

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

Serve Summons and Complaint – Service by Publication

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

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

(These instructions are for service by publication in the newspaper.)

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.

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](#).

Instructions for Service by Publication

You **must file proof of service** with your Summons and Complaint, or the Clerk of Court's Office won't accept your documents for filing. **But what happens if you can't find the Defendant parent?**

These instructions and forms are for serving the Defendant parent by publication in a newspaper.

You **must show** the judge or judicial referee you **diligently** tried to locate the Defendant's address or physical location to arrange to serve them by any of the other service methods.

Following are examples of ways to find the Defendant for service:

- Last known address.
 - Contact the U.S. Post Office for information on how to determine if the Defendant left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as Department of Motor Vehicles or County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
 - A reverse directory allows someone to search by phone number to find an address. (Your local library may have access to reverse directories.)

If, after a diligent search, you can't figure out the Defendant's address or physical location, you may serve the parenting responsibility Summons by publication. See [Rule 4\(e\) of the North Dakota Rules of Civil Procedure](#).

Complete the Declaration for Service by Publication

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

- Leave case number blank. When all of the completed documents are accepted for filing, the Clerk of Court assigns a case number.
- I, _____: Fill in your full name.
- Paragraph 1:** Read this statement carefully. If this statement **isn’t** true, you **can’t** use this form.
- Paragraph 2:** Fill in the Defendant’s full name.
- Paragraph 3:** Fill in the month and year you became a resident of North Dakota.
- Paragraph 4:** Write down **all** diligent efforts you made to find the Defendant. Review page 3 for examples of ways to try to locate the Defendant. **Make sure you write down every attempt you made!**
- Paragraph 5:** Put a checkmark next to the statement that is true.
- If you made attempts to serve the Defendant, list those.
 - If you have documentation proving your attempts, make sure you include the names of the documents in Paragraph 5 and make copies to file with your Declaration.
- Paragraph 6:** Review carefully! You’re stating that you’ve done everything you could to try to locate the Defendant.
- Paragraph 7:** Write down the Defendant’s last known address.
- Paragraph 8: Read carefully!** You’re declaring, under penalty of perjury under the laws of North Dakota, that everything you stated on this 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.
-

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 for Service by Publication **and** copies of any documents showing your attempts to serve the Defendant.

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

Get a copy of the summons to publish in the newspaper.

Publish the Summons in the Newspaper

Publish the Summons in a newspaper in the North Dakota county where you filed your parenting responsibility case. If no newspaper is published in that county, you may publish the Summons in a newspaper having general circulation in the county.

The [North Dakota Newspaper Association](#) maintains lists of North Dakota daily and weekly newspapers, including a list of official county newspapers.

- First publication of the Summons must be made **within sixty (60) days after filing the Declaration for Service by Publication.**
 - Service by publication is made by publishing the Summons **three (3) times, once each week for three (3) consecutive weeks.**
 - Publication can be done in the print edition, in the e-edition, or both.
 - **The Defendant is considered served by publication fifteen (15) days after the first publication of the Summons.**
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Mail Copies to the Defendant at Their Last Known Address

As soon as the documents are accepted for filing (see Page 5), mail a copy of each of the following to the Defendant:

1. Summons (*Contested Parenting Responsibility*) (signed by Plaintiff **and** Clerk of Court);
2. Complaint (*Contested Parenting Responsibility*); and
3. Declaration for Service by Publication.

You must mail a copy of each of the documents from a post office in North Dakota, first-class, postage prepaid.

- Mail the copies to the Defendant at their last reasonably ascertainable (discoverable) address. This is the address you listed in Paragraph 7 of your Declaration for Service by Publication.
- You must complete a Declaration of Service by Mail.

The copies must be mailed after you file your Declaration for Service by Publication with the Clerk of Court's Office, and **no later than fourteen (14) days after the first publication of the Summons in the newspaper.**

Complete the Declaration of Service by Mail

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

- Fill in the case number the Clerk of Court assigned when your documents were accepted for filing.

Paragraph 1: Fill in your full name.

Paragraph 2: Review the information to make sure you served all of the documents listed on the Defendant. 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.

Paragraph 5: Fill in the name of the person you served 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: Read carefully! You’re declaring, under penalty of perjury of the laws of North Dakota, that everything you stated on the Declaration 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.

File the Original, Completed Declaration of Service by Mail

File the original, completed Declaration of Service by Mail with the Clerk of Court’s Office.

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

When you serve the Defendant parent publication, the Defendant is considered served fifteen (15) days after the first publication in the newspaper.

1. On a calendar, find the first calendar day the Summons was published in the newspaper.
2. Starting with the day **after** the first publication, count forward fifteen (15) calendar days.

Your Parenting Responsibility case started the fifteenth (15th) day after the first publication of the Summons.

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.

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 15th 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.

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
County of _____

In District Court
_____ Judicial District

Plaintiff,
vs

Defendant.

)
)
)
)
)
)
)

Case No. _____

**Declaration for Service
by Publication**

I, _____ (*Plaintiff's name*), the undersigned, state as follows:

1. I am the Plaintiff in the above entitled action.
2. I make this Declaration for Service by Publication in support of service of process on the Defendant, _____ (*Defendant's name*) by publication under Rule 4(e) of the North Dakota Rules of Civil Procedure.
3. Under Rule 4(e)(1), service by publication is permitted because the above entitled action is an action to determine parenting rights and responsibilities, I am currently a resident of North Dakota, and have been a resident since _____ (*list the month and year you became a resident of North Dakota*).
4. I made the following diligent efforts to locate the Defendant in order to serve the Summons and Complaint to determine parenting rights and responsibilities (*list your specific efforts to locate the Defendant*):

(Paragraph 4, continued.)

5. *(Choose one)*

- I was unable to locate the Defendant in order to serve the Summons and Complaint for Parenting Responsibility, so I did not attempt to serve the Defendant.
- I made the following attempts to serve the Defendant the Summons and Complaint for Parenting Responsibility *(list your specific attempts to serve the Defendant)*:

6. I state that after diligent inquiry personal service of the Summons cannot be made on the Defendant in this state to the best of my knowledge, information, and belief.

7. The Defendant's last, reasonably ascertainable address is:

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

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

Signature of Plaintiff

Printed Name of Plaintiff

Address

City, State, Zip Code

Telephone Number

Email Address

State of North Dakota
County of _____

In District Court
_____ Judicial District

_____))
Plaintiff,)
)
vs)
)
_____))
Defendant.)

Case No. _____

Declaration of Service by Mail

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
- Complaint for Divorce
- Declaration for Service by Publication

3. Service by Mail:

As required by Rule 4(e)(4) 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, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, 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. 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