

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

Step One – Complete Summons & Complaint Forms

Important! Read Before Using this Packet of Forms.

ND Legal Self Help staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, 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.**

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer for information about finding a lawyer to represent you.

When you represent yourself, you're expected to know and follow the law, including:

- 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; and
 - Any local court rules.

Links to the state 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.

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

*These instructions and forms **aren't** a complete statement of the law. They cover the basic procedure for asking a North Dakota state district court to start a parenting responsibility (custody & visitation) case when the parents **don't agree** to all issues related to the case. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided.*

Use these forms and instructions at your own risk.

What is a Contested Parenting Responsibility Action, or Case?

Parents who have never been married to each other may ask a North Dakota state district court to establish parenting responsibilities (custody and visitation) to their children. (When parents are married to each other, parenting responsibilities are handled as part of the divorce or legal separation case.)

Contested parenting responsibilities means that the parents can't agree on every issue, or one parent can't be found. One parent may start the parenting responsibility case on their own. The other parent answers in writing, if they want to take part in the case. If, after the case starts, the parents don't reach an agreement on all issues, the judge or judicial referee decides the unresolved issues at trial.

If you and the other parent **aren't in agreement in writing** on every absolutely every issue in the parenting responsibility case, you have a contested case.

How is Paternity Established?

If a father-child relationship isn't established, you may bring a different type of civil action, or a case to establish paternity. Residential responsibility (custody) and parenting time (visitation) may be established as part of a paternity case.

Go to ndcourts.gov/legal-self-help/paternity for all of the information about paternity actions available through the North Dakota Legal Self Help Center.

The father-child relationship is established by:

- **An acknowledgment of paternity**
 - A process that happens shortly after birth that requires signatures on a form from the mother, father, and, if the mother is married, the husband. Then, the father's name is added to the birth certificate.
- **A civil action, or case to establish paternity**
 - A civil case that establishes the father of a child that may involve genetic testing. A district court judge issues an order establishing paternity so the father's name can be added to the birth certificate.
- **Adoption**
 - A civil case that terminates the parental rights of a parent, or parents, of a child and establishes another individual, or individuals, as the parent. A district court judge issues an adoption order so a new birth certificate is issued for the child. The new birth certificate lists the adoptive parent's name, or names.

How is Maternity Established?

If a mother-child relationship isn't established, you may need to bring a different type of civil action to establish maternity.

The mother-child relationship is established by:

- **Giving birth to the child**
- **A civil action to establish maternity**
 - A civil case that establishes the mother of a child. A district court judge issues an order establishing maternity so the mother's name can be added to the birth certificate.
- **Adoption**
 - A civil action that terminates the parental rights of a parent, or parents, of a child and establishes another individual, or individuals, as the parent. A district court judge issues an adoption order so a new birth certificate is issued for the child. The new birth certificate lists the adoptive parent's name, or names.

Who are the Parties in a Parenting Responsibility Case?

Plaintiff (or Petitioner) – The parent who starts the contested parenting responsibility case by serving a summons and complaint on the other parent.

Defendant (or Respondent) – The parent who is served the summons and complaint to establish parenting responsibilities.

Real Party in Interest (*also called the Statutory Real Party in Interest*) – a person or entity who has the right bring a case, even though someone else benefits if the case is successful.

The State of North Dakota is added as a real party in interest to parenting responsibility cases **only when**:

1. Child support will be established or modified **and** a minor child receives assistance through programs administered by the North Dakota Department of Health and Human Services, such as temporary assistance to needy families, Medicaid, and foster care; **or**
2. 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 Health and Human Services; **or**
3. Child support will be established or modified **and** North Dakota or the Child Support Division of the North Dakota Department of Health and 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](#).

Do the Parents & Children Need to Live in North Dakota to Establish Parenting Responsibility (Custody and Visitation)?

[Chapter 14-14.1 of the North Dakota Century Code](#) governs when a North Dakota state district judge or judicial referee can make decisions about child custody issues and enforce child custody orders. This is called jurisdiction and includes parenting responsibility cases.

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

A North Dakota District Court can establish parenting responsibility to a minor child when:

1. North Dakota is the home state of the child on the date the parenting responsibility case starts with service of the summons and complaint; **or**
2. North Dakota was the home state of the child within six months before the date the parenting responsibility case started with service of the summons and complaint, **and** the child is absent from North Dakota but a parent or person acting as a parent continues to live in North Dakota; **or**
3. North Dakota **isn't** the home state, **but** a court of the child's home state declined jurisdiction because North Dakota is the more appropriate forum, **and**:
 - The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with North Dakota other than mere physical presence; **and**
 - Substantial evidence is available in North Dakota concerning the child's care, protection, training, and personal relationships.

