



## MOTION FOR DEFAULT PARENTING RESPONSIBILITY (CUSTODY & VISITATION) JUDGMENT

### An Informational Guide to a North Dakota State Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process. **If you decide to represent yourself, you will need to do additional research to prepare.**

**When you represent yourself, you must abide by the following:**

- 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;
  - Any local court rules.

Links to the laws, case law, and court rules can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help/glossary](http://www.ndcourts.gov/legal-self-help/glossary).

**When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.** If you are unsure if this information suits your circumstances, consult a lawyer.

***This information is not a complete statement of the law.** This covers basic information about the process of making a motion for a default parenting responsibility (custody and visitation) judgment in a North Dakota state district court case to establish parenting responsibility. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. **Use at your own risk.***

**WARNING – Establishing parenting responsibility can have serious long-term legal and financial consequences. It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a motion for a default parenting responsibility judgment.**

This informational guide is made up of three sections:

**First Section:** General information about motions for default parenting responsibility judgments. (Pages 4-13)

**Second Section:** The **basic** motion for default parenting responsibility process from beginning to end. (Pages 14-22)

**Third Section:** Appendix of formatting examples of common motion for default parenting responsibility documents. (Page 23)

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## **INFORMATION ABOUT MOTIONS FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENTS**

### **WHAT IS A PARENTING RESPONSIBILITY ACTION?**

Parents who have never been married to each other may ask a North Dakota state district court to establish parenting rights and responsibilities to their children.

The district court case is called a Parenting Responsibility action.

Parenting rights and responsibilities are all the rights and responsibilities a parent has concerning the parent's minor child. This includes, but is not limited to:

- Residential responsibility (custody);
- Parenting time (visitation);
- Decision-making responsibility;
- Child support;
- Tax deductions; and
- Medical coverage.

(Generally, establishing parenting rights and responsibilities between parents who are or were married to each other are part of divorce or legal separation proceedings.)

### **What if paternity HAS NOT been established?**

If a father-child relationship has not been established, you may need to bring a different type of civil action to establish paternity. Residential responsibility (custody) and parenting time (visitation) may be established as part of a paternity action.

The father-child relationship is established by:

- An acknowledgment of paternity.
  - A process that occurs 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 to establish paternity.
  - A civil action that establishes the father of a child that may involve genetic testing. A court issues an order establishing paternity so that the father'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 court issues an adoption order so that the new birth certificate is issued for the child. The new birth certificate lists the adoptive parent's name, or names.

If the father-child relationship has not been established, email the ND Legal Self Help Center at [ndselfhelp@ndcourts.gov](mailto:ndselfhelp@ndcourts.gov) and request information on the civil action to establish paternity.

## **WHAT IS A MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT?**

### **Service of the Summons and Complaint to Establish Parenting Responsibility Starts the Parenting Responsibility Case:**

The parent starting the action to establish parenting responsibility, the Plaintiff, must arrange for a summons and complaint to be served on the other parent, the Defendant.

The Defendant has 21 days from the date they were served to answer the summons and complaint in writing.

If the Defendant **does not answer** the summons and complaint to establish parenting responsibility within the 21 day deadline, the Plaintiff may ask the court, in writing, to grant the parenting responsibility judgment without the Defendant's involvement.

The written request is called a Motion for Default Parenting Responsibility Judgment. In order for the court to grant a default parenting responsibility judgment, the Plaintiff must prove the following, in writing:

1. Proof of service of the summons and complaint to establish parenting responsibility;
2. The deadline for the Defendant to answer the summons and complaint has passed and the Defendant did not respond;
3. The North Dakota District Court has the authority (jurisdiction) to grant a parenting responsibility judgment; and
4. The Plaintiff has provided all other necessary information and proof for the North Dakota District Court to grant a default parenting responsibility judgment.

## **Contested Parenting Responsibility Informational Guide; Service Information and Affidavits (Proof) of Service Forms:**

[An Informational Guide to Contested Parenting Rights and Responsibilities](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation) is available at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation). The guide includes the basic steps through the contested parenting responsibility process in North Dakota. Including, how to create your own summons and complaint and how to serve them on the Defendant.

[Information about the type of service required to start an action to establish parenting responsibility](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action) and the proof of service that must be filed with the district court are available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action). See the “Service to Start a District Court Civil Action” section.

