

FAMILY COURT MATTER

REQUEST TO ESTABLISH CHILD CUSTODY AND PARENTING TIME

Forms included in this packet:

Notice of Motion and Motion to Establish Child Custody and Parenting Time

Affidavit in Support of Motion

Affidavit of Personal Service

Read These Important Notices

- **Use these forms only if:**

1. There is no court order deciding custody and visitation or parenting time rights, **and**

2. You are the child's parent, **and**

3. At the time of the child's birth you and the other parent were not married to each other, **and**

4. You have proof that the man is the father, in the form of either

a. Recognition of Parentage signed by both parents; the father's "yellow" copy, or the mother's "green" copy, or a certified copy of the Recognition of Parentage OR

b. Paternity Order finding that the man is the father of the child(ren.) Note: If the Paternity Order identifies the father and does not award custody and parenting time/visitation you may use this packet. Read your Paternity Order carefully. If it awards custody and grants parenting time/visitation rights or reserves parenting time/visitation rights, do not use this packet. Use the "Changing Custody" packet instead.

If you have a **Declaration of Parentage or a Birth Certificate** naming the father but you do not have a "ROP" or Paternity Order, you cannot use this packet. You can ask the other parent to sign a Recognition of Parentage now. If that is not possible, you must file a Summons and Complaint in a paternity case.

- **Information about Recognition of Parentage ("ROP")**

You can get a certified copy of your signed "ROP" at the Minnesota Department of Health, Vital Statistics, 717 Delaware Street SE, Minneapolis. A picture ID is required to get a copy of the "ROP." If you do not have an "ROP" but you and the other parent are willing to sign one now, you can get a form "ROP" from your local Child Support and Collections Office. The form must be signed and notarized and filed with the Minnesota Department of Health. Signing a "ROP" has serious legal consequences and you should understand those consequences before signing the "ROP".

- **Information about Paternity Actions**

To file a Summons and Complaint to establish paternity, contact a private attorney, or go to the county attorney.

- **If the Child is in Danger**

In extremely rare cases, a judge will change custody on a temporary basis before a full hearing with live testimony has been held. Those rare cases involve situations in which the child is in immediate, significant danger if the existing custody arrangement continues. If your child is in immediate danger, you should request an emergency, expedited hearing. An Order For Protection might also be available in extreme situations, but an Order for Protection will not permanently change custody. You need to use the motion papers in this packet to permanently change custody. You can get help with Orders for Protection from the court administrator's office or local domestic abuse advocacy programs.

- **The term "visitation" was changed to "parenting time" by the Minnesota Legislature, effective January 1, 2001. "Parenting time" means the time a parent spends with a child regardless of the custodial designation regarding the child. (M.S. §518.003, subd. 5.)**

- If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may not be able to immediately decide your request to establish custody.
- Court personnel and the county attorney's office **CANNOT** help you fill out the form(s) in this packet.
- You should see an attorney if you do not know how to answer the questions on these forms or if you think the other party will hire an attorney.
- The Court expects every person who appears in court without a lawyer to know and follow the law. If you act as your own lawyer, you must do what a lawyer would do.
- You **MUST** fill out all of the forms included with this packet and you **MUST** follow the instructions included with this packet.
- Type your answers or print neatly using dark ink.
- If you need more space to answer a question use an additional full sheet of paper.

INSTRUCTIONS

Step 1

Fill Out the *Notice of Motion and Motion to Establish Custody and Parenting Time Form*

Fill out the *Notice of Motion and Motion to Establish Custody and Parenting Time* form included in this packet. This form tells the Court and the other party the type of custody or visitation problem you are having, what you are asking for from the Court, and the date and time of the hearing.

At the top of the form:

- On the line after “In Re the Custody of,” print the name and birth date of each child involved in this action.

