

Instructions For: Declaratory Judgment and Temporary Restraining Order to Declare Sole Custody Status of Unmarried Mothers

These instructions contain general information and proposed forms to assist an unmarried mother in filing an action for a Declaratory Judgment, which is a request for a court order declaring their sole custody status under Minnesota law. Filing fees, policies and procedures may vary by county.

This packet of forms is intended for use in emergency situations where the children have been removed from the unmarried mother or the mother is unable to secure their return. The following sample pleadings are not a substitute for legal advice. Standpoint and Southern Minnesota Regional Legal Services (SMRLS) both recommend that parties seek legal advice before proceeding with these forms. These forms may not be appropriate dependent upon the facts of the case, and it is again recommended that you seek legal advice before proceeding.

Background:

Under Minnesota law, an unmarried mother has sole legal and sole physical custody of their children until a court order says otherwise. Minnesota Statute § 257.541 Subd. 1. This is true even if the father of the children has signed a Recognition of Parentage (ROP), has regular contact with the children, or is paying child support. However, Standpoint receives a high number of calls from mothers, their advocates, and their attorneys regarding situations where the father, or another family member, has removed the children from the mother's care and is refusing to return them.

Often, agencies, including law enforcement, will refuse to intervene in these situations, stating that this is a civil issue and needs to be addressed in family court. This approach from law enforcement sends a message to the non-custodial parent that they do not have to follow the rules.

SMRLS, headed by Meghan Maes, Lead Family Law Attorney for the SW region, has been working to address this common and systemic issue. When agencies refuse to intervene, one option that has been successful in some courts is bringing an action for Declaratory Judgment under Minnesota Statutes 555. The forms included in this packet are intended to assist unmarried mothers in bringing a Declaratory Judgment action.

The following pleadings are intended for use when requesting *an Ex Parte* Order (emergency order without giving prior notice to the other side) only. *Ex Parte* relief is not available in every situation and can be a high burden to meet. The facts and circumstances of each case determine whether emergency relief is appropriate. Generally, an emergency situation resulting in action by the court requires the potential for immediate harm to the child should the court fail to act. It is recommended that the parties using these forms document attempts to retrieve their children through Law Enforcement before utilizing this process.

These forms are not intended for use in situations where the parties have an existing family court order or pending family court action, such as in a divorce or custody file. If you have questions on how to enforce a court order, please contact Standpoint, who would be happy to answer your questions.

These are not statewide forms provided by the Minnesota Courts. Although an action for Declaratory Judgment and a request for a Temporary Restraining Order (TRO) are permissible under Minnesota Statute and the Minnesota Rules of Civil Procedure, many Judges will not have seen an action like this

and counties across Minnesota will not have a uniform procedure for handling these cases. You may need to educate court administration, court staff, judicial officers, or even law enforcement—feel free to contact Standpoint for further guidance.

Use of Declaratory Judgments:

A Declaratory Judgment is a request by a party to have a court recognize their legal rights. An action for Declaratory Judgment in this context asks the Judge to issue an order acknowledging that an unmarried mother has the right to determine the custody and care of their children. This is not the same as an action asking a court to establish custody and parenting time (which is a separate action in family court usually initiated by the presumed father), but instead is an action asking a court to issue a court order recognizing the existing Minnesota statute.

When used properly, an action for Declaratory Judgment can prevent costly litigation and remove uncertainty. Often these situations involve situations where there is threat of irreparable harm, i.e. emergency situations where mothers are requesting the immediate return of their children. For that reason, this sample paperwork also includes a request for a TRO under Minnesota Rules of Civil Procedure 65.01.

A TRO is an order by the court to preserve the rights of parties pending a final determination. A TRO is only issued when there is a threat of irreparable harm that will occur if the court doesn't immediately issue the order. TROs are designed to maintain the legal status quo of a matter in controversy and to preserve current relationships until a trial can be held on the merits. TROs in this context are designed to maintain, and not change, current custody arrangements until a trial can be held. This means since the unmarried mother has full legal custody under the law, through a TRO they are asking that the court order that they maintain custody until and unless it is changed by the court

Instructions:

Note: These actions are filed with case type of Civil/Other: Declaratory Judgment. They are not family law case types. The unmarried mother will be the Plaintiff (the party applying for relief) in the action and the other party will be the Defendant (the person responding to the action).

