

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1401

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Dennis Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE JUDICIARY

HB 1401

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10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1401

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-5-03

Tape Number	Side A	Side B	Meter #
1	x		8-end
1		X	0-5.6
2	X		49.7-end
Committee Clerk Signature			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1404.

Rep. Maragos: Introduced the bill.

D. Luke Davis: Support. (see attached testimony, Tape 1, side A, 8.1-22.5).

Rep. Eckre: You have made comments on how welfare workers are instructing on how to circumvent the law, how social services is providing help to circumvent the law. Have you ever got a hold of a state's attorney in Grand Forks county to let them know you found these out, in writing, and gave them specific examples of this happening.

Mr. Davis: The man is in violation of the law already, so the fact that he is in violation of law, is not going to correct it. I don't trust him.

Chairman DeKrey: Thank you. Any further testimony in support?

Roland Riemers: (see attached testimony, 22.5-29) Support.

Chairman DeKrey: Thank you.

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10/3/03

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House Judiciary Committee
Bill/Resolution Number HB 1401
Hearing Date 2-5-03

Mitchell Holbach: Support (see attached testimony, 29-37.1)

Rep. Onstad: If there is a court order in place, and the agency says there isn't anything we can do about it, how are pro se forms going to help you.

Mr. Holbach: First of all, it means that I don't have to go out and hire an attorney, which I can't afford. Pro se forms would allow me to go into the courtroom and force the other party into court and have the Court consider the best interests of the child - there is no penalty if the parent doesn't follow the visitation schedule. This would be cost effective and be able to get an answer in a quick manner. This would help reconnect a lot of parents with their children.

Rep. Boehning: When you pay child support, you pay the court, and they pay to the mother?

Mr. Holbach: I am not currently paying child support, the mother of my child has returned to the reservation because she is Native American. She moved to another state, onto the reservation.

Rep. Boehning: You are having problems all around, so what you are saying is you can't find the child.

Mr. Holbach: That has been my experience. The government welfare programs keep the mother and father apart.

Chairman DeKrey: Thank you. Any testimony in opposition.

Justice Mary Maring: Opposed (see attached testimony).

Chairman DeKrey: Thank you.

Rep. Bernstein: Is there education in law school on the use of pro se forms?

Justice Maring: In our training in law school, we are trained to develop forms, we are taught to do pro bono work in law school. Small claims court does really well in the area of pro se work.

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Donna Holbach
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10/3/03
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House Judiciary Committee
Bill/Resolution Number HB 1401
Hearing Date 2-5-03

Rep. Kretschmar: In the judicial system, what are statistics on pro se cases, are they increasing?

Justice Maring: Pro se work is increasing in all areas: civil, criminal, family law, etc.

Rep. Klemin: Will the forms you discussed in your testimony be available yet this year.

Justice Maring: I hope so, and then we have to make sure that court personnel are trained to answer questions, education.

Rep. Delmore: Are pro se visitation forms available?

Justice Maring: No, we are wanting the other two packets to go out first, then we will work on the visitation forms. They are very complicated.

Chairman DeKrey: Thank you. Any further testimony. We will close the hearing for now.

(Reopened later in the same session. 12 members present, 1 member absent (Rep. Maragos).)

Chairman DeKrey: What are the committee's wishes in regard to HB 1401.

Rep. Kretschmar: I move a Do Not Pass.

Rep. Delmore: Seconded.

12 YES 0 NO 1 ABSENT DO NOT PASS CARRIER: Rep. Kretschmar

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10/3/03
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FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1401

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$17,860		\$11,300	
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect or the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The fiscal note is based on developing three sets of forms. Each set of forms and instructions are budgeted at forty pages in length and 2,000 packets of each of the three sets of forms will be developed.

A design committee will meet eight (8) times to develop the forms during the first biennium and twice (2) during the second biennium for possible revisions.

The three sets of forms for child custody, visitation, and support orders will be distributed to all clerks of District Court.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Committee travel 03-05 biennium for eight meetings \$9860

Printing 3 sets of forms, 2000 packets, 40 pages each \$7500

(Based on estimate provided by Central Duplicating)
\$ 500

Postage

05-07 Biennium

Committee travel for two meetings \$2,500

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Printing 3 sets of forms (estimate 10% increase in printing) \$8,250

Postage (estimate 10% increase) \$ 550

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Ted Gladden	Agency:	Supreme Court
Phone Number:	3284216	Date Prepared:	01/23/2003

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10/3/03
Date

Date: 2/5/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1401

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	AB		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

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10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 5, 2003 11:23 a.m.

Module No: HR-22-1701
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1401: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1401 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-22-1701

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2003 TESTIMONY

HB 1401

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10/3/03
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SUPPORT HOUSE BILL 1401

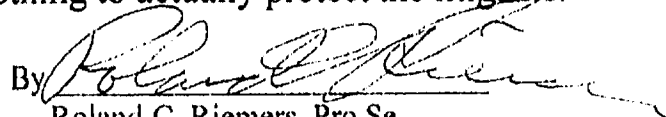
House bill 1401 would require the Supreme Court to make available self representation forms for pro se litigants. I urge you to support this measure as it is a good first step in the right direction to bringing back the courts to the common man.

In the past 10 years legal representation costs have increased faster then the rate of inflation. Legal representation, especially for those suffering from a 50% or greater reduction in their income from child and spousal support, has become beyond the reach of those who need it the most. And unlike doctors who will give you emergency treatment if you can pay for it or not, the legal profession most likely will show you the exit door if you don't have their \$5,000 retainer up front.

My personal feelings about courts are that procedures and forms should be so simple that the average intelligent person should be able to get justice without legal representation in a non-complex case. This idea has worked well in small claims court, and just needs to be extended to other areas as well such as child and spousal support, denial of visitation, visitation changes, custody changes, etc. To often denial of this basic relief has lead to further destruction of parents and children.

But just legal forms by themselves are not a complete answer. I have a year of law school and 3 years of constant practice under my belt and currently have 2 cases pending before the North Dakota Supreme Court and one even in the U.S. Supreme Court. I can generate forms probably better then most lawyers, who just use computer generated template forms anyway. But putting together a form is relatively easy compared to getting through the maze of rules and court room tactics ruled over by judges who normally have little tolerance or liking of pro se litigants. It is also my practical experience that no matter what the law or the rules, if you are not one of the good old boys in the legal profession, you are not going to prevail. Another reason for this is judges rarely write their own opinions (especially in a civil cases), and instead they assign the job to one of the opposing lawyers. Well, if there is no opposing attorney, it kind of leaves his honor in an awkward position. If he rules in favor of the pro se litigant he has to do several hours of work. If he rules in favor of the lawyer represented party that work is done for him free. So guess who the court is going to lean towards in its ruling?

Please support House Bill 1401, as well as other necessary steps to bring the law back to the people as well as making the courts and the laws more fair, honest, just, and affordable. Also please work towards doing away with the numerous presumptions upon presumptions, plus closed court hearings which just end up hiding the courts from public oversight and does nothing to actually protect the litigants.

By 
Roland C. Riemers, Pro Se
Box 14702, Grand Forks, ND 58208
1-701-885-1555

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D. Luke Davis, 608 Reeves DR, P O Box 5731, Grand Forks, ND 58206-5731
218-779-8525

North Dakota Children are the Rope in the Game of Tug of War

Numerous changes need to be made in domestic law and enforcement regarding; Family Violence, physical custody, and child support issues for the children of North Dakota. Numerous employees; state, county, municipal, and non-profit/special interest are stating that the actions or lack of as well as request for new legislation are for the best interest of the children are boldly lying to the people and the legislature of North Dakota.

Proven statistical fact and probability is that a child raised in a single head of household relationship is the child most likely to; drop out of school, poor school performance, drug use, incarceration, pre-marital sex, and teen age pregnancy. You have to ask yourself why is it that North Dakota ranks first in the nation for the highest percentage of single head of household legal custodial relationship.

The Federal (WRA) Work Responsibility Act of 1996 and it's adoption by ND limits welfare to 60 months unless family violence is present and requires the welfare recipient to identify the father which was not previously the case and you have to ask yourself why ND ranks first in the nation.

It was not a coincidence that the Federal (VAWA) Violence Against Woman Act and its adoption by ND was enacted the same year as the WRA of 1996

Ask a physical custodial parent of a child if child support fully covers the cost of the child and the parent will say NO and you have to ask yourself why ND ranks first in the nation single head of household.

