

Establishing Custody and Parenting Time for Unmarried Parents

IMPORTANT NOTICES

Use the Forms to Establish Custody and Parenting Time only if:

1. You are the child's parent, **and**
 2. At the time of the child's birth you and the other parent were not married to each other, **and**
 3. You have signed and filed a Recognition of Parentage, **and**
 4. There is no court order deciding custody and / or parenting time rights.
- Use these instructions for completing the following forms, which are required to be filed with the court when requesting an order establishing custody and parenting time: Summons to Establish Custody and Parenting Time, CHC102; Petition to Establish Custody and Parenting Time, CHC103; Notice of Motion and Motion to Establish Custody and Parenting Time, CHC104; and Affidavit in Support of Motion to Establish Custody and Parenting Time, CHC105.
 - The Recognition of Parentage ("ROP") must be signed by both parents; you must have a certified copy of the Recognition of Parentage.
 - **Where to Get a Certified Copy of the Recognition of Parentage ("ROP")**
Certified Copies of the Minnesota Recognition of Parentage and Non-Paternity Statement can be obtained by completing and notarizing the required form provided by the Minnesota Department of Health. You can get the form from the Minnesota Department of Health website at: <http://www.health.state.mn.us/divs/chs/osr/cerropsnpsia.pdf> for you can call 651-201-5980 to request a copy of the form. There is a fee for a certified copy. The completed form and fee should be mailed to:

**Minnesota Department of Health
Recognition of Parentage Program
Office of the State Registrar
P.O. Box 64499
St. Paul, MN 55164-0499**

Signing a "ROP" Now

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 Enforcement 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".

If you do not have an "ROP" and you or the other parent are unwilling to sign one now, your or the other party can apply for paternity establishment services with your local county child support enforcement office.

- If you have a **Declaration of Parentage or a Birth Certificate** naming the father but you do not have a “ROP”, 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 an action to establish paternity. You may want to seek legal advice from a private attorney or other legal services provider for more information.

- **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 may seek legal advice from a private attorney or other legal services provider; contact social services; seek an Order for Protection; or request an emergency expedited hearing.

Please Note: An Order For Protection might 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.

If you choose to request an emergency expedited hearing, you will need to draft your own court forms or seek help from a private attorney or other legal service provider, as there are **no court forms available** from court administration or on the public website.

- 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 any court forms.
- You should see an attorney if you do not know how to answer the questions on the 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.
- 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.

• Helpful materials may be found at your public county law library. For a directory, see <http://www.lawlibrary.state.mn.us/clppubdir.rtf>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

SEE ALSO “PARENTAL GUIDE TO MAKING CHILD FOCUSED PARENTING TIME DECISIONS” at

http://www.mncourts.gov/mncourtsgov/media/assets/documents/PARENTING_TIME_PA_MPHLET.pdf

INSTRUCTIONS

Step 1

Fill Out the *Summons to Establish Custody and Parenting Time Form*

A *Summons* tells the other party that you have filed a lawsuit against him or her asking the Court to establish an order for custody and parenting time.

How to Fill out the *Summons*:

- On the line after “In Re the Custody of,” print the name and birth date of each child involved in this action.
- Fill in your name on the line for “Petitioner”. From now on you will be called the Petitioner.
- Fill in the other parent’s name on the line for “Respondent”. From now on the other parent will be called the Respondent.
- If you are asking the Court to establish child support, check the box in Paragraph #1.
- Fill in the date, your address information, and sign the form.

Step 2

Fill Out the *Petition to Establish Custody and Parenting Time Form*

The *Petition* is divided into two parts. The first part gives the Court information about you, the other parent, your child(ren), other court orders, and your request for custody, parenting time, and child support. The second part summarizes for the Court and the other parent what you are asking from the Court.

How to Fill Out the *Petition*:

- Fill in the top of the form the same as the *Summons*
- Complete the first set of Paragraphs #1 – #11 by filling in the blanks or checking the appropriate box.
- Check the appropriate box for the second set of Paragraphs #1 - #5.

The following instructions will help in completing the form. For example, for help in answering Paragraph #1 on the *Petition*, read instruction #1.

