

FAMILY COURT MATTER

RESPONSE TO REQUEST TO ESTABLISH CHILD CUSTODY AND PARENTING TIME

Forms to use when responding to an action to establish child custody and parenting time:

Answer and Counter-Petition to Establish Custody and Parenting Time

Instructions – Financial Affidavit for Child Support

Financial Affidavit for Child Support

Form 11.1 – Confidential Information Form

Form 11.2 – Confidential Financial Source Documents

Affidavit of Service by Mail

Affidavit of Personal Service

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-1675.

IMPORTANT NOTICES

- You **CANNOT** use these forms if there is already a Court Order awarding custody.
- If your child is the subject of a child in need of protection or services (CHIPS) proceeding or certain delinquency proceedings, the Court may be not able to immediately decide your request to establish custody.
- Court personnel and the county attorney's office **CANNOT** help you fill out court form(s).
- You should see a lawyer if you do not know how to answer the questions on these forms or if you think the other party will hire a lawyer.
- 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.
- 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.
- **Where to Get a Certified Copy of the Recognition of Parentage (“ROP”)**

Certified Copies of the Minnesota Recognition of Parentage 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 <https://www.health.state.mn.us/people/vitalrecords/childsupport/formrequest.html>, or 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
Central Cashiering – Vital Records
PO BOX 64499
St. Paul, MN 55164-0499

INSTRUCTIONS

Step 1

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

Fill out the *Answer and Counter-Petition to Establish Custody and Parenting Time* form. The *Answer and Counter-Petition to Establish Custody and Parenting Time* is divided into two parts. The first part gives the Court your response to the Petitioner's requests in their *Petition to Establish Custody and Parenting Time*. The second part gives the Court information about you, the other parent, your children, other court orders, and your requests for custody, parenting time, and child support.

FILL IN THE TOP PART OF THE FORM:

- Fill in the County and Judicial District where the case is filed.
- Write in the court file number, if applicable. If the other party's documents have a court file number listed, you can put that number on your *Answer and Counter-Petition to Establish Custody and Parenting Time*. If no number is listed on their paperwork, then leave the court file number blank.
- On the line after "In Re the Custody of," print the name and birth date of each child involved in this action.
- On the line marked "Petitioner," print the other party's name as it appears on the *Petition to Establish Custody and Parenting Time*.
- On the line marked "Respondent," print your full name.

FILL OUT THE REST OF THE FORM:

NOTE: The following instructions are numbered the same as the paragraphs/questions on the *Answer and Counter-Petition to Establish Custody and Parenting Time* form.

For each of the following four questions, look at each paragraph numbered 1 through 11 in the *Petition to Establish Custody and Parenting Time*. For each paragraph of the *Petition*, you must say whether it is true, not true, partly true and partly not true, or state that you do not have enough information to answer the statement.

1. If a paragraph is TRUE, put the paragraph number(s) on the lines provided.
2. If a paragraph is NOT TRUE, put the paragraph number(s) on the lines provided.
3. If a paragraph is partly true and partly not true, put the paragraph number(s) on the lines provided.

4. If you don't know whether a paragraph is true or not true, put the paragraph number(s) on the lines provided.

Answer questions 1-11 starting on Page 2 of the form, which gives the court information about you, the other party, and the minor children involved in this case.

1. Check whether Petitioner is the father or mother of the minor children. Provide the name and address of the Petitioner. If the current address of the other parent is unknown or unavailable to you, write "unknown" or "unavailable."
2. Check whether you are the father or mother of the minor children. Provide your complete name and address where you live.
3. Provide the full name and birth date of the children involved in this action.
4. If the children currently lives with you, check the box for "Me." If the children currently lives with the other parent, check the box for "Other parent" and provide the full name of the other parent on the blank line. If the children currently lives with someone else, check the box for "Other person" and provide the full name of this persons. Provide the street address, city, county, state, and zip code of where the children are living. Fill in the date of how long the children have lived at that address. If the children have lived at the current address less than six months, provide the dates and locations of where the children have been living during the last six months.
5. If Petitioner attached a certified copy of the Recognition of Parentage (ROP) to his/her *Petition to Establish Custody and Parenting Time*, check the first box. If Petitioner stated in his/her Petition that he/she requested a copy of the ROP and will file it when he/she receives it, check the second box. If you will be providing the court with a certified copy of the ROP, check the third box.
6. Check YES if there is a court appointed guardian or conservator for the children and fill in all requested information (Court File number, County, State, and name of guardian/custodian. Check NO if no appointment has been made.
7. Read what *legal custody* and *physical custody* means and check the appropriate boxes based on what you are requesting.
8. Check YES if there is a child protection case for the children and fill in all information (County, State, Court File Number, child protection worker's name). Check NO if no such case is case is open.
9. Check YES if there is a current *Order for Protection* between you and the other parent and fill in all information (other parent's name, County, State, and Court File Number). Check NO if there is no order or current *Order for Protection* case. If there is an Order for Protection and the Petitioner did not include a copy with the Petition, you should provide a copy to the Court, but

this is only necessary if the Order is from a different county or state than this Custody and Parenting Time case.