Single head of household accounts for child abuse at a rate three times higher than any other legal custodial relationship and you have to ask yourself why ND ranks first in the nation.

The reason why the single head of household in spite of its inherent problems and dangers is present in 50% of ND households and number one in the country is a result of the dynamics involved with; Political Correctness, Civil Service, the Social Service industry, and the Legal Industry..

The first dynamic of Political Correctness is to avoid stating the truth or acting upon stereotypes regarding family violence and family law. 120 years of research, observations, and recording of findings and conclusions disprove beyond the shadow of a doubt that; a father is just as important in a child's life as the mother, a mother is more likely to murder and abuse the child, and that the reate of domestic violence initiation between women and men is about equal.

For any elected or appointed official to publicly state that these facts are correct are political suicide. Failure to support any issue or act that reinforces the stereotype that women are the better parent and that men are the more dangerous is political suicide.

Federal Law prohibits the Federal Government from being involved in family law but this was circumvented by ND's adoption of the WRA and the VAWA in 1996. A person can be placed in jail for up to two years for failure to meet child support orders or lose civil rights and have a criminal conviction for violating a civil court ordered.

Domestic violence laws can be used as a tool to circumvent the protections offered in the civil courts. ND domestic violence orders can be used to; collect welfare indefinitely instead of the usual 60 month limit, immediate permanent residency for non citizens, attach property and liquid assets, evict a person with nothing but their clothes on their backs, and most importantly deny any and all access to the child.

Instead of an open hearing, which affords protection from being a beggar in the street, these acts, give one person the ability to obtain an order in secret without the knowledge or chance to face his accuser or rebut the false evidence afforded in the civil court.

ND Judges who are elected admitted in a survey for the 1996 ND Law Review "Gender Bias in the Courts" that 85% of domestic violence hearings do not meet state statute. In the same article was a survey of lawyers 1/3 of which admitted that they advised the male client not to challenge or assert their claims for certain issues as "the judges are not going to grant the request because you are a male."

It is acceptable for a Judge to hear a case or fail to make a remark for the court record that a campaign contribution was accepted from one of the lawyers or parties in the suit (perceived or actual bias).

While it is true that any survey or data can be misinterpreted accidentally or with bias it is never the less unreasonable to assume that the statistics of the ND Women's Coalition on Domestic Violence is correct. The Coalition states that 96% of all domestic violence victims are women. You have to ask yourself which data is closer to the truth; Department of Defense and other studies that state domestic violence is 50-50 or the coalitions claim of 96-4%.

As for the statistics for child abuse they are readily available from most state's CPS Child Protective Services but bear in mind that these statistics themselves are flawed due to the agenda of the social service industry to be covered later. Never the less these statistics demonstrate that far and away that the most dangerous place for a child in America is in the home with a female head of household.

The checks and balances for ND people to avoid abuse and official oppression by agencies and civil service personnel is our elected officials in the form of the ; governor,

attorney general (AG), legislature, and judges. All of who are human, biased, and influenced by the person with the most money or the most power.

The second dynamic is Civil Service and it's inherent intent to; create job security for themselves, avoid responsibility for job performance, avoid responsibility for failure, and to set policy for themselves rather than the legislature.

The ability of civil service and agencies especially Dept of Human Services rather than the people's representatives which is the legislator is a glaring example. Dept of Human Services introduces a large number of; bills, additions, deletions, and amendments to the ND laws to the legislature in comparison to other agencies. Agencies, civil service personnel, and special interest use legislators as "straw men" enabling circumvention of the lobby laws.

Agencies and civil service use the legislature to enact laws that make their jobs easier. Agencies and civil service will fail to perform their job functions properly and efficiently. The check and balance that is represented by the legislature is circumvented by the agencies to determine the agencies job function.

The ND AG is responsible for insuring compliance under laws and regulations by state employees. The fact that most county employees are following rules and regulations set by state agencies or employees compounds; the problems, number of abuses, and official oppression by; elected, appointed, and civil service personnel.

I have made the Governor and the AG fully aware of numerous violations of rules and regulations by; state, county, and municipal employees from 1998 to present. I have yet to receive a reply from the Governors office regarding the notification of violations of laws and regulations.

Most of the time the Attorney Generals office does not reply but when they do they normally state "this is not our problem add you need to see a lawyer". The most recent correspondence and denial from the AG was a reply to an opens records request as it applies to AG opinions kept on file in the AG's Office.

The AG has many duties but three of them are; defending or insuring compliance by state employees, advising state attorneys, and issuing AG Opinions when a matter of interpretation a law or regulation requires the AG's intervention. The Opinions are to be kept on file in the AG's Office.

The only reason I thought that these violations, some of which are quite blatant and to be listed in a moment, was the possibility the AG had issued opinions, which differed from published law. My request was for an AG Opinions on Child Support Enforcement's continued refusal to perform child support reviews upon request.

The letters I have received from the AGs' office through every department head in Health and Human Services was that "child support reviews will not be done unless

the present child support order is at least three years old, there are no exceptions, this refusal is based upon workload restrictions and state policy, and hire a lawyer as the three year rule does not apply to lawyers".

The recent request by me only listed opinions for child support reviews as I was not going to list all violations until I was sure that the AG would comply with open records law and job responsibility regulations. .

It is true that the AG and the Governor are only responsible for certain employees, however, state employees including the AG determine and implement policy for county and municipal employees that is "in compliance with ND laws, rules, and regulations".

The following violations of ND state law, regulation, and policy by State, County, and Municipal employees are as follows:

AG's failure to insure that state attorneys develop and implement domestic violence training and policies.

State Attorneys failure to develop the programs above.

Bureau of Criminal Investigation and Peace Officers Board to develop training and programs with law enforcement departments as they pertain to; responding, investigation, and arresting in reference to family violence.

As far as I have been able to determine there is no law enforcement department that has posted policies as they pertain to; responding, investigation, and arresting in reference to family violence as required.

State Health Officer is not conducting domestic violence training with welfare entitlement workers.

State Health Officer is allowing the ND Women's Domestic Violence Council and it's 16 sub-agencies to conducting training in place of the State Health Officer without: a selection by bidding process, requiring a curriculum; using state resources and employees, and reimbursing the Council for expenses when conducting the training.

The Council was referred to me when I called the Health Officer's office and the Council director informed me that they were promised the job by the legislature prior to adoption of the VAWA.

Child Protective Services has deleted child abuser's names from the child abuse index, failed to notify Juvenile Court of abusers names, failed to notify a parent who is not a party to the abuse of the investigation, falsified investigations and testimony, and failed to conduct an investigation of abuse by dissuading the reporter from filing a report, failed to perform an investigation when requested, and instructed plaintiffs on how to abuse the court system.

State and County resources have been used by domestic violence non-profit agencies that practice sexual discrimination and teach sexual stereotypes.

Welfare entitlement workers are; instructing clients on how to circumvent the 60 maximum welfare entitlements, and receiving training of sexual stereotypes.

Child Support Enforcement is deceiving and disseminating information that is not based on law to avoid performing child support reviews when requested by the obligor and refusing to do a child support review when required that would benefit the obligor.

Child Support Enforcement personnel are giving evidence at ND Child Support Committee hearings that are misleading, deceitful, and self-serving.

The third dynamic is the social service industry that is both public and non-profit. From the list of abuses listed above by government it is quite obvious that a majority of the abuses concern Social Service.

A brief history of family law, social work, and sociology is that until 1880s the father received custody of the child. The 1880's saw the birth of the social service industry and for the first time there was an advocate and resource for the woman to obtain physical custody of the child. This status quo was maintained until the 1960s when states began making physical custody or co-parenting mandatory and not at the discretion of a judge or jury.

Sociologist in the 1960s began to see a pattern of two separate syndromes emerging among women with children and gave them the names Parental Alienation Syndrome and Malicious Housewife Syndrome. The conclusion was that the two syndromes were the result of an organized agenda to circumventing the mandatory co-parenting laws or to impede implementation of these laws.

Dept of Human Services is a large part of the state budget as well as county budgets. The number of employees involved with welfare, child support, child abuse, and advocates or ad litters make a huge pile of employees who need a job just as badly as we all do.

What the Social Service industry does, as a Christian friend of mine summarized "social services exist not to correct problems but rather to spread problems". One of the conclusions in a study done by proponents of the WRA of 1996 is "the social worker goal is to insure minimal or no contact between the father and the mother regardless of the cost to the child".

