

# Checklist for Post Dissolution / Post Decree Motion

- Send Intake
- Share Post-Diss / Post-Decree Motion Info Doc with client via MyCase
- Get copies of all relevant orders / documents
- Review all orders for ADR/Mediation clause
- If mediation/ADR is required, draft letter to OPP/OPA proposing mediation
- Obtain motion hearing date
- Set up calendar and tasks in MyCase
- Notify OPP/OPA of Motion Hearing Date (immediately after obtaining hearing date)
- Draft motion documents, responsive documents, etc
- File motion documents and **INCLUDE FILING FEE EVERY TIME**
- File 303 / Cert of Settlement Efforts with court (at least 24 hours before hearing)

## Explanation of Each Step

### 1) **Send appropriate Intake Form** – 4 options:

- a) FAMILY - Post Dissolution Motion (Issues related to custody/parenting time)
- b) FAMILY - Post Dissolution Motion (Issues related to finances only)
- c) FAMILY - Post Custody Decree Motion (Issues related to custody/parenting time)
- d) FAMILY - Post Custody Decree Motion (Issues related to finances)

### 2) **Get copies of all relevant orders**

- a) Should be able to find most orders on MCRO
- b) Ask client to provide any orders you cannot access on MCRO
- c) If client cannot provide or does not provide in a timely fashion, request any necessary orders from Court via “copy request” and bill client for the expense, if applicable

### 3) **Review all orders for ADR/Mediation clause**

- a) Must review ALL orders for this language, not just most recent order
- b) Ask client if they have participated in mediation recently regarding the issues

### 4) **If mediation/ADR is required, draft letter to OPP/OPA with the following information:**

- a) We’ve been retained
- b) General issues client is having or things they want modified and that client intend to file a motion if issues can’t be resolved
- c) Order states mediation is required
- d) Will they participate in mediation?
- e) Provide 2 options for mediators
- f) Give deadline for response and state we’ll proceed with obtaining a motion hearing date

We need to be able to clearly show the court we attempted to comply with any mediation/ADR requirement. You may also consider sending the letter via mail and email, following up with a subsequent email, etc.

## 5) Obtain motion hearing date

Even if the parties are going to participate in mediation, you can obtain a motion date right away with the understanding that the motion hearing will be canceled if an agreement is reached at mediation. This can be helpful when motion hearings are booking months out. If you are doing mediation, do not get a motion hearing date that is too close to mediation because then you'll be stuck having to go through all the work of drafting the motion docs before you even know if mediation is successful. Realistically, there should be about a month between mediation and the motion hearing.

### a) Send an email to the Judge's court reporter.

- i) This information may be in MyCase if you search for the Judge's name, click on it, then scroll down to the bottom. If it isn't, call court administration and ask for the name and email address.
- ii) Always include the opposing attorney (if applicable) on the email unless told otherwise by attorney
- iii) Identify file name and number, when you would like the hearing, how long it will take, and the issues to be addressed

### Example:

Hi Debbie,

I'm looking to get a motion date in the above-mentioned file. I'm wondering what dates you have available after October 1st. We would only need about 30 minutes and would be requesting modification of parenting time.

Thanks!

## 6) Set up calendar and tasks in MyCase.

- a) Once a date has been agreed upon in the email, notify the client and add it to the calendar in mycase.
- b) Set up a task identifying the due date for our Motion and Affidavit Documents. Motions and Affidavits are always due to the Court 21 days prior to the hearing if the opposing party is represented. If the opposing party is not represented, the motion documents have to be mailed to the opposing party 23 days prior to the hearing date. Use the date calculator in MyCase to calculate and make sure to be aware of weekends and holidays. Set the actual task due date for a few weeks before so we have plenty of time to prepare.

### Examples:

If the hearing is set for October 30th and the other party is represented by an attorney, our documents would be due to the Court on October 9th.

*Task: "Our Motion / Affidavit (Due Oct 9)" (Task Due Date Sept 18)*

If the hearing is set for October 30th and the other party is pro-se, our documents would still be due to the Court on October 9. HOWEVER, we must allow 3 additional days to mail the documents to the pro-se opposing party, so our motion and affidavit would need to be done and mailed by October 6th.

*Task "Our Motion / Affidavit (Due Oct 6) OPP Pro-Se" (Task Due Date Sept 15)*

If a due date ever falls on a weekend or holiday, then the adjusted due date will be the business day prior to the weekend / holiday.

## 7) Notify Opposing Party of Motion Hearing Date (immediately after obtaining hearing date)

- a) If the opposing party has an attorney, then the attorney will likely already be aware of the hearing date via the email exchanges in the previous step. (If for some reason the attorney wasn't on the email in previous step, then follow the next steps)
- b) If the opposing party DOES NOT have an attorney or the attorney has not been notified, we must immediately send them a letter notifying them of the hearing. Must include date, location, judicial officer and primary issue. (Rule 303.01(a))

**Example:**

Please be advised that a motion hearing regarding custody and parenting time has been scheduled for February 8, 2021 at 10:45 a.m. via Zoom in front of Judge Krista Jass at the Blue Earth County Courthouse, 401 Carver Road, Mankato, MN 56002. If you are interested in trying to resolve this matter prior to the motion hearing, please contact me. If you have or are planning to retain an attorney to represent you in this matter, please have your attorney contact me as soon as possible.