If you have a Recognition of Parentage “ROP”:

1. Do not write in the case or court file number at this time. The court administrator will assign a case number later.

2. On the line marked “Petitioner/Plaintiff,” print your name.

3. On the line marked “Respondent/Defendant,” print the name of the other parent. If you are not the child(ren)’s mother or father, name both parents as respondents, printing the name of one parent on one line and the name of the other parent on the second line.

4. On the “TO” line, print the full name and street address of each respondent.

If you have a Paternity Order:

1. Write the case or court file number of the paternity case.

2. On the line marked “Petitioner/Plaintiff,” print the name of the plaintiff in the paternity case.

3. On the line marked “Respondent/Defendant,” print the name of the defendant in the paternity case.

4. On the “TO” line, print the full name and street address of each party other than you.

Do not fill in the date, time, name of judge or judicial officer and location of the hearing yet. You will do that as part of Step 3.

FILL OUT THE REST OF THE FORM:

NOTE: The following instructions are numbered the same as the paragraphs/questions on the *Notice of Motion and Motion* form.

1. Print the full name and date of birth of each child for whom you wish to establish custody and visitation.
2. State how you are related to the child(ren). Then check “Recognition of Parentage” or “Paternity Order”. You must have one of these documents to use this packet of forms. Attach a copy of the document to the motion.
3. **Legal custody** identifies which party will have a right to make decisions about important issues in the life of the child(ren), including the educational, religious, and medical upbringing of the child(ren). Check off the type of legal custody you would like the Court to order:

- a. “Joint legal custody” – both you and the other party will have an equal right to make decisions regarding the educational, religious, and medical upbringing of the child(ren).
 - b. “Sole legal custody” – only one party will have the right to make decisions regarding the educational, religious, and medical upbringing of the child(ren).
4. **Physical custody** identifies which person(s) will handle the routine daily care and control of the child(ren). A parent who does not have physical custody usually has a right to parenting time (visitation) with the child(ren). Check off which type of physical custody you would like the Court to order:
- a. “Joint physical custody” – the child(ren) will live with both you and the other party based on a schedule that meets the needs of the child. Write in your detailed proposed schedule on the lines provided.
 - b. “Sole physical custody” – the child(ren) will live with one party and will have visitation with the other party.
5. **Parenting Time:** Check off whether parenting time with the child(ren) should be **supervised or unsupervised**. If you are asking for sole physical custody to you, and if you think your child(ren) would not be safe alone with your spouse, ask the Court to make parenting time “supervised.” The Court may order parenting time to take place at a visitation center, or the Court may order a family member or someone from social services to supervise the parenting time. You will explain why supervised parenting time is necessary in your *Affidavit in Support of Motion*. If you check “unsupervised” the other parent can visit the child(ren) without anyone else watching.
6. **Schedule for Parenting Time:** Use this paragraph to explain when each parent will have parenting time with the child(ren), whether you are asking for joint custody or sole custody. If you will have sole custody, check the box “Other parent” and state specifically when the other parent will have time with the child(ren.) If you will have joint custody, check both boxes “Me” and “Other parent” and explain which parent has responsibility for the child(ren) at all times.

The parenting time schedule you request must be what is **best for the child(ren)**. This will depend upon the age of the child(ren) and the parents’ schedules. Ask your court administrator for a pamphlet entitled, “A Parental Guide to Making Child-Focused Parenting Time Decisions.” Child development experts wrote this pamphlet to help parents and judges understand the needs of children and how those needs change as a child gets older. In setting out a schedule, you should be very specific. For example: “Weekends – every other weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m.” *Weeknights – one weeknight per week from after school to 7:00 p.m.* Include in your schedule such matters as who should provide transportation, and where exchanges should take place. Holidays may include, but are not limited to, the following: New Years Day, Easter, Memorial Day weekend, Fourth of July, Labor Day weekend, Thanksgiving Day, and Christmas. Some parents alternate holidays each year so that, for example, on Memorial Day weekend the child(ren) would be with the mother in odd-numbered years and with the father in even-numbered years. The next holiday would be Fourth of July and the child(ren) would be with the father in odd-numbered years and with the mother in even-numbered years. Other parents keep the same holidays each year so that, for example, the child(ren) spends every Christmas Eve with the mother and every Christmas Day with the father. Under “Other” you may want to include how you would like to handle Mother’s Day, Father’s Day, and any other special days.