The benefits and pay of government social workers is well in exceeds of the published wages and benefits for other types of jobs in ND. As for non-profits, I obtained the 2002 budget for a women's domestic violence non-profit and the direct personnel expenditures such as vacation reimbursement and retirement was \$980K out of a budget of \$1.2M.

Social Service industry is self-serving, financially lucrative, tax free, and provides the appearance of legitimacy to programs that teach; sexual stereotypes, fear, and how to circumvent the legal and welfare system.

The fourth dynamic is the Legal industry. There is a lot of overlap in duties and responsibilities between the dynamics of legal, social service, and politics. The abuses and financial rewards in the Legal industry are second only to Civil Service and Agencies.

The legal industry is made up of: judges, lawyers, advocates, ad litem, court clerks, court reporters, jailers, dispatchers, police officers the list is endless. Then there is physical plant maintenance, rehabilitation, repair, and new construction.

Ask anyone who is a lawyer or works with lawyers is aware that financially, family law is second only to bankruptcy law, which is presently being reformed due to the excess abuse by the legal system of bankruptcy.

The criminal system is bad enough so why do we criminalize actions that are covered by family law in the civil courts. The family law and legal system in ND is not adequate or sufficient since 45% of all cases in ND Civil/Criminal District Court is comprised of family law much of it for matters happening several years after the initial separation or divorce. .

The dynamics of the four situations; Politically Correct, Civil Service, Social Service, and the Legal Industry are self-serving, for their own interest; and not for the benefit of the family unit; father, mother, child, and the people of ND.

The Politically Correct has allowed the federal government to dictate and criminalize family law. The politically correct continue to initiate, amend, and implement policies and laws that are harmful to the child and at least one of the parents.

The Civil Service introduces legislation rather than legislators and the legislation criminalizes and punishes the children and at least one parent who made the mistake of living in ND.

The Social Service industry will do anything to; extend social ills, circumvent civil liberties, and keep parents separated at the expense of the children.

The Legal System regarding family law is an ongoing profitable industry with one customer spending thousands over a period of several years as well as the judges, state attorneys, and others who benefit as well prosecuting the criminalization of civil family law.

The ND legislature was elected to represent the people not the four dynamics trashing our society for profit, power, and self-interest. The ND legislature was not elected to adopt federal legislation to circumvent the constitutional protection of family law at the state level and to criminalize civil family law. Just as HB 1337 is to rectify a federal law that removes civil liberties you should do the same for all state; statutes, laws, policies, and regulations that resulted in criminalization of family law and the circumvention of ending welfare after 60 months.

Wise King Solomon was not able to determine who was the mother of the baby and stated the intent to cut the baby in half and give each woman half the baby. If King Solomon can not make a decision as to the best parent then why do we allow one person to decide who will remain in the child's life and who will be shielded from the child

either through visitation interference, leaving to find a better job to stay current in child support, imprisoned for contempt, unable to afford a home large enough for overnight visits, or simply not able to travel to the child because of a lack of transportation.

Several ND Child Support Committees have all stated the same thing; time with the parent is more important than the child support and the state should change to the income sharer model of child support as being fairer. Yet the legislature again lets the agencies set policy and ignores all evidence from these hearings.

The legislature Judiciary Committee in the House and the Senate are the most powerful check and balance of the ND Judicial Branch of government. The legislature has adopted the two federal acts of WRA and the VAWA without putting any protections in place for insuring state constitutional protections from abuse.

Almost immediately the Supreme Court changed domestic orders so that they do much more than protect battered victims and are widely submitted by abusive attorneys including Rebecca McGurran and readily accepted by Judges including Bruce Bohlman. SB 2155 wishes to remove the 20% maximum level of TANF welfare clients claiming domestic violence and allow all welfare clients to collect welfare indefinitely simply by claiming abuse. Domestic violence welfare clients are exempted from the goals the state must meet to remove clients from welfare and do not affect the states performance bonus from the federal government.

Until such time as;

The state bar implements the Law Revues recommended training to remove gender bias,
Attorneys desist in telling their clients not to request physical custody due to sex,
Judges stop signing 80% of protection orders that do not meet state statute,
Unbiased disinterested personnel who use a nationally accredited training program
through a competitive bid process provide domestic violence training,
All law enforcement and prosecutorial personnel have attended, implemented, and posted
procedures for; responding, investigating, arresting, and prosecuting family violence
Insure a parent is not being briefed by social workers on how to use various laws and
regulations to obtain sole physical custody and unlimited welfare
Organizations that practice discrimination and teach false sexual stereotypes are refused;
government forums, facilities and resources for; fund raising, promoting and teaching
sexual stereotypes without any accredited material, and offering services as part of an
offenders sentencing,
Child Support Enforcement performs child support reviews when requested or required,

kill all bills, additions, deletions, and amendments to the ND laws that penalize and
criminalize a parents actions simply because the legislature implemented federal
programs without any controls. Make the statutes reflect the best interest of the child and
the two people who are still parent even though not husband and wife. Remove the
godlike power and self-interest from the four dynamics that are making a situation
financial windfall and fulfills their self-interest for power and prestige.

BRIEF IN SUPPORT
HOUSE BILL NO. 1401

Introduced by:
Representative Andrew Maragos - Minot, ND
Fifty-eighth Legislative Assembly of North Dakota

COMES NOW, Mitchell D. Holbach, first being duly sworn upon oath, deposes and says:

- 1.) I ask that HB 1401 be supported and approved by all members of the Fifty-eighth Legislative assembly of North Dakota.
- 2.) There is a unmet need to make access to the Courts available to low income parents who can not afford the costs of retaining counsel. The availability of pro-bono and reduced fee representation is inadequate. Legal assistance does not have the resources or they do not assist in visitation enforcement.
- 3.) I am a non-custodial father who has experienced frustration of visitation since the birth of my son on February 11th, 1994. I have been to court many times in the state of Minnesota seeking enforcement of my parental rights resulting in thousands of dollars in attorney fees and costs, yet I continue to experience frustration and alienation of affection. Financial obstacles to gaining access to the Courts have had a deeply negative effect on far to many parent/child relationships.
- 4.) The only recourse available to a non-custodial parent who is denied access to their child is thru the court process. Low income and working poor parents who lack the financial ability need a method of enforcement for child custody, visitation and support decrees. A parent who is denied visitation and reports it to law enforcement officials will be told that it is a civil matter and the police will not intervene.
- 5.) The State of Minnesota has implemented and adopted pro se forms as a method for enforcement actions. North Dakota can use this model for guidelines to develop a effective enforcement method for it's citizens.
- 6.) North Dakota does not have a Family Law system that promotes co-operation. It is adversary and destructive to children and parents.
- 7.) Public assistance policies promote "Throw dad away and the system will pay." When parents have problems supporting their children, we give mothers welfare and dads jail. It should be revamped to promote policies which increase Father family involvement. A child support check is no substitute for a loving and involved father.

DATED: February 4th, 2003.

Mitchell D. Holbach

Deanna Holbach
Operator's Signature

10/3/03
Date

Testimony of Justice Mary Muehlen Maring on House Bill 1401

February 5, 2003

I speak in opposition to House Bill 1401 because the North Dakota Supreme Court has already undertaken this task. Last year Chief Justice VandeWalle requested that the Court Services Administration Committee of the Supreme Court review the issue of preparing forms for use by self-represented litigants. As a result, the Court Services Administration Committee established a subcommittee to develop pro se forms for use specifically in family law proceedings.

I chaired that subcommittee. We had a committee of three family law lawyers, then Representative John Mahoney, and the Honorable Bruce Bohlman. This subcommittee first identified areas which seemed to most need these forms. Those areas included simple divorce without children, child visitation, and child support modification. We spent several months drafting and redrafting forms and instruction guides on how to use the forms.

In early September 2002, we completed two sets of forms. One set is for those requesting help to resolve visitation problems. The other set is for those who have entered into a stipulation for divorce and there are no children involved.

Our subcommittee also considered draft forms concerning child support review. We met with representatives of state and local child support enforcement agencies and Legal Assistance of North Dakota on the issue of child support review forms for self-represented litigants. There was general agreement that forms in this area are needed, but there was also a recognition that there are numerous complexities associated with appropriate forms for self-represented litigants. Our subcommittee recommended further study be undertaken in any subsequent forms development effort.