In addition to the following instructions, additional information regarding filing a civil action may also be found in the Minnesota Judicial Branch Instructions for Starting a Civil Case in District Court located at <https://www.mncourts.gov/Help-Topics/Civil-Actions.aspx>.

To properly commence an action for declaratory judgment, the unmarried mother will need to fill out and file the following forms:

- 1. Civil Summons**
 - This form and instructions for starting a civil case are located on the Minnesota Judicial Branch (MJB) website – www.mncourts.gov/GetForms.aspx under court forms category Civil.

- 2. Civil Cover Sheet (Non-Family Case Type)**
 - This form and instructions are located on the Minnesota Judicial Branch website – www.mncourts.gov/GetForms.aspx under court forms category Civil (Note: the

instructions for this form are a part of the “Instructions for Starting a Civil Case in District Court”).

- **This is a required document for all civil actions in district court. Below are some tips to help fill out this form for this type of action.**
 - Attorney information—if either party is a Self-Represented Litigant (SRL), just list their names and addresses and list them as self-represented.
 - Question 1: Provide a concise statement of the case including facts and legal basis: Seeking declaratory judgment awarding unmarried mother sole custody pursuant to Minnesota Statute 257.541, subd. 1
 - Question 2: Date Complaint was Served: TBD
 - Question 3: Expedited Litigation Track Pilot Court Questions: Skip all, leave blank
 - Question 4: Complex Cases—check no, then skip the remaining
 - Question 5: Estimated Discovery Completion: NA
 - Question 6: Disclosure/Discovery of Electronically Stored Information—check no
 - Question 7: Proposed Trial Date: As soon as possible.
 - Question 8: Proposed Trial Time: 2 hours
 - Question 9: Jury Trial: Check that it is waived by consent of Plaintiff
 - Question 10: Physical/Mental/Blood Examination: Check No
 - Question 11: Include information if an interpreter is requested
 - Question 12: Issues in dispute: Declaratory judgment regarding unmarried mother’s right to sole custody
 - Question 13: Case Type: Other Civil: Declaratory Judgment
 - Question 14: Recommended Alternative Dispute Resolution (ADR) mechanism: NA

3. Complaint for Declaratory Judgment – Example Attached

- The Complaint is a statement of the facts that explain why you should have the result you are requesting. Include information about the other party’s actions taken to take or conceal the child(ren), attempts made to secure return of the child(ren), response of law enforcement, etc.

4. Notice of Motion and Motion for *Ex Parte* Temporary Restraining Order – Example Attached

- The motion is where you state what you want the court to order. If there are concerns about immediate and irreparable injury, loss, or damage a Court can issue an order without notice to the other party (*ex parte*).
- For example, if the children have been removed from the State, request the Defendant be held responsible for all costs associated with returning the child(ren) to Minnesota.
- Forms and instructions for filing a non *ex parte* motion can be found on the Minnesota Judicial Branch website – <https://www.mncourts.gov/GetForms.aspx?c=7&p=101>.

5. Affidavit of Plaintiff for *Ex Parte* Temporary Restraining Order – Example Attached

- The Affidavit is where you provide facts and evidence to support the requests in your motion. Include all relevant facts that you want the Court to know. This should include

an explanation of why emergency relief is requested, and a specific outline of the relief you are requesting from the court.

- If *Ex Parte* relief is sought, you should explain why notice should not be provided to the other party.
- For example, a fear that the other party will take further action to hide the child(ren) or run with them if they receive notice before the Court can issue an enforceable order.
- A request for *Ex Parte* relief must include the following information:
 - Disclosure of any prior attempt to obtain the same or similar relief and the result;
 - If there was a prior attempt to obtain emergency relief, the name of the judicial officer to whom the request was made; and
 - If the prior request was denied for the same or similar relief, explain what new facts are present to support the current motion.

6. Proposed *Ex Parte* Temporary Restraining Order – Example Attached

- Submitting a proposed order is a good idea. It can give the Judge a clear understanding of what you are asking for and can quickly sign the order if the relief is appropriate.

7. Fee Waiver Paperwork

- If fee waiver is needed, file the Affidavit for *In Forma Pauperis* (IFP) and Proposed Order, as in any family court case.
- This form and instructions are located on the Minnesota Judicial Branch website – www.mncourts.gov/GetForms.aspx under court forms category Fee Waiver/*In Forma Pauperis*.