7. **Child support** is money paid by the non-custodial parent to the custodial party for the support of the child(ren). Check off how you would like the Court to decide the issue of child support.

(a) Check box (a) if the child(ren) will live with you and you want the other party to pay you a monthly child support amount, and then fill in the amount that should be paid. If the other party is already paying child support pursuant to a court order but you want the party to pay a different amount of support, put the amount you want at (a).

(b) Check box (b) if you will be paying child support to the other party.

(c) Check box (c) if there is currently a court order regarding child support. Fill in who pays the support, how much is paid, and the court file number.

To calculate the amount of child support, follow these steps:

- First, if you want the other party to pay child support, determine that party's total gross monthly income. If you will be paying child support to the other party, determine your total gross monthly income. Gross monthly income is income before taxes and other deductions. **If a party is paid every two weeks, take the gross pay for the two-week period and multiply by 2.17 to get monthly pay. If a party is paid weekly, take the weekly gross pay and multiply by 4.33 to get monthly pay.**

Use the same multipliers in the next step in determining net monthly income and monthly deductions.

- Next, determine the net monthly income for the person who will be paying child support. To determine net income, subtract the following from the person's gross monthly income:

(1) Federal Income Tax (standard deductions apply – use tax tables)

(2) State Income Tax (standard deductions apply – use tax tables)

(3) Social Security deductions

(4) Reasonable pension deductions

(5) Cost of dependent health insurance coverage

(6) Cost of individual or group health/hospitalization coverage or an amount for actual medical expenses

(7) A child support or maintenance order that is currently being paid.

Using the NET monthly income amount and the chart below, determine the percent of child support to be paid. The following are two examples of how to find the percentage:

- Example 1: Assume the person's net income is \$857 per month and there are 3 children of the marriage. In the left-hand column, find the range in which \$857 is located (\$851-900). In the top row, find the number of children to be supported (3). The point at which the column and row meet is the percentage of child support to be paid: (31%).

- Example 1: Assume the person's net income is \$1,250 per month and there are 2 children of the marriage. In the left-hand column, find the range in which \$1,250 is located (\$1001-5000). In the top row, find the number of children to be supported (2). The point at which the column and row meet is the percentage of child support to be paid: (30%).

Net Income	Number of Children						
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<u>Per Month</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7 or more</u>
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\$0-\$550: To be determined based on the person’s ability to provide support at this income level, or at a higher level if the person has the earning ability.

\$551-600	16%	19%	22%	25%	28%	30%	32%
\$601-650	17%	21%	24%	27%	29%	32%	34%
\$651-700	18%	22%	25%	28%	31%	34%	36%
\$701-750	19%	23%	27%	30%	33%	36%	38%
\$751-800	20%	24%	28%	31%	35%	38%	40%
\$801-850	21%	25%	29%	33%	36%	40%	42%
\$851-900	22%	27%	31%	34%	38%	41%	44%
\$901-950	23%	28%	32%	36%	40%	43%	46%
\$951-1000	24%	29%	34%	38%	41%	45%	48%
\$1001-5935	25%	30%	35%	39%	43%	47%	50%

Now calculate the dollar amount of support to be paid each month by multiplying the person’s net income by the percentage indicated in the chart. For example: using the first example above, multiply \$857.00 x .31 = \$265.67 per month. Using the second example from above, multiply \$1,250.00 x .30 = \$375.00 per month.

Fill in the child support amount on the form. Note: This amount is the “guideline” amount of child support. You can ask to pay/receive more or less than the guideline amount. If you want to ask for an amount other than the guideline amount, read Minn. Stat. 518.551, subd. 5(c) and 5(d) and explain in the *Petition* why you want to deviate from the guideline amount, and how much you want child support to be. You can get a copy of the statute at the law library.

