

INSTRUCTIONS TO ANSWER A MOTION TO AMEND PARENTING TIME (VISITATION) IN A NORTH DAKOTA STATE DISTRICT COURT JUDGMENT

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees can't help you fill out any forms.

If you're unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, carefully read this information and any instructions to which you're referred.

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 state laws, case law, and court rules can be found at www.ndcourts.gov.

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. If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

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

These instructions and forms aren't a complete statement of the law. This covers basic procedure for answering a motion to a North Dakota state district court to amend the parenting time provisions in a North Dakota state district court judgment. There is 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 at your own risk.**

(In 2009 the North Dakota State Legislature changed the term "visitation" to "parenting time" and changed the term "custody" to "residential responsibility.")

⏰ DON'T DELAY! ⏰

You have a limited amount of time to answer a written motion to amend parenting time (visitation)!

- You have 14 days to answer if served by personal delivery or at your office.
- You have 17 days to answer if served by mail or third-party commercial carrier.

(See Page 7 for more information about calculating these deadlines.)

YOU MAY USE THIS PACKET OF FORMS ONLY IF:

1. You have a North Dakota state district court judgment that gave you or the other party parenting time (visitation);

AND

2. The other party in the case made a written motion to the Court to change, or amend, the parenting time (visitation) provisions in the judgment.

YOU CAN'T USE THIS PACKET OF FORMS TO ANSWER A MOTION TO CHANGE PRIMARY RESIDENTIAL RESPONSIBILITY (CUSTODY).

If the other party in the case made a motion to change, which parent has primary residential responsibility (custody) in your North Dakota state district court judgment, **you can't use this packet of forms.**

Go to www.ndcourts.gov/legal-self-help/custody for all of the forms and guides available through the North Dakota Legal Self Help Center for answering motions to modify primary residential responsibility (custody) in a North Dakota state district court judgment.

IF YOUR PARENTING TIME (VISITATION) SITUATION DOESN'T MEET THE REQUIREMENTS OF WHO MAY USE THIS PACKET OF FORMS:

If your parenting time (visitation) situation doesn't meet the requirements of who may use this packet of forms, neither the ND court system nor the ND Legal Self Help Center currently have other parenting time (visitation) packets of forms for you to use.

However, general information about the court process of answering a motion is available at www.ndcourts.gov/legal-self-help/answering-a-motion. The checklist and answer to motion templates are your starting point for creating your own answer to motion documents.

THE PARTIES

Plaintiff: The parent who is listed as the Plaintiff in the original family law action that granted parenting time (visitation).

Defendant: The parent who is listed as the Defendant in the original family law action that granted parenting time (visitation).

Moving party: The parent who brought the motion to amend parenting time (visitation). The moving party in the motion may be either the Plaintiff or the Defendant.

Opposing party: The other parent. In other words, the parent who didn't bring 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 family law 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.

LAWS AND RULES

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

Chapters 14-05 and 14-09 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 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 3.2 (Motions).

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. See particularly:

- Rule 5 (Service and Filing of Pleadings and Other Papers).
- Rule 6 (Computing and Extending Time; Time for Motion Papers).

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.

To research and 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.

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DEFINITIONS

*****The following definitions are intended to be helpful, BUT they aren't 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 a right of the child that is separate from the child's right to parenting time (visitation). A parent behind on paying child support can't be denied parenting time granted in a judgment. Also, a parent who is denied the parenting time granted in a judgment can't stop paying child support.

For more information about child support, go to childsupport.dhs.nd.gov.

Current Judgment – The most recent judgment of the North Dakota state district court that granted parenting time (visitation).

If the original judgment in the case has never been amended or modified, the current judgment is the original judgment.

If the original judgment **has been** amended or modified, the current judgment is most recently amended judgment in the case.

Custody – See Residential Responsibility.

Evidentiary Hearing – Presenting evidence to the judge or judicial referee at a hearing. For example, presenting witness testimony and documents.

Oral Arguments – Spoken statements by each party to either defend their legal position, or to disprove the opposing party's legal position. Oral arguments are limited to the legal reasons each party included in their written motion or answer to motion briefs.

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.)

Parenting time (visitation) is a right of the child that is separate from the child's right to child support. A parent who is behind on child support can't be denied the parenting time granted in a judgment. Also, a parent who is denied the parenting time granted in a judgment can't stop paying child support.

Primary Residential Responsibility – A parent with more than fifty percent of the residential responsibility. (Also known as primary custody.)

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

Visitation – See Parenting Time.