You may use these forms if you meet the “Home State” residency requirements of option #1 or #2. If not, you create your own documents, or retain a lawyer to create your documents.

What are the Laws and Rules for Parenting Responsibility Cases?

Interpreting what the law means for a specific set of circumstances is a fundamental part of legal representation. North Dakota Legal Self Help Center staff can't provide legal representation of any kind under any circumstances. Legal representation can only be provided to you by a lawyer who agrees to represent you.

Chapter 14-09 of the North Dakota Century Code at ndlegis.gov/cencode/t14c09.html

Chapter 14-14.1 of the North Dakota Century Code at ndlegis.gov/cencode/t14c14-1.html

The North Dakota Rules of Civil Procedure at ndcourts.gov/legal-resources/rules/ndrcivp.

The North Dakota Rules of Court at ndcourts.gov/legal-resources/rules/ndrct.

See particularly:

- Rule 8.2 (Interim Orders),
- Rule 8.3.1 (Case Management), and
- Rule 8.4 (Summons).

The North Dakota Rules of Evidence at ndcourts.gov/legal-resources/rules/ndrev.

North Dakota Case Law (Court Opinions) at <https://www.ndcourts.gov/supreme-court/opinions>. Use the “Topic” drop down menu to find topics that correspond to your legal issue.

You Must Calculate Child Support

Warning! You **Must** calculate your child support amount as part of your case, unless a North Dakota state district court, an out of state court, or tribal court already ordered child support.

Child support is based on guidelines set by the North Dakota Department of Health and Human Services. If a parent can show a different ability to earn income than the guidelines show, the judge may order a higher or lower child support payment.

The North Dakota Department of Health and Human Services created and provides support for the Child Support Guidelines Calculator. Go to childsupport.dhs.nd.gov/partners/lawyers/child-support-guidelines/current-child-support-guidelines for the Calculator.

You may be able to apply for services with [North Dakota Child Support](#). If your application for full services is approved by North Dakota Child Support, they can help to establish an order for child support and medical support in a separate child support case.

Court personnel and staff of the ND Legal Self Help Center **can't** help you with your child support calculations.

Warning! If you plan to ask the judge or judicial referee to allow a parent to pay a different amount of child support than the Child Support Guidelines Calculator amount, [consult a lawyer](#) for advice. The Calculator amount is presumed to be the correct amount of child support. The parent asking for a deviation from the Calculator amount must prove they meet one of the **limited exceptions** for deviation, **and** prove the deviation is in the best interests of the child(ren). See [North Dakota Century Code Section 14-09-09.7](#) and [North Dakota Administrative Code Section 75-02-04.1-09](#).

Documents to Start a Parenting Responsibility Case When the Parents Don't Agree (Step One)

3 Forms You, the Plaintiff, Must Complete in Step One:

Form Title	Description
Summons (Contested Parenting Responsibility)	Notifies the Defendant parent that the Plaintiff parent started the parenting responsibility case. The Summons must be signed and dated by the clerk of court to be valid.
Complaint (Contested Parenting Responsibility)	Gives the court information about the Plaintiff and Defendant and their minor child(ren). Tells the court what the Plaintiff is asking for from the court.
Confidential Information Form	Lists the full confidential information that isn't allowed to appear in other documents filed with the court. This form is a part of the court record that isn't seen by the public.

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

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

If a form(s) isn't completely filled out, it could result in the clerk not accepting your form(s) for filing, or the court may send the form(s) 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.

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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

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1: Fill Out the “Complaint (Contested Parenting Responsibility)” Form

Parental Rights and Responsibility – All the rights and responsibilities a parent has concerning the parent’s child.

A Complaint is required to be served with the Summons in every parenting responsibility case.

***You, the Plaintiff, complete, date, and sign this form.**

Complaint – Gives the Defendant parent, and the judge or judicial referee assigned to the case, information about the Plaintiff and Defendant and their minor child(ren). Tells the basics of what the Plaintiff parent is asking for from the court.

Fill in the top part of this form.

Note: The top part of each form is known as the “Caption”, and the information is the same on every form you fill out.

- On the line marked "county," write the name of the North Dakota county where the Defendant parent lives. If the Defendant **doesn’t** live in North Dakota, write the name of North Dakota county were you live.
- On the line marked "Judicial District," write the name of the Judicial District. The County is located within the Judicial District. (Judicial District information is located at ndcourts.gov/district-court.)
- Don’t** fill in the "Case No." The Clerk of Court assigns a case number after they accept your contested parenting responsibility documents for filing.
- On the line marked "Plaintiff," write your full name (first, middle, and last). From now on you’re called the Plaintiff.
- On the line marked "Defendant," write the full name of the other parent (first, middle, and last). From now the other parent is called the Defendant.
- Paragraphs 1 and 2:** Review. If Paragraph 1 and 2 **aren’t** correct, **Stop!** you **can’t** use these forms.
- Paragraph 3:**
 - Fill in all information regarding you, the Plaintiff.

