

# INSTRUCTIONS

## Answer to Petition to Establish Third Party Custody of a Child and Counterpetition for Custody

### Use this form only if you:

- want to respond to the *Petition for Third Party Custody* you were served with, AND
- want to be heard on the issue of custody of the child.

### Forms you may need:

- *Answer to Petition for Third Party Custody and Counterpetition for Custody* (CHC702);
- *Certificate of Representation and Parties* (CIV102);
- *Affidavit of Personal Service* (SOP102);
- *Affidavit of Service by Mail* (SOP104);
- *Notice to Public Authority with Affidavit of Mailing* (DIV813, DIV816);
- *Financial Affidavit for Child Support* (FAM102);
- *Confidential Information Form 11.1* (CON111); and
- *Cover Sheet for Non-Public Documents, Form 11.2* (CON112).

### Overview of Steps in a Third Party Custody Case

1. Complete the court forms, following all of the steps in these instructions.
2. Make a copy of all of your forms and attachments for each party.
3. Arrange for service of a copy of *Answer to Petition for Third Party Custody and Counterpetition for Custody* on each of the other parties.
4. File the original forms with the Court (filing fee is required; if you cannot afford the filing fee, you can apply for a fee waiver).

### Important Notices and Resources

- You have 21 days from the date you were served with the *Petition for Third Party Custody* to respond with an Answer.
- If you do not respond with an Answer within the 21-day period, the court may give the Petitioner everything they asked for in the Petition.
- Court staff may be limited in terms of the information they can provide about juvenile cases to anyone who is not already a party to the case.

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact your court administrator or call the Minnesota State Law Library at 651-297-7651.

## General Information about Third Party Custody

**These Instructions are for responding to a Petition for Third Party custody. If you were not served with a Petition for Third Party Custody, then you should not be using these forms. Third Party Custody is when someone other than the child’s biological, adopted, or legal parents are asking for custody.**

### **Does the Petitioner (or Co-Petitioner if there is one) have a legal right to ask for custody of a child who is not his or her child (this is called “standing”)?**

According to Minnesota law, a person can ask for third party custody if they are a “**de facto custodian**” or “**an interested third party**.” The following definitions from [Minn. Stat. § 257C.01](#), subd. 2 and 3, should help you determine if the Petitioner (or Co-Petitioner if there is one) meets the definition of a “de facto custodian” or an “interested third party.”

#### **DEFINITION OF “DE FACTO CUSTODIAN”**

- A. If the child is under three years old**, a Petitioner may qualify as a “**de facto custodian**” if *all* of the following statements are true:
- The Petitioner has been the primary caretaker to the child while the child was living in their home; **and**
  - The child lived with the Petitioner for at least 6 out of the last 24 months. The months do not have to be consecutive (in a row). (For example, the time can be 1 month with the Petitioner, 2 weeks not with the Petitioner, 2 weeks with the Petitioner—just so the total amount of time is 6 out of the last 24 months); **and**
  - During this time, neither parent was residing in the Petitioner’s home, and the parents have not consistently participated in the child’s life.
- B. If the child is more than three years old**, a Petitioner may qualify as a “**de facto custodian**” if *all* of the following statements are true:
- The Petitioner has been the primary caretaker to the child while the child was living in their home; **and**
  - The child lived with the Petitioner for at least 12 out of the last 24 months. The months do not have to be consecutive (in a row). The time can be, for example, 1 month with the Petitioner, 2 weeks not with the Petitioner, 2 weeks with the Petitioner—just so the total amount of time is 12 out of the last 24 months); **and**
  - During this time, neither parent was residing in the Petitioner’s home, and the parents have not consistently participated in the child’s life.

#### **DEFINITION OF “INTERESTED THIRD PARTY”**

A Petitioner may qualify as an “**interested third party**” if he or she is not a de facto custodian and one or more of the following statements is true:

- The parents have abandoned, neglected, or otherwise show a disregard for the child’s wellbeing and the child would be harmed by living with either parent; **or**
- The child is in physical or emotional danger if the child lives with either parent; **or**
- Other grave and weighty reasons make it necessary for the child to live with the Petitioner and for the Petitioner to have legal custody.

**IMPORTANT** - If you do not agree that the Petitioner (or Co-Petitioner if there is one) qualifies as a “de facto custodian” or an “interested third party” then you should include that information in your *Answer and Counterpetition*. You may want to seek legal advice if you are not sure.