With regard to the form packets drafted, we recommended that it will be important to identify the method or medium by which the forms are distributed and to ensure there is adequate educational support provided for judges and court personnel who will be responding to these forms when they are submitted by litigants.

These proposals were recently forwarded from the Court Services Administration Committee to the Supreme Court for its consideration.

Some pro se litigants believe their legal problems will be resolved in their favor merely by completing a form. The issue of assisting pro se litigants is not just about developing forms. There

is a tremendous impact on the courts and court personnel when dealing with pro se litigants. The disputes are most often in the domestic relations area where emotions run high. It is our responsibility to provide appropriate assistance from clerks of court and other court personnel, yet we must acknowledge limitations concerning the scope of assistance that can be provided. Assisting self-represented litigants is especially time consuming for court personnel because of their many questions and unfamiliarity with the rules of procedure. The courts and court staff must abide by the absolute duty of impartiality.

In conclusion, our Court has taken great strides in the last year toward developing forms in the domestic relations area for self-represented litigants and we will continue to study the other areas of concern.

*Prepared by the Minnesota Supreme Court
Advisory Task Force on Visitation and Child Support Enforcement*

*Approved by the
Minnesota Conference of Chief Judges
January 1999*

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For further information, contact:

*Minnesota Supreme Court
State Court Administration
Court Services Division
120 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155
651-297-7587*

FAMILY COURT MATTER

REQUEST FOR HELP TO RESOLVE VISITATION PROBLEM

(visit.mot)

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Donna Halliwell
Operator's Signature

10/3/03
Date

IMPORTANT NOTICES

- **WARNING:** YOU CANNOT USE THESE FORMS UNLESS THERE IS ALREADY A COURT ORDER GIVING YOU OR THE OTHER PARTY VISITATION RIGHTS.
- THE COURT EXPECTS EVERY PERSON WHO APPEARS IN COURT WITHOUT A LAWYER TO KNOW AND FOLLOW THE LAW. THE JUDGE WILL NOT BE ABLE TO GIVE YOU ANY HELP IN COURT.
- COURT STAFF AND THE COUNTY ATTORNEY'S OFFICE CANNOT HELP YOU FILL OUT THE FORM(S) IN THIS PACKET.
- YOU MUST FILL OUT ALL FORMS INCLUDED WITH THIS PACKET AND YOU MUST FOLLOW THE INSTRUCTIONS INCLUDED WITH THIS PACKET.
- YOU SHOULD SEE A LAWYER IF YOU DON'T KNOW HOW TO ANSWER THE QUESTIONS ON THESE FORMS OR IF YOU THINK THE OTHER PARTY WILL HIRE A LAWYER.
- TYPE YOUR ANSWERS OR PRINT NEATLY USING DARK INK.

INSTRUCTIONS

STEP 1
FILL OUT THE "NOTICE OF MOTION AND MOTION
FOR VISITATION ASSISTANCE" FORM

Fill out the "Notice of Motion and Motion for ~~Visitance~~ Visitation Assistance" form included in this packet. This form tells the Court and the other party the type of visitation problem you are having, what you are asking for from the Court, and the date and time of the hearing.

FILLING IN THE TOP PART OF THE FORM (this is known as "the caption"):

NOTE: The information to fill in the top part of the form can be found at the top of your current visitation order or your divorce or paternity decree. Be sure to copy the information EXACTLY as it is on your current order.

- Write the name of the county where your case is located, the number of the judicial district for that county (for example: Hennepin County is the 4th Judicial District and St. Paul is the 2nd Judicial District), and the case number which is also called the "Court file number."
- After "CASE TYPE," write which type of case this is. If this is regarding your divorce case, write: CASE TYPE 4: DISSOLUTION WITH CHILD. If this is regarding your paternity case (you and the other party were never married), write: CASE TYPE 14: PATERNITY.
- On the line marked "Name of Petitioner," write the name of the Petitioner as listed on your current visitation order or divorce or paternity decree.
- On the line marked "Name of Respondent," write the name of the Respondent as listed on your current visitation order or divorce or paternity decree.
- Write the full name and street address of the other party.

DO NOT FILL IN THE DATE, TIME, AND LOCATION OF THE HEARING YET. YOU WILL DO THAT AS PART OF STEP 3.

Dennis Hall
Operator's Signature

10/3/03
Date

FILLING OUT THE REST OF THE FORM:

NOTE: The instructions which follow are numbered the same as the questions on the Notice of Motion and Motion form.

Review questions 1 - 14 which list different types of help you can ask for from the Court. Check off **ONLY** the boxes for the type of help you are asking for from the Court -- you do not need to check off every box. **YOU MAY CHECK OFF AS MANY TYPES OF HELP AS YOU WISH, BUT IT WILL BE UP TO THE COURT TO DECIDE WHAT TYPES OF HELP (IF ANY) WILL BE ORDERED.**

1. Check box 1 if you are asking for makeup (compensatory) visitation because a scheduled visitation was wrongfully denied and the other party has not let you have makeup visitation.
2. Check box 2 if you are asking the Court to appoint a visitation expeditor to help you and the other party to resolve the visitation problem and/or any future visitation problems that may happen. Under Minnesota's law, the visitation expeditor will first try to help you and the other party reach an agreement between yourselves regarding the problem. However, if you and the other party are not able to resolve the problem yourselves, then the visitation expeditor will make a decision settling the problem. The visitation expeditor **CANNOT** make a decision that changes the existing visitation order.
 - **NOTE:** Not all counties have visitation expeditors. The Court will be able to grant this request only if visitation expeditors are available in your county.
 - **WARNING:** You and the other party will probably be required to pay for the fees and costs of the visitation expeditor.
3. Check box 3 if visitation is now unsupervised and you are asking for it to be supervised.
4. Check box 4 if visitation is now supervised and you are asking for it to be unsupervised.
5. Check box 5 if you are asking for the drop offs and pick ups of the child to take place at a visitation exchange center so that you can avoid contact with the other party as much as possible.

NOTE: Not all counties have visitation exchange centers. The Court will be able to grant this request only if a visitation exchange center exists in your county.

● **WARNING:** You and the other party will probably be required to pay for the fees and costs of this service.

6. Check box 6 if you are asking for the transportation of the children to take place in a different way or at a different location than is now happening (and then tell the Court how you would like it to take place).
7. Check box 7 if you are asking the Court to tell the other party to obey the existing visitation order.
8. Check box 8 if your existing order states only that visitation shall be "reasonable" and you want a specific visitation schedule. Be as complete and as specific as possible when describing the visitation schedule you want.
9. Check box 9 if your existing order includes a specific visitation schedule and you are asking for that schedule to be changed. Be as complete and as specific as possible when describing the visitation schedule you want.
10. Check box 10 if you are asking the Court to order a law enforcement officer or other person to go with you or to be present when the visitation exchange takes place.
11. Check box 11 if you are asking the Court to order the other party to pay any Court fees or other costs that you have because of this hearing.
12. Check box 12 if you are asking for the other party to pay any expenses that you have because the other party disobeyed the visitation order. For example, if you had to pay for day care because the other parent didn't show up, or if you had already paid for airfare to bring your children to you and the other parent wouldn't let the children go.
13. Check box 13 if you are asking for the other party to pay a penalty to the Court because the other party disobeyed the existing visitation order. The judge will determine the amount to be paid, which cannot be over \$500.00. **NOTE: If the Court grants this request, the money will not go to you but will be paid to the Court.**
14. You may check box 14 only if each of the following is true:
 - your visitation was wrongfully denied by the other party; AND
 - you lost money because of the wrongful denial of visitation; AND
 - you have another visitation scheduled in the future and have already paid for something to do with that visitation (for example: air fare); AND
 - you want the other party to pay money (the same amount as the money paid for the upcoming visit) to be held by the Court to help guarantee that the other party obeys the Court order in the future and, if the upcoming visitation is denied, to have the money paid to you.

DATE AND SIGN THE "NOTICE OF MOTION AND MOTION" FORM.

WARNING: By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving

Deanna Hall Smith
Operator's Signature

10/3/03
Date

or filing this document for an improper purpose, the Court can order you to pay money to the other party.

