



## **Judicial District 1**

# **COMPLAINT FOR CUSTODY AND/OR VISITATION**

**DUE TO THE CHANGING NATURE OF THE LAW, the forms and instructions contained in this packet may become outdated. You should review and research statutes and rules of procedure referenced in the instructions to ensure that the forms are accurate and current.**

IN NO EVENT will the Clerk of Court, the Custody Mediator or anyone contributing to the production of these forms, instructions or guidelines be liable for any indirect or consequential damages resulting from use of the forms or information provided to you.

IF THERE ARE ANY QUESTIONS in your mind concerning these forms, or your legal rights, it is strongly recommended that you consult with an attorney.

**USE THESE FORMS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED. IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE! NO ONE AT THE JUDICIAL CENTER, CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE, MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!**

**PLEASE CAREFULLY READ THE FORMS AND INSTRUCTIONS CONTAINED IN THIS PACKET. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT WITH AN ATTORNEY.**



THESE ARE EDUCATIONAL FORMS AND INSTRUCTIONS DESIGNED TO ASSIST YOU, BUT YOU ARE REPRESENTING YOURSELF. PLEASE REVIEW AND FOLLOW THE DIRECTIONS TO IMPROVE YOUR PERFORMANCE IN YOUR CASE. FAILURE TO READ AND FOLLOW THE INSTRUCTIONS MAY ADVERSELY IMPACT YOUR CLAIM.

**NO ONE AT THE CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE OR THE CUSTODY MEDIATOR MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!**

## **Steps for Filing a Complaint for Custody/Visitation**

### **STEP 1**

#### **Filling Out the Documents**

You must complete the following documents:

- **Complaint for Custody and/or Visitation**. The Plaintiff and Defendant stay the same throughout the entire case. Look on the previous order to see who the Plaintiff and Defendant are. Note that you **MUST** sign this Complaint in the presence of a **Notary Public**.
- **Civil Summons (AOC-CV-100)**. Forms may be accessed and filled out on line at [www.nccourts.org](http://www.nccourts.org).
- **Domestic Civil Action Cover Sheet (AOC-CV-750)**. Forms may be accessed and filled out on line at [www.nccourts.org](http://www.nccourts.org).
- **Custody Mediation Cover Sheet and Notice for Custody Mediation Orientation**. ALL PARTIES IN CUSTODY/VISITATION CASES ARE REQUIRED TO ATTEND CUSTODY MEDIATION.
- **Servicemembers Civil Relief Act Affidavit (AOC-G-250)**. Forms may be accessed and filled out on line at [www.nccourts.org](http://www.nccourts.org)

### **STEP 2**

#### **Filing the Documents**

You will need to take the following documents to the Civil Division of the Clerk of Superior Court's office in the Courthouse in the County in which you live.

- \$150.00 filing fee (fee subject to change)
- The original and two (2) copies of the Summons
- The original and two (2) copies of the Complaint
- The original and two (2) copies of the Custody Mediation Cover Sheet and Notice for Custody Mediation Orientation
- The original and two (2) copies of the Servicemembers Civil Relief Act Affidavit
- \$30.00 per Defendant service fee (if you choose to have a North Carolina Sheriff's Department serve your documents)

### **STEP 3**

#### **Mandatory Custody Mediation**

All cases filed in North Carolina which involve custody must go through the **Custody Mediation Program**. If you have not yet participated in Custody Mediation with regards this particular custody case, you will be required to participate before your case can be heard before a District Court Judge.

Mediation is a process in which a professionally trained neutral third party assists parents in developing an agreement that provides for the care of their children during and after separation. The goal of the mediation process is to provide the litigant a forum to discuss parenting issues that involve both parents in the continuing care of their children. The agreement focuses on the children's needs as well as the on the rights and responsibilities of both

parents. The parties are not required to reach an agreement, but they are required to attend at least one orientation session and one mediation session. Because participation is mandatory, there is no cost to you. Upon filing your complaint with the Clerk of Court, you will be given the date/time/place to complete the “Custody Mediation Cover Sheet and Notice for Custody Mediation Orientation” form, which form will notify you and the other party(ies) of the date, time and place that you must attend an orientation. It is **YOUR RESPONSIBILITY** to serve this Notice of Orientation on the other party. The orientation is an information exchange between the parties and the Custody Mediator and serves to educate you about the mediation process. At the orientation, the Custody Mediator will schedule your mediation session.