**What if the child is in danger?**

An Order for Protection (OFP) or a Child Protection (CHIPS) order may be options in extreme situations as a way to get temporary custody. An OFP will not permanently change custody and you still need to go to court to ask for permanent custody. For information about Orders for Protection, [contact your local courthouse](#) (or County Domestic Abuse Service Center if your county has one). For information about Child Protection orders, [contact your local County Child Protection office](#).

In *extremely rare cases*, a judge will make a temporary decision about custody before a full hearing with sworn testimony has been held. Those rare cases may be where the child is in immediate, significant danger if the existing custody arrangement continues

**Step 1**  
**Fill Out *Answer portion of the Third Party Custody Answer and Counterpetition (CHC702)***

Fill in the top part of the first page of the form. The information at the top of the first page of the form is known as “the caption” and will be the same on every form you fill out. The information to fill out the top part of the *Answer and Counterpetition* form can be found on the top part of the *Petition for Third Party Custody* which was served on you. Fill in all of the information just as it appears on the *Petition for Third Party Custody*, even if you think some of the information is incorrect.

**The Caption**

<p><b>State of Minnesota</b></p> <p>County <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">A</span></p> <hr/> <p>Petitioner <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">D</span></p> <hr/> <p>Co-Petitioner</p> <p>and</p> <p>Respondent Parent <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">E</span></p> <hr/> <p>Respondent Parent B <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">F</span></p> <hr/> <p>Respondent Guardian or Custodia <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">G</span></p>	<p style="text-align: right;"><b>District Court</b></p> <p>Judicial District: <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">B</span></p> <p>Court File Number: _____</p> <p>Case Type: _____ Custody <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px 10px;">C</span></p> <p style="text-align: center;"><b>ANSWER TO THIRD PARTY CUSTODY PETITION AND COUNTERPETITION FOR CUSTODY</b></p> <p style="text-align: center;"><b>Minn. Stat. <u>ch.</u> 257C</b></p>
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- A. Write in the county that is listed on the on the Petition that you were served with.
- B. Write in the Judicial District that is listed on the Petition that you were served with.
- C. Write in the Court File Number listed on the Petition. If no Court File Number is listed, then leave this blank.

**Parties in the Case:**

- D. **Petitioner and Co-Petitioner.** Whoever was named in the *Petition* as the Petitioner stays the Petitioner and whoever was named as the Co-Petitioner stays the Co-Petitioner, no matter who is filling out the papers or making the request to the court. If no Co-Petitioner is named, then leave this line blank.
- E. **Respondent Parent A.** Whoever was named as the Respondent Parent A in the *Petition* stays the Respondent Parent A, no matter who is filing out the papers or making the request to the court.
- F. **Respondent Parent B.** Whoever was named as the Respondent Parent B in the *Petition* stays the Respondent Parent B, no matter who is filing out the papers or making the request to the court.
- G. **Guardian or Custodian.** Whoever was named as the Guardian or Custodian in the *Petition* stays the Guardian or Custodian, no matter who is filing out the papers or making the request to the court.

**The Answer**

<b>ANSWER</b>	
Your name:	Your full name goes here.
The above-named Respondent alleges the following:	
1.	The statements made in the <i>Petition for Third Party Custody</i> in the following paragraphs are <b>true</b> (write only the paragraph number): _____
_____	
2.	The statements made in the <i>Petition for Third Party Custody</i> in the following paragraphs are <b>not true</b> (write only the paragraph number): _____
_____	
3.	The statements made in the <i>Petition for Third Party Custody</i> in the following paragraphs are <b>partly true and partly not true</b> (write only the paragraph number): _____
_____	
4.	Respondent <b>does not have information</b> to admit or deny the following paragraphs (write only the paragraph number): _____
_____	

For #1-#4, **include paragraph numbers only.** Do not include any explanations.

1. If all of the information in a paragraph is **true**, include that paragraph number on the lines provided. For example, “1, 2, 6, and 12” would mean the information in those numbered paragraphs in the *Petition* is all true.
2. If all of the information in a paragraph is **not true** (if the statement is false), include that paragraph number on the lines provided. For example, “3 and 4” would mean that the information in paragraphs #3 and #4 of the *Petition* is false.
3. If a paragraph is **partly true and partly not true**, include that paragraph number on the lines provided.
4. If you **do not know whether a paragraph is true or not true**, include that paragraph number on the lines provided.

**Step 2**  
**Fill Out the *Counterpetition* Section (CHC702) and  
 Confidential Information Form 11.1 (CON111)**

The *Counterpetition for Custody* section begins on page 2. Use this section to tell the court and the other parties about the facts of your case, information about the children and the parents, and the type of custody and parenting time or visitation that you are seeking.