Paragraphs #1 - #11- First Part

1. If you are the father of the child, circle the word “father”; if you are the mother, circle the word “mother”. Provide your complete name and address where you live or where you agree to receive papers about this case.
2. Provide the name and address of the other parent. If the current address of the other parent is unknown or unavailable to you, write “unknown” or “unavailable”.
3. Provide the full name and birth date of the child or children involved in this action.
4. If the child(ren) currently live with you, check the box “Me”. If the child(ren) live(s) with the other parent, check the box “Other” and provide the full name on the blank line. Provide the address, city, county, state, and zip code of the child(ren). Fill in the date of how long the child(ren) has / have lived at that address. If the child(ren) has / have lived at the current address less than six months, provide the dates and locations of where the child(ren) has / have been living.
5. If you are attaching a certified copy of the Recognition of Parentage, check the first box. If you have requested a certified copy, check the second box.
6. Check YES if there is a court appointed guardian or conservator for the child(ren) and fill in all information. Check NO if no appointment has been made.
7. Read what *legal custody* and *physical custody* means and check the appropriate boxes.
8. Check YES if there is a juvenile court case or child protection case for the child(ren) and fill in all information.
9. Check YES if there is an existing Order for Protection between you and the other parent and fill in all information. Staple a copy of the order to this *Petition*. Check NO if there is no order or existing court case.
10. Parenting time is the time a parent spends with the child(ren), regardless of who has custody of the child. If you think your child(ren) would not be safe alone with the other parent, you can ask the Court to make parenting time “supervised.” You must explain why supervision is needed in the *Affidavit in Support of Motion to Establish Custody and Parenting Time*. If you check “unsupervised” the parent can visit the child(ren) without anyone else watching. If you check “deny parenting time,” you are asking that the court to give the other parent NO parenting time. You must explain why no parenting time should be ordered in the *Affidavit in Support of Motion to Establish Custody and Parenting Time*.
11. Check the first box if you want the Court to establish a child support order. Check the second box if you are not asking the Court to establish child support. Check the third box if there is an existing child support order for the child(ren) and fill in all information.

Paragraphs #1-#5- Second Part

1. Check the same box as you checked in Paragraph #7a.
 2. Check the same box as you checked in Paragraph #7b.
 3. Check the same box as you checked in Paragraph #10.
 4. Only check this box if you checked the first box in Paragraph #11.
- Fill in the date, your address, telephone number and signature.

Step 3

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

How to Fill Out the *Notice of Motion and Motion*:

- Fill in the top of the form the same as the *Summons*.
- Fill in the name and address of the other parent in the “TO” section.
- Do not fill in the date, time, name of judicial officer and location of the hearing yet. You will do that as part of Step 6.

How to Fill Out the *Motion*:

NOTE: The following instructions are numbered the same as the paragraphs on the *Motion* form. Check the box that describes how you would like the Court to decide the issue in each Statement:

1. Check the same box as you checked in Statement #7a of the *Petition* and fill in all information.
2. Check the same box as you checked in Statement #7b of the *Petition* and fill in all information.
3. Check the same box as you checked in Paragraph #10 of the *Petition* and complete the parenting time schedule. The parenting time schedule you request must be what is **best for the child(ren)**. To help you make parenting time decisions that is best for your child(ren), ask your court administrator for a pamphlet entitled, “A Parental Guide to Making Child-Focused Parenting Time Decisions” as this will help you to understand a child’s development and the needs of children as they get older. This pamphlet is also available at www.mncourts.gov under the link “Publications and Reports”. Explain when each parent will have parenting time with the child(ren) and 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 Year’s Day, Easter, Memorial Day weekend, Fourth of July, Labor Day weekend, Thanksgiving Day, and Christmas. Some parents alternate holidays each year, so 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. Some parents like to keep the same holidays each year, so for example, the child(ren) spends every every Christmas Eve with the mother and every Christmas Day with the father. Under “Other” you may want to include how special holidays are handled, such as Mother’s Day and Father’s Day.
4. Check how much time the child(ren) will spend with you and the other parent under the schedule you have requested. If child support is requested in the *Petition*, the Court will also consider who should pay the health care coverage and expenses and child care expenses for the child(ren).
5. If you want the Court to order anything else, write it here.

