

**INSTRUCTIONS FOR THE OPPOSING PARTY TO ANSWER A MOTION TO  
MODIFY PRIMARY RESIDENTIAL RESPONSIBILITY (CUSTODY)  
NO AGREEMENT & 2 YEARS SINCE MOST RECENT JUDGMENT**

**IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS**

ND Legal Self Help Center staff and court employees can't help you fill out 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 the state laws, case law, and court rules can be found at [www.ndcourts.gov](http://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.

- If you would like to learn more about finding an attorney to represent you, go to [www.ndcourts.gov/legal-self-help/finding-a-lawyer](http://www.ndcourts.gov/legal-self-help/finding-a-lawyer).

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

***These instructions and forms aren't a complete statement of the law. This covers basic procedures for answering a motion to a North Dakota state district court to modify primary residential responsibility in an existing North Dakota state district court judgment when the parents DON'T agree AND it has been 2 years or more since the most recent judgment OR the parenting plan includes an earlier time to request modification. 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.**

**↔ DON'T DELAY! ↔**

**You have a limited amount of time to answer a written motion to modify primary residential responsibility!**

- 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 10 for more information about calculating these deadlines.)

**These Instructions are made up of three sections:**

**Section One:** Information About the Forms Packet and the Two Steps in all Motions to Modify Primary Residential Responsibility. (DON'T skip this section!)

- Pages 3-8

**Section Two:** Steps for Opposing Party to Make a Written Answer to the Motion to Modify Primary Residential Responsibility (Step One).

- Pages 9-19

**Section Three:** Steps for Evidentiary Hearing (Step Two).

- Pages 20-27

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**SECTION ONE: Information About the Forms Packet and the Two Steps in all Motions to Modify Primary Residential Responsibility.**

(DON'T skip this section!)

**YOU MAY USE THIS PACKET OF FORMS ONLY IF:**

You have a North Dakota state district court judgment that established residential responsibility (custody) and/or parenting time (visitation); **AND**

**1. Another party in the case made a written motion to the Court to change, or modify, the judgment so that:**

- A judgment that currently awards shared or equal residential responsibility is modified to award one parent primary residential responsibility, or
- A judgment that currently awards one parent primary residential responsibility is modified to award primary residential responsibility to the other parent; **AND**

**2. One of the following applies to your situation:**

- It has been 2 years or more since the original judgment or the most recently amended judgment; or
- Your current parenting plan allows for modification before two years have passed when an event or circumstance occurs, and the parent making the motion says that the event or circumstance has occurred.

**IF YOU DON'T MEET THE REQUIREMENTS OF WHO MAY USE THIS PACKET OF FORMS**

If your situation doesn't meet the requirements of who may use this packet of forms, you may answer a motion to modify primary residential responsibility. **However**, neither the ND court system nor the ND Legal Self Help Center currently has a packet of forms for you to use.

If you need to answer a motion to modify where less than 2 years have passed since the most recent judgment and an earlier timeframe isn't included in your parenting plan, **you'll need to create all of your own legal documents**, or retain a lawyer to create the documents for you.

A **Modifying Primary Residential Responsibility Research Guide** is available at [www.ndcourts.gov/legal-self-help/custody](http://www.ndcourts.gov/legal-self-help/custody). Scroll to the "Modifying Primary Residential Responsibility (Custody) Research Guides" section.

The Modifying Primary Residential Responsibility Research Guide is your starting point for your research into answering a motion to modify primary residential responsibility in an order of a North Dakota state district court. The research guide also includes general information about the legal documents you'll need to create in order to answer a motion to modify primary residential responsibility in an existing North Dakota state district court judgment.

## **THE PARTIES**

**Plaintiff:** The parent who is listed as the Plaintiff in the original family law action that established residential responsibility (custody) and parenting time (visitation).

**Defendant:** The parent who is listed as the Defendant in the original family law action that established residential responsibility (custody) and parenting time (visitation).

**Moving party:** The parent who brought the motion to modify primary residential responsibility. The moving party in the motion may be either the Plaintiff or the Defendant.

**Opposing party:** The other parent who didn't bring the motion. In other words, the parent who completes and signs the forms in this packet. (Also called the Non-moving party.)