8-10. You do not need to write anything for questions 8-10. If child support is requested, the Court will also consider who should pay the medical, dental and daycare expenses of the child(ren).

11. If you want the Court to order anything else, write it here.

12. You don’t have to write anything for this question. This is catchall language so the Court is not limited in what it can order.

Read the Verification and Acknowledgment carefully. By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party or impose other sanctions.

Date and sign the *Notice of Motion and Motion* form.

<p>Step 2 Fill Out the <i>Affidavit in Support of Motion to Establish Custody and Parenting Time Form</i></p>
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Fill out the *Affidavit in Support of Motion to Establish Custody and Parenting Time* form included in this packet. This form tells the Court and the other party what you are asking for from the Court and

WHY you are asking for it.

- Fill in the top part of the form the same way you did on your *Notice of Motion and Motion* form in Step 1.
- Where the form reads “STATE OF MINNESOTA, COUNTY OF _____,” on the blank line after “COUNTY OF,” fill in the name of the county where you will sign the *Affidavit*.
- Write your name on the blank line above paragraph/question number 1.

NOTE: The following instructions are numbered the same as the questions on the Affidavit in Support of Motion to Establish Custody and Parenting Time.

1. Check a box to show if you are the Petitioner in this case or the Respondent.
2. Check off whether a juvenile court proceeding is or is not now taking place in Minnesota or in any other state. If it is, list the county, state and file number of the case. If you have any juvenile court orders or papers from the child protection worker, attach a copy of these to your *Affidavit*.
3. Check off whether an *Order for Protection* involving you and the other party or child(ren) is now in effect in Minnesota or in any other state. If it is, write in the county, state and file number, and attach a copy of the *Order for Protection*.
4. Check off whether the child(ren) currently live(s) with you or the other party. Write in your relationship to the child(ren). Write the other party’s relationship to the child(ren) and list the child(ren)’s current address, and the date the child(ren) moved to that address.
5. Check off who should have **legal** custody of the child(ren) the same as you did on your *Notice of Motion and Motion* form and write in the reasons you think this is best for the child(ren).
6. Check off who should have **physical** custody of the child(ren) the same as you did in your *Notice of Motion and Motion*. If you are asking for joint physical custody, write in the schedule you think is best for the child(ren).
7. Write in why your request is best for the child(ren). Include as many details and facts as possible for each factor listed so the Court can make a decision. The Court considers 13 factors to determine custody if there is no custody order. Include details about each of the following factors.
 - a) the wishes of each of the child(ren)’s parents as to custody;
 - b) the reasonable preference of the child(ren), if the Court deems the child(ren) to be of sufficient age to express preference;
 - c) the child(ren)’s primary caretaker;
 - d) the intimacy of the relationship between parent and child(ren);
 - e) the interaction and interrelationship of the child(ren) with (a) parent(s), sibling(s), and any other person(s) who may significantly affect the child(ren)’s best interests;
 - f) the child(ren)’s adjustment to home, school and community;
 - g) the length of time the child(ren) has/have lived in a stable, satisfactory environment and the desirability of maintaining continuity;

