

# FAMILY COURT MATTER

## Request for Help To Resolve Parenting Time or Visitation Problem

Forms included in this packet:

*Notice of Motion and Motion for Parenting Time Assistance*

*Affidavit in Support of Motion for Parenting Time Assistance*

*Affidavit of Service by Mail*

*Affidavit of Personal Service*

Fill out – but DO NOT SIGN and DO NOT SERVE the:

*Notice of Motion and Motion; and*

*Affidavit in Support of Motion*

## IMPORTANT NOTICES

- **WARNING: You CANNOT use these forms UNLESS there is already a court order giving you or the other party parenting time or visitation rights. If you do not have such an order, then get the Family Court Packet entitled “Establishing Custody and Parenting Time”.**
- **The term “Visitation” was changed to “Parenting Time” by the Minnesota Legislature, effective 1/1/01. “Parenting time” means the time a parent spends with a child regardless of the custodial designation regarding the child. (Minn. Stat. Section 518.003 Subd. 5.)**
- The Court expects every person who appears in court without an attorney to know and follow the law. The judge will not be able to give you any help in court.
- Court personnel and the county attorney’s office **CANNOT** help you fill out the form(s) in this packet.
- You **MUST** fill out all forms included in this packet and you **MUST** follow the instructions included 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.
- Type your answers or print neatly using dark ink.

# INSTRUCTIONS

## Step 1

### Fill Out the *Notice of Motion and Motion for Parenting Time Assistance* Form

Fill out the *Notice of Motion and Motion for Parenting Time Assistance* form included in this packet. This form tells the court and the other party the type of parenting time/visitation problem you are having, what you are asking for from the court, and the date and time of the hearing.

## FILL OUT THE TOP PART OF THE FORM

**NOTE: The information to fill in the top part of the form can be found at the top of your current Visitation or Parenting Time Order or your divorce or paternity decree. Be sure to copy the information EXACTLY as it is on your current Order.**

- Write the case number that is also called the “court file number.”
- On the lines marked “Name of Petitioner/Plaintiff” and “Name of Respondent/Defendant,” write the names of the Petitioner/Plaintiff and Respondent/Defendant as listed on your **current** Parenting Time or Visitation Order, or divorce or paternity decree.
- On the line marked “TO:” write the full name and street address of the party (or parties) who has/have custody and is/are causing your parenting time problem.

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

**Fill out the rest of the form. The instructions that follow are numbered the same as the paragraphs/questions on the *Notice of Motion and Motion* form.**

Review paragraphs/questions 1-14 that list different types of help you can ask for from the court. Check off **only** the boxes for the type of help you are asking for from the court—you **do not need to check off every box. You may check off as many types of help as you wish, but it will be up to the court to decide what types of help (if any) will be ordered.**

1. Check box 1 if you are asking for makeup (compensatory) parenting time because a scheduled time was wrongfully denied and the other party has not let you have makeup parenting time.
2. Check box 2 if you are asking the court to appoint a parenting time expeditor to help you and the other party to resolve the parenting time problems and/or any future parenting time problems that may happen. Under Minnesota’s law, the parenting time expeditor will first try to help you and the other parties reach an agreement between yourselves regarding the problem. However, if you and the other party are not able to resolve the problem yourselves, then the parenting time expeditor will make a decision settling the problem. The parenting time expeditor **cannot** make a decision

that changes the existing parenting time or visitation order.

**Note: Not all counties have parenting time expeditors. The court will be able to grant this request only if parenting time expeditors are available in your county.**

**Warning: You and the other party will probably be required to pay for the fees and costs of the visitation expeditor.**

3. Check box 3 if visitation/parenting time is now unsupervised and you are asking for it to be supervised.
4. Check box 4 if visitation/parenting time is now supervised and you are asking for it to be unsupervised.

**Note: You cannot check both boxes 3 and 4.**

5. Check box 5 if you are asking for the drop-offs and pick-ups of the child(ren) to take place at a visitation exchange center so that you can avoid contact with the other party as much as possible.