## **MODIFYING PRIMARY RESIDENTIAL RESPONSIBILITY IS A TWO-STEP MOTION PROCESS**

*(Please note that in 2009 the North Dakota State Legislature changed the term "custody" to "residential responsibility" and changed the term "visitation" to "parenting time.")*

When a North Dakota state district court awards residential responsibility in a family law case, such as divorce, legal separation, paternity action, or other action to establish parenting rights and responsibilities, either parent may make a motion to ask the court to modify primary residential responsibility in the existing case, if certain requirements are met.

In general, there is a 2 year time limit before either parent may request modifications to primary residential responsibility. However, one exception to the 2 year time limit is when the parenting plan allows for an earlier time frame when an event or circumstance occurs.

### **Overview of the Two-Step Motion Process:**

**First Step:** The parent requesting modification, the Moving party, **must make a written prima facie case** for modifying primary residential responsibility in their motion documents.

The parent responding to the written motion, the Opposing party, has 14 days to answer the motion in writing. The Opposing party's answer documents may challenge the credibility or the sufficiency of the Moving party's written argument.

If the Opposing party **doesn't serve and file a written answer** to the motion to modify primary residential responsibility, the Judicial Officer may consider this an admission by the Opposing party that the motion has merit.

The Judicial Officer assigned to the case reviews the Moving party's motion documents and the Opposing party's answer to motion documents to determine whether the Moving party made a prima facie case for modifying primary residential responsibility.

If the Moving party **doesn't** make a prima facie case in writing, the motion is dismissed and **doesn't** move to the second step.

**Second Step:** An in-person, evidentiary hearing is scheduled **only** if the Judicial Officer assigned to the case finds that the Moving party made their prima facie case in writing in their motion documents. At the hearing, the Moving party must present evidence to prove the allegations in their motion for modifying primary residential responsibility. The Opposing party may present their evidence to dispute or counter the Moving party's evidence.

## **FEES**

**A filing fee of \$30.00 is required.**

- If you're unable to afford the filing fee, you may file a written request to waive the \$30.00 filing fee with the District Court.
- Forms and instructions for a fee waiver request are available at [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver).

**Other fees may apply.** The fees include, but aren't limited to:

- Service fees                      Varies
- Copy of Documents      \$.10 per page, \$1.00 minimum

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## **NORTH DAKOTA STATUTES & RULES RELATED TO MODIFYING PRIMARY RESIDENTIAL RESPONSIBILITY:**

North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature.

**Chapter 14-05**            **Divorce**                    [www.legis.nd.gov/cencode/t14c05.html](http://www.legis.nd.gov/cencode/t14c05.html)

**Chapter 14-09**            **Parent and Child**            [www.legis.nd.gov/cencode/t14c09.html](http://www.legis.nd.gov/cencode/t14c09.html)

- See specifically, Section 14-09-06.6: Limitations on post-judgment modifications of primary residential responsibility.
- See also, Section 14-09-06.2: Best interests and welfare of child – Court considerations – Factors.

**Chapter 14-14.1**            **Uniform Child Custody Jurisdiction and Enforcement Act**  
[www.legis.nd.gov/cencode/t14c14-1.html](http://www.legis.nd.gov/cencode/t14c14-1.html)

**Rule 6 of the North Dakota Rules of Civil Procedure: Computing and Extending Time; Time for Motion Papers.** [www.ndcourts.gov/legal-resources/rules/ndrcivp/6](http://www.ndcourts.gov/legal-resources/rules/ndrcivp/6)

**Rule 3.2 of the North Dakota Rules of Court: Motions.** [www.ndcourts.gov/legal-resources/rules/ndrct/3-2](http://www.ndcourts.gov/legal-resources/rules/ndrct/3-2)

**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).

### **“PRIMA FACIE CASE” – CASE LAW RESEARCH:**

When the decision of a motion to modify primary residential responsibility 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.

**“Prima facie case” isn’t defined in the laws enacted by the North Dakota Legislature.** You’ll need to research case law to define “prima facie case” and interpret what it means for your situation.

Links to some recent case law are provided as a starting point for your “prima facie case” research.

Baker v. Baker, 2019 ND 225, 923 N.W.2d 510 (ND 2019).

