

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

## Serve Summons and Complaint – Service by Mail

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 service by mail.)*

**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 Service by Mail**

If you, the Plaintiff, decide to arrange to have the Defendant parent served by mail, **the person who serves the documents must be at least 18 years old.**

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 Mail and date and sign the Declaration.

**The Declaration of Service by Mail must show the summons and complaint were served on the Defendant and you must have a return receipt with a signature and date. This is your proof of service.**

- If the service document **doesn't show** the Defendant was served **and** you don't have a signed and dated return receipt, **you must use a different service method.**
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#### **The person who serves by mail:**

- Mails a copy of the Summons and the Complaint to the Defendant parent from a United States Post Office.

The documents must be mailed by Certified Mail, Return Receipt Requested (Restricted Delivery). The envelope should be marked "Deliver to Addressee Only".

- Waits to receive the return receipt that's signed to show actual delivery.

If you **don't** receive a green card receipt that's signed to show actual delivery, you must arrange to serve the Defendant by a different service method.

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The person took the documents to the United States Post Office to mail must fill out a Declaration of Service by Mail and date and sign the Declaration. \*\*\*The United States Post Office employee **doesn't** complete a Declaration of Service by Mail.\*\*\*

### **Complete the Declaration of Service by Mail**

#### **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 by Mail**

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

- Paragraph 1:** Fill in your full name.
- Paragraphs 2:** Review the information to make sure you served all of the documents listed. If you didn’t, you can’t use this form.
- Paragraph 3:** Review the information to make sure it’s correct. If it isn’t, you can’t use this form.
- Paragraph 4:** Fill in the date you mailed the documents from the United States Post Office.
- Paragraph 5:** Fill in the name of the person and the mailing address you used to serve the documents.
  - If you served the Defendant parent, fill in their name and mailing address where you mailed the documents.
  - If the Defendant parent is currently represented by a lawyer in this case, fill in the name of their lawyer and the lawyer’s mailing address where you mailed the documents.
- Paragraph 6:** You **must** have the signed return receipt showing actual service. If you don’t, you haven’t served the Defendant by mail and you must arrange to serve the Defendant by a different service method..
- 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 Mail 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 Served by Mail – Neither You nor the Defendant May Take Your Child(ren) Out of North Dakota**

If the Defendant parent was served by Mail, the signed and dated return receipt shows the date the summons and complaint were served on the Defendant.

**Your Parenting Responsibility case started the day the Defendant signed and dated the return receipt.**

**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 Mail 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 Mail and the signed and dated return receipt.

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 Mail 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, )

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

vs )

**Declaration of Service by Mail**

\_\_\_\_\_  
Defendant. )

**The person serving court documents by mail states:**

1. My name is \_\_\_\_\_ (*name of person who mailed document(s) listed in Paragraph 2*) and I am at least 18 years of age.

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

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

**3. Service by Mail:**

As required by Rule 4(d) of the North Dakota Rules of Civil Procedure, I served a true and correct copy of each of the court documents listed in Paragraph 2 by mailing them, securely enclosed in an envelope, by Certified Mail, postage prepaid, Return Receipt Requested, Deliver to Addressee Only, directed to the person listed in Paragraph 5.

**4. Date of Service by Mail:**

Date Court Documents Were Served by Mail: \_\_\_\_\_

**5. Person Served by Mail:**

Name of Person Served: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

**6. Return Receipt Attached:** The signed return receipt is attached.

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

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

\_\_\_\_\_  
*Signature of Person Who Mailed Documents*

\_\_\_\_\_  
*Printed Name of Person Who Mailed Documents*

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

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

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

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