**The paragraph numbers below line up with the paragraph numbers in the *Counterpetition*.**

**Part 1: Information about the Parties and Children**

**1** **Petitioner**

a. Petitioner’s Name and Address:

First	Middle	Last
Street Address	Apartment or Unit Number	
City	State	Zip

Petitioner’s other names (maiden, former married or other legal name, alias):  
 Unknown     None

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**b** Petitioner’s Social Security Number (SSN):  
 Petitioner’s SSN is listed on Form 11.1 and on file with the court.  
 Petitioner’s SSN is unknown.

**c** How is Petitioner related to the children? \_\_\_\_\_

**d** Is Petitioner in the military?    Yes    No    Unknown

1. **Information about Petitioner.**

- a. Petitioner’s name and address, and former names, if any. If you don’t know this information, you may be able to find it on the *Petition*.
- b. One of the forms you will need to fill out is *Form 11.1* that lists each party’s Social Security Number (SSN). If you don’t know Petitioner’s SSN, check the second box.
- c. How are Petitioner and the children related? For example, the Petitioner might be the maternal grandmother (the mother of the children’s mother).
- d. Tell whether the Petitioner is in the military.

**Servicemember’s Civil Relief Act.** This is an act that protects military and Reservists or National Guard members on active duty from having a court order issued that affects them when they may not be available to participate in a court process. If you do not know how to serve the party in the military, you should [talk to an attorney](#).

**2**

**Co-Petitioner**

If there is only one petitioner, leave this Co-Petitioner section blank, and check here:

- a. Co-Petitioner’s Name and Address:

- 2. **Information about Co-Petitioner** (if any). If there is not a Co-Petitioner, check the box. However, if a Co-Petitioner is listed in the *Petition*, answer the questions in a-d for the Co-Petitioner like you did for the Petitioner.
- 3. **Information about Parent A.** Look at the *Petition* to see who is listed as Parent A. Answer a-d for Parent A.
- 4. **Information about Parent B.** The *Petition* tells you who Parent B is. Answer a-d for Parent B.

**5**

**Respondent Legal Guardian or Custodian**

If there is no Legal Guardian or Custodian, leave this section blank, and check here:

- 5. **Information about Legal Guardian or Custodian** (if any). If there is a court order naming a person as the Legal Guardian of the children, or if there is a court order giving someone else (not you or the other parties) custody of the children, then fill in a-d. Otherwise, check the box to say there is no Legal Guardian or Custodian.

**6**

**Children**

- a. Children’s names and dates of birth:

Name of Child	Child’s Age	Child’s Date of Birth
Example: Jane Kay Smith	3 years old	11/1/2016

- a. List each child’s full name, age, and date of birth.
  - b. Tell about any other court cases you are aware of that involve the parties. For example, is there a child support case between the parents, or an Order for Protection in place? Give as much detail as you can.
  - c. Tell who has legal and physical custody of each child. If there is not a custody in order, and if the parents are not married, then under Minnesota law, the mother has sole legal and sole physical custody.
  - d. Tell the court and the other parties the number of years and/or months each child has lived in Minnesota.
  - e. Have the children ever lived with Petitioner? If **Yes**, describe why and when.
7. **Paternity.** In this section, you will be giving information why one of the parents (Parent A or Parent B) is considered the father of the children. Please read through all of the options before choosing your answers, and check all that fit.

**7** **Paternity** – Check all that apply

**a. Court Order** **a**  
 There is a court order in the State of \_\_\_\_\_ that says Parent \_\_\_\_ (A or B) is the father of the following children: \_\_\_\_\_

**b. Minnesota Recognition of Parentage (ROP)** **b**  
 The Respondent Parents signed a Minnesota Recognition of Parentage (ROP) for the following children: \_\_\_\_\_  
**and** each ROP was filed with the Minnesota Department of Health (this is usually done at the hospital or at a county office).

**c. Voluntary Acknowledgment of Paternity or Parentage (VAP) in another state** **c**  
 The VAP is like the Minnesota ROP, but for a different state.  
 The Respondent Parents signed a VAP in a state other than Minnesota for the following children: \_\_\_\_\_  
**and** the VAP is filed in the following state: \_\_\_\_\_.