**8) Draft and file affidavit, motion documents, responsive documents, etc**

Every motion filing **MUST** contain the following:

- a) Notice of Motion and Motion
- b) Affidavit of Client with referenced exhibits
- c) Motion Filing Fee **\*Whether responding or initiating, make sure you pay the filing fee when you file.**

Other documents that may be filed as part of the motion:

- a) Affidavit of Attorney (If asking for fees)
- b) Other Affidavits (relatives, friends, coaches)
- c) Memo of Law
- d) Proposed Order – These are easy to draft once you have the Notice of Motion and Motion. It's basically the same information in order form, and it makes the judge's job easier.

The legal assistant/paralegal/attorney will draft the affidavit, but the client MUST review, approve, and sign the affidavit. When drafting the affidavit, consider that you are writing this from the client's perspective so use language and wording that is appropriate for our client's level.

**EVERY REQUEST MADE IN THE AFFIDAVIT MUST BE INCLUDED IN THE MOTION IN ORDER FOR THE COURT TO CONSIDER IT**

Prior to filing the motion documents with the court, make absolutely sure that any identifying information like SSNs, all but the last four digits of account numbers, school ID numbers, etc., are **redacted** from exhibits.

**\*Whether responding or initiating, make sure you pay the filing fee when you file.**

**9) File 303 / Cert of Settlement Efforts with court (at least 24 hours before hearing)**

- a) This is where the mediation/ADR information will become important. You will indicate that either you tried to mediate or that you did mediate and it wasn't successful. You can also note that settlement negotiations were offered informally so long as the letter informing the opposing party or attorney in step 6 was completed.

## Tips for Drafting Affidavits

**General Argument Writing Tips:** Remember what you learned in your English classes. Each paragraph should contain a clear claim (your topic sentence; “I believe it is in the child’s best interest if \_\_\_\_,” or “Petitioner/Respondent creates a \_\_\_\_ atmosphere when he/she \_\_\_\_.”). Bring up evidence to back up the claim. Evidence should be specific and contain concrete details (details that appeal to the senses) and exhibits when possible. This is where you tell the story of what happened, when, and how. Bring it all together with reasoning. Based on your claim and evidence, what do you want to see happen and why?

**Parenting Time/Custody:** When looking at parenting time, it’s a good idea to look at the Best Interest Factors and use them as an outline for supporting our position. It doesn’t always make sense to organize an affidavit this way, but when it works, it makes the judge’s job easier. Either way, make sure each applicable factor is addressed as this is the standard judges use when weighing parenting time modification decisions.

For motions regarding a change in custody, the endangerment standard applies, and may be useful in organizing an affidavit. Specifically, be prepared to address how the current custody order endangers the child’s physical health, emotional health, or emotional development.

Keep in mind that the description of the other parent should align with the requested parenting time. For instance, if the affidavit talks about how awful the other parent is, how they endanger the kid, and they aren’t mentally stable then requested parenting time should not be equal parenting time. Those two things do not align, and it would then appear our client is fine allowing the child to spend half their time with a parent who is putting them in danger. If the parent wants equal parenting time but also wants to trash the other parent in the affidavit, we need to discuss this with them and let them know it is not a good approach.

Instead, suggest eliminating some of the negative things they were going to say about the other parent and focus more on how they (our client) can provide for the child. That’s not to say that our client can’t bring up concerns they have, but we need to be mindful of the concerns being voiced vs. the parenting time schedule being requested.

If the parent truly believes it is not in the best interest of the child to live with the other parent and has information to support that, then the parenting time should reflect that by being minimal or limited. One suggestion would be to include requests for the other party to complete certain tasks to address the concerns of our client. For example, if our client is concerned about the other parent’s anger issues, then perhaps we ask for limited parenting time until that parent completes some anger management, then transition to a more equal parenting time schedule. Or if the parent is concerned about the other parent’s drinking, we ask for more limited parenting time until the other parent completes a CD evaluation and starts following the recommendations before adding more parenting time. Or request that the parent submit to random alcohol testing if there is a recent documented history of alcohol abuse.

Be specific in the affidavit. Provide examples of situations and text messages/emails you have to support any of those situations. Being overly broad or generalizing is not helpful to the Court. If you are discussing the other party’s lack of coparenting, provide text messages that show that. If you are discussing concerns with the other party’s parenting abilities, provide specific examples. If you are alleging the other parent has drug/alcohol problems, provide specific information about how our client knows this to be true by either things they have seen, things the children have told them, or police reports. Be specific with the proposed schedule. Is it e/o weekend? 2-2-5? 2-2-3? E/o week? Something else? What about holiday and vacation time?

Keep the child at the center. It is not our client's parenting time. It is the child's time with their parent. Make sure you take out any reference to "my time," and adjust it so that it is the child's time with whomever.