6. You don't have to write anything for this paragraph. 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 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 4 Fill out the <i>Affidavit in Support of Motion to Establish Custody and Parenting Time</i> Form</p>

The *Affidavit in Support of Motion to Establish Custody and Parenting Time* form tells the Court and the other parent what you are asking for and WHY you are asking for it.

- Fill in the top of the form the same as you did on the *Summons* 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 #1.

Signing the Affidavit under penalty of perjury means you are stating that the information in the Affidavit is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

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

1. Check the box **ONLY** if you are requesting the Court to establish child support.
2. Check off who should have **legal** custody of the child(ren) the same as you did on your *Petition* and *Notice of Motion and Motion* forms.
3. Check off who should have **physical** custody of the child(ren) the same as you did in your *Petition* and *Notice of Motion and Motion*.
4. 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 must consider the factors listed and your answers to these questions will help the Court make its decision regarding custody.
 - a) Describe the child(ren)'s physical, emotional, cultural, spiritual, and other needs and the effect of the proposed arrangements on the child(ren)'s needs and development;
 - b) Describe the child(ren)'s special medical, mental health, or educational needs that may require special parenting arrangements or access to recommended services;
 - c) Explain the custody arrangement the child(ren) want;

- d) Check the appropriate box and provide all information that asks about domestic abuse in both your household and in the other parent's household;
 - e) Describe the physical, mental, or chemical health issues either parent may have that affects the child(ren)'s safety or developmental needs (chemical health issues may mean issues with drugs, alcohol, or other illegal substances);
 - f) Describe how each parent has participated in providing care for the child(ren) by writing down what you and the other parent have done in the past as well as each and every day to take care of the child(ren);
 - g) Write down how you and the other parent will maintain consistency in providing care and meeting the ongoing developmental, emotional, spiritual, and cultural needs of the child(ren);
 - h) Describe how changes to home, school, and community will affect the child(ren)'s well-being and development;
 - i) Describe the effect of the proposed arrangements on the ongoing relationships between the child(ren) and each parent, siblings, and other significant persons in the child(ren)'s life;
 - j) Write down what you see as the benefits of the child(ren) to maximize parenting time with each parent and the detriment to the child(ren) in limiting parenting time with either parent;
 - k) Write down what you do to encourage and permit frequent and continuing contact by the other parent with the child(ren) and what the other parent does to encourage and permit frequent and continuing contact by the child(ren) with you;
 - l) Write down how you and the other parent are willing and able to cooperate in raising the child(ren); how you and the other parent will maximize the sharing of information and minimize the exposure of the child(ren) to conflict; and what methods you and the other parent plan to use for resolving disputes regarding any major decisions concerning the life of the child(ren).
5. Check the appropriate box for parenting time as you did in Paragraph #10 on your *Petition* and Paragraph #3 on your *Motion to Establish Custody and Parenting Time*.
 6. Check the appropriate box that tells the Court and the other parent what type of parenting time you want and how that is in the best interest(s) of the child(ren). The Court will grant parenting time that enables the child(ren) and the parents 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 emotional and physical 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.
 7. Check whether you are requesting that the child(ren) be transferred at a parenting time exchange center and write in why this is in the best interest(s) of the child(ren). You and/or the other parent may be required to pay a fee for each supervised visit.
 8. Only answer questions 8 through 26 if you are requesting the Court to establish child support. These questions will help the Court to determine the appropriate amount of child support.

For #27, write in any additional information you think might be helpful to the Court when it considers your request to establish custody and parenting time.

Step 5 Complete Confidential Information Forms

NOTE! Certain information is considered confidential and not available to the public. To keep this information private and not available to the public, you must attach Form 11.1 or Form 11.2 to certain documents that contain confidential information.