- h) the permanence, as a family unity, of the existing or proposed custodial home;
 - i) the mental and physical health of all individuals involved; except that a disability, as defined in Section 363.01 of a proposed custodian or the child(ren) shall not be determinative of the custody of the child(ren), unless the proposed custodial arrangement is not in the best interest(s) of the child(ren);
 - j) the capacity and disposition of the parties to give the child(ren) love, affection, and guidance, and to continue educating and raising the child(ren) in the child(ren)'s culture, religion and creed, if any.
 - k) The child(ren)'s cultural background;
 - l) The effect on the child(ren) of the actions of an abuser, if related to domestic abuse, as defined in Section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family household member of the parent; and
 - m) Except in cases in which a finding of domestic abuse as defined in Section 518B.01 has been made, the Court will structure visitation to encourage and permit frequent and continuing contact by the other parent with the child(ren).
8. Write down why you want the parenting time schedule at Paragraph 4 in your *Motion*. Include as many facts as possible to show the Court that your schedule is in the child(ren)'s best interest(s). If there are limits, such as no overnights, write in why the Court should order these limits.
 9. Check off whether you are asking for supervised or unsupervised parenting time the same as you did in paragraph 4 of your *Notice of Motion and Motion* and write down why you want the parenting time to be supervised or unsupervised. If you are asking for supervised visits, be specific about the reasons you believe the other parent's visits should be supervised. The Court will grant parenting time that enables the child(ren) and the non-custodial parent to maintain a parent-child relationship that will be in the best interest(s) of the child(ren). If you are requesting supervised parenting time or other limits, write in the things that have happened and are likely to happen that will put the child(ren)'s physical or emotional health in danger, or will impair the child(ren)'s emotional development if the parenting time is unsupervised. Write in the name of the person or agency you would like to supervise the parenting time.
 10. Check whether you are requesting that the child(ren) be transferred at a visitation exchange center if one is located in the area and for both parties to follow all rules of the visitation exchange center. If yes, write in why this is in the child(ren)'s best interest(s).
 11. State how much medical insurance costs per month for the child(ren) and check off who currently pays for that insurance.
 12. State how much day care costs per month for the child(ren) and check off who currently pays for that day care.
 13. Check box (a) if the Court has already ordered child support to be paid and you are satisfied with the amount of child support. Check box (b) if there is no order for child support in existence, or if you want to ask the Court to change the amount of child support. Write the name of the person who pays or should pay child support, the name of his or her employer, and how much (s)he earns

per week, month, year, or other (check the correct box). Write in your current gross income per month. Write in your current net monthly income and the source of that income. If you have income from more than one source, write in the additional source(s) and the amount(s) you receive from each per month.

14. Answer this question if you want the Court to modify existing child support payments or to order that the other party start paying child support. Write in your current monthly expenses. Be sure to add up the column and fill in the total amount of monthly expenses. Write in the names of individuals who live with you and who are included in your household expenses.
15. Write in any additional information you think might be helpful to the Court when it considers your request to establish custody and parenting time.

DO NOT SIGN the *Affidavit in Support of Motion* until after the deputy/court administrator has reviewed your papers.

DO NOT DATE AND SIGN YOUR AFFIDAVIT UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR COURT ADMINISTRATOR/DEPUTY. MAKE SURE YOU BRING PICTURE IDENTIFICATION TO SHOW TO THEM.

Step 3

Hearing Date, Time, and Location

When your *Notice of Motion and Motion* form and your *Affidavit in Support of Motion* form have been completed, go to the court administrator's office. The court administrator/deputy can notarize your signature free of charge, but you must have identification. The court administrator/deputy will also determine which judge or judicial officer will hear your case and obtain the date and time for the hearing. You may obtain this information yourself by calling the court administrator's office.

Fill in the date, time, location, the name of the judge or judicial officer and room number of the hearing on the first page of the *Notice of Motion and Motion* form.

Step 4

Make Copies of Forms

1. Make **two (2)** copies of the *Notice of Motion and Motion to Establish Custody and Parenting Time* form and all attachments, and **two (2)** copies of your *Affidavit in Support of Motion* form and all attachments.
2. Keep one copy of each form for yourself (make sure you bring your copies with you to Court on the day of the hearing).
3. Step 5 tells you how to serve the second copy of each form upon the other party. Step 7 tells you how to file the originals of the forms with the Court.

Step 5

Serve Notice on the Other Party

You must arrange for the other parties to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called "service of process." **A party to an action is not allowed to serve the other party.** You must have someone else who is 18 years of age or older serve the other party. Papers CANNOT be served on a Sunday or on a legal holiday.

