against.

If there's a domestic violence protection order or disorderly conduct restraining order in effect, review the order to see if you're allowed to contact or serve the other parent.

**Be careful not to violate the order!** Violating the order could have legal consequences for you and/or the other parent.

Before serving the other parent, consult a lawyer or a domestic violence intervention center in your area to help you navigate your situation. **Only follow the steps below once you know you can serve the other parent.**

Contact North Dakota Domestic & Sexual Violence Coalition for information about domestic violence/sexual assault (DA/SA) victim advocacy centers across North Dakota staffed with professionals who can help you with safety planning, findings shelter, obtaining a protection order, and more.

North Dakota Domestic & Sexual Violence Coalition  
521 E Main Ave, Suite 320  
Bismarck, ND 58501  
(701) 255-6240, Ext. 1016  
(888) 255-6240

[nddsvc.org/FIND-HELP](http://nddsvc.org/FIND-HELP)

## 1: Arrange to Serve Copies of Completed Summons and Complaint on the Defendant Parent

*(These instructions are for personal service.)*

**Caution!** Your parenting responsibility case **doesn't start** until the Defendant is served.

Arrange to serve the Defendant parent copies of the following documents:

- Summons (*Contested Parenting Responsibility*)
  - Must be signed by the Plaintiff **and** Clerk of Court.
- Complaint (*Contested Parenting Responsibility*)
  - Must be signed by Plaintiff.

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**Service Methods:** The following methods from [Rule 4 of the North Dakota Rules of Civil Procedure](#) may be used to arrange to serve the Defendant:

- Service by Sheriff
- Service by Personal Delivery
- Service by Mail
- Service by Publication

Instructions for each service method are available at [Start a Parenting Responsibility Case on Your Own - For Plaintiff](#).

**Your Parenting Responsibility case can't start until you have proof you completed service on the Defendant by one of the methods in [Rule 4 of the North Dakota Rules of Civil Procedure](#).**

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### **Instructions for Personal Service**

If you, the Plaintiff, decide to arrange to have the Defendant parent served by personal service, **the person who serves the documents must:**

1. Be at least 18 years old; **and**
2. Not a party in this case or interested in this case.

**You, the Plaintiff, **can't** serve the documents yourself!**

The person must serve the documents as required by [Rule 4\(d\) of the North Dakota Rules of Civil Procedure](#).

The person who served the documents must fill out a Declaration of Service by Personal Delivery and date and sign the Declaration.

**The Declaration of Service by Personal Delivery must show the summons and complaint were served on the Defendant. **This is your proof of service.****

- If the service document **doesn't show** the Defendant was served, **you must use a different service method.**

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The person who served the documents must fill out a Declaration of Service by Personal Delivery and date and sign the Declaration.

**Complete the Declaration of Service by Personal Delivery**

**You, the Plaintiff, Fill in the Top of the Form**

The information to fill out the top part of the form ("Caption") is the same as on the Summons form.

- Leave Case No blank. When all of the completed documents are accepted for filing, the Clerk of Court assigns a case number.

## To the Person Who Served the Court Documents

You're responsible to complete the remainder of the Declaration form as follows:

- Paragraph 1:** Fill in your full name.
- Paragraphs 2 and 3:** Read these statements carefully. If these statements **aren't** true, you can't use this form.
- Paragraph 4:** Fill in the date and time the documents were served. Put a checkmark  in the box for a.m. or p.m.
  - Fill in the street address, city, state, and zip code where the documents were served.
- Paragraph 5:** Fill in the name of the person you served (handed the documents).
  - Put a checkmark  next to the statement that is true.
- Paragraph 6:** Fill in how you identified the person.
- Paragraph 7: Read Carefully!!** You're declaring, under penalty of perjury under the laws of North Dakota, that everything you stated on the form is true and correct.
- Signature Block:**
  - Fill in the date, city, county, state, and country where you sign this form;
  - Sign your name; and
  - Fill in all of the information below your signature.

**Once service on the Defendant is complete**, make a copy of the completed Declaration of Service by Personal Delivery for your records.

You file the original with the original Summons and Complaint later in the process.

## 2: Your Parenting Responsibility Case Starts When the Defendant Parent is Personally Served – Neither You nor the Defendant May Take Your Child(ren) Out of North Dakota

If the Defendant parent was personally served, the service document you receive shows the date the summons and complaint were served on the Defendant.

**Your Parenting Responsibility case started the day the Defendant was personally served the Summons and Complaint.**

**Review the Summons.** As of the day the case started, if you or the Defendant want to take any of your children out of North Dakota, you must get written permission from the Defendant or the court.

