

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
_____ JUDICIAL DISTRICT

(Plaintiff))
PLAINTIFF,)
Vs)

(Defendant))
DEFENDANT.)
)

Case No. _____

ANSWER BRIEF TO MOTION TO MODIFY
PRIMARY RESIDENTIAL RESPONSIBILITY
(No Written Agreement)

INTRODUCTION

1. The Plaintiff/Defendant (*choose one*) submits this Answer Brief and supporting documentation to the Motion to Modify Primary Residential Responsibility to show that the Moving Party has not made a written prima facie case for modification of primary residential responsibility.

STATEMENT OF FACTS

2. In response to the facts stated in the Moving Party's Motion to Modify Primary Residential Responsibility, Plaintiff/Defendant (*choose one*) provides the following statement of facts.

3. The above-captioned civil case, was an action for (*choose one*)

- divorce.
- legal separation.
- establishing parenting rights and responsibilities.
- establishing paternity.
- other _____.

4. The Moving Party's motion to modify primary residential responsibility applies to the following child(ren) for whom residential responsibility was established in the above-captioned case (*list each child's initials and year of birth*): _____

5. The final judgment in the above-captioned civil case was entered _____, _____ (*date*) and (*choose one*)

- Plaintiff was awarded primary residential responsibility.
- Defendant was awarded primary residential responsibility.
- Neither Plaintiff nor Defendant was awarded primary residential responsibility.

Residential responsibility was awarded as follows (*describe*): _____

6. The residential responsibility in the final judgment has/has not (*choose one*) been previously modified. (*If the final judgment has been previously modified, complete the following.*)

The judgment was amended _____

(*date(s) of amended judgment(s)*). Currently, primary residential responsibility is

awarded to _____ (*name*).

7. (*Choose one*)

It has been two years or more since the Judgment/_____ Amended Judgment (*choose one – if an amended judgment, fill in the number; i.e. First, Second*) was entered.

It has not been two years or more since the Judgment/ _____ Amended Judgment (*choose one – if an amended judgment, fill in the number; i.e. First, Second*) was entered, paragraph _____ of the Judgment/ _____ Amended Judgment (*choose one, fill in the number*) allows/ does not allow (*choose one*) modification before two years when (*state event/circumstances*): _____

8. (*Briefly describe the relevant facts that support your answer to the motion to modify. Number each paragraph of your facts as 8(a), 8(b), 8(c), and so on. If you refer to facts from your supporting affidavit, other supporting affidavits, or documents, include the title of the affidavit or document in parentheses following the reference.*)

(Paragraph 8, Continued)

LAW AND ARGUMENT

9. North Dakota Century Code Section 14-09-06.6 allows a court to consider modification of primary residential responsibility after two years from the date of entry of the order establishing primary residential responsibility, or after two years from the date of entry of the order on a motion to modify primary residential responsibility. North Dakota Century Code Section 14-09-06.6 allows a court to consider modification of primary residential responsibility if the parenting plan includes a time frame earlier than two years.

10. *(Choose one)*

It has been two years or more since the Judgment/ _____ Amended Judgment was entered on _____, _____ *(date)*.

It has not been two years or more since the Judgment/ _____ Amended Judgment was entered, paragraph _____ of the Judgment/ _____ Amended Judgment allows/ does not allow *(choose one)* modification before two years when *(state event/ circumstances)*: _____

(Complete if you think the Judgment does not allow modification:) The event or circumstance has not occurred as follows:

11. Before a court will grant a full, in-person evidentiary hearing, the party requesting modification must show, in writing, **(I)** that there is a significant or material change in circumstances that justifies modification of primary residential responsibility, and **(II)** that modification is necessary to serve the best interests of the children.

I: Plaintiff/Defendant (choose one) has not made a written prima facie case that a material change of circumstances that justifies modification of primary residential responsibility has occurred.

12. Before the court will grant an in-person hearing, the court must find that the party requesting modification made a prima facie case that “[o]n the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties . . .” (North Dakota Century Code Section 14-09-06.6(6)(a)).

13. *(Choose any that apply.)*

There have not been significant and material changes in circumstances of the child or the parties.

The changes in circumstances the Plaintiff/Defendant *(choose one)* included in their motion were known at the time of the judgment Plaintiff/Defendant *(choose one)* is asking the court to modify.

14. *(Describe the facts that support Paragraph 13. Number each paragraph of your facts as 14(a), 14(b), 14(c), and so on. If you refer to facts from your supporting affidavit, other supporting affidavits, or documents, include the title of the affidavit or document in parentheses following the reference.)*

(Paragraph 14, Continued.)

II: Plaintiff/Defendant (choose one) has not made a written prima facie case that modification of primary residential responsibility is necessary to serve the best interests of the children.

15. If the court finds that the Plaintiff/Defendant (choose one) established a prima facie case that a material change of circumstances that justifies modification of primary residential responsibility has occurred, the court can only grant an in-person hearing if the court finds that the party requesting modification made a prima facie case that modification of primary residential responsibility is necessary to serve the best interests of the children.

16. The factors used by the court to determine best interests are listed in North Dakota Century Code Section 14-09-06.2. Based on the best interest factors, modification of primary residential responsibility is not necessary to serve the best interests of the children as follows:

(For Paragraphs 17 through 29, for each best interest factor, describe the facts that show modification is not necessary to serve the best interests of the children. If you refer to facts from your supporting affidavit, other supporting affidavits, or documents, include the title of the affidavit or document in parentheses following the reference.)

17. **Best Interest Factor (1)(a)** – The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance:

18. **Best Interest Factor (1)(b)** – The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment:

19. **Best Interest Factor (1)(c)** – The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future:

20. **Best Interest Factor (1)(d)** – The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community:

21. **Best Interest Factor (1)(e)** – The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

22. **Best Interest Factor (1)(f)** – The moral fitness of the parents, as that fitness impacts the child.

23. **Best Interest Factor (1)(g)** – The mental and physical health of the parents, as that health impacts the child.

24. **Best Interest Factor (1)(h)** – The home, school, and community records of the child and the potential effect of any change.

25. **Best Interest Factor (1)(i)** – If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

26. **Best Interest Factor (1)(j)** – Evidence of domestic violence.

27. **Best Interest Factor (1)(k)** – The interaction and inter-relationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

28. **Best Interest Factor (1)(l)** – The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in North Dakota Century Code Section 50-25.1-02.

29. **Best Interest Factor (1)(m)** – Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.

CONCLUSION

30. Based on all of the above and the affidavits filed in support of the answer brief to the motion, Plaintiff/Defendant (*choose one*) respectfully requests the Court enter an order finding that the Plaintiff/Defendant (*choose one*) did not meet their initial burden of establishing a prima facie case for modification of primary residential responsibility and dismissing the motion.

Dated _____, 20____

(*Opposing Party Signature*)

(*Printed Name*)

(*Address*)

(*City, State, Zip Code*)

(*Telephone Number*)