[www.ndcourts.gov/supreme-court/opinion/2019ND225](http://www.ndcourts.gov/supreme-court/opinion/2019ND225)

Heidt v. Heidt, 2019 ND 45, 923 N.W.2d 530 (ND 2019).

[www.ndcourts.gov/supreme-court/opinion/2019ND45](http://www.ndcourts.gov/supreme-court/opinion/2019ND45)

Solwey v. Solwey, 2016 ND 246, 888 N.W.2d 756 (ND 2016).

[www.ndcourts.gov/supreme-court/opinion/2016ND246](http://www.ndcourts.gov/supreme-court/opinion/2016ND246)

Schroeder v. Schroeder, 2014 ND 106, 846 N.W.2d 716 (ND 2014).

[www.ndcourts.gov/supreme-court/opinion/2014ND106](http://www.ndcourts.gov/supreme-court/opinion/2014ND106)

Sweeney v. Kirby, 2013 ND 9, 826 N.W.2d 330 (ND 2013).

[www.ndcourts.gov/supreme-court/opinion/2013ND9](http://www.ndcourts.gov/supreme-court/opinion/2013ND9)

Anderson v. Jenkins, 2013 ND 167, 837 N.W.2d 374 (ND 2013).

[www.ndcourts.gov/supreme-court/opinion/2013ND167](http://www.ndcourts.gov/supreme-court/opinion/2013ND167)

Ehli v. Joyce, 2010 ND 199, 789 N.W.2d 560 (ND 2010).

[www.ndcourts.gov/supreme-court/opinion/2010ND199](http://www.ndcourts.gov/supreme-court/opinion/2010ND199)

## **DEFINITIONS**

**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. (Use link above.)

**Custody:** See Residential Responsibility.

**Decision Making Responsibility:** The responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specific issues, but not child support issues.

**Judicial Officer:** Either a District Court Judge or a District Court Judicial Referee. A motion to modify primary residential responsibility may be heard by either a District Court Judge, or a District Court Judicial Referee. A Judicial Referee is appointed by the Presiding Judge.

**Material Change in Circumstances:** Significant change or changes since the original judgment, unknown at the time of the original judgment, requiring a modification in primary residential responsibility to serve the best interests of the child.

**Obligor:** The person ordered by the court to pay child support.

**Obligee:** The person receiving child support ordered by the court.

**Parental Rights and Responsibilities:** All the rights and responsibilities a parent has concerning the parent's child.

**Parenting Plan:** A written plan describing each parent's rights and responsibilities.

**Parenting Schedule:** The schedule of when the child is in the care of each parent.

**Parenting Time:** The time when the child is to be in the care of a parent. (Also known as visitation.)

**Prima Facie Case:** Evidence presented in writing that is strong enough, if not contradicted, to support a change in primary residential responsibility. Evidentiary facts are presented by affidavit. The Opposing party may present counter affidavits to show the Moving party's affidavits aren't credible or are insufficient. (Use links above to research case law.)

**Primary Residential Responsibility:** A parent with more than 50% of residential responsibility.

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

**Visitation:** See Parenting Time.

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## SECTION TWO: Steps for Opposing Party to Make a Written Answer to the Motion to Modify Primary Residential Responsibility (Step One).

### THE FIRST STEP ANSWER TO MOTION FORMS IN THE PACKET

The following forms are for the First Step in the answer to motion process.

Reminder: There is no guarantee that using these forms and following the procedures outlined will result in the Judicial Officer dismissing the motion to modify. You'll need to research how the laws apply to your situation to complete the forms. If you feel you need assistance, consult a lawyer licensed to practice in North Dakota.

Form Title	Purpose
Answer Brief to Motion to Modify Primary Residential Responsibility	The answer brief is where you, the Opposing party, make your written argument about whether the Moving party made their prima facie case for modification of primary residential responsibility. 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.
Affidavit in Support of Answer Brief Motion to Modify Primary Residential Responsibility	Your affidavit is also where you, the Opposing party, make your written argument about whether the Moving party made their prima facie case for modification of primary residential responsibility. 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.
Affidavit of ____ in Support of Answer Brief to Motion to Modify Primary Residential Resp.	You may ask others with first-hand knowledge to complete an affidavit. The affidavit must be signed in the presence of a notary public or clerk of district court by the individual making the statement.
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.
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 MAKE A WRITTEN ANSWER TO MOTION TO MODIFY PRIMARY RESIDENTIAL RESPONSIBILITY**

### **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 modify by personal delivery or at your office.

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

You have 17 days to answer if you were served the motion to modify by mail or third party commercial carrier.