ANSWER TO MOTION FORMS IN THE PACKET

Form Title	Purpose
(Optional) Form 8: Notice of Hearing on Motion to Amend Parenting Time	<i>This form is optional.</i> If the moving party <u>didn't</u> request a hearing in their Notice of Motion, and you, the opposing party, want to request a hearing on the motion, you may use this form to notify all other parties that you've requested a hearing on their motion. <i>(See Page 9 for important deadlines.)</i>
Form 9: Answer Brief to Motion to Amend Parenting Time	The answer brief is where you, the opposing party, make your written argument about whether the court should grant the moving party's motion to amend the parenting time (visitation) provisions in the current judgment. An answer brief takes the specific rules and laws that support your response and explains how they apply to the facts of your particular situation.
Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time	Your affidavit is also where you, the opposing party, make your written argument about whether the court should grant the moving party's motion to amend the parenting time (visitation) provisions in the current judgment. Facts referred to in the answer brief must appear in the affidavit. You must sign in the presence of a notary public or clerk of district court.
Form 11: Affidavit of Service by Mail	Proof that copies of the completed answer to motion documents, and any other supporting documents, were delivered to the moving party.

STEPS FOR OPPOSING PARTY TO ANSWER A MOTION TO AMEND PARENTING TIME (VISITATION)

Remember: There's **no guarantee** that using these forms and following the procedures outlined will result in the judge or judicial referee deciding motion the way to want. There's **no guarantee** that all judges, judicial referees and courts will accept forms available through the ND Legal Self Help Center. If you feel you need assistance, consult a lawyer licensed to practice in North Dakota.

Step One:

Calculate your Deadline; Review the Forms and Instructions; Research Laws; Make Decisions; Gather Information.

Calculate your deadline to answer the motion:

You have 14 days to answer if you were served the motion to amend parenting time (visitation) by personal delivery or at your office.

- The date of service is the date the motion to amend was personally delivered or left at your office.

You have 17 days to answer if you were served the motion to amend parenting time (visitation) by mail or third party commercial carrier.

- The date of service is the date the motion to amend was mailed.
- Keep the envelope with the postmarked date for reference.

When calculating days:

- Don't 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 isn't a Saturday, Sunday, or legal holiday.

Review the forms and instructions:

Read these instructions carefully. Review the individual forms. Determine if the forms apply to your situation. If you don't know if you should use this packet of forms, consult a lawyer who is licensed to practice in North Dakota.

Research statutes and case law:

Use the Laws and Rules section on Pages 3 and 4 to research how the statutes (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 answer.

Make a copy of the moving party's motion to amend documents on which to make notes. Review ALL of the motion to amend documents and make an outline of the facts and arguments you want to include in your answer.

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

www.ndcourts.gov/legal-self-help/answering-a-motion.

Review the current judgment the moving party is asking the Court to amend. Identify the paragraphs the moving party wants the court to amend. Outline how the laws and your facts support your answer to the motion to modify.

Decide if you'll reference other supporting documentation in your answer to motion documents.

Gather information:

For example:

- At least one copy of the current judgment. This is either the original judgment that granted parenting time (visitation), OR, if the original judgment has been amended, the most recently amended judgment.
- Supporting documentation 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. (See Steps Three and Four below.)

Verify the date of the current judgment and the Index Number that are referenced in the moving party's motion documents:

- The date of current judgment is the date the judgment was signed.
- Get the Index Number of the current judgment at www.ndcourts.gov/public-access:
 - Read the information and click the "Click Here to Proceed" button.
 - Select "State of North Dakota" from the location drop down box.
 - Click on the "Civil, Family & Probate Case Records" link.

- Search by “Case” and enter your case number in the “Case Number” box.
- Click on the case number.
- Find the current judgment in the list of documents filed in the case.
- The Index Number is listed to the right of the name of the document.

Step Two:

Complete the (*Optional*) Notice of Hearing, Answer Brief to Motion, and Affidavit in Support of Answer Brief Forms in the Packet.

Type your answers or print neatly using dark ink.

(Optional) Form 8: Notice of Hearing on Motion to Amend Parenting Time:

**This form is optional. Motions are designed to be decided on the documents alone.
A hearing on the motion isn't required.**

If the moving party didn't indicate in their Notice of Motion that they scheduled a hearing on the motion, you have the option of requesting a hearing. If you don't schedule a hearing, the judge or judicial referee will make a decision on whether to amend parenting time (visitation) after reviewing the documents you and the moving party filed.

You have a deadline – No later than 7 days after the deadline for filing your answer brief.

If the moving party didn't request a hearing and you want to request a hearing, you must make your request no later than 7 days after the deadline for filing your answer brief. If you miss the deadline, you can't request a hearing.