To serve the papers personally, follow these instructions:

At least 14 days before the hearing date, the server hands to the other party **one copy** of the completed *Notice of Motion and Motion* and **one copy** of your *Affidavit in Support of Motion* form (and all attachments). Example: If the hearing date is January 18, the papers must be served on or before January 4.

Warning: If your forms are not personally served on the other party at least 14 days before the hearing, your Motion may not be heard by the Court.

Step 6

The Person Who Served the Papers Fills Out the *Affidavit of Service* Form

After the papers are served, the person who served the papers must fill out the *Affidavit of Personal Service* form included in this packet. This form is evidence that the papers were served on the other party.

1. Fill in the top part of the form the same as you did for the *Notice of Motion and Motion* form.
2. On the blank line after it says "State of Minnesota, County of _____," fill in the name of the county where the server signs the *Affidavit of Personal Service*.
3. Fill in the name and birth date of the server.
4. Fill in the date the papers were handed to the other party.
5. Fill in the place where the documents were served.
6. Fill in the name of the other party.
7. The person who served the papers signs the Affidavit in the presence of a notary public or court administrator/deputy. The notary or court administrator/deputy will require picture identification. After it has been signed, make one copy of the *Affidavit of Personal Service* for your records. You will file the original with the Court as part of Step 7.

Step 7

File the Forms with the Court

The original documents must be **RECEIVED** by the court administrator's office **at least 14 days before the date of the hearing**. You may file the papers by mail, but you must allow three extra days for mailing. **Mail the documents listed below at least 17 days before the hearing** to court administrator's office.

File the following documents with the Court:

- The **original** of the *Notice of Motion and Motion to Establish Custody and Parenting Time*, and all attachments;
- The **original** of your *Affidavit in Support of Motion to Establish Custody And Parenting Time*, and all attachments;
- The **original** of the *Affidavit of Personal Service*; and
- A filing fee, if applicable.

If you did not pay a filing fee when this case was first begun, you will need to pay the filing fee now. Contact the court administrator to find out the amount of the filing fee. Make checks payable to the court administrator.

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the court administrator/deputy for an In Forma Pauperis application. You need to fill out this application and sign it in front of a Notary Public or a deputy/court administrator. This application will be reviewed by a judge who will determine whether you must pay the filing fee. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee or the court administrator cannot accept your forms.

Step 8 Appear in Court

You must go to Court on the date set for the hearing. Plan to arrive at least 15 minutes before your court time. Bring with you to the hearing your copies of the papers you filed with the Court. **Do not bring children to the first hearing**, unless the court administrator/deputy tells you to.

If the other party disagrees with your request, there will usually be two court hearings. At the first hearing, the judge or judicial officer will only consider the written Affidavits you and the other party filed. The first hearing is short – up to 30 minutes. Do not bring witnesses and evidence to the first hearing, unless instructed to by the court administrator/deputy. Usually the judge will not listen to live testimony at the first hearing. You will only have the opportunity to make a brief statement summarizing your position. However, if you have requested an emergency hearing and claim the child is in immediate danger, you may have to testify at the first hearing and have your witnesses. If you are not sure whether to bring witnesses to the first hearing, call the court administrator's office.

The hearing is very formal. You are expected to know and follow the court rules of procedure. You should be respectful to the other party and to everyone in the courtroom. Do not interrupt the judge or other party. Try to stay calm, and avoid unnecessarily criticizing the other party. Answer any questions from the judge honestly. Direct all your comments to the judge or judicial officer, not the

other party.

After the hearing the judge will issue an *Order*. The judge may issue the *Order* at the end of the hearing or may send a copy of the *Order* to you in the mail.

Custody Evaluations

On many occasions at the end of the first hearing the judge or judicial officer will ask for a custody evaluation in order to have someone gather facts to help the judge or judicial officer make a decision. A custody evaluation may take several days, and you must pay the cost of the evaluation. (If a party has an “IFP” the fee is waived.) If a custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least several months. The judge or judicial officer may also appoint a guardian ad litem to do a custody evaluation. This person may or may not be a lawyer.