If your mediation does not result in an agreement, the Custody Mediator will send an Order to Calendar to both parties. A calendaring request must be made within 90 days thereafter. The form for this calendar request will be provided to you with your copy of the Order to Calendar.

## **STEP 4**

### **Service of Process**

North Carolina General Statutes require that you give notice to the other party about the filing of your complaint. This is known as “Service of Process.” The correct way to serve the other party is determined by law. If the documents are not correctly served on the other party, the court will not hear your case. All papers and documents that you file in your case must be served on the other party. If the other party has an attorney, you must send copies of all of the paperwork to the attorney.

#### **PLEASE READ THIS SECTION VERY CAREFULLY.**

**If you have concerns or are confused, consult with an attorney immediately!** In order for your case to be binding against the Defendant, he/she must be given notice of the case, or *served* in a manner that is recognized by the court. **PLEASE NOTE that service of process must be *completed successfully* for your case to proceed and avoid dismissal.** This means that if you have the sheriff serve the documents, **IT IS YOUR RESPONSIBILITY** to follow up and make sure service was completed. If you serve by certified or registered mail, **YOU MUST** file the **Affidavit of Service of Process by Registered or Certified Mail** found in your packet along with the **green return-receipt card** you receive in the mail. The forms needed for *Service of Process* and the procedures you must follow are complex and will vary. In order to learn which steps to take next, review the following and choose the correct forms and procedures for your case:

#### **AVAILABLE METHODS FOR SERVICE OF PROCESS:**

- I. Service of Process by the Sheriff:** If the party lives in North Carolina and will not accept service of process, you will need to pay a \$30.00 service fee per party served to the sheriff in the county where he/she resides to serve the papers.
  - a. Take the **Civil Summons** and **Complaint** to the Clerk’s Office, when you file for custody/visitation. The summons should include the most recent address of the Defendant and any other information that will help the sheriff’s office locate him/her. These will be stamped and filed by the clerk. You must take or send the stamped documents and the \$30.00 payment to the Sheriff’s office where the defendant lives. Be sure to keep a copy of these documents.
  - b. After delivering these documents to the sheriff, he/she will keep a copy of the summons detailing how the Complaint and Summons were delivered to the Defendant. The sheriff’s deputy will then file this information with the clerk of court after service is complete.
  - c. In order to find out if the sheriff was successful or unsuccessful in attempting to serve the Defendant, you must check with the Clerk’s office or the Sheriff’s office to determine if service was successful.

#### **II. Service of Process by Certified or Registered Mail**

- a. Service of Process by certified or registered mail can be completed within the state and outside of the state, but within the US (*please consult with an attorney if the Defendant is in the military or lives in another country*) by mailing a **copy** of the Summons and Complaint **by registered or certified mail, return receipt requested**, addressed to the Defendant and delivered to his/her address (or the address of the location where he/she can be contacted by mail). A postal worker can help you fill out the necessary forms registered or certified mailing. **If you choose this type of service, you must file an *Affidavit of Service of Process by Certified or Registered Mail* when you receive the return receipt (the “green card”). You must attach the original return receipt to your affidavit.**
- b. The Affidavit of Service must be taken to and signed in the presence of a Notary Public and then filed with the Clerk of Court for placement in your Court file.

**III. Service of Process by Publication: You Do NOT Know Where the Defendant Is: (THIS SHOULD BE YOUR LAST RESORT)**

- a. If you do not know where the Defendant is located, you will need to serve him/her by "publication." If you know where the Defendant is or can find out his/her address, this process should not be used. Publication is a complex process using the newspaper to run notice of the complaint. You should speak with an attorney regarding this type of service.

**IT IS YOUR RESPONSIBILITY TO ENSURE  
THAT ALL OF THE ABOVE STEPS HAVE BEEN DONE PROPERLY.**

**IT IS RECOMMENDED THAT YOU SEEK LEGAL ADVICE  
REMEMBER, THE CLERK OF COURT CANNOT GIVE YOU LEGAL ADVICE.**

**STEP 5**  
**Attendance**

Be sure to attend all scheduled court events on time and dress appropriately (as if you were going to a job interview). This is very important.