8. Affidavit of Attorney

- This is only required if the unmarried mother is represented by counsel at the time they file.

Service and Hearing:

Once the forms are ready, they should be filed in the County where the child resides or where the child can be found. In most cases, the unmarried mother can file in the County where they live with the child before the child was removed from their care.

Filing these forms will result in a court hearing being held, even if *Ex Parte* relief is granted. How a court proceeds with this type of action will vary, depending on the County in which it is filed. It is recommended to contact Court Administration for county specific instructions. It is also recommended to contact the Court prior to filing to secure a hearing date. The hearing must be scheduled at the “earliest practicable time and shall take precedence over all matters...” Put this date on the proposed order.

Court Administration may advise you that the Signing Judge reviewing the paperwork will assign a hearing date after review to determine if the requested relief will be granted. In that case, the Plaintiff

will be informed of the hearing date after review. If the *Ex Parte* relief is granted, this relief will be in place until the hearing date.

It is important to note that even though this packet involves a request for *Ex Parte* relief, the other party will be notified of the action and will receive a copy of all paperwork filed. A request for *Ex Parte relief* only means that you are requesting that the court issue an order without input or advance notice to the adverse party. After the order is issued, the other party will be served with the underlying paperwork as well as any order issued by the Court.

At the hearing, the Defendant will have the opportunity to appear and be heard. In addition, some Defendants may choose to file a response in advance of the hearing. That being said, the primary purpose of this hearing is to determine if in fact the Plaintiff is an unmarried mother and entitled to sole custody pursuant to Minnesota statute. The Defendant may try to defend their actions, however, the court is limited in the relief they can request. The Defendant will likely be advised that they have a right to initiate an action in family court if they wish to establish custody and parenting time.

State of Minnesota

District Court

| | |
|-----------------|--------------------------|
| County of _____ | Judicial District: _____ |
| | Court File Number: _____ |
| | Case Type: _____ |

Plaintiff (first, middle, last)

vs.

Defendant (first, middle, last)

Date Case Filed: _____

**Civil Cover Sheet
(Non-Family Case Type)**

Minn. Gen. R. Prac. 104

This civil cover sheet must be filed by the initial filing lawyer or party, if unrepresented by legal counsel, unless the court orders all parties or their legal counsel to complete this form. Once the initial civil cover sheet is filed, opposing lawyers or unrepresented parties who have not already been ordered to complete this form may submit their own cover sheet within 7 days after being served with the initial cover sheet. See Rule 104 of the General Rules of Practice for the District Courts.

If information is not known to the filing party at the time of filing, it shall be provided to the Court Administrator in writing by the filing party within 7 days of learning the information. Any party impleading additional parties shall provide the same information to the Court Administrator. The Court Administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

Attorney Name (not firm name)

Attorney Name (not firm name)

Postal Address

Postal Address

City

State

Zip Code

City

State

Zip Code

Telephone Number

Telephone Number

E-mail Address

E-mail Address

Minnesota Attorney ID Number

Minnesota Attorney ID Number

PLAINTIFF, Self-represented

DEFENDANT, Self-represented

Name

Name

Postal Address

Postal Address

City

State

Zip Code

City

State

Zip Code

Telephone Number

Telephone Number

E-mail Address

E-mail Address

(Attach additional sheets for additional attorneys / parties)

Note: If either Plaintiff or Defendant gets an attorney, the attorney's name, address, telephone number and attorney ID number must be given in writing to the Court Administrator immediately.

1. Provide a concise statement of the case including facts and legal basis:

2. Date Complaint was served: _____

3. For Expedited Litigation Track (ETLT) Pilot Courts only:

a. The parties jointly and voluntarily agree that this case shall be governed by the Special Rules of ETLT Pilot. Date of agreement: _____

b. The court is requested to consider excluding this case from ETLT for the following reasons:

Note: ETLT is mandatory in certain cases, and where mandatory, exclusion may also be sought by timely motion under the Special Rules for ETLT Pilot.

