VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

Custody Litigation Overview

Table of Contents

Legal Custody, Physical Custody, and Parenting Time 2

General Outline of Custody Case 4

Step One: Summons and Petition and Answer and Counterpetition 5

Step Two: ICMC or Scheduling Conference 8

Step Three: Alternative Dispute Resolution 10

Step Four: Co-Parenting Class 12

Motion Hearings 13

Step Five: Pretrial 23

Step Six: Preparing for Trial 23

Step Seven: Trial 27

If a Guardian ad Litem is Appointed 31

Calculating Deadlines 32

E-filing 33

Definitions 37

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

Legal Custody, Physical Custody, and Parenting Time

What is Legal Custody?
Legal custody gives a parent[1] the authority to make important decisions about a child's life, including medical, education, and religious decisions. If a parent has sole legal custody, that means that parent alone can make these decisions without input or interference from the other parent. If the parents have joint legal custody, both parents have an equal say in these major decisions.

EXAMPLE: If Parent A has sole legal custody, Parent A alone can decide to follow a doctor's recommendation to put the child on ADHD medication, even if Parent B opposes the decision. On the other hand, if Parent A and Parent B have joint legal custody, Parent A cannot unilaterally make that medical decision. The parties will either have to come to an agreement or Parent A will have to seek a court order permitting them to take that action despite Parent B's objections.

EXAMPLE: If Parent A has sole physical custody, Parent A can unilaterally decide to move the child and Parent A alone has the authority to exercise control over the everyday routine of the child, such as enrolling the child in extracurricular activities and daycare, so long as it does not interfere with Parent B's parenting time. On the other hand, if Parent A and Parent B have joint physical custody, the parents have equal say in these decisions. Parent A would likely be free to move five minutes away from Parent A's previous residence (assuming it would not interrupt the child's normal daily routine) but would need Parent B's consent or a court order to move five hours away.

What is Physical Custody?
Physical custody gives a parent the right to make decisions about where the child lives and their daily routine so long as those decisions do not interfere with the other parent's parenting time. If a parent has sole physical custody, that parent alone gets to decide where the child lives and things affecting the child's daily routine. If the parents have joint physical custody, they both have the right to share in the routine daily care and control of the child and the residence of the child is shared with both parents.

What is Parenting Time?
Parenting time is separate from custody. Parent A can have sole legal and physical custody, and Parent B can still have parenting time. Court ordered parenting time refers to a set schedule that a parent is

[1] The term "parent" is often used in this overview because that is most often the case. However, a guardian or non-parent family member could also obtain legal custody in some instances.

entitled to spend with their child. In Minnesota, there is a presumption that the non-custodial parent is entitled to at least 25% parenting time (e.g., having the child a set day every week and every other weekend). Once court ordered parenting time has been established, the custodial parent is not allowed to make decisions that will interfere with the non-custodial parent's parenting time.

EXAMPLE: If Parent A has sole legal and physical custody of their child, and Parent B has court ordered parenting time every Tuesday overnight and every other weekend, Parent A cannot plan a trip or schedule activities for the child during the time that Parent B will have parenting time without Parent B's consent or a court order allowing them to do so. So, if Parent B does not want to spend their Tuesdays with the child at a 3-hour hockey practice, Parent A cannot force them to do so. Parent A has to make the child available for Parent B's parenting time and must schedule around that time unless Parent B consents to the scheduled event.

Who has legal and physical custody now?

If you have never been to court to establish child support, paternity, or custody and you have never been married to the other parent, the mother is the sole legal and physical custodian. This means the other parent has no rights to see or make decisions on behalf of the child until paternity and a parenting time schedule have been established. Establishing paternity in the legal system is fairly quick and simple, but a formal adjudication is necessary to establish the other parent's rights if the parties were not married. Paternity is presumed for any child born during the marriage or within 280 days following a divorce and no formal adjudication is required. When the parents are not married but signed a Recognition of Parentage (ROP) prior to the proceedings (usually at the hospital), a father can file the ROP with the court to demonstrate that he is the biological father. An ROP is a document that establishes a legal relationship between a father and child when the parents are not married. Both parents must sign the ROP, and it must be filed with the Minnesota Department of Health to be valid.

Residency Requirement to Bring Custody Action in Minnesota

In order for a Minnesota Court to hear a child custody matter, it has to have jurisdiction over the child (the legal authority to hear and decide the case). In order for Minnesota courts to have jurisdiction over the custody of your child, the child must have lived in Minnesota for at least six consecutive months (with some exceptions in emergency situations). You must file your custody action in the county where the child resides[2], even if you reside in a different county.

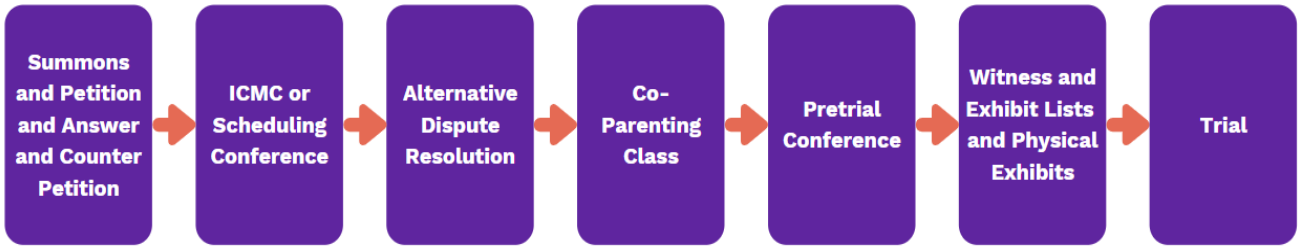
[2] Minn. Stat. § 518.003, subd. 9 defines a child's "residence" as "the place where a party has established a permanent home from which the party has no present intention of moving." Courts will consider factors such as how long the child has lived in a particular county, whether they are enrolled in school or daycare in that county, and where the child spends most of their time in determining where the child "resides."

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

General Outline of a Custody Case

Although each custody case will vary in some ways, there are general steps each will follow.

1. The parent who commences (starts) the action is the Petitioner. The other parent is the Respondent. Petitioner drafts a Summons (Form) and Petition (Form) and has it served on the Respondent. The Respondent will have 21 days to respond with an Answer and Counter Petition (Form). The matter is filed with the court. Both parties will receive notice of the case file number, the judge assigned, and the date of either an Initial Case Management Conference (ICMC) or a Scheduling Conference (depending on your jurisdiction). There are deadlines to file documents related to the conference prior to the actual conference.
2. The ICMC or Scheduling Conference is held, and a Scheduling Order is issued which outlines the deadlines in your case.
3. The parents may be required to participate in some form of alternative dispute resolution.
4. The parents will be required to attend a co-parenting class and to submit certification of attendance with the court.
5. There will be a pretrial for the court to determine what issues remain for trial.
6. The parents will need to serve and file their witness and exhibit lists and exchange physical exhibits. There are deadlines to serve and file witness and exhibit lists, to exchange exhibits with the other party, and to object to exhibits.
7. There will be a trial. Both parties will have the opportunity to call witnesses and submit exhibits.



That is the general outline each case follows. However, there are often motions brought to address interim issues. A guardian ad litem or custody evaluator may also be appointed to conduct interviews, observe each parent with the child, and submit recommendations to the court. The point at which a guardian ad litem and/or custody evaluator is appointed varies, but typically the matter is put on hold for about 90 days while the evaluation takes place. Additionally, Alternative Dispute Resolution (ADR) processes will suspend the timelines as the parties work through that process.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

NOTE: Custody actions may arise when parents are getting divorced, between non-married parents, or between interested third-parties, such as grandparents, and the parents. This overview focuses on custody actions with non-married parents where you are the Respondent, but it will note some key distinctions between custodial actions between non-married parents and custodial actions as part of a divorce.

STEP ONE: SUMMONS AND PETITION AND ANSWER AND COUNTERPETITION

The first step in commencing a custody action is for the Petitioner to complete and serve the Respondent with a Summons and Petition. The Petition will contain all relief requested by the other parent in broad strokes. **If you are not married**, the Petition will be called something to the effect of Petition to Establish Paternity, Parenting Time, Custody, and Child Support. Whether you are the Petitioner or the Respondent in an action to establish custody and parenting time, the first document you need to file can be found here: commencement documents. (This link includes instruction forms relating to different documents you may need to file and serve.)

If you are married, the Petition will be called Petition for Dissolution of Marriage with Child. If you are the Petitioner, here is the link for the Petition for Dissolution of Marriage with Child you will need to complete and serve on the other party.

If you are the Respondent in a Dissolution with Child action, here is the link for the Answer and Counterpetition you will need to complete and serve on the other party.

NOTE: A Respondent has more time to respond to a divorce petition (by serving an answer and counterpetition) than a custody petition. A Respondent has 30 days to respond to a divorce petition, but only 21 days to respond to a custody petition.