See Rule 11 of the Minnesota General Rules of Practice for more information. One 11.2 can be used for all documents containing confidential information. Examples of documents that have confidential information include:

- Recognition of Parentage form
- Paycheck stubs, employer statements, W-2 forms, or business income and business expenses
- Copies of your tax returns and schedules
- Bank statements
- Credit card statements
- Check registers

To protect your privacy, the other parties, and your child(ren), all social security numbers, employer identification numbers, and financial account numbers must not be listed on papers you file with the court. You must use Form 11.1 when providing these confidential numbers to the court. Form 11.1 can be found at www.mncourts.gov/forms under the court forms category of “Confidential Information” and is court form number CON111. Failure to use Form 11.1 means these numbers could be available to the general public and you could be charged court costs and the court may order other sanctions against you for the failure to keep your and the other party’s social security number, employer identification number, and/or financial account numbers private. **If these numbers are already on file with the court, you do not need to submit another Form 11.1.**

Step 6 Hearing Date, Time, and Location

When your *Notice of Motion and Motion* form and your *Affidavit in Support of Motion* form have been completed, contact the court administrator’s office in your county and let them know you would like a hearing date for a *Motion to Establish Custody and Parenting Time*.

NOTE: You may be told that you must first serve and file your *Summons* and *Petition to Establish Custody and Parenting Time* before court administration can schedule a hearing date.

When the court administrator gives you a hearing date and time, 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.

It is very important to contact your county's Court Administrator to find out that county's procedure for scheduling a hearing date for your motion to establish custody and parenting time.

Step 7

Make Copies of Forms

1. Make **two (2)** copies of each of the following documents: the *Summons*; the *Petition to Establish Custody and Parenting Time*; the *Notice of Motion and Motion to Establish Custody and Parenting Time* and all attachments; and the *Affidavit in Support of Motion 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 8 tells you how to serve the second copy of each form upon the other party. Step 10 tells you how to file the forms with the Court.

Step 8

Serve Notice on the Other Parent

You must arrange for the other parent 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 parent. Papers CANNOT be served on a legal holiday.

Personal service: forms and supporting documents are hand delivered to the other party personally or by leaving them at that party's place of residence with some person who is of suitable age or discretion who also lives at the same residence. Forms and supporting documents must be hand delivered at least 14 days before the hearing date.

Mail service: forms and supporting documents are mailed by first class U.S. mail to the other party at least 17 days before the hearing date.

If either you or the other parent has applied or is receiving public assistance benefits, you must arrange for the county attorney's office to receive complete copies of all forms and supporting documents you have prepared for the hearing.

Step 9

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. This form is evidence that the papers were served on the other parent.

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 address where the documents were served.
6. Fill in the name of the other party.
7. The person who served the papers signs the Affidavit under penalty of perjury. By signing the Affidavit under penalty of perjury, the server is stating that the information in the Affidavit is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions. After it has been signed, make one copy of the *Affidavit of Personal Service* for your records. You will file the Affidavit with the Court as part of Step 10.

<p>Step 10 File the Forms with the Court</p>
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File the documents at least 14 days prior to the hearing date. Make sure you have a copy of each document for your records. You can file the forms with the Court in person or by mail. There is a court filing fee. Contact the court administrator to find out the amount of the filing fee. Make checks payable to “Court Administrator.” To file in person, take the documents to the court administrator’s office. To file the forms by mail, mail the documents to the court administrator’s office at least 17 days prior to the hearing. The court may cancel your hearing if all documents required to be served and filed are not properly served and filed.

If you are asking for child support, you must file copies of all supporting documents (such pay stubs, employer statements, tax returns, verification of medical/dental insurance costs or expenses, child care expenses, disability payments) and complete and file with the court one Form 11.2 for supporting documents that contain confidential information (see Step 5). Check your documents to make sure all blanks are filled in, especially on the Affidavit of Service and the motion. All papers served must be identical copies of the forms and supporting documents filed with the court.

NOTE: If you fail to use the Form 11.2 cover sheet to protect confidential information in your supporting documents, the court may order you to pay additional court costs or other sanctions as a penalty for failing to follow the court rules.

If you cannot afford to pay the fees, a judge may waive it under certain circumstances. Ask the court clerk for an In Forma Pauperis application, or find the IFP application at www.mncourts.gov/forms under the court forms link. You need to fill out this application and

file it with court administration. This application will be reviewed by a judge who will determine whether you must pay the fees. If the judge does not sign the form to waive the fees, you must be prepared to pay the fees or court administration cannot accept your forms.

Step 11 **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 custody evaluation is ordered, the gap between the first, short hearing and the second evidentiary hearing often will be at least several months.