**Note: Not all counties have visitation exchange centers. The court will be able to grant this request only if visitation exchange center exists in your county.**

**Warning: You and the other party will probably be required to pay for the fees and costs of this service.**

6. Check box 6 if you are asking for the transportation of the child(ren) to take place in a different way or at a different location than is now happening and then tell the court how you would like it to take place.
7. Check box 7 if your existing Order states only that visitation or parenting time shall be “reasonable” and you want a specific schedule. Be as complete and as specific as possible when describing the schedule you want.
8. Check box 8 if your existing Order includes a specific visitation or parenting time schedule and you are asking for that schedule to be changed. Be as complete and as specific as possible when describing the schedule you want.
9. Check box 9 if your existing Order “reserves” visitation or parenting time and you are asking for parenting time rights. Be as complete and as specific as possible when describing the parenting time schedule you want.
10. Check box 10 if you are asking the Court to order the other party to pay any court fees or other costs that you have because of this hearing.
11. Check box 11 if you are asking for the other party to pay any expenses that you have because the other party disobeyed the Parenting Time Order. For example, if you had to pay for day care because the other parent did not appear, or if you had already paid for air fare to bring your child(ren) to you and the other parent would not let the child(ren) go.

12. Check box 12 if you are asking for the other party to pay a penalty to the court because the other party disobeyed the existing Parenting Time Order. The judge will determine the amount to be paid, which cannot be over \$500. **Note: If the court grants this request, the money will not go to you, but will be paid to the court.**
13. You may place a check mark in box 13 only if **each** of the following is true:
  - Your parenting time was wrongfully denied by the other party; AND
  - You lost money because of the wrongful denial of parenting time; AND
  - You have another parenting time scheduled in the future and have already paid for something to do with that time (for example: air fare); AND
  - You want the other party to pay money (the same amount as the money paid for the upcoming visit) to be held by the court to help guarantee that the other party obeys the court order in the future and, if the upcoming parenting time is denied, to have the money paid to you.

**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*.**

## Step 2

### Fill Out the *Affidavit in Support of Motion for Parenting Time Assistance Form*

Fill out the *Affidavit in Support of Motion for Parenting Time Assistance* 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.

- Write the case number which is also called the “court file number.”
- On the line marked “Name of Petitioner/Plaintiff,” write the name of the Petitioner/Plaintiff as listed on your **current** Visitation/Parenting Time Order or divorce or paternity decree.
- On the line marked “Name of Respondent/Defendant,” write the name of the Respondent/Defendant as listed on your **current** Visitation/Parenting Time Order or divorce or paternity decree.
- Write your name on the line above the first numbered paragraph/question.

### **FILL OUT THE REST OF THE FORM:**

You **MUST** answer paragraphs/questions 1 through 6:

1. You **CANNOT** use this packet of materials **UNLESS** a Parenting Time or Visitation Order

already exists for you or the other party, or an Order exists "reserving" parenting time or visitation rights. In paragraph/question 1, check either a. or b. If a. applies, also check off who has parenting time with the child(ren): You or the other party.

2. Check off whether an *Order for Protection* is or is not currently in effect in any state involving you and the other party or the child(ren) of this case. If an *Order for Protection* **IS** in effect, fill in the county, state, and file number found on the *Order for Protection*.
3. Check off whether a juvenile court proceeding (including delinquency, child(ren) in need of protection or services, foster care, or termination of parental rights) involving the child(ren) of this case. If more room is needed, attach another sheet of paper and make a note of that on the form.
4. List the name, birth date, and your relationship (e.g., mother, father, grandparent) to each child(ren) involved in this case. If more room is needed, attach another sheet of paper and make a note of that on the form.
5. Write the name of the state in which the child(ren) currently live and the month and year when they first started living there. Also list the name of the person with whom the child(ren) live and that person's relationship to the child(ren) (mother, father, grandparent). Finally, list the address of the child(ren) (including street address, city, and state).
6. Describe as clearly and as completely as possible the parenting time problem you have, including dates, times, witnesses, and other information that will be helpful to the court in resolving the problem.