**d. Other reasons Respondent Parent \_\_\_\_ (A or B) is presumed to be the father of the children** **d**  
 Check all that apply:

**i** The Respondent Parents were married when the following children were born: \_\_\_\_\_

**ii** The following children were born within 280 days after Respondent Parents were divorced (or after the marriage of the Respondent Parents ended by death, annulment, declaration of invalidity, or after a decree of legal separation was entered by a court): \_\_\_\_\_

**iii** Respondent Parent \_\_\_\_ (A or B) received the following children into his home, and openly holds them out as his biological children: \_\_\_\_\_

**iv** Genetic testing was done, and it shows that Respondent Parent \_\_\_\_ (A or B) is likely to be the father of the following children: \_\_\_\_\_

**v** Petitioner believes that Respondent Parent \_\_\_\_ is the father of the following children: \_\_\_\_\_  
 because: \_\_\_\_\_

**vi** Other: \_\_\_\_\_

- b. If both parents signed a [Minnesota Recognition of Parentage \(ROP\)](#), and if the ROP was filed with the MN Department of Health, then please check this box, and list the names of the children for whom the parents signed the ROP.
- c. A form similar to the Minnesota ROP from another state is sometimes called a **Voluntary Acknowledgement of Paternity or Parentage (VAP)**. If the parents signed and filed a VAP in another state, please list the names of the children for whom the parents signed the VAP.

- d. If there is another reason (not already listed above) that you think one of the parents is the father, then check this box, and write in either **A** or **B** to show which parent you believe is the father of the children.

The possible other reasons are listed below. Be sure to check any of these other reasons that fit if you checked “d.”

- i. Check this box if Parent A and Parent B were married to each other when any of the children were born, and then list the children.
- ii. If any of the children were born within 280 days after Parent A and Parent B were divorced, check this box and list the names of the children born within this time period.

You would also check this box if any of the children were born within 280 days after the marriage of the two parents ended in some way other than divorce (such as through legal separation or death of one of the parents), and then list the names of the children born within this time period.

- iii. If one of the parents *acts like* the children are his biological children (if he receives the children into his home and openly says they are his biological children), then check this box, and then list which children this applies to.
- iv. Check this box if there is paternity genetic testing showing that one of the parents is the biological father. Then write which parent (Parent **A** or Parent **B**) is likely the biological father, and list the children that this applies to.
- v. Check this box if you have a reason (that is not already listed) to believe that one of the parents is the biological father of the children. Write in the following:
  - Which parent (Parent **A** or Parent **B**) is likely the biological father;
  - List the children that this applies to; and
  - Explain why you believe this parent is the biological father.
- vi. Check this box if there is any other information you want the court to have about paternity of the children, and then give that information.

8. **Jurisdiction.** Petitioner has alleged that they have a legal right (called “[standing](#)”) to bring this action for third party custody either as a “De Facto Custodian” or an “Interested Third Party.”

**8. Jurisdiction**

The **Petitioner claims** to be a:

De Facto Custodian

OR

Interested Third Party

Do you agree with Petitioner’s claim regarding “de facto custodian” or “interested third party”?

Yes     No

**Why or why not?** \_\_\_\_\_

There are 3 things you have to answer in #8:

- Whether Petitioner claims to be a De Facto Custodian or Interested Third Party;
- Whether you agree with Petitioner’s claim; and



- Why you agree or why you do not agree with Petitioner’s claim.

**Parents’ Involvement with the Children**

9. **Your involvement with the children.** Answer #9 a-c to tell the court and the other parties about your involvement with the children.
10. **The other parent’s involvement with the children.** Answer #10 a-c to tell the court and the other parties all that you know about the other parent’s involvement with the children.

**Other People Who Have Cared for the Children**

**11** Has a Standby Custodian (a person officially named by a parent to care for the children if something happens to that parent) been named by you or the other parent?  YES  NO

**If YES:**

Who named the Standby Custodian? (check all that apply)

Parent A  Parent B **OR**  Legal Guardian or Other Custodian

What is the Standby Custodian’s name? \_\_\_\_\_

How is the Standby Custodian related to the children? \_\_\_\_\_

[standby custodian](#) is a person who has been officially named to care for the children in case something happens to the parent. See Minn. Stat. § 257B.01, subd. 12 (<https://www.revisor.mn.gov/statutes/cite/257B.01>). If a parent has named a **standby custodian**, you can check YES. Otherwise, check NO.

If you checked YES, then answer the following questions:

- Who named the standby custodian?
- What is the standby custodian’s name?
- How is the standby custodian related to the children?

12. **Other People Who Have Cared for the Children.** If there are other people who have let the children live with them and who have cared for the children without the parents’ help, check YES, and then provide the following information:

- Names of each caretaker;
- Relationship to the children; and
- Amount of time and when they cared for the children.