- The date of service is the date the motion to modify 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 links above to research how the 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 motion to modify documents on which to make notes. Review ALL of the motion to modify 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](http://www.ndcourts.gov/legal-self-help/answering-a-motion).

Review the judgment the Moving party is asking the Court to modify. Identify the paragraphs the Moving party wants the court to modify. 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 motion documents. For example, if you identify individuals with first-hand knowledge of your situation, decide if you want the individual to complete an affidavit.

#### **Gather information:**

For example:

- At least one copy of the original judgment that established residential responsibility and/or parenting time, 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.)
- Affidavits of individuals with first-hand knowledge you plan to refer to in the answer to motion documents.
  - Provide the **Affidavit of \_\_\_ in Support of Answer Brief to Motion to Modify Primary Residential Responsibility** form to each individual to complete and return to you.
  - Any affidavit 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.)
  - Please note that if an evidentiary hearing is scheduled, the individuals who provided affidavits may need to attend the evidentiary hearing as witnesses.

## **Step Two:**

**Complete the Answer Brief to Motion, Affidavit in Support of Answer Brief to Motion, and the Confidential Information Forms in the Packet.**

**Answer Brief to Motion to Modify Primary Residential Responsibility:**

Caption (top of form):

- Complete the Caption exactly as the Caption of the Judgment the Moving party is asking the court to modify is filled out.

Paragraph 1:

- If you're the Plaintiff in the judgment at issue, put a checkmark (✓) next to "Plaintiff."
- If you're the Defendant in the judgment at issue, put a checkmark (✓) next to "Defendant."

Paragraph 2:

- Put a checkmark (✓) next to Plaintiff OR Defendant. Choose the same option from Paragraph 1.

Paragraphs 3 through 10:

- Follow the instructions on the Answer Brief form to complete paragraphs 3 through 11.

Sentence near Top of Page 6, beginning with "I":

- If the Moving party is the Plaintiff in the judgment at issue, put a checkmark (✓) next to "Plaintiff."
- If the Moving party is the Defendant in the judgment at issue, put a checkmark (✓) next to "Defendant."

Paragraph 13:

- Follow the instructions on the Answer Brief form to complete paragraph 13.
- If you put a checkmark (✓) next to the second sentence:
  - If the Moving party is the Plaintiff in the judgment at issue, put a checkmark (✓) next to "Plaintiff."
  - If the Moving party is the Defendant in the judgment at issue, put a checkmark (✓) next to "Defendant."

Paragraph 14:

- Follow the instructions on the Brief form to complete paragraph 14.

Sentence at Top of Page 8, beginning with "II":

- Put a checkmark (✓) next to Plaintiff OR Defendant. Choose the same option from the Sentence near the Top of Page 6, beginning with “I”.

Paragraph 15:

- Put a checkmark (✓) next to Plaintiff OR Defendant. Choose the same option from the Sentence at the Top of Page 8, beginning with “II”.

Paragraph 16:

- This paragraph doesn’t require you fill in any information.

Paragraphs 17 through 29:

- Follow the instructions on the Answer Brief form to complete paragraphs 17 through 29.

Paragraph 30:

- Put a checkmark (✓) next to Plaintiff OR Defendant. Choose the same option from Paragraph 1.
- Put a checkmark (✓) next to Plaintiff OR Defendant. Choose the same option from the Sentence at the Top of Page 8, beginning with “II”.

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, and telephone number.
- 

### **Affidavit in Support of Answer Brief to Motion to Modify Primary Residential Responsibility:**

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 judgment at issue, put a checkmark (✓) next to “Plaintiff.”
- If you’re the Defendant in the judgment at issue, put a checkmark (✓) next to “Defendant.”
- Put a checkmark (✓) in the appropriate box.

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, and telephone number.
- 

### **Confidential Information Form:**

You're solely responsible for making sure confidential information doesn't appear in the documents you prepare.