As the Respondent in an action to establish custody and parenting time between non-married parents, you have 21 days from the date of service to respond to the Petition by serving Petitioner with an Answer and Counterpetition. The date of service is either the date you received it, if you were personally served, or the date you return a Notice and Acknowledgement, if you were asked to accept service by mail and choose to do so

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

IMPORTANT: If you do not serve your Answer and Counterpetition on the Petitioner within the 21-day deadline, Petitioner may seek a default judgment against you. What this means is that if you ignore the documents served upon you and do nothing, the court may issue an order giving Petitioner everything they asked for in their Petition. If you miss the 21-day deadline, still serve and file your Answer and Counterpetition as soon as possible. Judges do not like to enter default judgments in custody matters and will very likely consider your responsive documents even though they are late. However, you do not want to risk this so file them on time or as soon as possible.

If you received the documents by mail, you will be given a certain number of days to sign a Notice and Acknowledgment of Receipt by Mail. If you do choose to accept service by mail, you will have 21 days from the date you sign and return the Notice and Acknowledgment of Receipt by Mail to serve Petitioner with your Answer and Counterpetition.

NOTE: As a general rule, you should accept service by mail if you are asked to. You do not have to sign the Notice and Acknowledgment of Receipt by Mail, but failure to do so may result in you being personally served in a setting that is uncomfortable for you (such as at work or at your child's daycare). Additionally, unless the court finds you have good cause to refuse to accept service by mail, the court may require you to pay the expenses incurred in having you personally served.

NOTE: While the Petitioner is required to personally serve you with the commencement documents or get your signed consent to allow service by mail, as the Respondent, you can serve your responsive documents by mail. You do NOT have to personally serve.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

When does Respondent need to respond to the Summons and Petition?

If Personally Served

21 days from the date you were personally served is when your Answer and Counterpetition must be served on Petitioner

If Service Accepted by Mail

21 days from the date the Notice and Acknowledgement of Receipt by Mail is signed and returned to Petitioner is when your Answer and Counterpetition must be served on Petitioner

Your Answer and Counterpetition first responds to the stated facts in the petition by either denying, admitting, or stating you do not know enough about it to affirm or deny the statement. This is generally done in 2-3 numbered paragraphs.

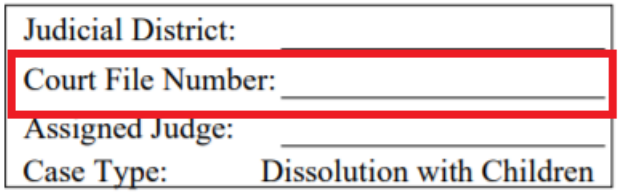
EXAMPLE:

1. Respondent denies the assertions contained in paragraph nos. 1-3, 5, and 7.
2. Respondent admits the assertions contained in paragraph no. 4.
3. Respondent does not have enough information to admit nor deny the assertions contained in paragraph no. 6.

Next, you list in broad strokes what you want to happen. Generally, the first request a Respondent will list is something to the effect of "For an Order denying each request for relief made by Petitioner that contradicts the relief I, Respondent, am requesting." Then you will list what you want the court to order instead. If you agree with something the Petitioner has requested, then you should let the court know that.

Petitioner must wait for that 21-day response period to expire or receipt of the Answer and Counterpetition (whichever is sooner) before filing their Summons, Petition, and Affidavit of Service with the court. The Petitioner must pay a filing fee (or file for an IFP) simultaneously when filing their documents, the cost of which varies by county but is generally around $300.

After the court receives Petitioner's Summons and Petition, both parties will receive a notice with the judge and court file number assigned to the file. All of your future filings and communications with the court must contain that court file number.


Judicial District: _____
Court File Number: _____
Assigned Judge: _____
Case Type: Dissolution with Children

Court file numbers can be found at the top right of the first page of most court documents

Once you receive this notice, you should immediately file your Answer and Counterpetition and Affidavit of Service with the court. You will also be required to pay an initial court filing fee or file a request to proceed IFP. To figure out your exact filing fee, you can call the court administrator or enter your county and "divorce/custody" in the search engine provided.

When filing a Summons and Petition or Answer and Counterpetition, you must either 1) pay a filing fee or 2) file a request to proceed IFP. If the IFP is not approved by the court, you will be required to pay the filing fee. If your IFP request is approved, you will not be required to pay the initial filing fee or any subsequent motion fees.

If you cannot afford to pay a filing fee, you can include an Affidavit for Proceeding In Forma Pauperis along with a Proposed Order with your filings, and the court will determine whether you are eligible to have your fees waived. (Instructions and forms for this request). This application is available to you regardless of whether you are the Petitioner or Respondent.

STEP TWO: ICMC OR SCHEDULING CONFERENCE

Depending on what county your case is being handled in, either an ICMC (Initial Case Management Conference) or a Scheduling Conference will be set following the Notice of Judicial Assignment. You will know which your jurisdiction uses when you receive a notice of the scheduled conference. The purpose of both proceedings is the same: to give the court an idea of what issues need to be resolved, to discuss early neutral evaluation options, and to establish deadlines to move matters forward. Neither of these

are "hearings" and no arguments are made at these conferences. These are intended to establish procedures and timelines, not to decide or even address substantive issues.

The only order issued following these conferences is a scheduling order, unless the parties have reached any agreements. If the parties have reached agreements, the judge may have those agreements read into the record (officially stated for the hearing transcript) and issue an order specifying the agreement of the parties.[3]

> **EXAMPLE:** The parties have agreed that mother will have sole physical custody, the parents will have joint legal custody, and father will have parenting time every other weekend and every Wednesday overnight. The parties have not agreed on child support or a holiday parenting schedule. The court will have the parties state this agreement at the conference. The judge will then issue an order granting mother sole physical custody, granting the parties joint legal custody, and ordering parenting time as agreed. However, the remaining issues (holiday parenting schedule and child support) will be addressed at a hearing down the road. The judge will not hear arguments, make any determinations, or issue any order regarding the issues that remain in dispute at an ICMC or Scheduling Conference.

Scheduling Conference: If the court proceeds with a Scheduling Conference, rather than an ICMC, you must file an Alternate Scheduling Statement no later than 60 days after the date on the Notice of Court Filing Number and Judicial Assignment. In some instances, the court may require the Alternate Scheduling Statement sooner than the 60-day deadline, so **read everything you get from the court promptly to ensure you are not missing a deadline.**

Here is the form for an Alternative Scheduling Statement. Note that not every section in this form will apply to you. For example, the asset and debt information only apply to marriage dissolution matters. Look at the headings for signals as to whom that particular section applies. If it does not apply to you, fill in the "Not Applicable" bubble and move on to the next section.

Initial Case Management Conference (ICMC): If the court chooses to proceed with an ICMC, rather than a Scheduling Conference, you will be required to complete an ICMC Data Sheet. The ICMC is somewhat unique to the particular judge and jurisdiction you are in, so it is important that you read the Order setting the ICMC carefully to ensure you understand what you need to complete, its due date, and

[3] If an agreement is made "on the record" (officially in front of the judge), it becomes binding on both parties. This means that issue is done and is no longer something you can argue about at trial, so make sure you are completely comfortable with any agreement you put on the record.

whether it should be filed/sent to the Court Administrator or simply sent to the judges' clerk for filing. An ICMC data sheet is one of the few things that may be sent directly to the judge and not filed with the Court Administrator. Typically, if the judge wants you to submit the data sheet without filing, he or she will have you email it to their chambers without copying the other party or filing it through the formal system. If the judge has you submit the ICMC data sheet without filing, there will be specific directions on how to do so, but note this means you do not need to serve the other party with a copy of your data sheet and it will not become part of the case record. It will solely be used to help the judge evaluate where both parties are coming from to assist him/her in determining how to proceed.

Here is a typical ICMC data sheet. However, if the court gives you something different to complete, follow the instructions of the court.

Sometime after the Scheduling Conference or ICMC, the judge will issue a **scheduling order**. This is a very important document because it **lays out deadlines crucial to your case**. Be sure to mark down every deadline in your calendar and put the Scheduling Order in a convenient place for quick reference. Do not just record the dates you need to show up in court. Include any deadlines to serve and file documents.

STEP THREE: PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) is required in all child custody matters, except where one of the parties is a victim of domestic abuse by the other party, the court cannot require a face-to-face meeting of the parties.

The most common forms of ADR are mediation and early neutral evaluation (ENE).

If a judge is insisting you participate in face-to-face alternative dispute resolution, reference Minnesota General Rule of Practice 310.01(b), which states the following:

The court **shall not require parties to participate in any facilitative process if one of the parties claims to be the victim of domestic abuse by the other party** or if the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In circumstances when the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process established in Rule 114 that will not require face-to-face meeting of the parties, the court may direct that the ADR process be used.

The rule can be found here.

