

File it yourself CUSTODY PACKET

In North Carolina Courts

Packet for Parents

LEGAL AID NC



www.legalaidnc.org

Prepared by:

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DISCLAIMER: This packet has been prepared for general information purposes only. This information is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Also, the law may vary from state to state, so that some information in this packet may not be correct for where you live. The information contained in this packet is not guaranteed and the information contained in this packet cannot replace the advice of a competent attorney licensed in your state.



These materials are not for everyone!

**CONSULT WITH AN ATTORNEY IF
ONE OF THESE SITUATIONS
APPLIES TO YOU:**

- ⇒ The children have lived in North Carolina less than 6 months; OR
- ⇒ One parent or a child lives outside North Carolina; OR
- ⇒ There has been another custody case involving these children; OR
- ⇒ There has been a Juvenile Court case involving these children; OR
- ⇒ DSS Child Protective Services has placed these children with someone else; OR
- ⇒ The children live with someone who is not their parent; OR
- ⇒ One parent is in the military.

If you or the children are victims of domestic violence, contact your nearest Legal Aid office or the Legal Aid HelpLine at 1-866-219-5262.

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I. Custody Law and Definitions

In North Carolina, the law gives judges in the district courts the right to decide who has custody of minor children. Once a custody case is filed, the Judge has the power to make the decision about where the child lives and who will get to make decisions for the child.

The Judge, in trying to figure out who should have custody and/or any visitation, will try to decide what is in the **"best interest of the child."**

The Judge will look at all the information affecting the child's life to make certain his/her decision is based on the best interest of the child. It is important that you raise all facts that will assist the Judge in making his/her decision.

There are two main types of custody: "Legal Custody" and "Physical Custody"

What is "Legal Custody"?

The parent(s) or person(s) who make the major decisions in the child's life, (such as decisions about health/healthcare, education, and religious upbringing) have "legal custody." The child does not have to live with the parent or person who has legal custody. The Judge may give legal custody to two people jointly ("Joint Legal Custody"), or one person may be given the primary responsibility to make major decisions for the child ("Primary Legal Custody").

What is "Physical Custody"?

The parent or person who has actual, physical care of the child has "physical custody." Again, the Judge may give physical custody to two people jointly ("Joint Physical Custody"). The people with joint physical custody are allowed to share time with the child so that each one has regular contact with the child. This does not mean that the child must live half the time with one parent and the other half with the other parent. The Court decides how much time the child spends with each parent.

Instead of joint physical custody, the Judge may give one person "Primary Physical Custody". In this situation, one parent or person has the child in his or her care for a large majority of time. Another parent or relative may still have regular contact and overnight visitation with the child.

It is possible for the Court to order "joint legal and physical custody," so that both parents have equal decision-making power and share physical custody, if one parent asks for it and the Court decides that it is in the best interest of the child.

What is "Visitation?"

"Visitation" is the time that a person who does not have primary physical custody spends with the child. During the custody proceedings the Judge will attempt to set a visitation schedule that is in the "best interest of the child." The amount and type of visitation granted by the court depends on things such as the living arrangements of the person asking for visitation, the ages of the children, how far apart the parents live, the desires of older children, and whether there has been domestic violence or child abuse. Visitation schedules may include: overnights during the week, weekend visits, telephone calls, sharing of holidays, and school vacations. You cannot deny visitation just because the other parent does not pay child support.

Who is the "Plaintiff"?

The "Plaintiff" is the person filing for custody. If you are starting this custody case, you are the plaintiff. You will remain the plaintiff, regardless of whether the opposing party files additional documents.

Who is the "Defendant"?

The "Defendant" is the person (or persons) you are suing for custody. That person may be a parent or grandparent. If you are a non-parent, you MUST include the biological parents, if living, as defendants. The person you sue will remain the defendant, regardless of whether you file additional documents.

II. Where do I file a Custody or Visitation Action?

Some of the most important questions you must ask as you plan to file for custody or visitation are: Where should my case be filed? In what state? In what county? These are important questions because if you do not file in the right place, the Judge might refuse to hear the case.