### **Protections for Active Military Service Members Against Default Judgments:**

Under Federal law, active duty service members have protections against default judgments.

Before a North Dakota state district court may grant a Motion for Default Parenting Responsibility Judgment, the Plaintiff must prove that the Defendant **is not** on active duty with any branch of the United States military.

The Plaintiff **must** attempt to find out if the Defendant is an active duty service member and include the steps you took and the outcome in the Motion for Default Parenting Responsibility Judgment documents.

The [Servicemembers Civil Relief Act \(SCRA\) Website](#) may be of interest. It is affiliated with the United States Department of Defense.

### **When a Motion for Default Parenting Responsibility Judgment is Granted:**

If the court grants a default parenting responsibility judgment, the judgment has the same effect as a parenting responsibility judgment.

However, at a later date the parent listed as Defendant may make a written motion to the court to re-open the default parenting responsibility judgment. If the other parent makes this written motion, the court will decide whether to re-open the default parenting responsibility judgment for further action, or to allow the default parenting responsibility judgment to remain in place.

## **DOES THE ND LEGAL SELF HELP CENTER HAVE MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT FORMS?**

**No, the ND Legal Self Help Center does not have a packet of forms for making a motion for a default parenting responsibility judgment.** If you decide to represent yourself, you will need to create and prepare your own legal documents.

**Names and descriptions of the documents you will need to create and prepare are found throughout this guide. Formatting examples of common motion for default parenting responsibility judgment documents are found at the end of this guide.**

Although the ND Legal Self Help Center does not have forms or instructions, a variety of General-Use forms are available as a starting point for creating your own legal documents.

All of the General-Use forms available through the ND Legal Self Help Center are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “District Court Civil” section.

You may find the forms in the Legal Services of North Dakota Family Law Manual of interest. The Legal Services of North Dakota Family Law Manual contains a variety of family law forms that were created for lawyers to use as examples in family law cases. The Legal Services of North Dakota website is [www.legalassist.org](http://www.legalassist.org).

*(References to the Legal Services of North Dakota Family Law Manual are for your convenience only. The ND Legal Self Help Center does not endorse, warrant, or accept responsibility for the content or uses of the Family Law Manual. You must independently determine the legal sufficiency of the forms in the Family Law Manual. Use at your own risk.)*

## **IS THERE HELP AVAILABLE FOR CREATING LEGAL DOCUMENTS?**

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota.

Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of your civil action.

You and the lawyer must agree in writing to Limited Legal Representation.

## **WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO MOTIONS FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENTS?**

**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](http://www.legis.nd.gov/cencode/t14c09.html)

**Chapter 14-12.2 of the North Dakota Century Code** governs enforcement and modification of child support and spousal support orders issued by other states or countries. [www.legis.nd.gov/cencode/t14c12-2.html](http://www.legis.nd.gov/cencode/t14c12-2.html)

**Chapter 14-14.1 of the North Dakota Century Code** governs child custody and visitation jurisdiction. [www.legis.nd.gov/cencode/t14c14-1.pdf](http://www.legis.nd.gov/cencode/t14c14-1.pdf)

Chapters 14-05, 14-09, 14-12.2, AND 14-14.1 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](http://www.legis.nd.gov/cencode/t14.html)

**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](http://www.ndcourts.gov/legal-resources/rules/ndrcivp). See particularly:

- Rule 55 (Default; Default Judgment).

**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](http://www.ndcourts.gov/legal-resources/rules/ndrct). See particularly:

- Rule 3.2 (Motions).

**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](http://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.

One way to research case law related to motions for default judgments, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. Case law summaries directly follow the text of the Century Code Section. To view the full text of the opinion, go to [www.ndcourts.gov](http://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.

### **WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT?**

**\*\*\*The following definitions are intended to be helpful, BUT they are not intended to constitute legal advice OR address every possible meaning of the terms in this section.\*\*\***

**Active Military Service** – Under the Federal Servicemembers Civil Relief Act:

- In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard active military service is full-time duty in the active military service of the United States. This includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. This does not include full-time National Guard duty.
- In the case of a member of the National Guard active military service includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds.
- In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active military service is active service.
- Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

**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](http://www.legis.nd.gov/cencode/t14c09.pdf)

**Child support** – Money paid by a parent for the financial benefit of a child. Child support is based on guidelines set by the North Dakota Department of Human Services. If a parent can show a different ability to earn income than the guidelines show, the court may order a higher or lower child support payment.