Mediation

Mediation can be conducted in different ways, some which require the parties to be in the same room and some that do not. If mediation is proposed, it is important to learn the logistics of how it will be conducted prior to agreeing to participate. A mediation that does not require the parties to be in the same room (referred to as "floating mediation" in some counties) is generally conducted with each party and their respective attorney, advocate, or other support in a separate room. The mediator is a neutral party, typically an attorney or retired judge. The role of the mediator is to listen to both sides of a dispute, give his or her frank opinion about what a judge is likely to do if the matter goes to trial, and to facilitate settlement. To do this, the mediator travels between the two rooms and speaks with each party about the issues and proposals. If agreements are reached at mediation, the mediator may write up those agreements and have both parties sign.

Each party is bound by agreements they reach during mediation, so think them through carefully. If the other party agrees to something that you are worried about them changing their mind about, ask the mediator to assist you in getting that agreement in writing.

Although you are bound by agreements reached at mediation, the underlying **discussions which occur at mediation are confidential** settlement communications and cannot be used against either party. Therefore, it is best to get at least the agreements made on the larger issues **in writing** at the actual mediation if possible because the signed agreement can be introduced in court, making it easier to enforce.

Mediation Fees

Mediators typically charge an hourly rate that can vary greatly. For example, one mediator may charge based on a sliding fee which considers your income while another mediator may charge $300 an hour. Make sure you understand these costs and who will be paying them before agreeing to mediate. IFP does not cover these costs and you will be held personally responsible for them.

Note: If you are agreeable to mediation but cannot afford the expense, you can propose the other parent pay the entire mediation fee. If the other parent agrees to this arrangement, make sure to get that agreement in writing before proceeding.

ENE

ENE consists of one or more sessions run by two experienced evaluators (one male and one female). Both parties attend either together or in separate rooms. Each side takes a turn presenting their view of the case and what they think should happen. The evaluators meet alone to confer. After identifying the key issues and discussing their perspectives of the merits of each argument, they will meet with the parties individually or jointly and have a frank conversation about what they believe a court is most likely to do.

The purpose of an ENE is to encourage settlement by giving the parties insight into what a judge is most likely to do. If any agreements are reached at the ENE, the evaluators will share those agreements with the judge and inform him/her what issues remain unresolved.

ENE Fees
Each court sets their own ENE fees. A few courts do not charge for ENE but most do. The parties pay for the costs of ENE at an hourly rate determined by a sliding fee schedule based on their respective gross yearly incomes. This sliding fee schedule varies by county. If you were granted the ability to proceed in forma pauperis, you will automatically receive the lowest rate (and some counties just require a flat rate in this situation).

Even outside of ADR, you are always free to settle any or all of the issues with the other parent at any time. For example, if you and the other parent can agree to a holiday parenting time schedule, you can submit your agreement to the court and still have a trial on the regular parenting schedule, where the child is going to go to school, or any other issues that remain.

Note: Prior to participating in ADR, it can be helpful to list each issue and what outcome you would like to see and what scenarios you would find unsafe/problematic. This exercise will increase your ability to make decisions at ADR because you have already largely thought through what is acceptable and what is a deal breaker.

The neutral(s) selected in ADR can make a huge difference in the likelihood in reaching settlement. An effective neutral can surprise everyone by helping parties reach a settlement agreement where no one walked in thinking it was possible. However, an ineffective neutral likely will not help solve problems and may even add some by emboldening an abusive parent to push harder. Therefore, the most important step in ADR is selecting the neutral.

STANDPOINT (standpointmn.org) **is a free legal resource that can help with this.** Standpoint has attorneys on staff who can provide free legal advice. If they are not familiar with the neutrals in your area, they will be able to connect you with someone who is.

Standpoint can be contacted by phone at 800-313-2666 or 612-343-9842, by email at info@standpointmn.org, or by text at 612-743-7397.

STEP FOUR: ATTEND A CO-PARENTING CLASS

Both parents will be required to attend a co-parenting class. Each parent completes this individually. The deadline to do so will be outlined in the Scheduling Order, along with the deadline to submit proof of your attendance. The court will provide you information about specific classes available in your county.

You can choose from one of those or request permission from the court to take a different one. There are often both online[4] and in-person options, but spots fill up fast, so you want to book early.

Once you have completed the class, you will receive a Certificate of Completion of Co-Parenting Class, which you must file with the court and serve on the other parent. If you choose an online course, a certificate will be generated upon completion that you can download and file with the court. If you attend the class in person, they will issue you a certificate upon completion on the last day of the course.

Motion Hearings

Motion hearings are a way for a party to seek temporary relief prior to trial. This is very common in custody cases. If you want to schedule a motion hearing, you should call the courthouse and provide them your court file number to secure a hearing date. There are different types of motions, each with different requirements. The most typical is a motion for temporary relief. There are also emergency motions and *ex parte* motions, which may only be brought in extreme circumstances.

Motion for Temporary Relief

If you and your child are not in an emergency or unsafe situation currently and you are seeking temporary relief (e.g., temporary supervised parenting time for the other parent, temporary sole physical custody), the way you request this is through a motion for temporary relief. Once you obtain your hearing date, you must promptly provide written notice of the date of the hearing to the other parent, except if you are currently residing with the other parent and there is a possibility of abuse.[5]

Make sure you schedule you motion hearing far enough in advance to allow you to meet the deadlines discussed herein, keeping in mind that drafting your own affidavit, securing affidavits from third parties, and gathering exhibits is time consuming. If you scheduled the hearing, you need to serve and file the following documents at least 21 days prior to the motion hearing:

- **Notice of Motion and Motion**

[4] There are statewide approved co-parenting classes that are completely online. There are many benefits to taking the course online. This guide is being written during a pandemic, and in-person meetings are not always possible or advised. However, even outside a pandemic, there might be reasons you would prefer to complete this course online. The online class is completed at your own pace and around your schedule. It is typically an 8-hour course, but it does not need to be completed all at once.

[5] If you are currently living with the abusive parent, you do not need to provide immediate written notice. However, you are still expected to give notice as soon as you can safely do so and no later than the 21-day notice in which you are required to serve and file your motion documents.

  - This is a document which outlines the specific relief requested, such as temporary sole physical custody. It must list the specific relief requested in broad strokes, leaving the details for the affidavits.
  - If you want to take oral testimony at the hearing, you need to request for leave of oral testimony within your original motion, which must include the names of witnesses you wish to call, nature and length of testimony, and types of exhibits, if any.
  - If you want the judge to interview your minor child, you must request that here.
- **Supporting Affidavits**
  - These are crucial to the motion. They consist of sworn statements giving the reasons why the court should grant you the relief you have requested.
  - You can and should submit your own affidavit and may also have others (e.g., daycare providers, school teachers, neighbors, relatives, etc.) write and sign affidavits on your behalf.
  - You may include exhibits to your affidavits.

Every motion must have at least one affidavit.

- **Memorandum of Law** (if any)
  - This outlines your legal arguments in support of the relief you are requesting and is highly technical. If you wish to submit one, you are highly encouraged to reach out to STANDPOINT for guidance.
- **Parenting/Financial Disclosure Statement** (only required if you are seeking temporary financial relief, such as child support)

You will also need to file an Affidavit of Service with the court and pay the motion filing fee when you file your motion documents, which is usually around $100 (unless you have an approved application to proceed in forma pauperis).

If you scheduled the hearing, and the other parent raises new issues in their responsive motion documents, you may respond only to the new issues in the form of affidavits and a memorandum of law (optional) and must do so by serving and filing the responsive documents no later than 7 days before the motion hearing. You must file an Affidavit of Service.

Note: You are not required to pay a second filing fee for responding to new issues raised by the other party.

If the other parent brings a motion, you have two possible deadlines: one for if you are raising new issues and another if you are not. To raise new issues in this context means to do more than respond to the issues outlined by the other party.

EXAMPLE: If the other parent brings a motion to establish temporary custody and parenting time and you want child support to be addressed, child support is a new issue. On the other hand, if you are simply opposing the other parent's parenting time request, that is not a new issue.

If you are raising new issues, you must file and serve the following documents at least 14 days prior to the hearing:

- **Notice of Motion and Responsive Motion** [6]
  - You will want to request the other parent's motion be denied in part or in its entirety and then list the relief you are requesting.
- **Supporting Affidavits with attached exhibits**
- **Memorandum of Law** (if any)
- **Parenting/Financial Disclosure Statement** (only required if you are seeking temporary financial relief, such as child support)

You must also pay the motion filing fee (unless you have an approved application to proceed in forma pauperis) and file an affidavit of service with the court. If you raise new issues, the other party will have an opportunity to respond, but you cannot then respond in turn.