Confidential information includes:

- Social security numbers
- Taxpayer identification numbers
- Birthdates
- Financial-account numbers.

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

- 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 is referenced in the documents.

Caption (top of form):

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

Page 1 Full Information Column:

- Fill in the full legal names, birth dates, and social security numbers of the Plaintiff, Defendant and each child listed in Paragraph 4 of your Answer Brief form.

Page 1 Redacted Information Column:

- Fill in the information of the Plaintiff, Defendant and each child as it appears in the forms you completed in Step Two.

Page 2 Full Information Column:

- Fill in the full information for each financial account listed in the forms you completed in Step Two. If you didn't list any financial accounts, you may indicate "Not Applicable" for name of account.

Page 2 Redacted Information Column:

- Fill in the financial account information as it appears in the forms you completed in Step Two. If you didn't list any financial accounts, you may indicate "N/A" for last 4 digits.

Date and Signature:

- **DON'T SIGN AND DATE THIS FORM.**
- You'll sign and date this form in Step Three.
- You may put a checkmark (✓) next to Plaintiff OR Defendant.
- You may fill in your printed name, address, and telephone number.

### **Step Three:**

**Date and Sign the Completed Answer Brief to Motion, Affidavit in Support of Answer Brief to Motion, and Confidential Information Forms; Make Copies of Forms Completed in Step Two.**

**Date and sign the following forms:**

- The completed Answer Brief to Motion to Modify Primary Residential Responsibility.
- The completed Confidential Information Form.

**Date and sign the following form in the presence of a Notary Public or Clerk of District Court:**

- The completed Affidavit in Support of Answer Brief to Motion to Modify Primary Residential Responsibility.

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

- Answer Brief to Motion to Modify Primary Residential Responsibility
- Affidavit in Support of Answer Brief to Motion to Modify Primary Residential Responsibility

Keep one copy of each completed form listed above for your records.

**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 support types of supporting documentation, make two copies of each.

Keep one copy of the supporting documents for your records.

**Make ONE COPY of the completed Confidential Information Form:**

Keep the copy for your records.

**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:**

- Answer Brief to Motion to Modify Primary Residential Responsibility;
- Affidavit in Support of Answer Brief to Motion to Modify Primary Residential Responsibility;
- All affidavits completed by other individuals; and
- All other supporting documentation.

DON'T serve a copy of the Confidential Information Form on the Moving party.

**Service by Mail:**

You may arrange for service of the copies of the documents by mail. Affidavit of Service by Mail forms are 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.

Two Affidavit of Service by Mail forms are included in this packet. If you have two parties to serve, you may use the form that allows you to list the names and addresses of two separate people.

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

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, and telephone number.

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:**

Additional information about serving motion documents, including other options for serving motion documents, 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 information and instructions in the "Service After a District Court Civil Action Has Started" section.

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**Step Five:**

**File the Original, Completed Answer to Motion to Modify Primary Residential Responsibility Forms and Other Supporting Documents with the Clerk of District Court; Pay the Filing Fee.**

**File the following Answer to Motion to Modify Primary Residential Responsibility Forms and other supporting documents with the Clerk of District Court:**

- The original, completed:
  - Answer Brief to Motion to Modify Primary Residential Responsibility;
  - Affidavit in Support of Answer Brief to Motion to Modify Primary Residential Responsibility;
  - All affidavits completed by other individuals;
  - Confidential Information Form; and
  - Affidavit of Service Form(s).
- And:
  - Copies of all other supporting documents.

You'll be required to pay a \$30.00 filing fee.

If you can't afford to pay the filing fee, the Judicial Officer may waive it under certain circumstances.

Forms and instructions to request an order to waive filing fees are available at [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver).

File the completed fee waiver forms when you file your answer to motion documents.

If your filing fee waiver request isn't granted by the Court, you must be prepared to pay the filing fee or the Clerk of District Court can't accept your documents.

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## **Step Six:**

### **Judicial Officer Reviews Motion and Answer to Motion Documents to Decide if Evidentiary Hearing will be Granted.**

#### **The Judicial Officer Reviews the Motion Documents Submitted by the Moving Party and Opposing Party:**

After the deadline for serving and filing the answer brief and other supporting documentation has passed, the motion is considered to be submitted to the District Court.