Questions you must consider include:

1. Are there any other cases already filed?

In order to decide where to file, the first question to ask is has there ever been a custody case in court about the child? If yes, then you should try to get a copy of the custody papers and have them reviewed by an attorney before you file a new case. Most of the time, you will have to file requests to change prior custody orders in the same place that the case was first started.

2. Can I file my custody case in North Carolina?

If there has never been any type of court case about the child, then to figure out if you can file the action in North Carolina you must know where this child has lived the past six months. The general rule is that the child must have lived in North Carolina for six months for the case to be properly heard in North Carolina. Then North Carolina is the "home state" of the child. If the child is less than six months old, then you can file here if the child is currently here or has been here the majority of his or her life.

It is important to remember that the judges only look at where the child has lived, NOT where the parents or other guardians have lived.

3. In what county should I file?

Most of the time, you should file the action in the county where the child is living. You can also file it in the county where you live or where a parent lives.

III. Forms

- **Complaint (form)**
4 pages, including "Verification"
- **Civil Summons (form)**
2 pages, from Administrative Office of the Court
- **Petition to Sue/Appeal/File Motions as an Indigent (form)**
2 pages, from Administrative Office of the Court

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(Check ONLY those that apply)

I have participated in litigation concerning the custody of the above named child.

Name of Court _____ Case Number _____ Date of Decision _____

I have information of a lawsuit concerning the above named child in a court in North Carolina or another state.

Name of Court _____ Case Number _____ Nature of Proceeding _____

I know of a person as listed below, who has Physical Custody Claimed Custody Claimed Visitation Rights with respect to the above named child.

Name and Address of Person(s)

(Use only if another child. Use additional pages as necessary.)

SECOND CHILD. During the past five (5) years the minor child, _____, born on _____ has lived as follows:

Period Of Residence		Address	Name of Person Lived With	Present Address Of Person
Dates				
From	To			
	Present			

(Check ONLY those that apply)

I have participated in litigation concerning the custody of the above named child.

Name of Court	Case Number	Date of Decision
_____	_____	_____

I have information of a lawsuit concerning the above named child in a court in North Carolina or another state.

Name of Court	Case Number	Nature of Proceeding
_____	_____	_____

I know of a person as listed below, who has Physical Custody Claimed Custody Claimed Visitation Rights with respect to the above named child.

Name and Address of Person(s)

6. The Plaintiff is a fit and proper person to have custody of the child[ren]. It is in the child[ren]'s best interest that the Plaintiff be awarded custody visitation.

7. The parties have been unable to agree on a custody and visitation schedule with the child[ren].

8. This Court has jurisdiction to hear this custody case because (check one):

- The child[ren] has/have lived in North Carolina for the past six months.
- The child[ren] is/are less than six months old and has/have lived in North Carolina since the child[ren]'s birth or for a majority of the child (ren)'s life.

WHEREFORE, THE PLAINTIFF PRAYS OF THE COURT:

1. For an Order giving Plaintiff temporary and permanent custody or temporary and permanent visitation of the child[ren] listed above.
2. For such other relief as may be proper, just and lawful.

Respectfully submitted;

This, the ____ day of _____, 20__.

Signature of Plaintiff

Mailing Address of Plaintiff

Telephone Number

STATE OF NORTH CAROLINA

_____ COUNTY

VERIFICATION

_____, being first duly sworn, deposes and says:

That (s)he is the Plaintiff in the foregoing action and that (s)he has read the contents of the foregoing Complaint and know the contents thereof, and that they are true to his/her own knowledge, except as to those matters alleged upon information and belief, and as to those matters, (s)he believes them to be true.

This is the ____ day _____, 20__.

Signature of Plaintiff

_____ County, North Carolina

Sworn to (or affirmed) and ascribed before me,
this date by _____

Date: _____

(Official Seal)

Official Signature of Notary
_____, Notary Public
Notary's Printed or typed name

My commission expires: _____

STATE OF NORTH CAROLINA

File No.