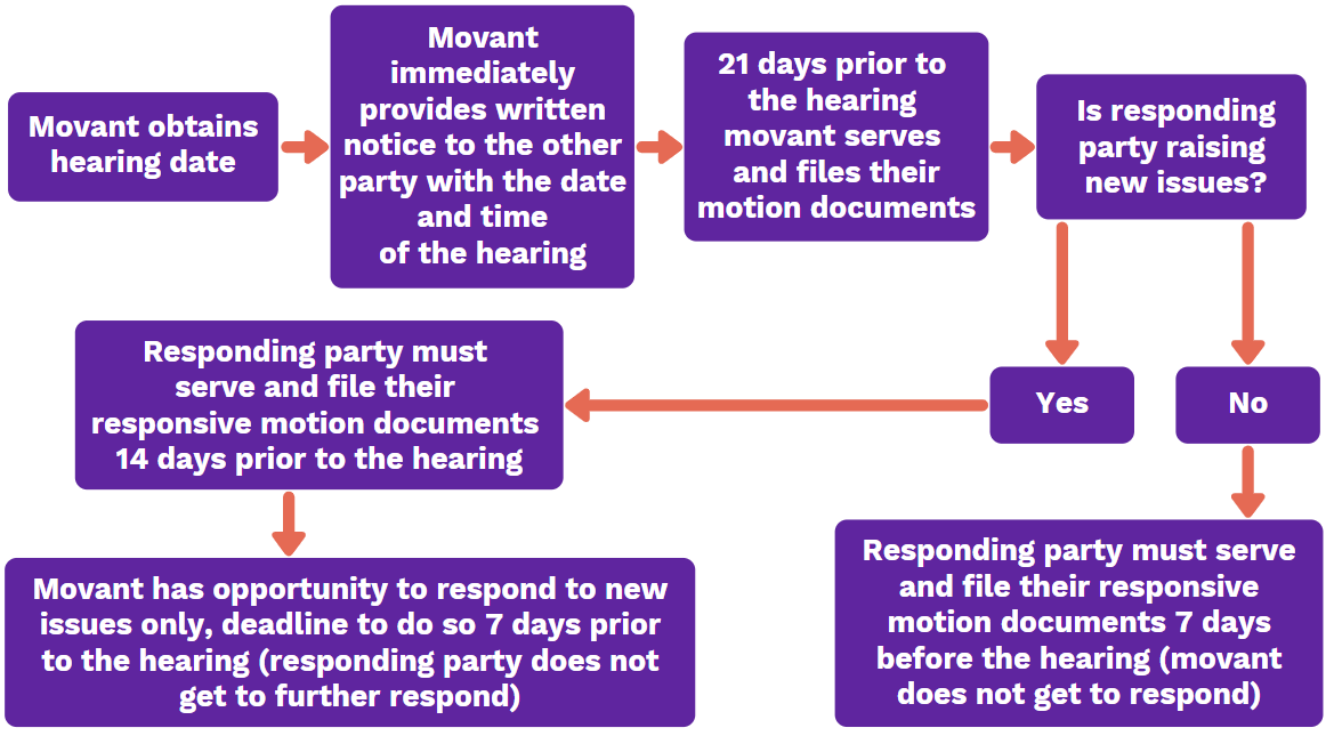
If you are not raising new issues, the documents you will serve and file are the same, but you do not have to do so until at least 7 days before the hearing. If you do not raise new issues, the other party is not supposed to respond.

As a victim of domestic abuse, you are exempt from the general requirement that the moving party initiate a settlement conference to attempt to resolve the issues in the motion. However, if you are the movant, you are still required to file a Certificate of Settlement Efforts at least 24 hours prior to the hearing, in which you will list your reason for noncompliance: namely that you are a victim of domestic abuse and exempt under Minn. Gen. R. Prac. 310.01(b).

[6] See above section above for more detail.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

Timeline for Motions for Temporary Relief



Emergency Motions

When a motion addresses an emergency situation, the court may permit a hearing to be held on a much shorter timeframe than allowed in a regular motion hearing. Whether or not the court considers your issue an emergency will largely depend on the potential for immediate harm to your child under the current situation. This is judged on a case-by-case basis. Emergency situations may include your child suffering from physical or sexual abuse when in the care of the other parent; threats by the other parent to flee out of state with the child; or medical neglect by the other parent, such as the other parent refusing to administer the child's prescribed medications.

The party bringing an emergency motion is still required to give notice to the other party and to serve and file all relevant motion documents, they just do not need to do so 21 days prior to the hearing. If you scheduled the hearing, you need to serve and file the following documents as soon as possible:

- **Notice of Motion and Emergency Motion**[7]
  - Must specifically state why emergency relief is required – essentially the reason why this is so urgent that you cannot follow the usual motion timelines.
- **Proposed Order**
- **Supporting Affidavits**
- **Memorandum of Law** (if any)

You must also file an Affidavit of Service with the court and pay the motion filing fee[8] (unless you have an approved application to proceed in forma pauperis). An order granting emergency relief without notice to the other party will include a return hearing date within 14 days of the date the emergency relief is granted.

Ex Parte Emergency Motions
A request for *ex parte* relief is a request that the court issue an order without any initial input from or notice to the other party. **These motions will only be granted in extreme cases where the child is found to be in imminent danger** and where providing notice to the other party increases the risk of harm.

If you are requesting an *ex parte* motion hearing, you will need to file (but not serve) the following documents:

- **Notice of Motion and Emergency Motion for *Ex Parte* Relief**[9]
- **Supporting Affidavits and Exhibits**
  - Your Affidavit must specify why *ex parte* relief is necessary in this case by explaining the danger the child is in and the increased risk of harm to them if notice is provided to the other party.
- **Memorandum of Law** (if any)
- **Proposed Order**
  - You should include a safety plan for removing the child from the immediate threat of harm, such as having a sheriff accompany you to remove the child.

EXAMPLE: A motion for *ex parte* emergency relief is appropriate if the child is currently in danger with the other parent and the other parent is likely to harm the child or abscond with them in retaliation for being served with your motion documents.

[7] See motion documents listed in a Motion for Temporary Relief section above for more detail.
[8] The same fees that apply to a motion for temporary relief also apply to an emergency motion.
[9] See motion documents listed in a Motion for Temporary Relief section above for more detail. The same fees that apply to a motion for temporary relief also apply to an *ex parte* emergency motion.

If a court allows an emergency motion to be heard *ex parte*, it agrees to hear just the movant's side of the case and promptly issue an order.[10] The *ex parte* order must then be served on the opposing party with all supporting documents. The purpose of an *ex parte* order is to first get the child to safety and then allow the other party to come to court to defend against the allegations.

An order granting emergency relief without notice to the other party will include a return hearing date within 14 days of the date the emergency relief is granted.

Pretrial Motions

Pretrial motions are how a party may request specific accommodations for trial. The deadline for such motions will be outlined in your scheduling order. One such motion may be a motion to allow a minor child to testify (generally in-camera). As a general rule, judges will not allow a minor child to testify. However, an exception may be made if the judge finds the child to be of adequate maturity to express their preference and the issues at stake are high. A motion to allow a child to testify should include an affidavit clearly supporting the importance to the child of being heard and the maturity level of the child. The older the child is, the more likely a judge is to allow them to testify because maturity is often associated with age. A judge will not let a three-year-old testify. However, a judge may allow a mature seven or eight-year-old testify under certain circumstances.

EXAMPLE: If you are going to trial on a parenting time schedule where you agree the other parent is to have parenting time, but you are fighting about one or two parenting days a week, do not ask to have the child testify. If both parents are generally good parents, the potential long-term consequences of having a child testify likely far outweigh the potential consequences to the child of spending an additional day or two a week with the other parent. On the other hand, if the other parent is abusive and for that reason you are asking all parenting time for that parent be supervised and the other parent is requesting full physical custody, this is likely an extreme situation where it might be appropriate to ask the court to allow the minor child the opportunity to voice their preference. But again, only if the child is of adequate maturity to do so.

It is important to note that you cannot just list a minor child as a witness and then have them show up the day of trial. You need to get special leave (permission) from the court to have a minor testify and should only attempt to do so if you think 1) it is important to your child to have the chance to express their preference, 2) they are mentally and emotionally mature enough to handle testifying without serious adverse consequences, and 3) the issue(s) to be determined at trial will have a significant impact

[10] If a court denies a party's request to hear an emergency motion *ex parte*, that just means that notice to the other party is required before the hearing and that the non-moving party will receive an opportunity to respond to the motion before an order is issued.

on their life. Note the final consideration here is the effect a determination will have on the child's life, not your life.

Preparing Your Motion Documents

Your Notice of Motion and Motion should succinctly state the relief you are requesting.

> **EXAMPLE:** For an Order granting mother temporary sole legal and physical custody subject to a graduated parenting time schedule for father as outlined in mother's affidavit.

There are two keys to increasing your likelihood of success on your motion: come off as reasonable and present concrete solutions to the judge. If you appear reasonable, a judge is more likely to believe what you have to say. Furthermore, if you hand the judge reasonable proposed solutions, they are more likely to adopt them. Your opportunity to hit both of these marks is in your affidavit.