- c. Anticipated number of trial witnesses: _____
- d. Amount of medical expenses to date: _____
- e. Amount of lost wages to date: _____
- f. Identify any known subrogation interests: _____

4. For Complex Cases (See Minn. Gen. R. Prac. 146):

- a. Is this case a "complex case" as defined in Rule 146? Yes No
- b. State briefly the reasons for complex case treatment for this case:

- c. Have the parties filed a "CCP Election" for this case as provided in Rule 146(d)?
 Yes No

5. Estimated discovery completion within _____ months from the date of this form.

6. Disclosure/discovery of electronically stored information discussed with other party?
 No Yes Date of discussion: _____

If yes, list agreements, plans and disputes:

7. Proposed trial start date: _____

8. Estimated trial time: _____ days _____ hours (estimates less than a day must be stated in hours).

9. Jury trial is:

- waived by consent of _____ pursuant to Minn. R. Civ. P. 38.02.
(specify party)
- requested by _____ (NOTE: Applicable fee must be enclosed)
(specify party)

10. Physical/mental/blood examination pursuant to Minn. R. Civ. P. 35 is requested.

- Yes No

11. Identify any party or witness who will require interpreter services, and describe the services needed (specifying language, and if known, particular dialect):

12. Issues in dispute:

13. Case Type/Category: _____ (NOTE: select case types from the Civil Case Type Index found at http://www.mncourts.gov/mncourtsgov/media/scao_library/documents/eFile%20Support/Handout-Case-Type-Index.pdf.)

14. Recommended Alternative Dispute Resolution (ADR) mechanism: _____
(See list of ADR processes set forth in Minn. Gen. R. Prac. 114.02(a))
Recommended ADR provider (known as a "neutral") _____
Recommended ADR completion date: _____
If applicable, reasons why ADR not appropriate for this case:

By signing below, the attorney or party submitting this form certifies that the above information is true and correct.

Submitted by:

Signature

Name: _____

Attorney Reg. #: _____

Firm/Agency Name: _____

Street Address: _____

City/State/Zip Code: _____

Telephone: _____

Date: _____

State of Minnesota

County _____

District Court

Judicial District: _____
Court File Number: _____
Case Type: _____

Plaintiff

vs

Civil Summons

Defendant

This Summons is directed to (name of Defendant):

1. **You are being sued.** The Plaintiff has started a lawsuit against you. The *Complaint* is attached to this *Summons*. Do not throw these papers away. They are official papers that start a lawsuit and affect your legal rights, even if nothing has been filed with the court and even if there is no court file number on this *Summons*.

2. **You must BOTH reply, in writing, AND get a copy of your reply to the person/business who is suing you within 21 days to protect your rights.** Your reply is called an *Answer*. Getting your reply to the Plaintiff is called service. You must serve a copy of your *Answer or Answer and Counterclaim* (Answer) within 21 days from the date you received the *Summons* and *Complaint*.

ANSWER: You can find the *Answer* form and instructions on the MN Judicial Branch website at www.mncourts.gov/forms under the “Civil” category. The instructions will explain in detail how to fill out the *Answer* form.

3. **You must respond to each claim.** The *Answer* is your written response to the Plaintiff's *Complaint*. In your *Answer* you must state whether you agree or disagree with each paragraph of the *Complaint*. If you think the Plaintiff should not be given everything they asked for in the *Complaint*, you must say that in your *Answer*.

4. **SERVICE: You may lose your case if you do not send a written response to the Plaintiff.** If you do not serve a written *Answer* within 21 days, you may lose this case by default.

You will not get to tell your side of the story. If you choose not to respond, the Plaintiff may be awarded everything they asked for in their *Complaint*. If you agree with the claims stated in the *Complaint*, you don't need to respond. A default judgment can then be entered against you for what the Plaintiff asked for in the *Complaint*.

To protect your rights, you must serve a copy of your *Answer* on the person who signed this *Summons* in person or by mail at this address:

_____.

5. Carefully read the Instructions (CIV301) for the *Answer* for your next steps.
6. **Legal Assistance.** You may wish to get legal help from an attorney. If you do not have an attorney and would like legal help:
 - Visit www.mncourts.gov/selfhelp and click on the “Legal Advice Clinics” tab to get more information about legal clinics in each Minnesota county.
 - Court Administration may have information about places where you can get legal assistance.

NOTE: Even if you cannot get legal help, you must still serve a written *Answer* to protect your rights or you may lose the case.

7. **Alternative Dispute Resolution (ADR).** The parties may agree to or be ordered to participate in an ADR process under Rule 114 of the Minnesota Rules of Practice. You must still serve your written *Answer*, even if you expect to use ADR.