STEP 2
FILL OUT THE "AFFIDAVIT IN SUPPORT OF MOTION FOR VISITATION ASSISTANCE" FORM

Fill out the "Affidavit in Support of Motion for Visitation Assistance" form included in this packet. This form tells the Court and the other party what you are asking for from the Court and WHY you are asking for it. Fill in the top part of the form the same way you did on your "Notice of Motion and Motion" form in Step 1.

- Write the name of the county where your case is located, the number of the judicial district for that county (for example: Hennepin County is the 4th Judicial District and St. Paul is the 2nd Judicial District), and the case number which is also called the "Court file number."
- After "CASE TYPE," write which type of case this is. If this is regarding your divorce case, write: CASE TYPE 4: DISSOLUTION WITH CHILD. If this is regarding your paternity case (you and the other party were never married), write: CASE TYPE 14: PATERNITY.
- On the line marked "Name of Petitioner," write the name of the Petitioner as listed on your current visitation order or divorce or paternity decree.
- On the line marked "Name of Respondent," write the name of the Respondent as listed on your current visitation order or divorce or paternity decree.

FILLING OUT THE REST OF THE FORM:

You **MUST** answer questions 1 through 6:

1. You cannot use this packet of materials unless a visitation order already exists for you or the other party. In question 1, check off who has visitation with the child(ren): You or the other party.
2. Check off whether an Order for Protection is or is not currently in effect in any State involving you and the other party or the children of this case. If an Order for Protection IS in effect, fill in the County, State, and File Number found on the Order for Protection.
3. Check off whether a juvenile Court proceeding (including delinquency, child in need of protection or services, foster care, or termination of parental rights) involving the children of this case is or is not currently taking place. If a juvenile Court proceeding IS currently taking place, fill in the County, State, and Court File Number found on the juvenile Court order.

4. List the name, birth date, and your relationship (e.g., mother, father, grandparent) to each child involved in this case. If more room is needed, attach another sheet of paper and make a note of that on the form.
5. Write the name of the state in which the children currently live and the month and year when they first started living there. Also list the name of the person with whom the children live and that person's relationship to the children (mother, father, grandparent). Finally, list the address of the children (including street address, city, and state).
6. Describe as clearly and as completely as possible the visitation problem you have, including dates, times, witnesses, and other information that will be helpful to the Court in resolving the problem.

FOR QUESTIONS 7 - 20, CHECK OFF ONLY THE TYPE(S) OF HELP THAT YOU CHECKED OFF ON YOUR NOTICE OF MOTION AND MOTION FORM:

7. Check box 7 ONLY if you checked box 1 on the Notice of Motion and Motion form. Then also fill in the date(s) and time(s) on which you were scheduled to have visitation and what the other party did to deny you that visitation. For example: *"The other party did not let me take the children with me when I went to pick them up for my scheduled visitation"; or "the other party refused to drop off the children as planned"; or "the other party wasn't home when I went to pick up the children at the scheduled time and even though I waited for an hour the other party did not show up."*
8. Check box 8 ONLY if you checked box 2 on the Notice of Motion and Motion form. You do not need to fill in any other blanks for Question 8.
 - **NOTE:** Not all counties have visitation expeditors. The Court will be able to grant this request only if visitation expeditors are available in your county.
 - **WARNING:** You and the other party will probably be required to pay for the fees and costs of the visitation expeditor.
9. Check box 9 ONLY if you checked box 3 on the Notice of Motion and Motion form. Then tell the Court why visitation should be changed to supervised.
10. Check box 10 ONLY if you checked box 4 on the Notice of Motion and Motion form. Then tell the Court why visitation should be changed to unsupervised.
11. Check box 11 ONLY if you checked box 5 on the Notice of Motion and Motion form. Then tell the Court why the pick ups and drop offs of the children should take place at a visitation center.
 - NOTE:** Not all counties have visitation exchange centers. The Court can grant this request only if a visitation exchange center exists in your county.
 - **WARNING:** You and the other party will probably be required to pay for the fees and costs of this service.

12. Check box 12 ONLY if you checked box 6 on the Notice of Motion and Motion form. Then tell the Court how the transportation arrangements should be changed and why.
13. Check box 13 ONLY if you checked box 7 on the Notice of Motion and Motion form. Then tell the Court how the other party has disobeyed the existing visitation order.
14. Check box 14 ONLY if you checked box 8 on the Notice of Motion and Motion form. Then fill in the same schedule as you did on Question 8 on Notice of Motion and Motion form.
15. Check box 15 ONLY if you checked box 9 on the Notice of Motion and Motion form. Then fill in the same schedule as you did on Question 9 on Notice of Motion and Motion form.
16. Check box 16 ONLY if you checked box 10 on the Notice of Motion and Motion form. Then tell the Court why you want a law enforcement office or other person ordered to go with you when visitation is supposed to take place.
17. Check box 17 ONLY if you checked box 11 on the Notice of Motion and Motion form. Then tell the Court the total amount of Court fees and costs you paid and why the other party should have to pay you for those fees and costs.
18. Check box 18 ONLY if you checked box 12 on the Notice of Motion and Motion form. Then tell the Court the total amount and type of other expenses you have because of the denied visitation.
19. Check box 19 ONLY if you checked box 13 on the Notice of Motion and Motion form. You do not need to fill in any other blanks for Question 19.
NOTE: The money will not go to you, but will be paid to the Court.
20. Check box 20 ONLY if you checked box 14 on the Notice of Motion and Motion form. Then tell the Court the amount and type of expense you have already paid for regarding an upcoming scheduled visitation.
21. Check off box 21 only if there is other information you think would be helpful to the Court in deciding this case.

DO NOT DATE AND SIGN YOUR "AFFIDAVIT" UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR THE COURT ADMINISTRATOR. MAKE SURE TO BRING IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR COURT ADMINISTRATOR. A Notary Public can usually be found at a bank and sometimes at the courthouse.

WARNING: By signing your name you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth or if you are misleading the Court or if you are serving or filing this document for an improper purpose, the Court can order you to pay money to the other party.

Instructions: Page 6 of 9

Approved by Conference of Chief Judges: _____

Revised: _____
(visit.mot)

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

STEP 3
OBTAIN FROM COURT ADMINISTRATOR
HEARING DATE, TIME, AND LOCATION

Take your "Notice of Motion and Motion" form and your "Affidavit in Support of Motion" form to the Court Administrator's Office in the county where your case is located. Some counties just have one office that handles all types of cases, and others have special "Family Court" offices. If your county has a "Family Court" office, then go to that office. The Court Administrator will give you a date, time, address, and room number for your hearing. **NOTE:** Some counties will be able to give you this information over the phone -- check with your county to see if that is possible.

Fill in the date, time, location, and room number of the hearing on the first page of the "Notice of Motion and Motion" form.

STEP 4
MAKE COPIES OF FORMS

1. Make two copies of the "Notice of Motion and Motion" form
2. Make two copies of "Affidavit in Support of Motion" form.
3. Keep one copy of each form for yourself.
4. Step 5 tells you how to send the second copy of each form to the other party. Step 7 tells you what to do with the originals of the forms.

STEP 5
SERVE NOTICE ON THE OTHER PARTY
AT LEAST 17 DAYS BEFORE THE HEARING DATE

You must arrange for the other party to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called "service of process." You may serve process by following these instructions:

1. Place one copy of the completed "Notice of Motion and Motion to Resolve Visitation Dispute" form AND one copy of the completed "Affidavit in Support of Motion" form in an envelope. Write your return address and the last known address of the other party on the front of the envelope. Place the correct amount of postage on the envelope (you may want to take the envelope to the post office to be weighed to make sure you put on the right amount of postage).

2. The envelope containing the forms must be mailed to the other party (or his/her attorney if there is one) at least 17 days before the hearing date. You should have someone else who is over the age of 18 mail the forms.

● **WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR HIS/HER ATTORNEY) AT LEAST 17 DAYS BEFORE THE HEARING DATE, YOUR MOTION CANNOT BE HEARD BY THE COURT.**

STEP 6
THE PERSON WHO MAILED THE ENVELOPE
FILLS OUT THE "AFFIDAVIT OF SERVICE" FORM

After the envelope containing the forms has been mailed to the other party, then the person who placed the envelope in the mail must fill out the "Affidavit of Service by Mail" form included in this packet. This form proves to the Court that the papers were mailed to the other party.