*For Paragraphs/Questions 7-20, check off only the type(s) of help that you checked off on your Notice of Motion and Motion form.*

7. Check box 7 ONLY if you checked box 1 on the *Notice of Motion and Motion* form. Then also fill in the date(s) and time(s) on which you were scheduled to have parenting time and what the other party did to deny you that parenting time. For example: "*The other party did not let me take the child(ren) with me when I went to pick them up for my scheduled visitation*"; or "*the other party refused to drop off the child(ren) as planned*"; or "*the other party wasn't home when I went to pick up the child(ren) at the scheduled time and even though I waited for an hour the other party did not show up*."
8. Check box 8 ONLY if you checked box 2 on the *Notice of Motion and Motion* form. You do not need to fill in any other blanks for paragraph/question 8.

**WARNING: You and the other party will probably be required to pay for the fees and costs of the parenting time expeditor.**

9. Check box 9 ONLY if you checked box 3 on the *Notice of Motion and Motion* form. Then tell the court why parenting time should be changed to supervised.
10. Check box 10 ONLY if you checked box 4 on the *Notice of Motion and Motion* form. Then tell the court why parenting time should be changed to unsupervised.

11. Check box 11 ONLY if you checked box 5 on the *Notice of Motion and Motion* form. Then tell the court why the pick-ups and drop-offs of the child(ren) should take place at a visitation center.

**WARNING: You and the other party will probably be required to pay for the fees and costs of this service.**

12. Check box 12 ONLY if you checked box 6 on the *Notice of Motion and Motion* form. Then tell the court how the transportation arrangements should be changed and why.
13. Check box 13 ONLY if you checked box 7 on the *Notice of Motion and Motion* form. Write in why this schedule is in the best interests of the child(ren).
14. Check box 14 ONLY if you checked box 8 on the *Notice of Motion and Motion* form. Write in why this new schedule is in the best interests of the child(ren).
15. Check box 15 ONLY if you checked box 9 on the *Notice of Motion and Motion* form. Answer all of parts a.-f.
16. Check box 16 ONLY if you checked box 10 on the *Notice of Motion and Motion* form. Itemize and then total the amount of court fees and costs you paid. Explain why the other party should have to pay you for those fees and costs.
17. Check box 17 ONLY if you checked box 11 on the *Notice of Motion and Motion* form. Itemize and then total the amount of other expenses you have because of the denied parenting time. Check box 18 ONLY if you checked box 12 on the *Notice of Motion and Motion* form.
18. Check box 18 ONLY if you checked box 13 on the *Notice of Motion and Motion* form. Itemize the other expenses you have already paid for regarding an upcoming scheduled parenting time, and then give the total amount.
20. Check box 20 ONLY if there is other information you think would be helpful to the Court in deciding this case. Write in the information. Be specific.

***Do not date and sign your Affidavit until you are in the presence of a Notary Public or Deputy Court Administrator. Make sure to bring picture identification to show to the Notary Public or Deputy Court Administrator.***

## **Step 3**

### **Obtain**

#### **Hearing Date, Time, and Location From Court Administrator**

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. A Deputy Court Administrator can notarize your signature on the *Affidavit in Support of Motion*. The Deputy Court Administrator will assist you in getting a court date and time.

Fill in the date, time, location, name of the judge 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** copies of the *Notice of Motion and Motion* form.
2. Make **two** copies of *Affidavit in Support of Motion* form.
3. Keep one copy of each form for yourself (make sure you bring your copies with you to Court on the day of the hearing).
4. Step 5 tells you how to serve the second copy of each form upon the other party. Step 7 tells you what to do with the originals of the forms.

## Step 5

### Serve Notice on the Other Party At Least 14 Days Before the Hearing Date

You must arrange for the other party 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 to the action.** You must have someone else who is over the age of 18 serve the other party. The papers can be served personally (handed to the other party), or by mail. The other party must receive the papers at least 14 days before the hearing. Papers **CANNOT** be served on a Sunday or on a legal holiday. If papers are served by mail, Court Rules require adding three days, so that papers must be postmarked at least 17 days before the hearing.