Date

Signature

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

E-mail: _____

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT
Case Type - Other Civil: Declaratory Judgment

,
and
,

Plaintiff,

Defendant.

**Complaint for
Declaratory Judgment**

Plaintiff, _____, complaining of Defendant, alleges as follows:

VENUE AND JURISDICTION

1. The Plaintiff is a resident of ____ County, Minnesota, residing at _____.
2. The Defendant is residing at _____.
3. The Plaintiff is the biological mother of _____, DOB _____.
4. The Plaintiff was not married to the Defendant, nor to any other man when these child(ren) were conceived, nor when the child(ren) were born.
5. Paternity of the child(ren) has not been established under Minn. Stats. §§ 257.51 to 257.74.
6. Custody of the child(ren) has not been determined in a separate proceeding under Minn. Stat. § 518.156. The Defendant has no legally recognized right to parenting time or custody of the above minor child(ren) by a court order or by any other means.
7. To the best of Plaintiff's knowledge, there are no legal proceedings or actions in Minnesota or elsewhere that addresses the custody rights of either party.
8. To the best of Plaintiff's knowledge, there is no order for protection in effect

under Minn. Stat. § 518B.01 or a similar law in another state, which governs either party or their joint child(ren). [**In the alternative, if there is an OFP, include this**].

9. Minnesota is the home state of the minor child(ren) within the meaning of Minn. Stat. § 518D.102.
10. The Court has jurisdiction to declare the Plaintiff is the only party with a legally recognized relationship with the minor child(ren).

NEED FOR DECLARATION OF THE RIGHTS OF THE PARTIES

11. [**Include facts particular to the case about what happened, how Defendant took the kids, and why Plaintiff cannot secure the return of the kids from Defendant**].
12. Defendant has the child(ren) and refuses to return the child(ren).
13. Plaintiff contacted local law enforcement but they refused to help. [Give dates] Law enforcement [**you can include other agencies if relevant**] will not enforce Plaintiff's custodial rights without a court order.
14. Plaintiff attempted several times [give dates], and through several different methods [**give examples if applicable, such as attempts to retrieve the child(ren) from school**], to secure the return of the minor child(ren) without court intervention. These efforts have not been successful.
15. [**If concerned about safety of child(ren) with Defendant, explain here**].
16. Plaintiff is a victim of domestic abuse by the Defendant and needs the assistance of the court to safely enforce her rights and the return of the minor child(ren).

Plaintiff is extremely worried and unnecessarily burdened from this unlawful separation.

PLAINTIFF’S REQUEST FOR DECLARATORY JUDGMENT

17. Plaintiff is bringing this motion for declaratory relief in good faith and for the purpose to declare that, pursuant to Minnesota Statute, and that as an unmarried mother of child(ren) born out of wedlock, she has sole physical and legal custody of the child(ren)
18. Plaintiff needs an order from this court to confirm that the Defendant has no legal basis for which to deny the return of the parties’ minor child(ren) to the Plaintiff and to prohibit the Defendant from further concealing, taking, retaining, or failing to return the minor child(ren) to the Plaintiff now and in the future, until a court order states otherwise. This order is believed to be necessary for law enforcement to assist in the safe return of the minor child(ren).

WHEREFORE Plaintiff requests a declaratory judgment:

1. For a declaration, pursuant to Minn. Stat. §257.541 Subd. 1, that Plaintiff has sole legal and physical custody rights of the following child(ren):
[List the children’s names and birth dates]
2. For an order requiring Defendant, by whatever means necessary and his own expense, to make immediate arrangements bring the child(ren) to ____ County Sheriff’s Department within 24 hours to return them to my physical custody.

3. For an Order enjoining the Defendant and his agents from unlawfully withholding the parties' minor child(ren), concealing the minor child(ren), or otherwise interfering with Plaintiff's custodial rights.
4. For an Order requiring that every law enforcement officer, police department, and sheriff's office in Minnesota and the United States be responsible for enforcement of this Order, including but not limited to assisting in obtaining immediate physical custody of the child(ren) by whatever means necessary, and assisting the Plaintiff should she need assistance retrieving the children in the future;
5. For costs of the action and the return of the minor child(ren); and
6. For further relief as this Court may deem equitable, appropriate and just.