The Judicial Officer assigned to the case reviews the motion documents submitted by both the Moving party and you, the Opposing party, to determine if the Moving party made a prima facie case for modification.

The Moving party has the burden of proving their prima facie case in their motion documents, even if you, the Opposing party, didn't serve and file an answer brief and other supporting documentation.

The Judicial Officer's decision will be in writing and sent to each party.

#### **If the Judicial Officer Decides the Moving Party DIDN'T Make a Prima Facie Case:**

After reviewing all of the motion documents, the Judicial Officer will decide if the Moving party made their written prima facie case for modification.

If the Judicial Officer decides the Moving party DIDN'T make a written prima facie case, the motion is dismissed and an evidentiary hearing isn't scheduled.

#### **If the Judicial Officer Decides the Moving Party DID Make a Prima Facie Case:**

If the Judicial Officer decides the Moving party DID make a written prima facie case, an evidentiary hearing is scheduled. You'll be notified by mail of the date, time and location of the hearing.

The Moving party must prove the allegations in their written motion documents at the evidentiary hearing. You must be prepared to challenge the Moving party's evidence at the evidentiary hearing.

## SECTION THREE: Steps for the Evidentiary Hearing (Step Two).

### EVIDENTIARY HEARING FORMS IN THE PACKET (Step Two)

Following are forms for the Second Step in the motion process. Please note that forms **AREN'T** available for every part of the evidentiary hearing process. You'll need to create many of your own legal documents for this step.

Reminder: There is no guarantee that using these forms and following the procedures outlined will result in the Court dismissing the motion to modify primary residential responsibility following an evidentiary hearing. Representing yourself at an evidentiary hearing is a complex and confusing process. If you feel you need assistance, consult a lawyer licensed to practice in North Dakota.

Form Title	Purpose
Joint Informational Statement	Completed at the required meeting of the Moving party and Opposing party. Filed with the Court within 7 days after the required meeting.
Financial Affidavit	Written verification of the financial information used to calculate the modified child support amounts. May be required if modifying primary residential responsibility changes the child support obligations.
(Proposed) Order to Amend Judgment	This is your proposed order for the Court to sign, if the Court grants your request. The proposed order is based on the Court's decision(s) at the evidentiary hearing.
(Proposed) Amended Judgment	This is your proposed amended judgment for the Court to sign, if the Court grants your request. The proposed amended judgment is based on the Court's decision(s) at the evidentiary hearing.

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**Step One:****Required Meeting; Prepare Joint Informational Statement; File Joint Informational Statement.**

Review Rule 8.3.1 of the North Dakota Rules of Court at [www.ndcourts.gov/legal-resources/rules/ndrct/8-3-1](http://www.ndcourts.gov/legal-resources/rules/ndrct/8-3-1).

After the Judicial Officer decides the Moving party met the requirements for an evidentiary hearing, the Opposing party and the Moving party are required to meet in-person or by electronic means to prepare a Joint Informational Statement.

The completed and signed Joint Informational Statement is filed with the Clerk of District Court.

**Individual Counties May Have a Different Joint Informational Statement Process:**

Rule 8.3.1 of the North Dakota Rules of Court gives the basic requirements and timelines for preparing and filing a Joint Informational Statement.

However, individual counties may have a process that is different than the basic requirements and timelines of Rule 8.3.1. If the County's process is different, a written notice, order or other document you receive from the Court will include the County's process.

If the County's process is different, comply with that County's requirements and timelines.

**If the County's Process ISN'T Different, Comply with the Following Requirements and Timelines of Rule 8.3.1:****You'll Receive Written Notice of the Evidentiary Hearing:**

After the Judicial Officer decides the Moving party met the requirements for an evidentiary hearing, you and the Moving party will receive the Judicial Officer's decision in writing. You and the Moving party will also receive written notice of the date, time and location of the evidentiary hearing.

(Notice of the hearing may be mailed to you separately.)

**Meet with the Moving Party Within 30 Days of the Order for an Evidentiary Hearing:**

You, the Opposing party, and the Moving party are required to meet in-person or by electronic means within 30 days of the order for an evidentiary hearing. The purpose of the meeting is to prepare a Joint Informational Statement.