The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator. The Calculator is available at [childsupport.dhs.nd.gov/lawyers/child-support-guidelines](http://childsupport.dhs.nd.gov/lawyers/child-support-guidelines).

**Custody** – See Residential Responsibility.

**Decision making responsibility** – The responsibility to make decisions concerning the minor child. The term may refer to decisions on all issues or on specific issues, but not child support issues.

**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 do not permit family members to move to the deployment location.

**Home state** – The state in which a minor child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, home state means the state in which the child lived from birth with a parent. A period of temporary absence of any of the mentioned persons is part of the period.

**Jurisdiction** – The power of a North Dakota state district court to inquire into the facts, apply the law, and determine and pronounce judgment. In general, there are two types of jurisdiction. Both are required for a court to have jurisdiction:

- **Subject Matter Jurisdiction**: The court's power to hear and determine the type of case or controversy involved in the civil action, which comes from the constitution and laws.
- **Personal Jurisdiction**: The court's power over the parties in the case.

**Obligor** – The person ordered by the court to pay child support or spousal support.

**Obligee** – The person receiving child support or spousal support ordered by the court.

**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.)

**Primary residential responsibility** – A parent with more than fifty percent of the residential responsibility.

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

**Visitation** – See Parenting Time.

## **WHO ARE THE PARTIES IN A MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT?**

**Plaintiff:** The parent who is listed as the Plaintiff in the action to establish parenting responsibility. Also, the parent who started the action with service of the summons and complaint on the other parent.

**Defendant:** The parent who is listed as the Defendant in the action to establish parenting responsibility. Also, the parent who was served the summons and complaint to establish parenting responsibility.

**Moving Party:** The parent bringing the Motion for Default Parenting Responsibility Judgment. The Moving Party is also the Plaintiff in motions for default parenting responsibility judgments.

**Opposing Party:** The other parent. The Opposing Party is also the Defendant in motions for default parenting responsibility judgments. (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 actions to establish parenting responsibility 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.

### **WHAT IS THE NORTH DAKOTA RESIDENCY REQUIREMENT FOR MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT?**

The North Dakota residency requirement applies to the action to establish parenting responsibility case that was started by the Plaintiff.

[Chapter 14-14.1 of the North Dakota Century Code](#) governs which state can make decisions about parenting rights and responsibilities issues.

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

1. North Dakota is the home state of the child on the date the parenting responsibility action starts; or
2. North Dakota was the home state of the child within six months before the date the parenting responsibility action started, **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 **is not** 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.

### **LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION**

You are not required to hire a lawyer to bring a civil action in North Dakota State District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

## Lawyer Resources

If you decide to find a lawyer to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is [www.legalassist.org](http://www.legalassist.org).
- The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is [www.sband.org](http://www.sband.org). The cost is \$30.00 for a 30 minute consultation with a lawyer.
- For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at [www.ndcourts.gov/Lawyers](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.

## Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled.

For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make court appearances for you.

You and the lawyer must agree in writing to Limited Legal Representation.

## **THE MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT PROCESS IN NORTH DAKOTA STATE DISTRICT COURT**

### **PART ONE: FILE THE SUMMONS, COMPLAINT TO ESTABLISH PARENTING RESPONSIBILITY, AND PROOF OF SERVICE WITH THE CLERK OF DISTRICT COURT**

The District Court CANNOT consider your motion for default parenting responsibility judgment UNTIL the following original, completed documents are filed with the Clerk of District Court:

- Summons;
- Complaint; and
- Proof of service of the Summons and Complaint on the Defendant.

You are required to pay an \$80.00 filing fee.

However, you may ask the court to waive the \$80.00 filing fee.

Forms to request the court waive the filing fee are available at [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver). Fee waivers are based on inability to pay. The completed fee waiver request forms are filed at the same time as the summons and complaint.

If the Clerk of District Court accepts your documents for filing, a case number will be assigned.

**In Part Three, fill in the case number on ALL of your motion for default parenting responsibility judgment documents.**

### **PART TWO: THE MOVING PARTY RESEARCHES THE LAWS & RULES; GATHERS INFORMATION**

Read this court process information **carefully**. Review the formatting examples of motion for default parenting responsibility judgment documents at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).