Your affidavit should tell a persuasive story to the court. Keep in mind that the judge does not know you, your child, or the other parent. However, while you are telling this story, keep at the front of your mind the best interests of the child, because that is what the judge is being asked to determine. This is especially true in situations where the other parent has been abusive. Of course, abuse aimed at you affected you, but it also affected your child, and that needs to be the focus right now.

> **EXAMPLE:** A story about when the other parent screamed at you should focus on the child trying to sleep in the next room. Discuss safety concerns and give concrete examples.

Do not disparage the other parent. This is not an opportunity to rant. You may very well have reason to hate the other parent, but save that for a discussion with a close friend (out of the presence of your child), and try to come off as neutral as possible about the person the other parent is. If you come off as attacking the other parent, you will lose credibility with the court.

- Try to write about the other parent from a place of compassion: it is unfortunate that this person has made these choices and you would love to see them do better, but you have to consider what is best for your child. The child loves the other parent, but they are scared when he/she does x.

- Your affidavit should provide concrete examples of how the other parent's actions have negatively impacted the child and should not just be a narrative of poor parenting decisions. If a neutral third party could look at an incident and think "this might be poor parenting but does not endanger the child's physical and emotional wellbeing" leave it out.
- You want to focus on concrete examples of psychological and physical harm. The court will not deprive the other parent of parenting time merely because they are a "bad" parent or not as "good" a parent as you are.

Put it in if the other parent…	**Leave it out if the other parent…**
withholds food from the child	provides unhealthy meals at irregular times
is involved in a cult that affects his/her ability to parent	does not practice the same faith as you
leaves your young child to fend for themselves while he/she is passed out drunk or out at the bar	is merely less hands on then you
forces the child to watch porn	allows the child watch shows/movies you do not approve of
leaves the child with a pedophile	leaves the child with a relative during their parenting time
has ever sexually, physically or emotionally abused the child or angers easily	yells on occasion or is less nurturing than you
has ever sexually, physically or emotionally abused you (focus on the impact on the child)	had normal fights with you (it is normal for people to fight sometimes and incidents that did not rise to the level of some form of abuse need not be mentioned)

- Point to ways, if possible, that the other parent can remain involved in the child's life in a safe way. This is part of giving the judge a concrete solution and showing your reasonableness. One of the best ways to do this is by proposing a graduated parenting schedule where the other parent can increase their involvement by making positive changes. If the other parent does not take the necessary steps, they do not get to move to the next stage in parenting time and if they do successfully complete the steps, likely they will be more equipped to be a safe and positive influence in the child's life.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

EXAMPLE

1. Phase I: Supervised parenting time at the YMCA for up to 3 hours at a set time every Saturday at father's expense. Father will undergo a chemical dependency evaluation and follow all recommendations resulting therefrom. Father will complete an anger management program and follow all recommendations resulting therefrom. Once father has completed both a chemical dependency evaluation and anger management and satisfied all resulting recommendations, father will move on to the next stage. Father will have attended at least 6 consecutive supervised parenting time sessions immediately prior to moving on to the next stage.
2. Phase II: Supervised parenting time at the YMCA for up to 3 hours every Wednesday and for up to 6 hours every other Saturday. Father is to remain sober during this time and must attend each supervised parenting session for 8 consecutive weeks to move on to the next phase. Father will submit to random drug and alcohol testing through Minnesota Monitoring during this time, at his expense, and will make the results available to mother. If father misses a scheduled parenting time visit, this phase starts over. If father has a positive or missed drug and alcohol test, start over at Phase I.
3. Phase III: Unsupervised parenting time from 5:00 p.m. to 8:00 p.m. every Wednesday and optional supervised parenting time at the YMCA for up to 6 hours every other Saturday. Father will continue to submit to random drug and alcohol tests and will take a test within 6 hours before his parenting time is to begin each Wednesday. If father misses two consecutive Wednesday visits, this phase starts over. If father has a positive or missed drug and alcohol test, start over at Phase I. Father will move on to the next phase once he has had the children for 8 Wednesdays with no more than one missed week.
4. Phase IV: Unsupervised parenting time from 5:00 p.m. to 8:00 p.m. every Wednesday and an overnight every other week from Saturday at 6:00 p.m. to Sunday at 4:00 p.m. for 8 weeks. Father will continue to submit to random drug and alcohol tests and will take a test within 6 hours before his parenting time is to begin. If father has a positive or missed drug and alcohol test, start over at Phase I. If father misses two visits in a 3-week period, this phase starts over.

EXAMPLE CONTINUED:

5. Phase V: Unsupervised parenting time from 5:00 p.m. to 8:00 p.m. every Wednesday and every other weekend from Friday at 6:00 p.m. to Sunday at 11:00 a.m. for 12 weeks. Father will continue to submit to random drug and alcohol tests and will take a test within 6 hours before his weekend parenting time. If father has a positive or missed drug and alcohol test, start over at Phase I.
6. Phase VI: Unsupervised parenting time from 5:00 p.m. to 8:00 p.m. every Wednesday and every other weekend from 6:00 p.m. on Friday to 4:00 p.m. on Sunday. Father will continue to submit to random drug and alcohol tests. If father has a positive or missed drug and alcohol test, start over at Phase I.
7. Phase VI: Unsupervised parenting time from 5:00 p.m. to 8:00 p.m. every Wednesday and every other weekend from 6:00 p.m. on Friday to 4:00 p.m. on Sunday. Father will remain sober and will submit to a drug and alcohol test upon mother's request. If such a test is requested and it is negative, mother will pay for the test. If a test comes back positive or father refuses to submit to a test, start over at Phase I.

The above is an example of a fairly stringent graduated parenting time proposal that might be proposed if the other parent has chemical dependency issues, which often go hand-in-hand with abuse. However, if the other parent is abusive when sober, you likely would want to focus on anger management and parenting classes and may not want to even offer unsupervised parenting time. Each case is different, and this is just an example to give you an idea of a way to structure your proposal that makes you seem reasonable and gives the judge something they can just sign off on rather than having to come up with restrictions on their own, which they may or may not do. Typically, you want to offer the other parent some form of parenting time and where there has been abuse, courts will generally accept a proposal that the abuser's parenting time should be supervised. Only in the rarest of circumstances where the other parent is causing the child real psychological harm that no intervention can protect the child from will you want to propose no parenting time.

EXAMPLE: If the other parent has subjected the children to cult practices and brainwashing, even supervised parenting time may not be appropriate.

Courts operate from the assumption that it is best for the children to have both parents in their life, and it is an extremely high hurdle to overcome that assumption. That is why it is best to take the approach that the other parent should have *some* parenting time, but that must be balanced with the child's safety.

You will also want to compile affidavits from third parties that support the assertions you are making in your affidavit, but again, they should not serve to merely disparage the other parent. Focus on people who have witnessed first-hand concerning behavior by the other parent or its effects on the child.

STEP FIVE: PRETRIAL CONFERENCE

The pretrial conference is an opportunity to inform the judge what issues remain for trial and to set up logistics. You should be prepared to discuss whether you think the appropriate time has been set aside for trial, and whether you or any of your witnesses need an accommodation for trial (e.g., a translator, hearing assistance device, etc.). This is just a summary of the most common issues discussed at a pretrial and is not all-encompassing.

Seven days prior to the pretrial conference, you must serve and file a Parenting/Financial Disclosure Statement and file your Affidavit of Service with the court.

STEP SIX: PREPARING FOR TRIAL

Witness and Exhibit Lists

Your scheduling order will provide your deadline for serving and filing your witness and exhibit list, as well as your deadline to serve the other party with your physical exhibits. Your exhibit list should briefly describe each exhibit you anticipate offering into evidence at trial. Your witness list should provide each witness's full name and contact information, as well as a brief description of the topic for their anticipated testimony.

As a general rule, err on the side of creating an over-inclusive witness/exhibit list rather than an under-inclusive one. You are not allowed to introduce witnesses or exhibits other than those disclosed on your witness and exhibit lists, and you are not required to introduce every witness/exhibit listed. It is better to include someone/something that you might want to use and change your mind than to not include someone/something and then end up wanting to introduce that witness or exhibit at trial. Again, you can always opt not to introduce someone/something you included on a witness or exhibit list, but you cannot call a witness or introduce an exhibit that is not listed on your witness or exhibit list. You can find a witness list form here and an exhibit list form here. Minnesota courts have compiled some additional helpful information on completing your witness list (here) and exhibit list (here).

NOTE: You should gather your exhibits and talk to your witnesses **well before** the date your witness and exhibit lists are due. Make sure that everyone on your list is willing to be a witness and with their address being disclosed.

You should also plan ahead of time for the order in which you will call witnesses and introduce exhibits, how you plan to introduce exhibits, and the questions you intend to ask each witness.

NOTE: You, as a parent, are a witness and may testify. And although you cannot read from a prepared script, courts will generally allow you to bring up a sheet of paper with short headings or notes to aid you in remembering the key points you want to testify about.

Prepare your Story
There are two key things to keep in mind when working on the narrative you want to tell through trial:

1. The judge does not know your family's story *and*
2. The judge likely listens to bickering parents nearly 40 hours a week.