Caption (top of form):

- Complete the Plaintiff, Defendant, Case Number, County and Judicial District exactly as it appears in the current judgment the moving party is asking the court to amend.
- If your judgment doesn't include the County or the Judicial District, District Court maps are available at www.ndcourts.gov by clicking on the “District Courts” drop down menu. (The County is within the Judicial District.)

TO:

- List the full legal name of the moving party.

First Paragraph:

- Contact the clerk of court in the county where the case is filed to get a time, date and location scheduled for the hearing.
- After you have the date, time, and location of the hearing, fill in all of the information.
- Indicate with a checkmark (°) whether the scheduled hearing is:
 - To present evidence (evidentiary hearing);
 - To present oral arguments; or
 - To present both (checkmark (°) both boxes).

Date and Signature:

- **DON'T SIGN AND DATE THIS FORM.**
 - You'll sign and date this form in Step Three.
 - You may fill in your printed name, address, telephone number, and email.
-

Form 9: Answer Brief to Motion to Amend Parenting Time:

Caption (top of form):

- Complete the Plaintiff, Defendant, Case Number, County and Judicial District exactly as it appears in the current judgment the moving party is asking the court to amend.
- If your judgment doesn't include the County or the Judicial District, District Court maps are available at www.ndcourts.gov by clicking on the "District Courts" drop down menu. (The County is within the Judicial District.)

Paragraph 1:

- Fill in the date of the current judgment the moving party is asking the court to amend and the Index Number of the current judgment.

Paragraphs 2-10:

- Follow the instructions on the Answer Brief form to complete paragraphs 2 through 10.

Date and Signature:

- **DON'T SIGN AND DATE THIS FORM.**
 - You'll sign and date this form in Step Three.
 - You may fill in your printed name, address, telephone number, and email.
-

Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time:

Caption (top of form):

- Complete the Caption exactly as you filled out the Caption of the Answer Brief form.

First Sentence:

- Fill in your full, legal name.

Paragraph 1:

- If you're the Plaintiff in the current judgment the moving party is asking the court to amend, put a checkmark (°) next to "Plaintiff."
- If you're the Defendant in the current judgment the moving party is asking the court to amend, put a checkmark (°) next to "Defendant."
- Fill in the full, legal name of the opposing party and put a checkmark (°) in the appropriate box for the moving party.

Rest of the Affidavit Form:

- Follow the instructions on the Affidavit form to complete the rest of the form.

Date and Signature:

- **DON'T SIGN AND DATE THIS FORM.**
- You'll sign and date this form in Step Three.
- You may fill in your printed name, address, telephone number, and email.

Step Three:

Date and Sign the Completed (*Optional*) Notice of Hearing, Answer Brief to Motion, and Affidavit in Support of Answer Brief Forms; Make Copies of Forms Completed in Step Two.

Date and sign the following forms:

- The completed (*Optional*) Form 8: Notice of Hearing to Amend Parenting Time;
 - **ONLY** if you requested a hearing on the motion
- The completed Form 9: Answer Brief to Motion to Amend Parenting Time; and
- The completed Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time.

Make TWO COPIES of each of the following forms completed in Step Two:

- (Optional) Form 8: Notice of Hearing to Amend Parenting Time;
 - **ONLY** if you requested a hearing on the motion
- Form 9: Answer Brief to Motion to Amend Parenting Time; and
- Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time.

Keep one copy of each completed form listed above for your records. You'll file the originals with the clerk of district court in Step Five.

Make TWO COPIES of all supporting documents you referred to in your answer to motion documents:

For example, if you refer to affidavits that were completed by other individuals, or you refer to other types of supporting documentation, make two copies of each.

Keep one copy of any supporting affidavits for your records. You'll file the originals of any supporting affidavits with the clerk of district court in Step Five.

Keep the originals of any other supporting documentation (non-affidavits) for your records. You'll file the copies of any other supporting documentation with the clerk of district court in Step Five.

Step Four:

Serve Copies of Completed Forms on the Moving Party; Complete the Affidavit of Service Form.

Service is providing copies of your completed answer to motion documents and other supporting documents on the moving party. The District Court won't act on your answer to motion documents unless you file proof of service with the court. An affidavit of service gives the District Court proof of service.

Serve one copy of each of the following on the opposing party:

- (Optional) Form 8: Notice of Hearing to Amend Parenting Time;
 - **ONLY** if you requested a hearing on the motion
- Form 9: Answer Brief to Motion to Amend Parenting Time;
- Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time; and
- All other supporting documentation.

Service by Mail:

You may arrange for service of the copies of the documents by mail. An Affidavit of Service by Mail form is included in this packet of forms.