VERIFICATION

I, _____, state under oath that I am the Plaintiff in this proceeding. I have read this Complaint for Declaratory Judgment or had it read to me in my preferred language and understand what it says. To the best of my knowledge, all the facts in this complaint are true.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Signature: _____

Dated: _____

County and State Where Signed: _____

ACKNOWLEDGMENT

By presenting this document to the court, I certify that to the best of my knowledge, information, and belief, the following statements are true. I understand that if a statement is not true, the court can order a penalty against me (such as to pay money to the other party, pay court costs, and/or other penalties).

1. The information I included in this form is based on facts and supported by existing law.
2. I am not presenting this form for any improper purpose. I am not using this form to:
 - a. Harass anyone;
 - b. Cause unnecessary delay in the case; or
 - c. Needlessly increase the cost of litigation.
3. No judicial officer has said I am a frivolous litigant.
4. There is no court order saying I cannot serve or file this form.
5. This form does not contain any “restricted identifiers” or confidential information as defined in Rule 11 of the General Rules of Practice (https://www.revisor.mn.gov/court_rules/gp/id/11/) or the Rules of Public Access to Records of the Judicial Branch (https://www.revisor.mn.gov/court_rules/rule/ra-toh/).
6. If I need to file “restricted identifiers,” confidential information, or a confidential document, I will use Form 11.1 and/or Form 11.2, as required by Rule 11.

Date:

Signature

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

E-mail: _____

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT
Case Type – Other Civil: Declaratory Judgment

,

Plaintiff,

vs.

,

Defendant.

**NOTICE OF MOTION AND MOTION
FOR AN *EX PARTE* TEMPORARY
RESTRAINING ORDER**

TO: _____, ABOVE-NAMED DEFENDANT, _____ (address)

On _____ [**date submitted**] before a Judge of District Court, the Plaintiff moves the Court for the following *Ex Parte* relief pending the hearing of Plaintiff’s Motion for Temporary Injunction in the above-captioned matter scheduled for _____:

1. A Temporary Restraining Order restraining Defendant from unlawfully withholding the child(ren) in violation of Minn. Stat. § 257.541, subd. 1, which gives Petitioner sole custody of the minor child(ren) _____, date of birth _____.
2. Ordering Defendant to make immediate arrangements to safely transport the minor children to the _____ County Sheriff’s Department in the State of Minnesota within 24 hours after receipt of an Order.
3. Order that the Defendant and his agents are prohibited from withholding the minor child(ren), concealing the minor child(ren), or otherwise interfering with Plaintiff’s custodial rights in violation of an Order;
4. Ordering every law enforcement officer, police department, and sheriff’s office in Minnesota and everywhere in the United States be responsible for enforcing this Order,

including assisting in immediately obtaining physical custody of the minor child(ren) by any means necessary and assisting the Plaintiff should she need such assistance retrieving the children in the future;

5. For costs of the action and the return of the minor child(ren); and

6. For such other and further relief as the Court may deem just, fair and equitable.

This motion is based on Plaintiff's Complaint, Affidavit, Motion and all of the pleadings herein.

PLEASE TAKE NOTICE that the Court may grant any and all of the above relief even if you are not present.

DATE: _____

Signature

Street Address

City/State/Zip Code

(_____) _____
Telephone Number

E-mail address

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____
Case Type – Other Civil: Declaratory Judgment

,
Plaintiff,

AFFIDAVIT OF PLAINTIFF FOR *EX PARTE* TEMPORARY RESTRAINING ORDER

Vs.

Court File No.

,
Defendant.

STATE OF MINNESOTA)
)
COUNTY OF _____) **ss.**

_____, being first duly sworn upon oath, states and deposes as follows:

1. My name is _____ and I reside at _____ [street address], in the City of _____, County of _____, State of Minnesota. [Or, in the alternative, I am a participant in the Safe at Home Program. My address through that Program is _____]. I am the Plaintiff in the above-captioned matter.
2. The last known address of Defendant is, _____ [street address] in the City of _____, in the County of _____, the in State of Minnesota.
3. I have not applied for *Ex Parte* relief prior to the application for an *Ex Parte* temporary restraining order.
4. To the best of my knowledge, there is no other action than this one involving Defendant and myself in Minnesota or elsewhere.
5. I am the mother of _____, DOB _____.
6. The Defendant and I have never been married.
7. The Defendant is listed on the child's birth certificate from the State of Minnesota as the