Keeping those two things in mind, what you want to do is create a narrative that demonstrates to the judge why it is in your child's best interests to grant the relief you are requesting. The judge assumes both parents love their child and that both parents are upset with each other by the time a family law proceeding has been commenced. It is crucial that you present yourself as reasonable and concerned with the child's best interests. Too often parents in custody disputes are so focused on their rage toward the other parent that they come off as using their child as a pawn to get revenge. Even if that is not the case, the judge only knows you by how you present yourself during court proceedings. Stick to how events that have transpired have affected the child and concrete safety and well-being concerns that the other parent presents. Next, you should sit down and outline that story to ensure you present it in a comprehensive, clear and succinct way to the court.

Gather Exhibits
Look to the outline you have created and start gathering all documents you believe support your narrative. This may include photographs, police reports, school records, journals, text messages, phone records, and really any other physical document that supports your story.

Make a List of Potential Witnesses

Review your outline with your supporting documents and determine who has first knowledge of relevant events, how the child was affected by events, or how the child feels about being with you as opposed to the other parent. Examples of people relevant to your case might be daycare providers, family members or family friends, a neighbor, a child's therapist, a doctor, or a school counselor. Remember that any document you want to be considered by the court at trial must have a witness who has firsthand knowledge and can authenticate it and answer questions about it. Every witness, however, does not need to testify about a specific exhibit.

EXAMPLE: if you are trying to shed light on physical abuse a child has endured at the hands of the other parent, you might want to get in medical records (which will require physician testimony) and also testimony from a neighbor who regularly sees bruises on the child, although those incidents were not documented. Together, these help to demonstrate the abuse that has occurred.

Arranging for Witnesses

While you cannot influence what a witness testifies to at trial, you can and should contact witnesses ahead of time to get an idea of how they might testify and whether you think it would benefit you to move forward with having them testify. As soon as your trial is scheduled, you should notify potential witnesses of the date and time. The only way to force a witness to show up to testify is to have another adult personally serve them with a subpoena, which must include the necessary $20 witness fee and mileage reimbursement ($.28 a mile to and from their place of residence and the courthouse). The subpoena form can be found here. This form also includes the Return of Service which must be completed by the person (a non-party over 18 years of age) who personally served the subpoena on the witness. The final page includes more details about the Minnesota Rules that apply to subpoenas and the fees that must be paid to a witness.

Every exhibit needs a witness, but not every witness needs an exhibit.

Some witnesses (mainly someone testifying in their professional capacity such as a psychiatrist) may require additional compensation for their time. A witness is only required to show up to court and testify if you properly serve them with a subpoena and pay the required fees. If the witness is a personal friend or family member who you are confident will show up for trial, you can forego the subpoena and fees, unless they need a subpoena to get out of work.

You may request that the court administrator prepare the subpoena on your behalf for a fee (currently $16), but you are still responsible for service along with witness and mileage fees. If you choose to go this route, make sure to contact the court administrator well before trial and ask how long they anticipate it will take them to have the subpoena(s) ready.

If you applied to proceed In Forma Pauperis and your application was approved by the court, you may be eligible to have the court pay the witness fees for you, but this is not automatic. You must file a Supplemental Affidavit for Proceeding In Forma Pauperis and a Proposed Supplemental Order for Proceeding In Forma Pauperis to be considered for this fee arrangement.

Create a Trial Notebook

This is a handy way to keep your thoughts straight at trial and make sure you do not miss anything. A trial notebook is for your use only, so you can write notes and questions you have for witnesses. One way to organize your notebook would be to get a heavy duty 3 ring binder and insert Petitioner's Witness and Exhibit List followed by all of Petitioner's exhibits and then followed by the same for Respondent. You can then go through and mark up the exhibits (because it is your copy) with things you want to make sure to touch on. You can include questions you have or witnesses regarding the various exhibits. You might also consider paper clipping the clean copies of your exhibits for the judge and opposing counsel along with the original for the witness behind your copy in your notebook. But again, this is for your use alone and you can organize it in a way you find most useful.

TIP: Write out questions for each witness you intend to call. You can refer to these when questioning a witness during trial. You should also write out questions for the other parent's witnesses if you intend to cross-examine them. If you think of a question for the other parent's witness while they are directly examining that witness, you can write it down and refer to it direct cross examination.

Redacting: **Personal identifiers must be redacted**, which means blocked out, on all pleadings and exhibits (with the exception of the Confidential Information Form). You should redact things in a way that doesn't interfere with its distinguishability but that protects the party whose personal identifier it contains.

EXAMPLE: If you are filing a tax return, all Social Security Numbers and account numbers should be completely redacted. An exception to this rule would be if there are multiple accounts of one kind listed which need to be distinguishable, in which case you would redact all but the last four numbers.

You can redact documents manually, by whiting or blacking out the relative portion, or using a computer program if you have one available to you.

STEP SEVEN: TRIAL

- On the day of trial, you should arrive at the courthouse early and dressed professionally.
- Do not bring your minor child to the courthouse.

> **NOTE:** Even if one or more minor child will be speaking with the judge or testifying, they should not be in the courtroom until that time, and you should not be the one supervising them.

- Arrange for childcare and for someone else to bring your minor child to and from the courthouse if they will be testifying.
- Although a certain amount of time will be set aside for your trial, plan on being there longer.

> **EXAMPLE:** If your trial is set for half a day, arrange for the full day. If trial is set for one or more full days, plan on having someone with your child for at least an hour after you anticipate being there to ensure you do not need to disrupt the proceedings.

- Plan ahead for what you can and cannot bring into the courtroom.

> **NOTE:** What is allowed in the courtroom varies by county, so you should call ahead of time to ensure you are not scrambling to figure out what to do with prohibited personal items right before your scheduled court appearance. For example, many courts will not allow you to bring your cellphone into the courthouse. Some court facilities have lockers you can use or rent for the day, but others only have unguarded cubbies. Plan ahead.

- When you arrive at the courthouse, you will go through the metal detectors and then proceed to check in. There may be a bailiff outside of the courtrooms to check you in or there might be a counter you need to approach. If you are unclear what courtroom you need to be in, you can

ask someone or look to the monitors outside of the courtrooms (if any) that flash the names of the matters being heard in each respective room that day

- At the beginning of trial, each party will have the opportunity to present an opening statement. This is a brief summary of your case: what relief you are seeking and what evidence you will offer to support that request. The judge will give you the option to give an opening statement or to waive your chance to do so. Do not feel obligated to give an opening statement. In fact, with self-represented parties, the judge will often encourage you to waive it.

An opening statement can help familiarize a busy judge with your case. If you choose to give an opening statement, prepare it in advance and keep it brief. Here is an example of the framework you might follow to give an opening statement:

Your Honor, we have agreed on (list what you have agreed to). What we are asking you to decide is (list the issues for trial), and I am asking for (list what you want the court to decide).

Example, Your Honor, we have agreed that child support will be set following the Minnesota Child Support Guidelines and have agreed that I will have sole legal custody. We are asking you to decide the issues of physical custody and the parenting time schedule. I am asking that you award me sole physical custody and continue the parenting time schedule that we have been following.

- After opening statements, the Petitioner begins calling witnesses and introducing exhibits to which the witness will testify. The party calling the witness asks open-ended questions, not leading questions.[11] The point of the questioning is essentially to keep the witness on track. The witnesses cannot just give a monologue. There needs to be a question in front of them that they are answering.

REMEMBER: You, as a parent, are a witness.

- After Petitioner has completed their initial questioning, Respondent gets the opportunity to cross-examine each of Petitioner's witnesses. Do not feel obligated to cross-examine a witness. Judges often discourage self-represented parties from doing so.

- After Petitioner has called all of their witnesses, Respondent then presents their witnesses and exhibits in the same way as described above for Petitioner.

[11] Example of a leading question: Did you see Respondent hitting the child when you entered the room? Example of open-ended question: What did you see when you entered the room?

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

NOTE: Self-represented parties can ask to testify and are allowed to give a monologue (because a party cannot both ask and answer their own questions). A testifying party will be subject to cross-examination by the other party, just like any other witness. If you are going to testify, the court most likely will not let you read a written statement but will generally allow you to have a list of topics that you want to talk about.

If you want an exhibit to be entered into evidence, the only way to accomplish that is by having a witness with personal knowledge to testify about it, properly laying the foundation, and offering the document up as an exhibit. You may not introduce into evidence statements made by a third party unless they are present to testify about it. A common pitfall self-represented parties run into is walking into trial with signed statements by individuals who are not physically present to testify. This is hearsay and will not get in. You must arrange for your witnesses to be physically present and cannot substitute that presence by submitting a signed statement or anything else.

EXAMPLE: If you want to get into evidence that a friend of yours saw the Petitioner hit the child, that friend will need to be present at trial to testify.