1. Fill in the top part of the form the same as you did for the "Notice of Motion and Motion" form.
2. After "COUNTY OF" fill in the name of the county where the person was when the person signed the Affidavit of Service by Mail.
3. Fill in the name of the person who mailed the envelope.
4. Fill in the name of the person to whom the documents were mailed (the other party).
5. Fill in the other party's last known address.
6. Fill in the name of the city and state where the post office was located from which the documents were mailed.
7. **THE PERSON WHO MAILED THE ENVELOPE MUST NOT SIGN THE "AFFIDAVIT OF SERVICE BY MAIL" UNTIL HE/SHE IS IN THE PRESENCE OF A NOTARY PUBLIC OR THE COURT ADMINISTRATOR. MAKE SURE THE PERSON BRINGS IDENTIFICATION TO SHOW TO THE NOTARY PUBLIC OR COURT ADMINISTRATOR.**
8. After it has been signed, make one copy of the Affidavit of Service by Mail for your records.

Dennis Halliwell
Operator's Signature

10/3/03
Date

STEP 7
FILING THE FORMS WITH THE COURT

AT LEAST 14 DAYS BEFORE THE HEARING DATE, take the original of the "Notice of Motion and Motion to Resolve Visitation Dispute," the original of the "Affidavit in Support of Motion," and the original of the "Affidavit of Service by Mail" to the Court Administrator's Office in the county where your case is located. Some counties just have one office that handles all types of cases, and others have special "Family Court" offices. If your county has a "Family Court" office, then go to that office. Tell the Court Administrator that you wish to file the documents.

If you did not pay a filing fee when this case was first begun, you will now need to pay the filing fee. Filing fees range from \$129 to \$135, depending upon the county where your case is located.

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask the Court Administrator at the Family Court Filings window for an In forma Pauperis application. You need to fill out this application and sign it in front of a Notary Public or the Court Administrator. This application will be reviewed by a judge who will determine whether you must pay the filing fee. If the judge does not sign the form which waives the fee, you must be prepared to pay the filing fee or the Court Administrator cannot accept your forms.

STEP 8
APPEAR AT THE HEARING

You must go to Court on the date set for the hearing. If you do not go to Court, you will lose the case. Be sure to be on time. Bring to the hearing:

- your copy of the Notice of Motion and Motion and Affidavit in Support of Motion,
- any evidence you want the judge to know about (such as pictures, documents, receipts, bills, etc.), and
- any witnesses you want to talk to the judge.

The judge will not allow you to use as evidence (and will not look at) any documents (such as letters, notes, or statements) written by someone other than yourself unless the person who wrote the document is in Court at the hearing.

If you want the judge to hear what someone else has to say about your case, that person **MUST** be in Court -- YOU cannot tell the judge what that person said or has to say. You may force someone to attend the hearing by serving a subpoena on that person prior to the date of the hearing. The Court Administrator can tell you how to get a subpoena. You will have to pay a fee to get a subpoena.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY

JUDICIAL DISTRICT

CASE NO.

In the Matter of:

Name of Petitioner

v.

Name of Respondent

CASE TYPE _____ :

NOTICE OF MOTION AND MOTION
FOR VISITATION ASSISTANCE

TO:

First

Middle

Last

Street Address

Apt. No.

City

County

State

PLEASE TAKE NOTICE that on the _____ day of _____, 19_____,
at _____ o'clock ____ .M. in Room _____ of the _____ County
Courthouse or Government Center located at _____
in the City of _____, State of Minnesota, I will ask the Court for the
following Order:

REVIEW QUESTIONS 1 - 14 AND CHECK OFF ONLY THE TYPE OF HELP YOU ARE ASKING
FOR FROM THE COURT:

- ☐ 1. Giving me makeup (compensatory) visitation because a scheduled visitation was wrongfully denied by the other party (Minnesota Statutes section 518.175, subdivision 6(b)).
- ☐ 2. Appointing a visitation expeditor to help me and the other party resolve the visitation problem and/or any future visitation problems that may occur, and ordering the other party and I to pay for the fees and costs of the expeditor unless the Court determines otherwise (Minnesota Statutes section 518.1751). (The Court will be able to appoint a visitation expeditor only if that service is available in your county. If it is available, you and the other party will probably be required to pay for the fees and cost of the visitation expeditor.)
- ☐ 3. Changing the existing visitation order to require supervised visitation.
- ☐ 4. Changing the existing visitation order to allow unsupervised visitation.
- ☐ 5. Changing the existing visitation order to provide for drop offs and pick ups of the child(ren) to occur at a visitation exchange center and for both parties to follow all rules of the visitation exchange center.

☐ 6. Changing the existing visitation order to provide for the transportation of the child(ren) for visitation to be as follows: _____

☐ 7. Directing the other party to obey the existing visitation order.

☐ 8. Changing the existing visitation order from "reasonable visitation" to the following specific visitation schedule:

a. Weekends: _____

b. Week nights or after school: _____

c. Holidays: _____

d. Summer: _____

e. School holidays: _____

f. Telephone contact: _____

g. Other: _____

☐ 9. Changing the existing visitation schedule to the following schedule:

a. Weekends: _____

b. Week nights or after school: _____

c. Holidays: _____

d. Summer: _____

e. School holidays: _____

f. Telephone contact: _____

g. Other: _____

- ☐ 10. Ordering a law enforcement officer or other person to go with me when visitation is supposed to occur as allowed under Minnesota Statutes section 518.175, subd. 1(b).
- ☐ 11. Directing the other party to pay me for my Court fees and costs that are a result of having to bring this motion.
- ☐ 12. Directing the other party to pay me for my expenses that resulted from the other party's wrongful failure to follow the existing Court order.
- ☐ 13. Directing the other party to pay to the Court a civil penalty of up to \$500.00 as allowed under Minnesota Statutes section 518.175, subdivision 6(c).
- ☐ 14. Finding that my visitation was wrongfully denied, that I incurred expenses in connection with the denied visitation, and that I have already paid for expenses in the amount of \$_____ in connection with an upcoming scheduled visitation. As allowed under Minnesota Statutes section 518.175, subdivision 6(d), I ask the Court to direct the other party to pay to the Court to be held in an escrow account an amount of money equal to my prepaid expenses for the upcoming visitation to help guarantee that the other party obeys the Court order in the future and to be paid to me if the upcoming visit is denied.

DATE: ____/____/____
Month Day Year

My Signature

Street Address: _____

City/State/Zip: _____

Telephone: (____) _____

Deanna Hall Smith
Operator's Signature

10/3/03
Date

STATE OF MINNESOTA

COUNTY

DISTRICT COURT

JUDICIAL DISTRICT

CASE NO.

CASE TYPE ____ :

In the Matter of:

Name of Petitioner

v.

Name of Respondent

AFFIDAVIT IN SUPPORT OF MOTION
FOR VISITATION ASSISTANCE

STATE OF MINNESOTA

COUNTY OF _____ } SS
(County where Affidavit signed)

My name is _____. In answering the following questions I understand that I am under oath and that I must tell the truth.

1. My Notice of Motion and Motion is NOT a request to establish visitation rights because an order establishing visitation rights for (check one) ☐ me ☐ the other party has already been issued in this case. Instead, my Notice of Motion and Motion is a request to resolve a visitation dispute.
2. An Order for Protection involving me and the other party and/or the child(ren) (check one):
☐ a. IS NOT currently in effect in any State.
☐ b. IS in effect from _____ County in the State of _____ and its Court File Number is _____.
3. A juvenile Court (child protection, delinquency, or foster care) proceeding involving one or more of the children in this case (check one):
☐ a. IS NOT now taking place in any State.
☐ b. IS now taking place in _____ County in the State of _____ and its Court File Number is _____.
4. The following child(ren) are involved in this case (attach another sheet of paper if necessary):

Name of childBirth DateMy Relationship to Child

5. The child(ren) live in the State of _____ and have lived there since the month of _____ 19_____. The child(ren) live with _____ who is related to them as _____. The address of the child(ren) is:

Street Address: _____

City/State/Zip: _____, State of _____

6. I have a visitation problem. It is: _____

FOR QUESTIONS 7 - 20, CHECK OFF ONLY THOSE THAT APPLY - THE SAME AS ON YOUR NOTICE OF MOTION AND MOTION FORM

☐ 7. I was scheduled to have visitation on the following date(s) _____ at the following times _____, but the other party wrongfully denied my scheduled visitation by doing the following: _____

I ask the Court to give me **makeup (compensatory) visitation** because of the visitation that was denied to me. The make-up visitation should take place on the following date(s) _____ at the following time(s) _____, which is within one year of the date my scheduled visitation was wrongfully denied.