If you do not know if you should use this informational guide and the formatting examples of motion for default parenting responsibility judgment documents, consult a lawyer who is licensed to practice in the state of North Dakota.

**Research Rule 55 of the North Dakota Rules of Civil Procedure, Rule 3.2 of the North Dakota Rules of Court, & Other Applicable Laws:**

Research default judgment requirements in [Rule 55 of the North Dakota Rules of Civil Procedure](#).

Research basic motion requirements in [Rule 3.2 of the North Dakota Rules of Court](#).

Research how the statutes (laws) enacted by the North Dakota Legislature and case law apply to your specific situation.

### **Gather Information:**

#### Including:

- Your copy of the Summons and Complaint to establish parenting responsibility.
- Your copy of your proof of service of the Summons and Complaint to establish parenting responsibility on the Defendant.
  - If served by a sheriff or other law enforcement officer, proof of service is a Certificate of Service.
  - If served by an individual other than a sheriff or other law enforcement officer, proof of service is an Affidavit of Service.
- Proof that the Defendant **is not** on active duty with any branch of the United States military.
  - Under Federal law, active duty service members have protections against default judgments.
  - You **must** attempt to find out if the Defendant is an active duty service member and include the steps you took and the outcome in your motion documents.
  - You may find the [Servicemembers Civil Relief Act \(SCRA\) Website](#) of interest. It is affiliated with the United States Department of Defense.
- Other supporting documentation that you plan to refer to in your motion documents.
  - Any supporting documentation to which you refer in your motion documents **must** be served on the Opposing Party and filed with the Court.
- Child support calculations, if you plan to request the court require payment of child support.
  - The Calculator is available at [childsupport.dhs.nd.gov/lawyers/child-support-guidelines](http://childsupport.dhs.nd.gov/lawyers/child-support-guidelines).
  - The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator.
  - Court system and ND Legal Self Help Center staff cannot provide support for the Child Support Guidelines Calculator.

## **PART THREE: MOVING PARTY CREATES THEIR MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT DOCUMENTS**

The Moving Party is required to create, serve and file their motion for default parenting responsibility judgment documents.

Create the Following Nine Documents:

- **Notice of Motion for Default Parenting Responsibility Judgment –**
  - See MP1: Notice of Motion for Default Parenting Responsibility Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - A written notice that tells all the parties that the Moving Party is requesting an order from the Court.
  
- **Motion for Default Parenting Responsibility Judgment –**
  - See MP2: Motion for Default Parenting Responsibility Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - A short, written request to the Court for a default parenting responsibility judgment.
  
- **Brief in Support of Default Parenting Responsibility Judgment –**
  - See MP3: Brief in Support of Motion for Default Parenting Responsibility Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - A written document that explains why the Moving Party should have the motion for default parenting responsibility judgment granted by the court.
  - A list of the Moving Party's version of the facts related to the motion for default parenting responsibility judgment.
  - An explanation of each law, case law or court rule that supports the Moving Party's argument(s) and an application of each to the Moving Party's specific set of facts.
  
- **Affidavit of Default, Identification and Active Military Status –**
  - See MP4: Affidavit of Default, Identification and Active Military Status – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - Your, the Moving Party's, written statement of the Defendant's default, your address and employer, the Defendant's address and employer, and the Defendant's military status.



- The affidavit must be signed by you, the Moving Party, in the presence of a notary public or clerk of court.
- **Affidavit of Proof for Default Parenting responsibility Judgment –**
  - See MP5: Affidavit of Proof for Default Parenting Responsibility Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - Your, the Moving Party’s, written statement of the jurisdictional and factual matters in the complaint to establish parenting responsibility, including the factual basis for the grounds of the parenting responsibility.
  - The affidavit must be signed by you, the Moving Party, in the presence of a notary public or clerk of court.
- **Confidential Information Form –**
  - See MP6: Confidential Information Form – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - Review [Rule 3.4](#) of the North Dakota Rules of Court. Lists the full confidential information that is not allowed to appear in documents filed with the court. This form is not a part of the public court record.
  - Also available online, in Appendix H of the North Dakota Rules of Court.
- **Findings of Fact, Conclusions of Law and Order for Judgment (Proposed) –**
  - See MP7: Findings of Fact, Conclusions of Law and Order for Default Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - Findings of Fact are the Court’s written determination of the facts made from the evidence presented. Conclusions of Law are the rulings of law made by the Court based on, or in connection with, the Findings of Fact.
  - These are your proposed findings of fact, conclusions of law and order for default judgment.
  - If the Court grants your motion for default parenting responsibility judgment and uses your proposed findings of fact, conclusions of law and order for default judgment, the judicial officer assigned to your case will date and sign your proposed findings of fact, conclusions of law and order for default judgment.
- **Judgment (Proposed) –**
  - See MP8: Judgment – formatting example at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).
  - A written order of the judicial officer’s decision.
  - This is your judgment, which is an EXACT copy of the conclusions of law from the signed findings of fact, conclusions of law and order for judgment.

