

## North Dakota Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

Disclaimer: This Toolkit was developed under grant number SJI-20-E-005 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. While the Jurisdiction and Service of Process Chart is a useful resource, it does not remove the responsibility of each and every lawyer to engage in original analysis and research.

### Custody Determination - Jurisdiction

#### Initial Custody Determination

**N.D. Cent. Code § 14-14.1-12** (<https://codes.findlaw.com/nd/title-14-domestic-relations-and-persons/nd-cent-code-sect-14-14-1-12.html>)

Permissible if:

1. State is child's home state (at commencement of proceeding or six months prior and child is absent but at least one parent continues to live in the state); or
2. Court of another state does not have jurisdiction under subdivision a, or court of home state of child declines jurisdiction on the ground that this state is the more appropriate forum and (1) child and at least one parent has significant connection to State; (2) substantial evidence is available re: child's care, protection, training and personal relationships; or
3. all courts having jurisdiction under a and b declined to exercise jurisdiction based on this forum being most convenient;
4. no court of any other state would have jurisdiction under a, b, or c.

[This is the state's adoption of the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA").].

#### Temporary Emergency Jurisdiction relating to Child Custody

**See N.D. Cent. Code § 14-14.1-15(1)** (<https://codes.findlaw.com/nd/title-14-domestic-relations-and-persons/nd-cent-code-sect-14-14-1-15.html>)

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

14-15-06. Individuals as to whom consent not required - Notice of hearing.

1. Consent to adoption is not required of:

a. A parent who has deserted a child without affording means of identification or who has abandoned a child.

b. A parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause:

(1) To communicate with the child; or

(2) To provide for the care and support of the child as required by law or judicial decree. c.

The father of a minor if the father's consent is not required by subdivision b of subsection 1 of section 14-15-05.

d. A parent who has relinquished that parent's right to consent under section 14-15-19.

e. A parent whose parental rights have been terminated by order of court under section 14-15-19.

f. A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent.

g. Any parent of the individual to be adopted, if the individual is an adult.

h. Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably.

i. The spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

j. A parent of the minor, if the failure of the parent to consent is excused by the court in the best interest of the child by reason of the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the court to identify the parent. 2. Except as provided in section 14-15-11

## **Custody Determination – Service/Notification Requirements**

### **14-15-11 (8). Service:**

Notice must be given in the manner appropriate under the North Dakota Rules of Civil Procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

**N.D. R. Civ. P. 5(b)** (<https://www.ndcourts.gov/legal-resources/rules/ndrcivp/5-8>)

(b) Service--How made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party. If an attorney is providing limited representation under Rule 11(e), service must be made on the party and on the attorney for matters within the scope of the limited representation.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, leaving it in a conspicuous place in the office; or,

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to the person's last known address, in which event service is complete upon deposit of the paper to be served with the commercial carrier;

(E) if no address is known, on order of the court by leaving it with the clerk of court;

(F) sending it by electronic means if the person consented in writing, in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served;

or

(G) delivering it by any other means that the person consented to in writing.

## **Paternity and Child Support Proceeding – Jurisdiction**

**Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – – See N.D. Cent. Code § 14-12.2-04** (<https://www.legis.nd.gov/cencode/t14c12-2.pdf#nameddest=14-12p2-04>)  
Jurisdiction permitted over non-resident individual if:

1. The individual is personally served with a summons within this state;

2. The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  3. The individual resided with the child in this state;
  4. The individual resided in this state and provided prenatal expenses or support for the child;
  5. The child resides in this state as a result of the acts or directives of the individual;
  6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
- There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

## **Paternity and Child Support Proceeding – Service/Notification Requirements**

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(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to the person's last known address, in which event service is complete upon deposit of the paper to be served with the commercial carrier;

(E) if no address is known, on order of the court by leaving it with the clerk of court;

(F) sending it by electronic means if the person consented in writing, in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means that the person consented to in writing.

## **Child Abuse/Neglect Proceeding – Jurisdiction**

### Child Abuse/Neglect/Dependency Proceedings

**N.D. Cent. Code § 14-14.1** (<https://www.legis.nd.gov/cencode/t14c14-1.pdf>)

North Dakota courts have jurisdiction as discussed below under the Uniform Child Custody Jurisdiction and Enforcement Act Chapter 14-14.1 for a child custody proceeding in cases of neglect, abuse or dependency.

**N.D. Cent. Code § 14-14.1-01 (102) (3).**

**N.D. Cent. Code § 14-14.1-12**

1. Except as otherwise provided in section 14-14.1-15, a court of this state has jurisdiction to make an initial child custody determination only if:

a. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

b. A court of another state does not have jurisdiction under subdivision a, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 14-14.1-18 or 14-14.1-19, and:

(1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(2) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

c. All courts having jurisdiction under subdivision a or b have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 14-14.1-18 or 14-14.1-19; or

d. No court of any other state would have jurisdiction under the criteria specified in subdivision a, b, or c.

2. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

## **Child Abuse/Neglect Proceeding – Service/Notification Requirements**

### **14-15-11 (8). Service:**

Notice must be given in the manner appropriate under the North Dakota Rules of Civil Procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

**N.D. R. Civ. P. 5(b)** (<https://www.ndcourts.gov/legal-resources/rules/ndrcivp/5-8>)

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(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, leaving it in a conspicuous place in the office; or,

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) sending it by a third-party commercial carrier to the person's last known address, in which event service is complete upon deposit of the paper to be served with the commercial carrier;

(E) if no address is known, on order of the court by leaving it with the clerk of court;

(F) sending it by electronic means if the person consented in writing, in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means that the person consented to in writing.

## **Divorce and Legal Separation – Jurisdiction**

No independent statute identified.

## **Divorce and Legal Separation – Service/Notification Requirements**

No independent statute identified.

## **Adoption Proceeding – Jurisdiction**

### Adoption Proceedings

**N.D. Cent. Code § 14-15** (<https://www.legis.nd.gov/cencode/t14c15.pdf>)

North Dakota district courts have jurisdiction over adoption proceedings.

### **N.D. Cent. Code § 14-15-01(5).**

Recognition of foreign jurisdictions

### **N.D. Cent. Code § 14-15-17**

A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or outside of the United States must be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree were issued by a court of this state.

## **Adoption Proceeding – Service/Notification Requirements**

### **14-15-11 (8). Service:**

Notice must be given in the manner appropriate under the North Dakota Rules of Civil Procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

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- (C) mailing it to the person's last known address, in which event service is complete upon mailing;
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- (G) delivering it by any other means that the person consented to in writing.

## **Domestic Violence – Jurisdiction**

### Domestic Violence Protection Order

**N.D. Cent. Code § 14-07.1-02** (<https://www.legis.nd.gov/cencode/t14c07-1.pdf>)

#### **Who may file and which court has jurisdiction - N.D. Cent. Code § 14-07.1-02(01)**

An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

#### **Jurisdiction over out-of-state individuals - N.D. Cent. Code § 14-07.1-02(09)**

Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

## **Domestic Violence– Service/Notification Requirements**

### **14-15-11 (8). Service:**

Notice must be given in the manner appropriate under the North Dakota Rules of Civil Procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

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- (C) mailing it to the person's last known address, in which event service is complete upon mailing;
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