County

In the General Court Of Justice
[X] District [] Superior Court Division

Name Of Plaintiff
Address
City, State, Zip

CIVIL SUMMONS
[] ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3,4

VERSUS

Name Of Defendant(s)

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of the Defendant(s) Named Below:

Name And Address Of Defendant 1

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

Date Issued

Time [] AM [] PM

Signature

[] Deputy CSC [] Assistant CSC [] Clerk Of Superior Court

[] ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time [] AM [] PM

Signature

[] Deputy CSC [] Assistant CSC [] Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
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<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
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<i>Date Of Return</i>	<i>County Of Sheriff</i>
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STATE OF NORTH CAROLINA

File No.

County

In the General Court Of Justice

District Superior Court Division

Name of Plaintiff

VERSUS

Name of Defendant

PETITION TO SUE/APPEAL/FILE MOTIONS AS AN INDIGENT

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the three boxes below)

- Petition To Sue - As a plaintiff in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of this action. Therefore, I now petition the Court for an order allowing me to bring suit in this action as an indigent.
I am an inmate in the custody of the Department of Correction.
(Note To Clerk: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)
Petition To File Motions - As a defendant debtor in the above entitled action, I affirm that I am financially unable to advance the required costs to file a motion. Therefore, I now petition the Court for an order allowing me to file my motion as an indigent.
Petition To Appeal - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.

(check one or more of the boxes below as applicable)

- I am presently a recipient of food stamps, Aid to Families With Dependent Children (AFDC), Supplemental Security Income (SSI).
I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.)
Although I am not a recipient of food stamps, AFDC or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature

Signature of Petitioner

Title of Person Authorized To Administer Oaths

Name And Address Of Petitioner (Type Or Print)

Date Commission Expires

SEAL

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above-named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date

Signature

Name And Address (Type or Print)

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

- the petitioner is authorized to bring suit, to appeal, or file motions in this action as an indigent.
the petition is denied.

Date

Signature

- Assistant CSC Clerk Of Superior Court
Judge Magistrate (for appeal only)

NOTE TO CLERK: If the petitioner is NOT a recipient of food stamps, AFDC, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

	ORDER - DAC INMATES	
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The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Adult Correction and that the complaint

- is not frivolous.
- is frivolous.

It is ORDERED that

- the petitioner is authorized to sue in this action as an indigent.
- the petitioner is not authorized to sue as an indigent.
- the action is dismissed.

<i>Date</i>	<i>Name of Superior Court Judge (Type or Print)</i>	<i>Signature Of Superior Court Judge</i>
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	CERTIFICATION	
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I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

<i>Date</i>	<i>Signature</i>	<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk of Superior Court</i>
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NOTE: G.S. 1-110(b) provides: "The Clerk of Superior Court shall serve a copy of the order of dismissal upon the prison inmate."

IV. Instructions for filing Custody/Visitation papers

A. After you fill out the following forms:

1. Complaint
2. Civil Summons
3. Petition to Sue/Appeal as an Indigent (only if necessary)

Make sure you sign the "Verification" (on the last page of the Complaint) and the "Petition to Sue/Appeal as an Indigent" in the presence of a Notary Public before you go to the Courthouse.

B. Make two (2) copies of each form before you go to the Courthouse.

C. Take all the originals and copies to the Clerk's Office along with the filing fee or the Petition to Sue/Appeal as an Indigent.

NOTE: The Clerk will determine whether you can have your filing fee waived or if you have to pay the fee.

D. Check with the Clerk of Court to be sure you have filed all the required papers.

NOTE: Some counties have more forms to file.

E. After all the forms are filed, you must then serve a copy of the Civil Summons and Complaint on all defendants.

Tips for Successful Filing:

1. Payment of fees:

If you have to pay any court costs, bring cash. Some clerks accept certified checks, some accept money orders, but all accept cash. Contact the clerk's office to find out whether the sheriff's service fee is waived for people who file as an indigent, and if not, find out the exact amount of the fee and bring it in cash.

2. Copies:

Make your own copies of the papers you are filing before you go to the clerk's office. You will need at least one copy for each defendant and a copy for yourself. Most clerks do not have time to make copies for you, and they will charge you for any copies they make.

3. Notarizing:

For papers that must be notarized, have them notarized before you go to the clerk's office. Most clerk's offices do not provide notary services.

4. Courtesy:

Always be courteous to the staff at the clerk's office.