#### **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. If January 4 is a Sunday or legal holiday the papers must be served by January 3.

#### **To serve the papers by mail, follow these instructions:**

The server places **one copy** of the completed *Notice of Motion and Motion* form, and **one copy** of your *Affidavit in Support of Motion*, (and all attachments) in an envelope. Then the server writes your return address and the last known address of the other party on the front of the envelope. The server places the correct amount of postage on the envelope (the server may want to take the envelope to the post office to be weighed to make sure you he/she has the right amount of postage).

The server must mail the envelope containing the forms to the other party **at least 17 days before the hearing date**. Example: If the hearing is January 18, the papers must be postmarked no later than

January 1. If January 1 is a Sunday or legal holiday, the papers must be postmarked by the last day of February.

**Warning: If your forms are not personally served on the other party at least 14 days before the hearing OR mailed to the other party (or his/her attorney) at least 17 days before the hearing date, your Motion will NOT be heard by the court.**

## Step 6

### The Person Who Served the Papers Personally or By Mail Fills Out the *Affidavit of Service* Form

After the papers are served, the person who served the papers must fill out one of the two *Affidavit of Service* forms included in this packet. This form is proof for the Court that the papers were served on the other party.

#### **IF THE PAPERS WERE SERVED PERSONALLY, FOLLOW THESE INSTRUCTIONS:**

1. Use the *Affidavit of Personal Service*.
2. Fill in the top part of the form the same as you did for the *Notice of Motion and Motion* form.
3. 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*.
4. Fill in the name and birth date of the server.
5. Fill in the date the papers were handed to the other party.
6. Fill in the name of the other party.
7. The person who served the papers **MUST NOT SIGN** the *Affidavit of Personal Service* until (s)he is in the presence of a Notary Public. Make sure the person brings picture identification to show to the Notary Public or Deputy Court Administrator.
8. 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.

## **IF THE PAPERS WERE SERVED BY MAIL, FOLLOW THESE INSTRUCTIONS:**

1. Use the *Affidavit of Service by Mail*.
2. Fill in the top part of the form the same as you did for the *Notice of Motion and Motion* form.
3. On the blank line after it says “State of Minnesota, County of \_\_\_\_\_,” fill in the name of the county where the server was when (s)he signed the *Affidavit of Service*.
4. Fill in the name of the person who mailed the envelope.
5. Fill in the name of the person to whom the documents were mailed (the other party).
6. Write in the address of the other party where the papers were mailed.
7. Write in the name of the city and state where the post office was located from which the documents were mailed.
8. The person who mailed the envelope MUST NOT SIGN the *Affidavit of Service by Mail* until (s)he is in the presence of a Notary Public or Deputy Court Administrator. Make sure the person brings picture identification to show to them.
9. After it has been signed, make one copy of the *Affidavit of Service by Mail* for your records. You will file the original with the Court Administrator 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 can file the documents listed below in person or by mail, but you must allow three extra days for mailing. Mail the documents listed below at least 17 days before the hearing.

File the following documents with the Court Administrator:

- The **original** of the *Notice of Motion and Motion for Parenting Time Assistance*;
- The **original** of your *Affidavit in Support of Motion for Parenting Time Assistance*
- The **original** of the *Affidavit of Service by Mail OR Affidavit of Personal Service*
- 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 your check payable to

“Court Administrator”.

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the Deputy Court Administrator for an In Forma Pauperis application. You need to fill out this application and sign it in front of a Notary Public or Deputy Court Administrator. A judge who will determine whether you must pay the filing fee will review this application. If the judge does not sign the form that 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. Be sure to be on time. Bring with you to the hearing your copies of the papers. **Do not bring child(ren) to the first hearing.** The hearing is very formal. You should be polite to everyone in the courtroom, and address the judge as “your honor”. Remember to talk to the judge, not the other party. Do not argue with the other party or be unnecessarily disparaging of 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.