### **3: Decide Whether to File the Summons & Complaint Now or Later; if You Choose Now, Complete these #3 Instructions**

You may choose to file the original, completed Summons, Complaint, and Declaration of Service by Personal Delivery with the Clerk of Court:

- 1) **Now**, which Isn't required at this point; **or**
- 2) **No later than 37 days after service on the Defendant**, which is **Required** by [Rule 8.3.1 of the North Dakota Rules of Court](#).

If you choose to file no later than 37 days after service on the Defendant, go directly to the "What are the Next Steps" section on Page 6 of these instructions.

If you choose to file now, continue following these #3 instructions.

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Take the original, completed documents to the Clerk of Court's Office in the North Dakota county listed in the Caption of your parenting responsibility forms.

- **You're required to pay the \$160.00 filing fee.**
- If you're not able to pay the filing fee, you may be able to have the fee waived. Fill out and give the [Filing Fee Waiver Form](#) to the Clerk of Court.

File the following **original, completed** documents with the Clerk of Court's Office:

1. Summons (*Contested Parenting Responsibility*) (signed by Plaintiff **and** Clerk of Court);
2. Complaint (*Contested Parenting Responsibility*);
3. Confidential Informational Form; and
4. Declaration of Service by Personal Delivery (*received from person who personally served the Defendant*).

**If the Clerk's Office accepts your documents for filing, your case is assigned a case number.**

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**You must serve a Notice of Filing on the Defendant** after your original, completed Summons, Complaint, and Declaration of Service by Personal Delivery are filed.

A [Notice of Filing](#) form and instructions are available on the North Dakota Legal Self Help Center webpage.

## What Are the Next Steps?

**You've completed Step Two. Step Three requires the Defendant parent to serve a written Answer on you:**

The Defendant has **21 days after they were served** a copy of the Summons and Complaint to serve a written Answer on you (the Plaintiff).

### Calculate the 21 Day Deadline for the Written Answer:

1. Don't include the day the Defendant parent was served:
  - **Service by Sheriff** – start your count the day after the Defendant was served.
  - **Personal Service** – start your count the day after the Defendant was served.
  - **Service by Mail** – start your count the day after the return receipt for the Summons and Complaint was signed and dated.
  - **Service by Publication** – the Defendant is considered served fifteen (15) days after the first publication of the Summons in the newspaper. Start your count the day after the 15<sup>th</sup> day.
2. Count every calendar day, including weekends and North Dakota state holidays.
3. Include the last day of the deadline, but if the last day falls on a Saturday, Sunday, or North Dakota state holiday, the deadline continues to run until the end of the next day that isn't a Saturday, Sunday, or North Dakota state holiday.
  - For example, if the last day of the 21 day deadline lands on a Sunday, the deadline extends until the end of the next day, which is Monday.

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If the Defendant parent **serves** a written Answer on you within the 21 day time period, the parenting responsibility case continues. Review the information and forms located at [Steps You Must Take Before the Court Can Establish Parenting Responsibility - Both Parents](#).

If the Defendant parent **doesn't serve** a written Answer on you within the 21 day deadline, you may file a Motion for Default Divorce Judgment. Instructions and forms are available at [Get the Final Parenting Responsibility Judgment - Both Parents](#).

State of North Dakota

In District Court

County of \_\_\_\_\_

\_\_\_\_\_ Judicial District

\_\_\_\_\_) )  
 Plaintiff, )  
 vs )  
 \_\_\_\_\_ )  
 Defendant. )

Case No. \_\_\_\_\_

**Declaration of Service by  
Personal Delivery**

**The person who personally served court documents states:**

1. My name is \_\_\_\_\_ (name of person who personally served documents listed in Paragraph 3).

2. I am at least 18 years of age. I am **not a party or** interested in the above-named action.

**3. List of Court Documents Served:**

- Summons (*Contested Parenting Responsibility*)
- Complaint (*Contested Parenting Responsibility*)

**4. Date, Time, and Address of Personal Service:**

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m. (or)  p.m.

Address:

\_\_\_\_\_  
(street address) (city) (zip code)

5. I served a true and correct copy of each of the court documents listed in Paragraph 3 to \_\_\_\_\_ (name of person served) by (choose one):

Giving the court documents directly to them.

Leaving the court documents with \_\_\_\_\_ (name),

a person of suitable age and discretion who lives at the same address in Paragraph 4.

6. I know the person I served is the person intended to be served because (*explain how you identified the person*): \_\_\_\_\_

7. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Personal Delivery is true and correct.

Signed on \_\_\_\_\_ (*date*) in \_\_\_\_\_ (*city*),  
\_\_\_\_\_ County, \_\_\_\_\_ (*state*), \_\_\_\_\_ (*country*).

\_\_\_\_\_  
*Signature of Person Who Personally Served Documents*

\_\_\_\_\_  
*Printed Name of Person Who Personally Served Documents*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City, State, Zip Code*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Email Address*