- If the judicial officer signs your proposed findings of fact, conclusions of law and order for judgment, the clerk of court will date and sign your proposed judgment.
- **Parenting responsibility IS NOT established until a parenting responsibility judgment is dated, signed and filed.**

**Write the case number you were assigned by the Clerk of District Court in Part One on the first page of ALL of your motion documents.**

Make a copy of each of your motion documents to serve on the Opposing Party in Part Four.

Make an additional copy to keep for your records.

#### **PART FOUR: MOVING PARTY ARRANGES FOR SERVICE OF COPIES OF THE DOCUMENTS ON OPPOSING PARTY**

The Moving Party is required to serve copies of motion for default parenting responsibility judgment documents on the Opposing Party.

Service is providing copies of your completed motion for default parenting responsibility judgment documents and other supporting documents on the Opposing Party.

The Moving Party will also be required to complete and file an Affidavit of Service. An Affidavit of Service provides the District Court with proof that you served the Opposing Party.

The District Court **will not** act on your motion documents, unless you file proof of service with the court.

The Moving Party is required to serve one copy of each of the following documents on the Opposing Party:

- Notice of Motion for Default Parenting Responsibility Judgment;
- Motion for Default Parenting Responsibility Judgment;
- Brief in Support of Motion for Default Parenting Responsibility Judgment;
- Affidavit of Default, Identification and Active Military Status;
- Affidavit of Proof for Default Parenting Responsibility Judgment;
- Findings of Fact, Conclusions of Law and Order for Judgment (Proposed);
- Judgment (Proposed); and
- Any other supporting documentation you referenced in your motion documents.

**DO NOT** serve a copy of the Confidential Information Form on the Opposing Party.

### **Service by Mail:**

You may arrange for service of the copies of the documents by mail by an individual who is at least 18 years old.

- Put the copies in an envelope;
- Either:
  - Address the envelope with the Opposing Party's last known address; OR
  - If you know the Opposing Party is currently represented by a lawyer, address the envelope with the lawyer's address; and
- List your address as the return address on the envelope.

The individual 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.

### **Complete the Affidavit of Service by Mail:**

An Affidavit of Service by Mail form is available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action). See the "Service After a Civil Action Has Started" section.

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

### Caption:

- Complete the Caption exactly as the Caption of the Notice of Motion form is filled out.

### Paragraphs 1-7:

- Follow the directions on the form.

### Date and Signature:

- DO NOT date and sign the form until your signature can be witnessed by a Notary Public or Clerk of Court.
- Fill in the County and State where the form was signed.
- Fill in the printed name, address, and telephone number.

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

### **Additional Service Information for Motions:**

There are other service options available for motions. Go to [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action). See the “Service After a Civil Action Has Started” section.

## **PART FIVE: MOVING PARTY FILES THEIR MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT DOCUMENTS WITH THE CLERK OF COURT**

The Moving Party is required to file their original motion for default parenting responsibility judgment documents and other supporting documents with the Clerk of District Court.

The original, completed documents to file:

- Notice of Motion for Default Parenting Responsibility Judgment;
- Motion for Default Parenting Responsibility Judgment;
- Brief in Support of Motion for Default Parenting Responsibility Judgment;
- Affidavit of Default, Identification and Active Military Status;
- Affidavit of Proof for Default Parenting Responsibility Judgment;
- Confidential Information Form;
- Findings of Fact, Conclusions of Law and Order for Judgment (Proposed);
- Judgment (Proposed);
- Affidavit of Service; and
- Any other supporting documentation you referenced in your motion documents.

You will not be required to pay a filing fee.