Put the copies in an envelope. Address the envelope with the moving party's last known address. If you know the moving party is currently represented by a lawyer, address the envelope with the lawyer's address. List your address as the return address on the envelope.

A person 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.

If You Have More than One Party to Serve:

If you have more than one party to serve, you'll need to arrange for service of copies of the above documents on each party. You'll need to provide proof of service on each party.

Complete Form 11: Affidavit of Service by Mail:

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

Caption:

- Complete the Caption exactly as the Caption of the Answer Brief form is filled out.

First Paragraph:

- Follow the directions on the form.

Date and Signature:

- Date and sign the form
- Fill in the County and State where the form was signed.
- Fill in the printed name, address, telephone number, and email.

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

Additional Service Information for Motions:

Go to www.ndcourts.gov/legal-self-help/service-in-a-civil-action. See the "Service After a District Court Civil Action has Started" section.

Step Five:

File the Original, Completed Answer to Motion to Amend Parenting Time Forms and Other Supporting Documents with the Clerk of District Court.

File the following Answer to Motion to Amend Parenting Time Forms and other supporting documents with the Clerk of District Court:

The original, completed:

- (Optional) Form 8: Notice of Hearing to Amend Parenting Time;
 - **ONLY** if you requested a hearing on the motion
- Form 9: Answer Brief to Motion to Amend Parenting Time;
- Form 10: Affidavit in Support of Answer Brief to Motion to Amend Parenting Time; and
- Form 11: Affidavit of Service Form(s).

And:

- Copies of all other supporting documents.

Court Fees: You must be prepared to pay a filing fee at the time you file this motion. The filing fee is \$100.00.

Petition to Waive Court Fees: If you can't afford to pay the filing fee, you may qualify to have it waived by the court.

- You need to fill out a Petition for Waiver of Fees (*available from the Clerk of Court or the North Dakota Supreme Court website at ndcourts.gov/legal-self-help/fee-waiver*) and file it with the Clerk of Court.
- Your application will be reviewed by a judge who will decide whether you must pay the fee. If the judge doesn't sign an order that waives the fee, you must be prepared to pay the fee or the clerk can't accept your forms.

Step Six (A):

If the Motion will be Decided on ONLY the Documents Filed with the Court, the Judge or Judicial Referee Reviews the Documents Without Holding a Hearing.

After the deadline passes for motion documents and answer to motion documents to be served and filed, if neither party requested a hearing, the judge or judicial referee assigned to your case will review the motion documents filed by you and the moving party.

The motion to amend the parenting time (visitation) provisions in your current judgment will be decided only on the documents filed with the court. No in-person hearing will be held.

Step Six (B):

If You or the Moving Party Requested a Hearing, Attend the Hearing.

You must go to Court on the date set for the hearing. If you don't go to Court, you'll lose the case. Be sure to be on time. Bring to the hearing:

- Your copies of the completed forms you filed with the Clerk of Court's Office;
- Any evidence you want the judge to know about (such as pictures, documents, receipts, bills, etc.); and
- Any witnesses you want to talk to the judge and anyone having signed an affidavit.

The judge or judicial referee won't allow you to use as evidence (and won't look at) any documents (such as letters, notes, or statements) written by someone other than yourself unless the person who wrote the document is in Court at the hearing.

If you want the judge to hear what someone else has to say about your case, that person **MUST** be in Court – YOU can't tell the judge what that person said or has to say. You may force someone to attend the hearing by serving a subpoena on that person prior to the date of the hearing.

- An Evidence Research Guide and a Subpoena Informational Guide are available at www.ndcourts.gov/legal-self-help. Scroll to the "District Court Civil" Section.

Step Seven:

The Judge or Judicial Referee Decides Whether to Amend the Judgment.

If the Judge or Judicial Referee DOESN'T Grant the Motion to Amend Parenting Time:

If the judge or judicial referee doesn't grant the motion to amend parenting time, the current judgment remains in effect.

If the Judge or Judicial Referee GRANTS the Motion to Amend Parenting Time:

If the judge grants the motion to amend parenting time in the current judgment, the judge or judicial referee will sign an order amending the parenting time provisions in the current judgment.

- The judge or judicial referee may decide to sign the moving party's proposed order, or may decide to sign a different proposed order.

After the judge or judicial referee signs the order amending the parenting time provisions in the current judgment, the clerk of district court will sign an amended judgment that incorporates all of the amendments approved by the judge or judicial referee.

Your current judgment **ISN'T AMENDED** until the clerk of district court signs the amended judgment and files it in your case.

You'll receive a copy of the signed amended judgment.