**Custody – What Is Best for the Children**

13. **Best Interests of the Children.** The best interest factors are found in Minn. Stat. § 518.17, subd. 1 (<https://www.revisor.mn.gov/statutes/cite/518.17#stat.518.17.1>).

The court has to consider every single “[best interest factor](#)” when deciding the custody arrangement that you want, so it is very important that you **answer every question** and **give specific details**.

Answer **all** the questions. You may need to continue your answers on other sheets of paper (do not write in the margins or on the back of the pages).

Do not just restate the question in your answer. For example, when asked how close you are to the children, do not just write “I am very close to the children.” Instead, give details that show how close you are. For example, “I listen to the children when they are sad or upset; we go to the park together every weekend; we read together before bed every night; etc.”

**13** **Best Interests of the Children**

Note: Minn. Stat. § 257C.04 says the court **must** “consider and evaluate” certain best interest factors. By answering the questions in Paragraphs 13 and 14, you are giving the court information about those factors.

**a** What do the children want for custody, if the children are old enough to state their wishes?

Name of Child	Child’s Preference	Child’s Age
Example: John James Smith	John wants to live with Petitioner	15 years old

- a. One of the best interest factors in [Minn. Stat. § 257C.04, subd. 1](#) is the reasonable preference of the child, if the court believes the child is of “sufficient ability, age, and maturity to express an independent, reliable preference.”

If you believe one of the children meets these requirements, then list that child, his or her preference, and age.

**b** Who is the children’s primary caretaker? \_\_\_\_\_

- b. Include the name of the children’s **primary caretaker**. A primary caretaker provides most of the day-to-day care and decision-making for each child. Examples of caregiving include preparing meals, attending medical appointments, disciplining, helping the child get dressed, reading to the child, providing transportation to activities, and looking over homework. If at different times in each child’s life, different people have been the primary caretaker, name **all** adults who have provided this care and when that care took place. If this person is not you, the other parent, or the Petitioner, this person should also be listed in the chart at #12 on CHC702.
- c. Tell about the closeness of the relationship between each child and each party, and with anyone else who is significant in each child’s life (for example, a grandparent or cousin).
- d. Tell about how each child plays, talks, opens up to or interacts with the all of the parties, with brothers and sisters, and with anyone else who is significant in each child’s life (for example, a grandparent or cousin).
- e. Tell about how each child has adjusted (or not) to life at home, in school, and in the community.
- f. Do the children currently live in a safe, stable place? Check **YES** or **NO**. Then answer the follow-up questions.
- g. List all of the people who live with you in your home (except for the children who are a part of this third party custody request).

Then describe how permanent your family is or how permanent the people are in your home. For example: Have the people living in the home been there for a while? Have you lived in one house or apartment for a period of time, or are there frequent moves?

- h. Describe the **mental** and **physical** health of everyone involved in this case. If there is not enough space on the lines for your full answers, continue writing your answers on another piece of paper.
- i. This question has two parts:
  - Explain whether you are able to give each child love, affection, and guidance; and
  - Explain how you will do this.
- j. Describe the children’s cultural background.

**Indian tribe.** If any of the children are either members of, or eligible for enrollment in, an Indian tribe, then check **YES**, and list the names of the children. You will also need to list the name of the tribe, if you know it.

Check **NO** if the children are not members of, or eligible for enrollment in, an Indian tribe. If you do not know, then check **UNKNOWN**.

Is either parent a member of, or eligible for enrollment in, an Indian tribe? If **YES**, then list the name of the tribe.

**If the answer to either of these questions is YES**, then the Indian Child Welfare Act (ICWA), the Minnesota Indian Family Preservation Act, and other laws give rights to the Indian child’s family and tribe. The tribe has the right to receive notice of any family law proceeding where someone other than the child’s parent is seeking custody of the child. It is a good idea to get legal advice if you think this applies to your case.

- k. This question has two parts:
  - Explain whether you are likely to continue educating and raising the children in their culture, religion and creed; and
  - Explain how you will do this.
- l. There are three parts to this question:
  - Whether there has been any domestic abuse between any of the parties in this case;
  - *If YES*, who has been involved in the domestic abuse; and
  - *If YES*, how the domestic abuse has affected the children.

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**Part 2: Income and Ability to Provide Child Support**

**14** Existing Child Support Order  
Are you aware of a child support order that is already in place?  YES  NO

**15**  I know I must fill out and file a *Financial Affidavit for Child Support* (FAM102) with attachments (proof of financial situation).

- 14. This question asks if you know about a child support order that orders a parent to pay or reserves the issue of child support.