A Joint Informational Statement form may be included with the written notice, order or other document you receive from the Court. A Joint Informational Statement form is also included in this packet.

File the completed and signed Joint Informational Statement form with the Clerk of District Court. You must file the completed and signed form within 7 days after the meeting.

## **Step Two: Prepare for the Evidentiary Hearing.**

The order for the evidentiary hearing includes the date, time and location of the hearing.

### **If you need special assistance at the hearing:**

If you have a disability, don't read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

### **Review pre-trial or trial guidebooks for self-represented individuals and lawyers:**

Preparing for an evidentiary hearing is often a complex and confusing process. Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

### **Gather documentation:**

You'll be required to prove the allegations in your answer to motion documents. Gather the documentation you believe will prove your side.

#### For example:

- At least one copy of the original judgment that established residential responsibility and/or parenting time, OR, if the original judgment has been amended, the most recently amended judgment.
- Your copies of the motion documents the Moving party served on you.
- Your copies of the answer to motion documents you filed with the Court in the First Step.
- Your copies of the supporting documentation you filed with the Court in the First Step.
- List of witnesses, including the individuals whose affidavits you filed with the Court in support of your answer to motion in the First Step.

## **Review the North Dakota Rules of Evidence carefully!**

The North Dakota Rules of Evidence govern how you object to evidence the Moving party wants to admit at the hearing. The Rules also govern whether your evidence is admitted for consideration at the hearing.

The starting point for admitting evidence at the hearing is whether the evidence is relevant. The party asking for evidence to be admitted must show a reasonable connection between the evidence they want the Judicial Officer to consider and the legal claim they are trying to prove.

An Evidence Research Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “District Court Civil” section.

### **Subpoenas:**

If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena. A Subpoena Informational Guide is available at [www.ndcourts.gov/legal-self-help/subpoenas](http://www.ndcourts.gov/legal-self-help/subpoenas).

### **Organize the information, documents, etc. that you think you’ll need for the hearing:**

At minimum, prepare an outline of your remarks and arguments.

## **Step Three: The Evidentiary Hearing.**

The evidentiary hearing is an examination of the facts and law, presided over by the Judicial Officer assigned to your case. The Moving party and Opposing party each have an opportunity to tell their side of the facts and argue how the laws apply to the situation. The Judicial Officer weighs the facts and arguments presented by the Moving party and Opposing party and either grants or dismisses the motion to modify primary residential responsibility.

### **If you need special assistance at the hearing:**

If you have a disability, don’t read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court’s office as soon as possible.

## **Don't be late!**

Don't be late for your evidentiary hearing. If you have a serious, unavoidable reason why you can't go to the evidentiary hearing on the scheduled day or will be late, call the Clerk of District Court's office as soon as possible.

Be aware that even if you contact the Clerk of District Court's office, the Judicial Officer may decide to hold the evidentiary hearing without you.

## **Bring the information, documents, etc. that you prepared for the hearing:**

Bring all of the files, paperwork, etc. that you gathered and organized while preparing for the evidentiary hearing. Bring the outline of what you want to say.

## **Before the hearing begins:**

Organize your files and paperwork on your assigned table in the courtroom so you can easily locate information as needed.

Be prepared to take notes during the hearing.

## **Conduct of the hearing:**

In general, an evidentiary hearing proceeds in the following order:

- The evidentiary hearing officially begins when all are asked to rise when the Judicial Officer comes into the courtroom:
  - The Judicial Officer begins the evidentiary hearing by identifying any documents that were submitted to the Clerk of District Court and identifying the parties.
- Opening Statements:
  - If the Judicial Officer allows opening statements, the Moving party usually goes first.
  - An opening statement describes the issues and states what the party expects to prove during the hearing.
- The Moving Party Presents their Case:
  - The Moving party has the burden of proving the allegations in their motion documents.
  - The Moving party may call individuals with first-hand knowledge to testify.
  - The Moving party may testify on their own behalf.
  - You, the Opposing party, may object to the evidence the Moving party presents. The North Dakota Rules of Evidence govern how you object to evidence.