10. Parenting time is the time a parent spends with the children, regardless of who has custody of the child. If you are asking for joint physical custody, check the boxes to grant parenting time to the Mother and Father. If you are asking for sole physical custody, check the box to grant parenting time to the other parent. Or, if you think your children would not be safe alone with the other parent, you can ask the Court to make parenting time “supervised.” **NOTE:** Supervised parenting time is not likely to be ordered unless unsupervised visits will cause harm to the children. If you check “deny parenting time,” you are asking that the court give the other parent NO parenting time.
11. Child support is money parents pay for the care, support, and education of the children. It may include a monthly court ordered amount for basic support, child care support, and medical support. The MN Department of Human Services (DHS) has created a child support calculator to estimate the amount of child support that the court may order on a case. The calculator is on the DHS website at <http://childsupportcalculator.dhs.state.mn.us/>.

Check the first box if there is no existing child support order and you want the Court to establish child support. 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 children and fill in all of the information (County, State, court file number).

FILL OUT PARAGRAPHS 1-6 where it says “The Respondent requests that the Court grant the following relief.”

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 this box if you checked the first box in Paragraph 11.
5. You do not have to write anything for this paragraph.
6. Read a. through d. 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.

Fill in your address and phone number. Then date and sign the *Answer and Counter-Petition to Establish Custody* form.

Step 2

Complete the *Financial Affidavit for Child Support* Form

If child support is being requested, fill out the form called *Financial Affidavit for Child Support*. This form asks for your income information. The *Financial Affidavit for Child Support* has separate instructions that you should read. It is very important to attach to the *Financial Affidavit for Child Support* any proof you

have regarding your income. This proof may include the last 3 months of pay stubs, income tax returns, or other documents. Make sure the copy of the *Financial Affidavit for Child Support* you provide to the other party also has copies of your proof of income included.

Step 3 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 form can be used for all documents containing confidential information. Examples of documents that have confidential information include:

- 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 party, and your children, 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 do this 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 4 Make Copies of Forms

1. Make **two (2) copies** of the following documents:
 - *Answer and Counter-Petition to Establish Custody and Parenting Time*,
 - *Financial Affidavit for Child Support* (if applicable), and
 - All attachments.
2. Keep one copy of each form for yourself (make sure you bring your copies with you to Court).
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 forms with the Court.

Step 5 Serve the Other Party

A complete copy of all documents you have prepared must be served on the other party. This is called "service of process." Papers cannot be served on legal holidays.

Your *Answer and Counter-Petition to Establish Custody and Parenting Time* MUST be served within **21 days** of you being served with the *Summons and Petition to Establish Custody and Parenting Time*. If you do not serve your *Answer and Counter-Petition to Establish Custody and Parenting Time* within those 21 days, your response may not be considered.

Who Can Serve

The forms you have prepared can be served by any of the following:

- The sheriff;
- Another adult; or
- You.

Personal Service

The server hands the other party (or their attorney, if they have one) one copy of all of the completed forms listed in Step 4 above.

The server must give the papers to the other party (or their attorney, if they have one) **within 21 days of being served with the *Summons and Petition to Establish Custody and Parenting Time***

Service by Mail

A copy of your *Answer* is placed in an envelope addressed to the other party (or their attorney if they have one) with your return address on the envelope and is then sent by first class U.S. mail. The server must drop the letter in the mailbox or give it to the postal worker.

A copy of your forms must be mailed to the other party (or their attorney if they have one) **within 21 days of being served with the *Summons and Petition to Establish Custody and Parenting Time*.**

WARNING: The Court may ignore your response if you do not serve and file the responsive papers on time.

Step 6 The Person Who Served the Papers Fills Out the *Affidavit of Service* Form

After a copy of your forms is hand-delivered or mailed, the person who did the service must fill out an *Affidavit of Service* form and sign it under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth.

After it has been signed, make one copy of the *Affidavit of Service* for your records.

Step 7 File the Forms with the Court

Promptly file the following documents with the court:

- The *Answer and Counter-Petition to Establish Custody and Parenting Time*;
- The *Financial Affidavit for Child Support with attachments* - if applicable;
- The *Confidential Information Form (Form 11.1)* – if applicable,
- The *Confidential Financial Source Documents (Form 11.2)* – if applicable, and
- The *Affidavit of Personal Service* or *Affidavit of Service by Mail*

Contact Court Administration in the county where the case is filed to find out the amount of the filing fee. Make checks payable to “Court Administrator.”

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask Court Administration for the *In Forma Pauperis* (IFP) (Fee Waiver) forms or download the forms at <http://www.mncourts.gov/GetForms.aspx?c=19&p=69>. You need to fill out the forms and sign them. Your fee waiver forms will be reviewed by a judge who will determine whether you must pay the filing fee or if it can be waived. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee.

Step 8 Appear in Court

You should receive a document from the court that contains the court file number for your case and other important information. There could be a court date already set, or you may need to call the court to ask about scheduling a court date.

First Court Date

When your first court date is scheduled, there are things you can do to prepare:

- 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.
- **Do not bring witnesses and evidence to the first hearing**, unless instructed to by the court administrator/deputy.

Custody Evaluations

On many occasions at the end of the first court date, the judge will ask for a custody evaluation in order to have someone gather facts to help the judge make a decision. A custody evaluation may take several days, and you must pay the cost of the evaluation.

This is a formal process. 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.

Finally, be aware that this matter may be scheduled for a Settlement Conference. The purpose of the Settlement Conference is to facilitate discussions with a judge in settling the case before trial. Each of you will be expected to be present at that Settlement Conference, along with the person who completed the custody evaluation. You will be expected to seriously consider settlement proposals that would be in the best interests of the child/children.