15. The *Financial Affidavit for Child Support* (FAM102) and instructions are available online at <http://mncourts.gov/GetForms.aspx?c=18&p=68>. You will also need to use Form 11.2 (CON112) as a cover sheet for non-public documents like paystubs, bank records, and/or credit card statements. Form 11.2 is available online at <http://mncourts.gov/GetForms.aspx?c=11&p=43>.

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### Part 3: Your Requests

asks the Court for an Order as follows:

**1**  **Dismissing the entire petition** (if you check this box, then skip questions #2 through #4).

**OR**

**2**  **Granting legal and physical custody as follows:**

1. You can ask the court to dismiss the entire petition. That means you are asking the court to say no to all of Petitioner's requests for custody, parenting time, and/or child support.

**OR**

2. You can ask the court to issue an order in this case for custody, parenting time, and/or child support. If you choose #2, then you will need to fill out the rest of the form to let the court and the other parties know the details of your request.

Legal custody refers to the right to make decisions about how to raise the child, including decisions about education, health care, and religious training.

Physical custody refers to the right to make decisions about the routine day-to-day activities of the child and where the child lives.

Joint custody means sharing the rights and responsibility with someone else. Sole custody means only one person may make the important decisions about the child.

See Minn. Stat. § 518.003, subd. 3 (<https://www.revisor.mn.gov/statutes/cite/518.003>).

**a** **Legal Custody:** *Legal custody means having a right to participate in the major decisions regarding the child's life, including education, religious upbringing and medical treatment.*

It is in the children's best interests that legal custody be granted as follows:

**Sole legal custody** to:

<input type="checkbox"/> Parent A	<input type="checkbox"/> Parent B
<input type="checkbox"/> Both parents	<input type="checkbox"/> Petitioner
<input type="checkbox"/> Co-Petitioner	<input type="checkbox"/> Legal Guardian or Other Custodian

**OR**

**Joint legal custody** to the following parties:

<input type="checkbox"/> Parent A	<input type="checkbox"/> Parent B
<input type="checkbox"/> Both parents	<input type="checkbox"/> Petitioner
<input type="checkbox"/> Co-Petitioner	<input type="checkbox"/> Legal Guardian or Other Custodian

- a. What are you asking for regarding **legal custody**? Your options are **sole legal custody** to 1 person, or **joint legal custody** to more than 1 person.

**b** **Physical Custody:** *Physical custody identifies who will handle the routine daily care and control of the child, and who the child will live with.*

It is in the children's best interests that physical custody be granted as follows:

**Sole physical custody** to:

<input type="checkbox"/> Parent A	<input type="checkbox"/> Parent B
<input type="checkbox"/> Both parents	<input type="checkbox"/> Petitioner
<input type="checkbox"/> Co-Petitioner	<input type="checkbox"/> Legal Guardian or Other Custodian

**OR**

**Joint physical custody** to the following parties:

<input type="checkbox"/> Parent A	<input type="checkbox"/> Parent B
<input type="checkbox"/> Both parents	<input type="checkbox"/> Petitioner
<input type="checkbox"/> Co-Petitioner	<input type="checkbox"/> Legal Guardian or Other Custodian

If you checked "**joint physical custody**" and the other person is not your spouse, then you need a schedule stating who takes care of the children and when. **Describe the schedule:** \_\_\_\_\_

- b. Answer the same questions for **physical custody**. **NOTE:** If you are asking the court to share joint physical custody with someone else who is not your spouse, you will need to describe the schedule – when will each of you have the children?

**c** **Joint legal or physical custody**

If you checked “joint legal custody” or “joint physical custody,” answer the following questions:

i. Can you cooperate with the other party in raising the child?  YES  NO  
 Explain how you are able to cooperate *or* if you are not able to cooperate, why not: \_\_\_\_\_

ii. If you and the other party disagree on major decisions about the children’s lives, how will you work out your differences and make a decision? \_\_\_\_\_  
 How willing are you and the other party to use these methods to resolve disagreements? \_\_\_\_\_

iii. Do you believe it would be negative or bad for the child if either you or the other party (who you are asking to share joint custody with) had sole authority over raising the child rather than joint authority with the other party?  
 YES  NO  
 Explain your answer: \_\_\_\_\_

iv. Has there been domestic abuse between you and the other party?  
 YES  NO  
**If YES**, explain when the domestic abuse happened and how the situation got better: \_\_\_\_\_

c. **If you asked for joint legal custody in “a,” or for joint physical custody in “b,”** then answer the questions in this section (i-iv).