- child's father, but there is no custody or parenting time order in this State or any other.
8. Defendant, the child(ren), and I have resided in the State of Minnesota for more than six months prior to the commencement of these proceedings.
 9. I am bringing this motion in good faith and for the sole purpose to declare that as a mother of a child(ren) born out of wedlock, I have sole physical and legal custody of my child(ren) until a Court grants custody rights to another.
 10. I need a court order for enforcement purposes. I contacted local law enforcement in Minnesota [give dates] but they refused to help me because Defendant claims to be the father. Law enforcement and other agencies will not enforce my custodial rights without a court order.
 11. **[Paragraphs that explain specific circumstances of each client including history of domestic abuse, what happened, attempts made to secure the return of the children, why this has been unsuccessful, etc. Include specific dates].**
 12. Irreparable harm has resulted and will continue without an *Ex Parte* Temporary Restraining Order.
 13. I have attempted several times, and through several different methods, to secure the return of the minor child(ren) without court intervention. These efforts have not been successful.
 14. **[If there is fear that the children are in danger with Defendant, include that here].**
 15. I am asking that the Court not require me to post a security bond because I am not financially able to do so at this time.
 16. I am requesting that Defendant be ordered to bring the child(ren) to ____ County Sheriff's Department within 24 hours to return them to my physical custody. I request that Defendant

be held completely responsible for any costs associated with this transportation.

17. I am asking that my request be granted without notifying the Defendant because [**what concerns exist about notifying him or her, including that they will flee with the kids or otherwise conceal them**].
18. No prior request has been made for the relief requested in my motion for relief. [**If a prior request has been made for same or similar relief, you must disclose the attempts made, the name of the judicial officer to whom the request was made, and if the prior request was denied, what new facts are present to justify the relief at this time**].

FURTHER YOUR AFFIANT SAYETH NAUGHT

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

Signature

County and State where signed:

Name: _____

Address: _____

City/State/Zip: _____

Telephone: (_____) _____

E-mail address: _____

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT
Case Type – Other Civil: Declaratory Judgment

,

Plaintiff,

vs.

,

Defendant.

***EX PARTE* TEMPORARY
RESTRAINING ORDER**

This matter came before the Court on _____, 202_ at the _____ Courthouse, _____, _____, Minnesota before the undersigned on the Plaintiff's *Ex Parte* Motion for Temporary Restraining Order. The Court having reviewed the pleadings and being otherwise advised, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motion for *Ex Parte* Temporary Restraining Order is granted.
2. The security requirement pursuant to Minn. R. Civ. P. 65.03 is waived based on Plaintiff's request to proceed *In Forma Pauperis*.
3. Plaintiff has sole legal and sole physical custody of the minor child(ren) _____, born _____.
4. Defendant shall make immediate arrangements to transport the children to ____ County Sheriff's Office within 24 hours of receipt of this order.
5. Defendant and his agents are prohibited from withholding or concealing the minor child(ren) in violation of this Order.
6. Every police department and sheriff's office in every state of the United States shall be responsible for enforcing this Order. Enforcement of this Order may include assisting in obtaining physical custody of the child. Plaintiff may seek assistance in enforcing this

Order from law enforcement agencies of other states and this order shall be given full faith and credit in every state of the United States.

7. A hearing is scheduled for _____.

Dated this _____ day of _____, 202_

REFEREE OF DISTRICT COURT

Dated this _____ day of _____, 202_

JUDGE OF DISTRICT COURT

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
Case Type - Other Civil: Declaratory Judgment

_____,
Plaintiff,
v.

_____,
Defendant.

Affidavit of Attorney for Plaintiff

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

_____, being first duly sworn upon oath, deposes and states:

1. I am the attorney for the above-named Plaintiff.
2. Defendant took minors without the permission of their lawful custodian and is continuing to unlawfully withhold Plaintiff's minor children without consent in _____. (County where children are located). Irreparable harm has resulted and will continue without an *Ex Parte* Temporary Restraining Order.
3. As that the Defendant has already taken the children once, Plaintiff is justified in the concern that Defendant will leave their current location, which is believed to be known, again with the minor children if notice is required. Therefore, no specific notice was given to Defendant prior to pursuing this *Ex Parte* Temporary Restraining Order.
4. No prior request has been made for the relief requested in Plaintiff's motion for relief.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

County, MN
County and State Where Signed

Date

 ls
_____, Attorney for Plaintiff