Paragraph 4:

- Fill in all information regarding the Defendant parent. (Write “unknown” for any information you don’t know.)

Paragraph 5: Review. If Paragraph 5 **isn’t** correct, **Stop!** you **can’t** use these forms.

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 don’t permit family members to move to the deployment locations.

Paragraph 6: Put a checkmark (✓) next to the correct statement. If you choose the second statement, put a checkmark (✓) next to any or all that apply.

Minor child – a child who is under 18 years old.

Paragraph 7: Fill in the information for each minor child of the Plaintiff and Defendant. For each minor child, fill in the following:

- Minor child’s **initials** and **year** of birth;
- **Last** four digits of minor child’s social security number (If the minor child doesn’t have a social security number, type or write “N/A”); and
- Minor child’s **full address**.

If you have more than three minor children together, attach a sheet that lists the information for each additional child. Type or write on one side only.

- Put a checkmark (✓) in the box at the end of Paragraph 7.
- Type or write “Complaint Paragraph 7” on top of the additional sheet

Paragraph 8: Put a checkmark (✓) indicating if the Plaintiff is the mother or father.

Paragraph 9: Put a checkmark (✓) indicating if the Defendant is the mother or father.

Paternity – the state of being a father to a child.

According to [North Dakota Century Code Section 14-20-07\(2\)](#), “[t]he father-child relationship is established between a man and a child by:

1. An unrebutted presumption of the man’s paternity of the child under [Section 14-20-10](#);
2. An effective acknowledgment of paternity by the man under [Sections 14-20-11 through 14-20-24](#), unless the acknowledgment has been rescinded or successfully challenged;

3. An adjudication of the man's paternity;
4. Adoption of the child by the man; or
5. The man having consented to assisted reproduction by a women under [Sections 14-20-59 through 14-20-65](#) which resulted in the birth of a child"

- Paragraph 10:** Review. If the father's name isn't on the birth certificate, **Stop!** you can't use these forms.

Residential Responsibility – (also called *custody*) a parent's responsibility to provide a home for the child.

Parenting Time – (also called *visitation*) the time when the child is to be in the care of a parent.

- Paragraph 11:** Put a checkmark (✓) next to the residential responsibility and parenting time option you request from the Court. **Don't** put a checkmark in more than one box.

The *Contested Parenting Responsibility* packet of forms **doesn't** include an option for split residential responsibility (dividing the minor children between the parents). If you want the Court to establish split residential responsibility, **Stop!** You can't use this form or the *Contested Parenting Responsibility* packet of forms.

Jurisdiction – The power of the judge or judicial referee to inquire into the facts, apply the law, and determine and pronounce judgment. There are two types of jurisdiction: 1) Subject matter jurisdiction is the court's power to hear and determine the type of case or controversy; and 2) Personal jurisdiction is the court's power over the parties in a civil action. The court must have both types of jurisdiction.

- Paragraph 12:** Put a checkmark (✓) next to **one** statement explaining why North Dakota has jurisdiction of this parenting responsibility case. Fill in the full legal name of the parent(s) residing in North Dakota. If your circumstances don't fit in either option, **Stop!** You can't use this form or the *Contested Parenting Responsibility* packet of forms.

- Paragraph 13:** Put a checkmark (✓) next to the statement that is true for your situation. If neither statement is true, **Stop!** You can't use this form or the *Contested Parenting Responsibility* packet of forms.

- Paragraph 14:** Complete all 5 parts of Paragraph 14.

- Paragraph 14(a): Fill in the information for each minor child listed in Paragraph 7. (Initials **only**).

- Paragraph 14(b): Fill in the information for each minor child listed in Paragraph 7. (Initials **only**).
- Paragraph 14(c): Put a checkmark (✓) next to the statement that is true for your situation. If you select the second option, fill in the additional information.
- Paragraph 14(d): Put a checkmark (✓) next to the statement that is true for your situation. If you select the second option, fill in the additional information.
- Paragraph 14(e): Put a checkmark (✓) next to the statement that is true for your situation. If you select the second option, fill in the additional information.
- If you need more space to answer any of Paragraph 14, attach a sheet or sheets with the additional information. Type or write on one side only.
 - Put a checkmark (✓) in the box at the end of Paragraph 14.
 - Type or write “Complaint Paragraph 14” on top of the additional sheet(s).

Paragraph 15: Put a checkmark (✓) next to the statement that’s true for your situation. If you select the first option, fill in the case number of the child support order.