**Parenting Time.** Minn. Stat. § 518.003, subd 5 (<https://www.revisor.mn.gov/statutes/cite/518.003>), defines parenting time as the time a parent has with the child regardless of who has custody.

**3.  Granting Parenting Time as follows:**

Weekends: \_\_\_\_\_

Weeknights or after school (or, if not in school, then Monday through Friday): \_\_\_\_\_

Holidays: **Include detailed information such as the name of the holiday and whether the holiday schedule includes weekends.**

Birthdays: **Do you want a different schedule for the children’s birthdays? The parents’ birthdays?**

School release days: \_\_\_\_\_

Summer: \_\_\_\_\_

Telephone contact with children (When can they talk on the phone with the parents): \_\_\_\_\_

Transportation: **Who is responsible for transporting the children? For example, how will the children get to the other parent for their parenting time? How will the children get back to their home?**

Other: \_\_\_\_\_

Supervised parenting time for  Parent A /  Parent B, because: **Explain why a party’s parenting time needs to be supervised. What is the risk to the children if that parent was supervised during parenting time?**

- Who should supervise? \_\_\_\_\_
- If there is a cost, who should pay? \_\_\_\_\_

NO PARENTING TIME for Parent A (reserving parenting time), because: **What is the risk to the children if Parent A spent any time with them? What could happen?**

NO PARENTING TIME for Parent B (reserving parenting time), because: **What is the risk to the children if Parent B spent any time with them?**

3. The parenting time schedule should include enough detail so that it is clear to everyone what to expect for parenting time, if the court grants your request.
4. This is a question about child support.
5. You do not have to fill in anything at #5. This is standard language in many court forms.

### **Verification, Acknowledgements, Signature and Signature Block**

**Read the Verification and Acknowledgments very carefully.** When you sign your name to this *Counterpetition*, you are telling the court that you are telling the truth in the *Counterpetition* and that your requests are made in good faith. If you are not telling the truth, if you are misleading the court, or if you are using this *Counterpetition* for an improper purpose, the court can order you to pay money to the other party or impose other sanctions.

Date and sign the last page of the *Counterpetition* (CHC702), and then print your name, address, phone number, and e-mail address.

### **Step 3**

**Fill out the “Cover Sheet for Non-Public Documents” Form 11.2**

**Fill out “Confidential Information” Form 11.1 when necessary**

**NOTE!** Most documents filed with the court are considered public documents and are available to the public. Certain information that is filed with the court may be considered confidential based on court rule and not available to the public. To keep this information confidential and not available to the public, you must take certain steps that are described below.

The steps listed below are for filers who are filing paper documents. Filers who are using eFS to submit their court documents must identify and designate their filings as required in Minn. Gen. R. Prac. 11.03 and 14.06.

#### **Confidential Information Form 11.1**

All social security numbers, employer identification numbers, and financial account numbers (also called “restricted identifiers”) must not be listed on papers you file with the court. This is to protect your privacy, the other parties and your children. Only provide social security numbers, employer identification numbers, and financial account numbers when the court requires this information to be provided to the court. For example, if you must provide the court with bank account numbers, or medical account numbers, do not include any account number in your document (your motion, supporting affidavit, etc.). Instead, you must use Form 11.1 to list these confidential numbers.

If account numbers are not required to be provided to the court, and the numbers appear on documents that are considered available to the public, (such as medical invoices or credit account numbers on statements) you must remove the number on the document before filing the document with the court.

### **Cover Sheet for Non-Public Documents Form 11.2**

Most documents filed with the court are public. However, some documents are considered non-public documents based on court rules. You **must** identify these documents as non-public at the time you file the documents with the court. You must complete and file the “Cover Sheet for Non-Public Documents Form 11.2” (also called Form 11.2 cover sheet) when you file non-public documents. The most common non-public documents are called “financial source documents.” Examples of financial source documents include:

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

You may also need to submit other documents that court rules identify as non-public documents, such as a medical record. For example, a report from a doctor that provides a medical diagnosis or treatment plan for you or your child would qualify as a medical record.

You must use the Form 11.2 cover sheet when filing other non-public documents, such as medical records, with the court. One Form 11.2 cover sheet can be used for submitting all non-public documents.



**The failure to use Form 11.2 or Form 11.1 may result in your document being rejected by court administration, being available to the public, stricken from the court record, and sanctions from the court.**

See Rule 11 of the Minnesota General Rules of Practice for more information about how to file documents containing social security numbers, financial account numbers, “financial source documents” and other non-public documents.

Form 11.1 and Form 11.2 can be found at [www.mncourts.gov/forms](http://www.mncourts.gov/forms) under the court forms category of “Confidential Information” and is court form number CON111 and CON112.