- You, the Opposing Party, have the Option to Cross-Examine the Moving Party's Witnesses:
  - After the Moving party finishes direct questioning of their witness, you have a chance to ask their witness questions. This is called cross-examination.
  - If the Moving party testifies on their own behalf, you may cross-examine them.
  - You may only ask questions about the topics covered during the Moving party's direct questioning of their witness.
  
- You, the Opposing Party, Present your Case:
  - You may present your evidence, including witnesses with first-hand knowledge.
  - You may testify on your own behalf.
  - The Moving party may object to the evidence you present. The North Dakota Rules of Evidence govern how the Moving party objects to your evidence.
  
- The Moving Party has the Option to Cross-Examine your Witnesses:
  - After you finish direct questioning of your witness, the Moving party has the chance to cross-examine your witness.
  - If you testify on your own behalf, the Moving party may cross-examine you.
  - The Moving party may only ask questions about the topics covered during your direct questioning of your witness.
  
- Closing Arguments:
  - If the Judicial Officer allows closing arguments, the Moving party usually goes first.
  - A closing argument is a summary of the evidence presented at the hearing and an argument to the Judicial Officer on how the motion should be decided.

**The Judicial Officer May Decide the Motion at the End of the Hearing OR Decide at a Later Date:**

At the end of the hearing, the Judicial Officer may make a final decision on the motion or may decide to make a final decision at a later date.

If the Judicial Officer makes a final decision at the end of the hearing, the Judicial Officer may require the party who won to prepare an amended judgment that includes the modifications to primary residential responsibility.

If the Judicial Officer DOESN'T make a final decision at the end of the hearing, the Judicial Officer will make a decision at a later date. You'll receive the Judicial Officer's decision in writing.

**The Judicial Officer May Require You to Prepare a Proposed Order to Amend Judgment and a Proposed Amended Judgment:**

An order to amend judgment explains why the Judicial Officer decided you met the requirements to modify primary residential responsibility, and lists the exact modifications to the current judgment. An order to amend judgment is signed by the Judicial Officer.

An amended judgment is a recreation of the current judgment with all of the modifications from the order to amend judgment. An amended judgment is signed by either the Judicial Officer or the Clerk of Court.

If you are required to prepare a proposed order to amend judgment and a proposed amended judgment, you must serve copies on all parties, and file proof of service with the Clerk of District Court.

- 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) for information about service and affidavit of service forms. Review the information in the “Service After a District Court Civil Action Has Started” section.

The Judicial Officer will decide whether your proposed order to amend judgment and a proposed amended judgment are appropriate.

If the Judicial Officer decides they are appropriate, the Judicial Officer will sign and date the proposed order to amend judgment, and either the Judicial Officer or the Clerk of Court will sign the proposed amended judgment.

The order to amend judgment and the amended judgment aren’t official until appropriately signed and dated.

**Step Four:  
Appealing the Final Order.**

There are up to two ways to request a review of a final order in a motion to modify primary residential responsibility.

**Review of a Judicial Referee Final Order by a District Court Judge:**

If a Judicial Referee issued the final order in a motion to modify primary residential responsibility, either party may file a written request for review by a District Court Judge.

If a party decides to file a request, the written request for review must:

- Be filed with the District Court within 7 days after service of the Notice of the Right to Review; and
- State the reasons the party requests the review.

The District Court Judge who reviews the Judicial Referee's final order may:

- Adopt the Judicial Referee's findings in the final order;
- Send the final order back to the Judicial Referee for additional findings; or
- Reject the Judicial Referee's findings in the final order.
  - If the District Court Judge rejects the Judicial Referee's findings, the Judge must issue their own findings of fact, with or without a hearing.

Parties aren't required to request a review of a Judicial Referee's final order. A party may skip this option and appeal the final order to the North Dakota Supreme Court.

### **Appeal a District Court Final Order to the North Dakota Supreme Court**

Either party may appeal a final order in a motion to modify primary residential responsibility to the North Dakota Supreme Court.

The Notice of Appeal must be filed with the Clerk of the Supreme Court within sixty (60) days of the District Court Judicial Officer's final order.

A guide to the North Dakota Supreme Court appeals process can be found at [www.ndcourts.gov/legal-self-help/district-court-appeal-to-supreme-court](http://www.ndcourts.gov/legal-self-help/district-court-appeal-to-supreme-court).