5. Address:

Make sure that the clerk's office has your current address. Contact the clerk if you have any questions about a hearing date.

6. Contacting the Clerk's Office after filing:

If you need to contact the clerk's office about your case, have the docket number and the case name available. The case name consists of the names of the plaintiff and the defendant.

V. Instructions for "Serving" the Defendant

The words "service" or "serving" are legal terms that mean delivering the court papers to the Defendant. You CANNOT hand deliver the papers. You must serve the Defendant as required by North Carolina law and have legal proof that the Complaint and Civil Summons were delivered to the Defendant.

Ways to serve the court papers on the Defendant include:

By Sheriff: The easiest method is to have the Sheriff in the county where the Defendant lives or works serve the Defendant for you. To do this, pay a \$15.00 fee to the Sheriff of the county where the Defendant lives or works and they will deliver the papers for you. If you are indigent, this fee may be waived. The clerk will direct you as to what documents to take to the Sheriff's office or may deliver the documents for you. (The fee is subject to future increase so always ask the Clerk or Sheriff how much the service fee will be.)

By Certified Mail: To serve the Defendant by mail, you need to mail the Complaint and Civil Summons to the Defendant's mailing address by Certified or Registered Mail, Return Receipt Requested. Once the green receipt is returned to you, you must complete and file with the court an "Affidavit of Return of Service by Certified Mail." (A sample form follows this section.)

By Acceptance of Service: The Defendant may also sign a sworn statement before a Notary Public that he/she received the Complaint and Civil Summons. (This type of statement is not included in the Pro Se packet. The Defendant is responsible for preparing and filing this statement with the Court.)

By Publication: If you have made all possible efforts to find the Defendant, and still cannot locate his or her address, you may also consider serving the Defendant by publication in the newspaper. This type of service is not recommended and additional forms will be necessary to file with the newspaper and the court. (It is up to you to get these forms from an attorney or the Clerk of Court. They are not available on the court's website.)

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STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____-CVD-_____

Plaintiff

v.

Defendant.

AFFIDAVIT OF RETURN OF SERVICE

BY CERTIFIED MAIL

I, _____, the Plaintiff in this action for custody/visitation, being first duly sworn, depose, say and certify that:

1. A copy of the civil summons and complaint in the above-entitled action was deposited in the U.S. Mail and mailed via certified mail, return receipt requested, to the Defendant.

2. The same was mailed to the Defendant at the following address:

3. The summons and complaint were in fact received by Defendant on _____, as evidenced by the attached return receipt.

This is the _____ day of _____, 20____.

Plaintiff's SIGNATURE

Plaintiff's Mailing Address

City, State, Zip

_____ County, North Carolina

Sworn to (or affirmed) and ascribed before me,
this date by _____

Date: _____

(Official Seal)

Official Signature of Notary

_____, Notary Public

Notary's Printed or typed name

My commission expires: _____

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VI. Defendant's Answer and Counterclaims

The Defendant has thirty days to file an "Answer" or a "Motion for Extension of Time" once he/she is served your custody or visitation complaint. If the Defendant files an answer, he/she or his/her lawyer will send you a copy. If the Answer includes a Counterclaim or issues other than custody/visitation, then you have 30 days to file a Reply. You should consult an attorney to get some legal advice and make sure to file a response on time.

VII. Mediation

After the Defendant files an Answer or the thirty days to do so have ended, the case is set for mediation. In many counties it is your obligation as the "Plaintiff" (the person filing the action) to schedule the mediation and to send the other side notice. If you do not hear from the court about scheduling your mediation, you should call the Clerk's office and ask how to set your case for mediation.

What is Mediation?

North Carolina law requires that the parties to a custody law suit attend mediation before the case goes to a judge. "Mediation" is a meeting where the people involved in the custody lawsuit (the mother, father, grandparent or other legal guardian) sit in a room together with a mediator. Each person takes turns telling the mediator and the other side what they each want for the child's custody and visitation plan. The goal of mediation is to agree on a plan for custody and visitation that both parties can agree to. The topics discussed are usually: where the children will live, a visitation schedule for weekends, mid-week visits, telephone calls, holidays, summer, and school breaks. (Child support is NOT discussed or decided in the mediation.)