Trial tip: Make sure you have three copies of each exhibit (for you, the opposing party, and the judge) as well the original for the witness to refer to (this is the one that will be entered into evidence). Although you will have already served a copy of the exhibits on the other party, you still need to have a physical copy to hand to them when you introduce the exhibit at trial.

- All exhibits must be numbered. The court may number your exhibits before trial, but if they do not, you must ask the court to give an exhibit number when you are ready to give the court an exhibit. You then ask the judge if you can show the witness the exhibit. You must give the other party a copy of the exhibit and then you may show the exhibit to the witness. A witness must have personal knowledge in order to testify about an exhibit. This means that a witness cannot testify about a document that they only know about because you or another party told them. A witness has personal knowledge of things they perceived/witnessed firsthand.

EXAMPLE: A childcare worker would have firsthand knowledge of bruising they saw on a child but would not have firsthand knowledge of bruising you told them about but they never saw.

- When you are ready to give the court an exhibit, you need to "lay the foundation," which means having the witness tell the court what the exhibit is and how they know what it is (they must have personal knowledge about the exhibit). To do this, you hand the document to the witness and ask 1) Do you know what this document is? 2) What is it? 3) How do you know what this document is? and then 4) ask what they know about the exhibit or what they can explain about it to the court. Immediately after "laying the foundation," you must offer the exhibit into evidence using words such as "I offer into evidence as exhibit 1 a copy of a police report dated January 1, 2001." It is very important that you follow the formality of actually offering the document as an exhibit. Failure to do so will prevent the evidence from becoming a part of the court record for consideration.

NOTE: As a party you may testify to exhibits, but you must follow the same formal process. Have the exhibit numbered, state what it is for the record, summarize what you have to say about the exhibit, and then offer it into evidence. Once you have followed these steps, you may testify about the exhibit.

Trial tip: Have the witness and exhibit list and check off each one after they testify or after the exhibit is accepted by the judge. When the judge asks if you are done, look at your list to be sure you got everything done.

- When one party is introducing an exhibit, the other party may object. The judge will make a ruling right there about whether the court will accept the exhibit.

- Once both parties have presented their case, each will have the opportunity to make a closing statement. This is a brief summary of your case essentially telling the judge this is the relief I want, this was the evidence presented, and here is why you should order what I am asking for.

- The court will issue its final order within 90 days from the last day of trial. If you think the judge made an error in that final order, you have 60 days from the date judgment was entered to appeal. If the error is a typographical mistake, such as a listing the wrong address or some other clear typo, you should call the judge's clerk and ask how this can be corrected.

For additional information about trial, you can view a guide the courts put together for self-represented parties.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

If a Guardian ad Litem is Appointed

Guardians ad Litem (GAL) all have their own unique style and methods for doing things. This section is intended to give you a general idea of what to expect and provides some suggestions for working with them.

The purpose of a GAL is to provide an outside perspective into the life of the child and to report to the court what they believe is in the child's best interests. Their recommendations carry a lot of weight in the eyes of the judge, and it is important that you make your best effort to form a positive impression with them from the start.

A GAL will conduct some type of interview (typically in person) with each parent separately and then may observe each parent with the child. The GAL will also reach out to third parties who are familiar with the child and each parent's relationship with them. These third-party interviews are typically conducted by phone, but some GALs will do them in person or by sending out questionnaires. However, your GAL goes about conducting their investigation, there are practical things you should do. Your interactions with the GAL should largely be treated like an interview for the position of parent that you are seeking. Think about what you are asking the court to ultimately order and treat your time with the GAL as you would a formal interview for that role.

Be responsive. Respond to correspondence from the GAL as soon as possible. Be flexible in your scheduling if you can.

Be courteous. Always. Even if the GAL is rude or you become angry, remain courteous.

Focus on the child and not the other parent or yourself when you are meeting with the GAL. While it is appropriate to state your concerns about the other parent, do so in the most objective and fair way possible and keep the focus on your concerns about the other parent's ability to provide a safe and positive environment for the child. Think about what you want to get across to the GAL before you meet and plan ahead for how you are going to present that to them. If they ask you a question that throws you off, take a breath and express that you need a moment to think about that. It is okay to think through what you want to say. This is similar to how you would conduct yourself in a job interview. The focus should never be on badmouthing your previous employer (or here the other parent), it should be on how you are best suited for the role you are seeking. Here, you should share your concrete concerns

EXAMPLE: If you are aware the other parent is leaving the child alone with a pedophile, you should absolutely share this with the GAL, but do so in as calm a manner as possible while keeping the focus on your concern for the safety of your child, not on how horrible the other parent is for their poor decisions or the company they keep.

about the other parent's ability to care for the child, but it should never turn into a ranting session. Save that for your friends and family. Keep any criticisms of the other parent as fair and objective as possible and always, always, always, keep the focus on how those concerns relate to the wellbeing of the child.

When the GAL is observing you with your child, do not bring up the other parent at all. Do not say negative things about the other parent in the presence of the child, and even if you think they are out of earshot, do not do it. It will reflect poorly on you if you are viewed as someone who speaks ill about the other parent in the presence of your child.

Do not send unsolicited information to the GAL unless it is very important. The GAL will provide you with their contact information, and often this will include their email. This should not be viewed as an opportunity to dump every thought you have at their feet. If the GAL asks you to report certain things to them, certainly do that. Otherwise, keep it to a minimum. An example of a grievance you should keep to yourself is if the child comes back from the other parent's home and reports that they ate nothing but junk food. This may be poor parenting, but the GAL's role is not to rank one parent as better than the other and complaints like this come off as petty. On the other hand, an example of something you should share with the GAL is if the child returns from the other parent's home and reports they were touched inappropriately (in which case you should also file a police report).

In short, the GAL is a very powerful person in these proceedings and they are given just a small snapshot into the life of your child. They are charged with investigating what is best for the child and reporting that to the court. A judge will typically put more weight on the GAL report than anything else presented to them because they are a neutral third party assigned for the child's benefit. They are viewed as an arm of the judge because they are able to dig in much deeper than a judge will. It is paramount that you present yourself as rational, reasonable and stable and as putting your child's needs before any anger/ill feelings toward the other parent.

Calculating Deadlines

When calculating filing and service deadlines, you exclude the day you received the document and then count forward. However, if the last day lands on a Saturday, Sunday or legal holiday, your deadline is the following day that is not a Saturday, Sunday or legal holiday. If you are serving or filing your documents personally or through the court's e-filing system, this is the day your documents are due.
If you are serving or filing something by mail, you need to subtract 3 days from the amount of time you are allotted. If the time you are given, less 3 days, falls on a Saturday, Sunday or legal holiday, your deadline is the first day prior to that day that is not a Saturday, Sunday or legal holiday.

VIOLENCE FREE
MINNESOTA
THE COALITION TO END RELATIONSHIP ABUSE

EXAMPLE: If you were served with a Summons and Petition and you are calculating your 21-day deadline to respond you count out 21 calendar days beginning the day after you received the documents. However, in the scenario depicted below, the 21st day is a Saturday, so you look forward to the next day that is not a Saturday, Sunday or legal holiday. In the illustration below, that would be Tuesday, the 24th day. That would be your deadline to serve your Answer and Counterpetition if you were having Petitioner personally served.

If you were serving the other party by mail, you need to provide 3 extra days for service. We add those days for service by mail by counting backward 3 days. In the scenario described above, we established your deadline to personally serve your documents would be the 24th day. You count backward 3 days, but because that lands you on a Saturday, you look to the next prior day that is not a Saturday, Sunday or legal holiday. In this scenario, your deadline to serve your Answer and Counterpetition by mail would be the 20th day.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						Date of service
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	15	19	20	21
22	23 HOLIDAY	24				

E-filing

A modern method of filing and serving documents is through the court's efiling system. This system allows for faster service. You can file or serve documents with the click of the button, and you can view court orders or other important documents as soon as they are available rather than having to wait for then to arrive in the mail.

1. Step One: Determine what web browser you will be using. Follow this link and select "eFile and eServe – Internet Explorer" or "eFile and eServe – Other browsers".

NOTE: If you register for e-filing, you must always use to this method. You cannot e-file some documents and mail in others, for example. You are also expected to check the email you have registered your account with regularly. If you have registered for e-filing, any notice given to you through that account is documented and the court will not accept excuses for failing to monitor that email.

2. Step Two: Register for an account. You only need to do this once. In the future, you can just sign in. You will need to provide your first and last name (middle name optional) and email address. Choose an email address that the other parent does not have access to. If you do not have one, create one. You will choose a password and create your own security question with an answer. Then you will select "Register for a Self-Represented Account". Fill in your address and phone number. Agree to the terms and conditions. A link will be sent to the email account you provided which you must click on to activate your account.

NOTE: If an advocate is assisting a party with registration through the efile system, the party's information, and not the advocate's information, is what must be used.

3. Step Three: Sign in and add a payment account. Even if you get approved to proceed in forma pauperis, you are still required to have a payment method associated with your account.