## **Step 4**

### **Make Copies and Arrange for Service on the Other Parties**



## Supporting Documents

If you have any supporting documents (such as police reports or domestic abuse orders) that you want the court to see, then be sure to label these supporting documents very clearly (for example: Attachment 1). If a document supports a statement you have made in your *Counterpetition* (CHC702), then be sure to mention the document in your answer (for example, you can write “See Attachment 1” if that attachment supports your answer).

There is a packet of forms online that includes *Instructions* (FAM901) and a blank *List of Supporting Documents* (FAM903). See <http://mncourts.gov/GetForms.aspx?c=18&p=127>.

## Copies for Each Party

Make copies of the completed *Answer and Counterpetition* (CHC702), the *Financial Affidavit for Child Support*, and any supporting documents. You need to make a copy for each of the parties listed in the caption.

You may need more copies:

- If there is any public assistance, you will need an extra copy for the county support agency. See Step 6 below.
- If either of the parents are eligible for membership or members of an Indian tribe, you will need a copy for the tribe.

## Service

You have to arrange for the other parties to get copies of all of your forms.

## Who Can Serve

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

- The sheriff;
- Another adult;
- You.

One way the documents can be served is by U.S. Mail.

- The server places **one copy** of the completed *Answer and Counterpetition* (and all attachments) in an envelope.
- Then the server writes your return address and the last known address of the other party on the front of the envelope.
- The server places the correct amount of postage on the envelope (the server may want to take the envelope to the post office to be weighed to make sure there is sufficient postage).

The papers can also be served “personally” (handed to the other party). This is called “**personal service.**”

NOTE: Papers cannot be served on a legal holiday as described in Minn. Stat. § 645.44, subd. 5 (<https://www.revisor.mn.gov/statutes/cite/645.44>).

## Step 5

### Completing the *Affidavits of Service* (SOP102 or SOP104)

After the *Answer and Counterpetition* along with the supporting documents are served, then the person who served them (the “server”) must fill out an **Affidavit of Service**. Use the [Affidavit of Service by Mail \(SOP104\)](#) if the papers were served by mail. If the forms were served personally, then the person who served them must fill out the [Affidavit of Personal Service \(SOP102\)](#). You will need a separate *Affidavit of Service* for each party that was served.

These *affidavits of service* tell the court when, where, and how a copy of your papers were served on each party.

## Step 6

### Giving Notice to the Public Authority

If anyone involved in the case receives public assistance from the State of Minnesota, or receives county child support services, then you must mail or hand-deliver a [Notice to the Public Authority \(DIV813\)](#) and a copy of the *Answer and Counterpetition* to the Public Authority (usually the [county support agency](#)) in the county where the third party custody case has been filed.

You have to do each of the following steps:

- Fill out the [Notice to the Public Authority \(DIV813\)](#) form, and make a copy.
- Make one copy of *Confidential Information Form* (CON111) (see Step 3 above).
- Make a copy of the *Answer and Counterpetition*.
- Mail or hand-deliver a copy of DIV813, CON111, and the *Answer and Counterpetition* to the county support agency.
- Fill out the [Affidavit of Mailing or Delivery of Notice to the Public Authority \(DIV816\)](#). You will file the original DIV813, the original DIV816, and the original *Answer and Counterpetition* with Court Administration (see Step 7).

## Step 7

### Filing the Forms with the Court, Filing Fee

**File the following with the court:**

- The *Answer and Counterpetition* (CHC702), and all attachments;
- All *Affidavits of Service* or *Admissions of Service* proving that all of the parties have been served;

- *Confidential Information Form 11.1* (CON111);
- *Financial Affidavit for Child Support* (FAM102);
- *Cover Sheet for Non-Public Documents Form 11.2* (CON112); and
- *If it applies*, the following two forms:
  - *Original Notice to the Public Authority* (DIV813); and
  - *Affidavit of Mailing or Delivery*. (DIV816).

There is a [filing fee](#) due when you file. You can make checks payable to “District Court.”

If you cannot afford to pay the filing fee, you can ask for a fee waiver by completing the forms in the [In Forma Pauperis/IFP](#) packet of forms. If a judge does not fully grant the fee waiver, then you must pay the filing fee before Court Administration can process your forms.

## Step 8

### Getting an Order

What happens next depends on what the other parties might do and the facts of your case. You must attend all hearings that you receive notice about.

**IMPORTANT:** If you need help deciding what steps you should take after filing the *Answer and Counterpetition*, you should talk to an attorney.