Who is the Mediator?

The mediator is a person who does not take any person's side in the mediation. The mediator is a "neutral", trained professional whose only job is to help the parties reach an agreement. The mediator will not decide who is right and wrong or force anyone to agree to anything. The mediator is appointed and paid by the Court.

How much will it cost?

It is free. If you are asked to pay for this service, please contact the Legal Aid of North Carolina's HelpLine at 1-866-219-5262.

Where is the Mediation held?

The mediation is held at the courthouse or other location typically in the county where the lawsuit has been filed.

Will attorneys be there?

No.

What happens if we reach an agreement?

The mediator will put the custody and visitation agreement in writing and each party will sign it. This may be done by mail several days after the mediation has ended. This agreement is called a "Parenting Plan". After the parties sign the Parenting Plan, the family Court Judge signs it, making it become a court order.

What if one side wants to change the Parenting Plan?

If one side wants to change the Parenting Plan, that person needs to file a motion to modify the Plan. The Court will send the parties to mediation again.

What if one side violates the Parenting Plan?

If one party violates the Plan, then the other party can file a motion in court to ask the family Court Judge to require the other party to come to court and explain why she or he violated the Parenting Plan. The Court can punish the other side if the Plan is violated the Plan; or the Court can modify the Plan.

What if we do not reach an agreement at mediation?

Your case will be heard in court and decided by a judge.

What are the benefits of reaching an agreement at mediation?

Mediation is usually quicker than going to court to get a decision. You can avoid the possibility that the Judge will rule against you. It is less of an emotional trauma than going to Court. You can save yourself and your witnesses the time, inconvenience and embarrassment of testifying in court.

Tips for Successful Mediation:

1. Know your rights.

Attend a custody clinic and/or read about North Carolina custody laws before you go to mediation. Consult with a private attorney or Legal Aid attorney.

2. Compromise.

Be willing to be reasonable. You will not get everything you want or ask for. Be ready to give in on one thing so that you can focus on getting something else that is more important to you.

3. Know your "Bottom Line."

Decide before you go what are the most important things for you to get and where you are willing to compromise.

4. Be prepared.

Think before you go about what you want and write it down. Some things to think about are:

- The number of nights each person will have the child sleep at his/her house (this can affect the amount of child support you can get).
- Will the schedule change in any way during the summer months? What are the "summer months"?
- What time and place will the child be picked up and dropped off for visitation changes?
- Where will the child spend holidays including New Years' Day, Good Friday, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day?
- Where will the child spend each parent's birthday, the child's birthday, Mothers' Day and Fathers' Day?
- Who will have the final right to make decisions concerning the child's medical treatment and education?
- Will this person first have to discuss these decisions with the other parent before making a decision?

5. Focus forward.

Control your emotions during the mediation. Look forward, not backwards. Don't get stuck on your past hurts, frustrations or anger during the mediation. Don't be distracted by the other person's bad behavior or insults. Stay focused on the future and be hopeful about reaching an agreement. This may take a lot of work!

6. Review the Final Agreement carefully before you sign it.

If you have a "Parenting Plan", be sure it reflects what you agreed to. If you need to make changes, contact the mediator and request the changes.

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CONCLUSION

If for any reason your mediation does not reach a settlement, your custody case will go to trial. Custody trials can take a few hours or weeks to complete. Parties without attorneys face many obstacles in attempting to handle their own custody trials. Legal Aid is working on a follow-up video and instructions that will help a person learn how to prepare for and present evidence in a custody hearing. Because of the high demand for services, Legal Aid will not be able to provide individual consultations if your custody case goes to trial. You are always advised to seek private legal counsel if possible to assist in the actual trial of a custody case.

Legal Aid of North Carolina wants to make these materials as helpful and informative as possible.

To help us do this, you can fill out a short, anonymous online [survey](https://www.surveymonkey.com/s/Self-Help-Court-Filing-NC) (<https://www.surveymonkey.com/s/Self-Help-Court-Filing-NC>), or call toll-free at 1-855-210-4399 and leave your name and number. We will call you back to get your comments and suggestions for improving these materials.