☐ 8. I ask the Court to **appoint a visitation expeditor** to help me and the other party resolve this visitation problem and/or any future visitation problems that may happen. I understand that I and the other party may be required by the Court to pay for the fees and costs of the visitation expeditor.

☐ 9. I believe that it is in the best interests of the child(ren) that the existing visitation order be changed to require **supervised visitation** because: _____

☐ 10. I believe that it is in the best interests of the child(ren) that the existing visitation order be changed to allow **unsupervised visitation** because: _____

☐ 11. I ask that the existing visitation order be changed to provide for drop offs and pick ups of the child(ren) to occur at a visitation exchange center, and for both parties to be ordered to follow all rules of the visitation exchange center, because:

☐ 12. I ask that the existing visitation order be changed to provide for the transportation of the child(ren) for visitation to be as follows: _____

because: _____

☐ 13. I ask that the other party be ordered to follow the existing visitation order because the other party has disobeyed it as follows: _____

☐ 14. I believe that it is in the best interests of the child(ren) that the existing visitation Order be changed from "reasonable visitation" to the following specific visitation schedule:

a. Weekends: _____

b. Week nights or after school: _____

c. Holidays: _____

d. Summer: _____

e. School holidays: _____

f. Telephone contact: _____

g. Other: _____

☐ 15. I believe that it is in the best interests of the child(ren) that the existing visitation schedule should be changed to the following specific schedule:

- a. Weekends: _____
- b. Week nights or after school: _____
- c. Holidays: _____
- d. Summer: _____
- e. School holidays: _____
- f. Telephone contact: _____
- g. Other: _____

☐ 16. I ask the Court to order a law enforcement officer or other person to go with me when visitation is supposed to take place because: _____

☐ 17. I ask that the other party be ordered to pay me for my Court fees and costs which total \$_____ because: _____

☐ 18. I ask the Court to order the other party to pay me for my other expenses which total \$_____ and include costs for _____ because the other party wrongfully disobeyed the visitation order, or wrongfully disobeyed an agreement made with or a decision made by a visitation expeditor, and caused me to have these expenses that I would not have otherwise had.

☐ 19. Because the other party wrongfully disobeyed the existing visitation order, or wrongfully failed to follow our agreement made with a visitation expeditor or failed to follow the decision of a visitation expeditor, I ask that the other party be ordered to pay to the Court a civil penalty of up to \$500.00.

☐ 20. I have already paid \$_____ for _____

In connection with an upcoming scheduled visitation. As allowed under Minnesota Statutes section 518.175, subdivision 6(d), I ask the Court to direct the other party to pay to the Court to be held in an escrow account an amount of money equal to my prepaid expenses for the upcoming visitation to help guarantee that the other party obeys the visitation order. I also ask that if the other party denies my upcoming visitation that the money be paid to me.

☐ 21. I believe the following additional information would be helpful to the Court in understanding this visitation problem: _____

_____.

My Signature
(Sign only in presence of notary public
or Court Administrator)

Street Address: _____

City/State/Zip: _____

Telephone: (____) _____

Subscribed and sworn to before me this

_____ day of _____, 19____.

Notary Public/Court Administrator

Deanna Halliwell
Operator's Signature

10/3/03
Date

STATE OF MINNESOTA

DISTRICT COURT

COUNTY

JUDICIAL DISTRICT

CASE NO.

CASE TYPE ____ : ____

In the Matter of:

Name of Petitioner

v.

Name of Respondent

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA

COUNTY OF _____

(County where Affidavit signed)

} SS

I, _____, being sworn, upon oath, state that on _____, 19____, I served the attached **Notice of Motion and Motion for Visitation Assistance and Affidavit in Support of Motion** upon _____ by placing a true and correct copy of each in an envelope addressed to the last known address of _____ in the City of _____, State of _____, and Zip Code is _____, and depositing the envelope, with sufficient postage, in the United States Mail at the Post Office located in the City of _____, in the State of _____.

Signature of Person Who Mailed Envelope
(Sign only in presence of Notary Public
or Court Administrator)

Subscribed and sworn to before me this

_____ day of _____, 19____.

Notary Public/Court Administrator

HB1401

A PARENTAL GUIDE TO MAKING CHILD-FOCUSED VISITATION DECISIONS

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

PURPOSE

Unless special circumstances exist, children generally fare best when they have the emotional support and ongoing involvement of both parents. Ongoing parental involvement fosters positive parent-child relationships and healthy emotional and social development. It is also beneficial to parents because it makes it more likely that the parents will have positive relationships with their children when the children become adults.

For parents who do not live together, it is important to cooperate with each other for the benefit of the children. Children adjust more easily to crisis and loss if their parents work together to develop healthy ways of communicating, resolving problems, and reducing conflict.

It is important for parents to remember that formation of a positive parent-child relationship is a life-long process. The key to a successful parent-child relationship is the quality of time, rather than the quantity of time, spent together.

Establishing a visitation schedule is an area where parents may experience conflict. This pamphlet is designed to assist parents in creating visitation schedules that focus on their children's developmental needs from infancy through adolescence. It identifies key tasks that children normally accomplish at each stage of development, and then identifies suggestions for visitation practices aimed at promoting healthy development at each developmental stage. Emphasis is placed on the importance of parents accommodating their children's changing needs by creating visitation schedules that are routine and predictable, and yet flexible enough to change in frequency and duration to accommodate their children's needs as they grow older.

Parents are encouraged to recognize that a visitation schedule that is best for one child may not be best for the child's brothers and sisters. Parents are also encouraged to understand that visitation schedules that are best for their children may not be best for the parents. For the best interests of their children, parents may need to tolerate disruption of their own schedules and more or less visitation than they might otherwise choose. Many parents may also need to address their own feelings of loss, envy, anger, or disappointment when setting visitation schedules that are best for their children.

ASSUMPTIONS

The information in this pamphlet is based upon the following assumptions:

- The child will benefit from ongoing and active contact with both parents.
- One parent has sole or primary physical custody of the child.
- One parent has primary responsibility for the day-to-day care of the child.
- Both parents are fit to parent the child.
- Both parents are willing and able to parent the child.
- Child abuse, domestic violence, and chemical dependency issues do not exist.

odd numbered pages
missing

Donna Hall
Operator's Signature

10/3/03
Date

WHAT PARENTS CAN DO TO HELP Keep Children Out of the Middle

- Parents can keep their children out of the middle of adult issues by not using the children as messengers. Sometimes the message is something as innocent as a reminder that the child must take her medication before bedtime. Other times, the message may be that the child support payment will be late. Unfortunately, we all know what happens to the bearer of bad news. If the message was difficult for one parent to say directly to the other parent, just imagine how difficult it will be for the child to relay that message. Instead of using their children as messengers, parents should either deal directly with each other or through a mutually agreed upon adult.
- Parents can keep their children out of the middle of adult issues by not asking them to report about what is going on in the life of the other parent. Any time children are asked to divide their loyalty, or to betray one parent to another, the children feel guilty or as if they are being asked to stop loving one parent. It is certainly appropriate for parents to show interest in the lives of their children by asking "how was your weekend visit?" But, if the interest is not in the child or in how the child feels, the child will pick up on this and may eventually feel angry and used.
- Parents can keep their children out of the middle of adult issues by not attacking or putting down the other parent. Some parents find themselves so angry with the other parent that they vent their anger in front of their children. Other parents may say things to try to make themselves look good and the other parent look bad. Children identify with both parents. If one parent puts down the other parent, in the eyes of the child it is as if that parent is also putting down the child.

Establish a Workable Means of Communication

Parents can help their children by establishing a workable means of communicating with each other about their children. At first, some parents may find it difficult to separate their feelings about the relationship or the other parent from their need to give and receive information about the children. Parents can overcome this problem by communicating with each other about their children in a "business-like" manner. This may include agreeing about the time, place, and manner of their communication. It may also include establishing a list of topics and sticking to it. Parents who are unable to talk to each other because of ongoing conflict, hostility, or issues of domestic violence, may find it easier to communicate by putting the information in writing or by communicating through a mutually-agreed upon adult. Except in cases where there is an Order For Protection or other court order prohibiting contact, parents should keep each other or a mutually agreed-upon third person advised of their home and work addresses and telephone numbers. In cases where there is an Order for Protection or other court order prohibiting contact, the parent must follow the order or ask the court to modify the order to permit communication regarding the children.