4. Step Four: If you are filing a Summons and Petition to start a new case, you should go to actions (upper right-hand corner) and select "Start a New Case". You will select the county where your child lives (this should be contained on your Summons and Petition as well). The category is "Family". The case type is "Custody" if paternity has already been established and you are not married to the other parent. If you are currently married to the other parent, the case type is "Dissolution with Child". If you have never been married to the other parent and paternity has not been established, the case type is "Paternity".

NOTE: The case type "Domestic Abuse" is what you would select if you were filing for an order for protection, but it is not what you file under for custody matters regardless of domestic violence issues. The case type "Support" is what you would select to establish child support and is not what you file under for custody issues.

Next, you will need to fill in the party information. If you are filing this action, you are the Petitioner and the other parent is the Respondent. If you check "I am this party" the information will self-populate. You must fill in the first and last name of the other party. You should also include their address and phone number if you know it.

Once a court file number has been assigned, you will go to actions and select "File Into Existing Case" and enter the court file number into the search bar to pull up your case.

5. Step Five: Upload and file/serve your documents. The document you upload must be in PDF format. The system will not allow you to upload a Word document.

   You need to fill out the section "Enter the details for this filing" for each document you are filing/serving through the system.

   Filing Type
   There are 3 options for filing type: 1) efile, 2) eserve, and 3) efile and eserve. You can only eserve the other party through this system if the other party has set him/herself up with an account through the system. You cannot do this for the other party. If the other party is not set up with an account for eservice, you will have to go through traditional means for service.

   Efiling is a way to electronically submit your documents to the court. Eservice is a way to serve the other party with documents. Typically, anything you file must also be served on the other party, and therefore, the "efile and eserve" option is the one you will most typically use if the other party is also registered with the efiling system.

   Filing Code
   The filing code is the name of the document you are submitting (e.g., Summons, Petition, Answer and Counterpetition, etc.).

   Filing Description
   The filing description is a place where you can add a little more detail to the name of the document if necessary. For example, if you are filing a motion, you would select "Motion" for the filing code and might add a more detailed description under the filing description, such as "Petitioner's Motion to Modify Parenting Time Schedule".

   Client Reference Number
   This section is intended to allow attorneys to track their internal files with the corresponding court files. You need not put anything in this section.

   Comments to Court
   For each document, you must label it either public, confidential or sealed. The reasons these classifications are important is they determine who can view the documents. Public documents can be accessed by anyone. Confidential documents can only be viewed by court staff and certain governmental entities. Sealed documents receive an extra layer of protection and are only

accessible to court staff with the highest security level clearance. Failure to correctly classify a document will result in rejection of the filing.

Confidential: There are two types of documents that must be filed as "confidential": those containing "restricted identifiers" and "financial source documents". Restricted identifiers are complete or partial Social Security numbers, complete or partial employer identification numbers, and more than the last four numbers of a financial account number (unless that financial account number is a Social Security Number, in which case it is a restricted identifier). Financial source documents are income tax returns, W-2s, paystubs, credit card statements, financial institution statements (such as bank statements), check registers (or copies of checks), and similar documents. A good rule of thumb is that if a document refers to someone's finances with anything more than just stating a straight value (such as a statement by you in a pleading saying your significant other earns $x or the value of something is $x), treat it as a confidential financial source document.

Never list restricted identifiers in any paperwork unless required.

> **EXAMPLE:** You must list the parties full Social Security Numbers and birthdates in the Confidential Information Form (which must be labeled confidential when filing), but you should never list a Social Security Number or account number in an affidavit to the court.

Sealed: To properly label a document sealed, you generally need a court order. There is no hard and fast rule on what is considered so sensitive that it warrants a "sealed" label, but it is very unlikely that anything you file will qualify. If ever in doubt, call the court administrator and ask for guidance.

Public: Any document that does not qualify as confidential or sealed is public. This will be the vast majority of what you file with the court (e.g., Summons, Petition, Answer and Counterpetition, Affidavits/Declarations, Motions).

Courtesy Copies
If you want a copy of what you are serving/filing to go to an email address other than the email you used to register with the court's filing system, you can enter it here. You will automatically receive an email notification (sent to the email you used to register your account) when your documents are served, submitted for filing, and accepted for filing, along with a copy of the documents submitted.

> **NOTE:** You cannot use the courtesy copy to serve the other party with a document. If they are set up for eservice, you must eserve them. If they are not, you must follow traditional service requirements. Email is not proper service.

When a document has been accepted for filing, you will get an email with a link to the document with an electronic court stamp. If you want this document for your records, you need to download it before the link expires (30 days from the date it is sent to your inbox).

6. Step Six: Read and check the acknowledgment boxes.
7. Step Seven: Select the appropriate court fee if you are filing commencement or motion documents. You only have to pay one commencement fee and one motion filing fee per motion filed. For example, if you file a motion for temporary relief and you also submit a response to the other party's responsive motion, you only have to pay a single motion filing fee. No fees need to be paid for other filings, such as a Scheduling Statement.
8. Step Eight: Review your filing for accuracy and submit.

Definitions

- **Petitioner**: the person who starts the action by serving the other party with a Summons and Petition.
- **Respondent**: the person who is responding to the action. This person was served with a Summons and Petition and must respond with an Answer and Counterpetition.
- **Adjudication**: the legal process by which a judge determines the rights and obligations between the parties involved. An adjudication of paternity is a formal court determination that the parent adjudicated is the father of the child. This determination gives the father parental rights.
- **Jurisdiction:** the legal authority to hear and decide the case. A court needs to have jurisdiction over a matter in order for it to proceed with that particular court.
- **Service**: encompasses the different court-approved ways of getting a document to the other party.
    - *Personal Service* is accomplished by a non-party (it cannot be you) over the age of 18 personally handing a document to the party being served (or another individual over the age of 18 who resides with the party being served). The document must be physically handed to an appropriate person and cannot just be left at the person's residence.
    - *Service by U.S. Mail* is accomplished by mailing the documents to the last known physical address of the person intended to be served.
    - *E-Service* is accomplished by serving another party electronically through the court's e-filing system. This method can only be used if the other party has set up an account with the court's e-filing system. You cannot set up an account for them, they must do it themselves.
    - Note: if you are commencing an action, you must have the other party personally served. Thereafter you can accomplish service through alternate means (by mail or e-service).
- **Affidavit of Service:** a court document wherein the serving party swears under penalty of perjury that the party listed in the document was served, the documents which were served, the method of

service, and the date the documents were served. This must be filed with the court along with the documents that were served AFTER the documents have been served. Here are forms for an: Affidavit of service by **PERSONAL SERVICE** and Affidavit of service forms by **MAIL.**

- **Summons:** a court document which explains what is expected of the Respondent after they have been served with a Petition. Every Petitioner must serve and file a Summons to commence a custody action
- **Petition:** explains why the Petitioner has initiated a court action against the Respondent and what they are asking the court to do.
- **Answer and Counterpetition:** Respondent's response to Petitioner's Petition. It must affirm or deny all allegations contained in the Petition and specify what the Respondent wants the court to do.
- **Relief**: what a party is asking the judge to order. For example, a request that the court order only supervised parenting time for the other parent is a request for relief.
- **Proceeding In Forma Pauperis**: If a request to proceed in forma pauperis is granted, that party has their court fees waived and certain related fees either waived or reduced. The court reviews these requests based on a party's income and not the merits of their case.
- **Early Neutral Evaluation:** a process by which a neutral professional hears from both parties and discusses with them the merits of their case and what a judge is most likely to do and helps facilitate settlement discussions and narrow issues.
- **Movant:** the party bringing a motion/the original motion filer. The movant can be the Petitioner or the Respondent, it is based on who filed the initial motion the other party is responding to.
- **In-Camera**: if something is conducted "in-camera," it is conducted by the judge without an audience or official record. For example, if a document is submitted for in-camera review, the other party does not receive a copy of it, and it does not become a part of the official court record. It is merely viewed by the judge for their consideration. A common example of something submitted for in-camera review is an invoice for attorney's fees. With respect to "in-camera testimony," sometimes courts will allow a minor child to testify informally in the judge's chambers without either party or a court reporter present. Typically, a judge will spend a little time with the child and another court official (a bailiff or court staff member) to allow the child to warm up to them before asking the child age-appropriate questions related to the issues before the court. This method provides a less intimidating environment for the child than testifying on the stand and reduces the pressure on the child that comes from talking about such sensitive matters in front of the parents. In-camera testimony does not become a part of the court record.
- STANDPOINT (standpointmn.org) **is a free legal resource.** Standpoint has attorneys on staff who can provide free legal advice. If they are not familiar with the neutrals in your area, they will be able to connect you with someone who is. Standpoint can be contacted by phone at 800-313-2666 or 612-343-9842, by email at info@standpointmn.org, or by text at 612-743-7397.

This guide was developed with funding from the Minnesota State Bar Foundation (2021).