## **PART SIX: OPPOSING PARTY HAS 14 OR 17 DAYS TO SERVE AND FILE AN ANSWER TO THE MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT**

**The Opposing Party must answer or respond within 14 or 17 days of service of your motion for default parenting responsibility judgment documents.**

If you arranged to serve the motion documents on the Opposing Party by personal delivery or at their office, the Opposing Party has 14 days to serve and file their answer brief and supporting documents.

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

If you arranged to serve the motion documents on the Opposing Party by mail or third-party commercial carrier, the Opposing Party has 17 days to serve and file their answer brief and supporting documents.

- The date of service is the date the motion was mailed.

If the Opposing Party does not serve and file an answer brief and supporting documents, the District Court may consider the failure an admission by the Opposing Party that your motion has merit. You will still be required to prove you meet the requirements for a default parenting responsibility judgment.

**Calculating days for filing and service:**

- Do not 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 is not a Saturday, Sunday, or legal holiday.

**PART SEVEN: THE COURT DECIDES WHETHER TO GRANT YOUR DEFAULT PARENTING RESPONSIBILITY JUDGMENT**

After the deadline passes for motion documents to be served and filed, if neither party requested a hearing, the judge assigned to your parenting responsibility will review the motion documents filed by the Moving Party and the Opposing Party.

If the Opposing Party did not serve and file an answer brief and supporting documents, your motion for default parenting responsibility judgment documents are still required to prove you meet the requirements for a default parenting responsibility judgment.

**If the Judge DOES NOT Grant Your Motion for Default Parenting Responsibility Judgment:**

If the Opposing Party served and filed an answer brief and supporting documents and the judge does not grant your motion for default parenting responsibility judgment, the parenting responsibility moves forward as a contested matter.

Review the [Informational Guide to Contested Parenting Rights and Responsibilities](#) starting at Part Three for the basic steps in the process of contested parenting responsibility after the Summons and Complaint are served.

- The guide is available at [www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation](http://www.ndcourts.gov/legal-self-help/establishing-custody-and-visitation).

**If the Judge GRANTS Your Motion for Default Parenting Responsibility Judgment:**

If the judge grants your motion for default parenting responsibility judgment, the judge will sign a findings of fact, conclusions of law and order for default judgment.

After the judge signs the findings of fact, conclusions of law and order for default judgment, the clerk of district court will sign a judgment. The judgment is an exact duplicate of the conclusion of law section of the findings of fact, conclusions of law and order for default judgment document signed by the judge.

Parenting responsibility IS NOT established until a parenting responsibility judgment is dated, signed and filed.

You will receive a copy of the signed judgment.

**PART EIGHT: THE PLAINTIFF MAILES A NOTICE OF ENTRY OF JUDGMENT TO THE DEFENDANT**

Within 14 days after the parenting responsibility judgment is filed, you must serve a Notice of Entry of Judgment on the Defendant.

A Notice of Entry of Judgment general use form is available at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

Fill out the form and follow the instructions for service on the Defendant.

- You must include a copy of the signed parenting responsibility Judgment when you serve the completed Notice of Entry of Judgment on the Defendant.

After completing and serving the Notice of Entry of Judgment form, file the original completed Notice of Entry of Judgment and proof of service on the Defendant with the Clerk of Court's Office in the County where your case is located.

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## **APPENDIX OF FORMATTING EXAMPLES OF COMMON MOTION FOR DEFAULT PARENTING RESPONSIBILITY JUDGMENT DOCUMENTS**

Formatting examples of the common motion for default parenting responsibility judgment documents listed below are on the [ND Legal Self Help Center website](#). Scroll to the “Family Law” section and click on the “Establishing Custody and Visitation” link.

The documents ARE NOT fillable. You may hand write in blue or black ink, or copy and paste into word processing software, such as MS Word or Google Docs.

### **Documents ALL Moving Parties Will Need:**

- **MP1: Notice of Motion for Default Parenting Responsibility Judgment**
- **MP2: Motion for Default Parenting Responsibility Judgment**
- **MP3: Brief in Support of Motion for Default Parenting Responsibility Judgment**
- **MP4: Affidavit of Default, Identification and Active Military Status**
- **MP5: Affidavit of Proof for Default Parenting Responsibility Judgment**
- **MP6: Confidential Information Form**
- **MP7: Findings of Fact, Conclusions of Law, Order for Default Judgment**
- **MP8: Judgment**