Encourage Telephone and Other Contact

Parents can help their children by calling and writing to them and by reasonably encouraging and assisting them to call and write to the other parent. Children do best when they are able to maintain contact with both parents. While visitation is one way to maintain that contact, other ways include telephone calls, letters, e-mail, and other forms of communication. Telephone calls between parent and child should be permitted at reasonable hours and at the expense of the calling parent. Unless restricted by court order, parents have a right to send cards, letters, packages, e-mail, audiotapes, and videocassettes to their children. Children have the same right to send items to their parents. Parents should not interfere with these rights.

Establish Similar Household Routines

Parents can help their children by following similar routines for mealtime, bedtime, and homework time. Parents can also help their children by accepting that they have limited control over what happens in the other parent's home and by respecting the authority of the other parent. From a very young age, children learn that their parents have different parenting styles. Children can adjust to some differences in routines between their parents' homes. Developmentally, though, children cope better when there is general consistency between their parents' homes because it helps them have a sense of order.

Provide Child's Belongings

Parents can help their children transition between their parents' homes by sending along the children's important belongings, such as clothing, medicine, and equipment. Parents can also help their children by sending along personal objects, such as blankets, stuffed animals, photos, or memorabilia of the other parent.

Support Contact with Grandparents and Other Extended Family

Parents can help their children maintain important family ties by arranging for the children to visit their father's family when they are with their father, and by arranging for the children to visit their mother's family when they are with their mother. Children who have had loving relationships with their grandparents and other extended family members need to maintain those ties, otherwise they may experience a sense of loss.

Facilitate Temporary Schedule Adjustments

Parents can help their children by giving as much advance notice as possible when requesting a temporary adjustment to the visitation schedule. Family emergencies, illness of a parent or child, or special events of a parent or child may require temporary adjustment to the visitation schedule. Parents can help their children by scheduling an alternate visitation time to take place as soon as possible.

Accommodate Vacation Plans

Parents can help their children by understanding that it is important for each parent to vacation with their children. Parents can help their children by scheduling their vacation times so that they do not interfere with the other parent's time with the children or with the children's schedules. Vacation, whether during school breaks or during the summer, can be a time for parents and children to expand their relationship. Vacation is also important because it gives the other parent time off from the demands of parenting. Vacation time takes precedence over regular visitation unless a court order or an agreement of the parents provides otherwise.

VISITATION SUGGESTIONS

Generally

Children generally fare best when they have the emotional and financial support and ongoing involvement of both parents. Establishing a visitation schedule is one way to ensure and foster that contact. The child's needs are the key factors for parents to consider when establishing a visitation schedule. These needs change as the child grows older and moves from one developmental stage to the next. The developmental needs of an infant, for example, are different from those of a toddler or a teenager.

This section identifies key tasks that children normally accomplish at each stage of development before moving on to the next developmental stage. In considering these developmental tasks, it is important to always keep in mind that each child is unique, that all children do not progress at the same rate, and that "normal" development has a tremendous range at each age. Thus, some six-year-old children progress quickly and do what might be typical of an eight-year-old child, while other six-year-old children progress more slowly and do what might be typical of a five-year-old child.

This section also identifies visitation suggestions that promote healthy development at each stage. Rather than rigidly applying these visitation suggestions, parents are strongly encouraged to apply them in a way that best meets the specific developmental needs of each child. This may mean that parents establish different visitation schedules for each of their children.

The child's developmental stage is only one factor parents should consider when deciding which visitation arrangement is best for each child. Other factors parents need to consider when establishing a visitation schedule include:

- Any special needs of the child and parents.
- The routines and schedules of the child and parents.
- Any mental health issues relating to the child or parents.
- Each parent's past caregiving history.
- The child's relationship with each parent.
- The child's relationship with grandparents and extended family members.
- The child's relationship with and any step-family members.
- The distance between parental homes.
- Whether the child's brothers and sisters will participate in the child's visitation.
- The child's temperament and ability to make a calm transition between homes.
- The length of time that has passed since the separation or divorce.
- The ability of the parents to cooperate.
- The child's and parents' cultural and religious differences.
- Transportation and other costs related to visitation.
- Any other factor(s) that will enable the child and noncustodial parent to maintain a child to parent relationship that is in the best interests of the child.

PRESCHOOLERS (2½ - 5 YEARS)

Developmental Tasks

Preschoolers continue to increase their sense of individuality. They make significant gains in their verbal skills and become more likely to express their feelings. Preschoolers also develop a greater sense of curiosity and exploration, and increase their abilities to imagine and fantasize. Children at this developmental stage may think they are responsible for their parents' divorce or for their parents not living together. They fear abandonment and may fantasize that their parents will reunite. Their sense of security is affected by predictable and consistent routines.

Visitation Considerations

Routine and consistent visitation schedules are very important. For parents who live far apart, it is usually best for the child if the noncustodial parent travels to the residential area of the other parent. This may mean that visitation takes place in the home of the custodial parent or in a nearby location where the child feels comfortable. During this stage, children may be comfortable with longer visitation periods, including overnights. For younger children, overnights should be limited to no more than one night per week. Older preschoolers may be able to have additional overnights and lengthier visitation. Assuming the child has an ongoing relationship with the noncustodial parent, vacation time may be appropriate. Weekend visitation that is increased gradually may help preschoolers to make the transition to an extended vacation time. Transitions are easier if children bring with them personal objects, such as blankets, stuffed animals, photos, or memorabilia of the parent. Because preschoolers have improved verbal and comprehension skills, it is important for parents to avoid speaking disrespectfully about the other parent or about others in the home.

What Parents Can Do to Help

Parents can help their preschoolers by:

- Establishing a consistent, predictable, and routine visitation schedule.
- Gradually increasing the length of visitation, working up to overnights.
- Sending along personal objects, such as blankets, stuffed animals, and photos of the parent.
- Avoiding criticism about the other parent and others in the home.

ADOLESCENTS (12 - 18 YEARS)

Developmental Tasks

During the early stage of adolescence, children continue the process of establishing their identity and self-worth. Through this process, and with guidance from their parents, they establish a sense of self in relationship to the rules and regulations of society. Adolescents also begin the process of separating from their parents, during which they may mourn the loss of childhood, dependency, and protection within the family. During this stage, adolescents gain academic and/or athletic prowess, make and sustain friendships, continue the process of gender identification, and begin to explore intimate relationships.

During the later stages of adolescence, young adults continue the process of establishing their independence. They continue the development of loyal friendships, begin to develop a work ethic, and begin to develop aspirations. Young adults also continue the process of gender identification and management of sexual impulses. Adolescents need the support and involvement of both parents. Adolescents may be embarrassed or angry about their parents' relationship. They may begin to have doubts about their own relationships with family members and peers, causing them either to focus too much on relationships or to withdraw from relationships. Adolescents may also inappropriately act out by using drugs or by engaging in sex or other unhealthy behaviors to attain a sense of belonging.

Visitation Considerations

It is important for parents of adolescents to maintain the child's accessibility to school, peers, extracurricular and community activities from both homes. It is also important for each parent to consistently apply the family rules of their own household.

Adolescents may need to be with friends more than with their family and, therefore, may resist a rigid visitation schedule. Parents will need to exercise greater flexibility, adapted to the increasing ability of the child to take care of his or her own needs. There will also need to be greater flexibility adapted to the child's preferences -- an adolescent should not be forced to comply with a visitation schedule about which the child had no input. To accomplish this, parents should consider the child's wishes and decide visitation issues together with the child.

Many adolescents benefit from a primary home base, with specific evenings, weekends, and activities at the other home scheduled on a regular and predictable basis. Other adolescents, however, may be comfortable spending equal time with each parent, including up to two weeks at each residence. Adolescents may be comfortable with one to three weekends of visitation per month, depending upon the child's schedule, distance, and capacity to travel. The noncustodial parent should maintain contact with the child's teachers and attend the child's performances and other important events. Parents who live far apart should establish, with input from the child, a permanent schedule with some built-in flexibility.

What Parents Can Do to Help

Parents of adolescents can help by:

- Developing a visitation schedule by working with the child;
- Establishing a predictable schedule that is flexible enough to allow for the child's activities;
- Consistently applying family rules and expectations; and
- Avoiding the assumption that a child's mood swings or behavioral acting out is caused by the other parent.