- If you already have a child support order, make sure you have a copy so you can write or type the correct case number in Paragraph 15.

Paragraphs 16 through 18: Read the statements carefully. This tells the court what you’re asking for from the court.

Paragraph 19: This is your verified statement.

By signing your name you’re telling the judge or judicial referee you’re telling the truth and you have a good faith reason for your requests. If you’re not telling the truth or if you’re misleading the judge or judicial referee, or if you’re serving or filing this document for an improper purpose, the judge or judicial referee could find you in contempt or you may be prosecuted for perjury.

Date and Signature: Complete the date and signature block.

- Fill in the date, city, county, state, and country on the “Signed on” line.
- Sign the signature line.
- Fill in all the lines under the signature line. *(If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.)*

You make copies of the completed Complaint on Page 14 of these instructions.

2: Fill Out the “Summons” Form

***You, the Plaintiff, complete this form. You also need a date and signature from the Clerk of Court.**

Summons – Tells the Defendant parent that you’re starting a Parenting Responsibility case. This document also tells the Defendant if they don’t serve a written Answer to your Complaint, the judge or judicial referee may give you everything you ask for by default in your parenting responsibility case. The Summons must be served on the Defendant with the Complaint.

Fill in the Top Part of the Form (Caption):

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

Both parents are required to obey the Summons after it’s served on the Defendant. Read it carefully!

Date and Signature:

Fill in the date you sign this document.

Sign the signature line.

Sign the signature line.

Fill in all the lines under the signature line. *(If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.)*

On Page 14, You Must go to the District Clerk of Court’s Office and ask the Clerk of Court to sign and date the Summons. *(The Summons isn’t valid (doesn’t count) unless the Clerk of District Court or Deputy Clerk of District Court has also signed the Summons).*

You make copies of the completed Summons on Page 14 of these instructions.

3: Fill Out the “Confidential Information Form”

Court records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is required to remain confidential, even if it’s part of a public court record.

Only you are responsible for making sure confidential information doesn’t appear in your completed forms documents.

Confidential information includes:

- Full names of minor children
- Social security numbers
- Taxpayer identification numbers
- Birthdates
- Financial-account numbers.

Documents filed with the Court with references to confidential information must include only:

- Initials of minor children
- The last four (4) digits of the social security number and taxpayer identification number
- The year of birth
- The last four (4) digits of the financial-account number

Since the forms in this packet include references to confidential information, you must prepare a Confidential Information form. The form must contain the full confidential information that's referenced in your completed forms.

Fill in the Top Part of the Form:

***You, the Plaintiff, complete, date, and sign this form.**

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

Fill in the Plaintiff and Defendant Information:

- Fill in the full information for you, the Plaintiff, and the full information for the Defendant parent.
- Fill in the year of birth and last 4 digits of the social security number for you and Defendant.

Fill in each minor child's information:

- Fill in the minor child's full legal name. In the redacted section, fill in **only** the minor child's initials.
- Fill in the minor child's birth date. In the redacted section, fill in **only** the year.
- Fill in the social security number for each minor child. In the redacted section, fill in **only** the last four digits of the social security number.
 - If a minor child doesn't have a social security number, type or write "N/A."

- If you have more than three minor children together, attach a sheet that lists the information for each additional child.

You, the Plaintiff, must sign and date the Confidential Information Form.

You make one copy of the Confidential Information Form for your records in the next step.

4: Get Summons Signed by Clerk of Court; Make Copies of Completed Forms

Get Summons Signed by Clerk of District Court

You, the Plaintiff, go to the Office of the Clerk of District Court and get the Summons signed and dated by the clerk of district court or a deputy clerk of district court.

- You won't be charged a fee to sign the summons.

If you didn't sign the Summons in Step 2, date and sign the Summons.

- Fill in all the lines under your signature.

Sign Documents

If you didn't sign the following forms in Step 1 and Step 3, date and sign them:

1. Complaint (*Contested Parenting Responsibility*); and
2. Confidential Information Form.

Make Copies

After getting all signatures as indicated above, make 2 copies of the following:

1. Summons; and
2. Complaint (*Contested Parenting Responsibility*).

One copy is for your records, one copy is for the Defendant. The original is filed with the Court.

Make one copy of the following:

1. Confidential Information Form.

One copy is for your records. **Don't** serve the Confidential Information Form on the Defendant. The original is filed with the Court.

What Are the Next Steps?

You've completed Step One.

Now go to Step Two which involves the following:

1. Serving copies of the completed forms on the Defendant parent;
2. Getting the proof of service;
3. Filing the originals of the completed forms and proof of service with the clerk of district court; and
4. Completing, serving, and filing the Notice of Filing.