

## INTRODUCTION

This instruction booklet was created to help you complete the Petition for Third-Party Custody (“Petition for Custody”) forms.<sup>1</sup> Along with this booklet, you should make sure that you have the following documents with which to file for third-party custody: Summons for Third-Party Custody; Affidavit of Non-Military Status; Third-Party Petition for Custody; Admission of Service; your own Affidavit; and Order Granting Third-Party Custody. If you are missing one of these documents, please make sure you go back to your county courthouse to get the form because you must properly complete all these forms in order to file your Petition for Custody.

## THE CAPTION

The caption is at the top of each of the documents that needs to be filed with the court. The caption must be the same for every document. On the left hand side of the form, fill in the name of the county in which you are going to file the Petition for Custody. You must file your paperwork in the county in which the child lives. **If there has been a hearing regarding the child in a different county, the Third Party Petition for Custody must be filed in the county in which a previous hearing took place.** On the right hand side of the form, fill in the Judicial District in which the form is going to be filed. You can look the Judicial District up at <http://www.mncourts.gov/?page=238>. There are ten (10) Judicial Districts in the State of Minnesota.

When filling out the document, make sure either type the document out or to use a black ink pen. Remember to write clearly and do not write in the margins of the document. Write only on the lines provided. If you need more room, attach a separate piece of paper and clearly mark which portion of the document you are answering on the separate piece of paper. Write in complete sentences, using your best grammar and factual information. Do not exaggerate or distort the truth.

The Court File Number must be left blank. When your Petition for Custody is accepted by the court, they will fill in the Court File Number for you. The Case Type is Child Custody. For the name of the case, you will need to fill in the initials of the child(ren)’s name(s) for which you are going to Petition for Custody on the left of DOB. **ONLY USE THE CHILD(REN)’S INITIALS**, do not fill in their entire names. On the right, after DOB, fill in the child(ren)’s date of birth – for example, 1/1/2001.

You are the Petitioner of this case. Fill in your entire name where it says “Name of Petitioner”. Your full name is your first, middle and last name. If you are the only person filing for Petition of Custody, skip the space where it says “Name of Co-Petitioner”. If someone else is petitioning for custody with you, fill out his or her name

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in the “Name of Co-Petitioner” space. Again fill in his or her full name – first name, middle name and last name.

The child(ren)’s parent(s) is/are the Respondent(s). Fill in the child(ren)’s mother’s name – first name, middle name and last name – in the space that says “Name of Respondent Mother”. Fill in the child(ren)’s father’s name – first name, middle name, last name – in the space that says “Name of Respondent Father”. If the child(ren) have a custodian or other legal guardian, please fill in the child(ren)’s custodian’s name – first name, middle name and last name – in the space that says “Name of Respondent Guardian or Other Custodian”.

This is the end of the caption. The caption will be the same on all documents. Make sure you do not change any part of the caption when you are filling in any of the other documents.

### **SUMMONS FOR THIRD PARTY CUSTODY**

The Summons gives the Respondent(s) notice that you are bringing a lawsuit to petition for custody of the child(ren). The Summons requires the Respondent(s) to answer your Petition for Custody and also requires the Respondent(s) to appear in court.

The Summons tells the Respondent(s) that you have filed a lawsuit against him/them for custody of his/her/their minor children. After this statement, you must fill in the information for each child whom you are seeking custody of. Enter the child’s full name – first name, middle name and last name – on the line before the word BORN. On the line after the word BORN, you must enter the child’s birth date. The birth date should be entered in month/date/year form. For example, 04/04/2004.

The rest of the Summons gives the Respondent(s) instructions as to what they need to do upon receiving the Summons. Make sure you mark on your calendar the day that you have the Summons served. **YOU MAY NOT SERVE THE RESPONDENT(S) WITH THE SUMMONS YOURSELF!** Minnesota Rule of Civil Procedure 4.02 states that an interested party, that would be you or anyone else involved in the lawsuit, may not serve a Summons. Rule 4.02 states that anyone over 18 years old who is not an interested party in the action may serve the Summons upon the Respondent(s). I would advise you to have the sheriff in the county in which the lawsuit is taking place serve the Summons. The cost of this is usually about \$30.00 per service. You must supply the sheriff with all of the documents that need to be served and once the sheriff has served the parties, the Sheriff’s Office will call you and tell you the date of service. It is a good idea to have the sheriff serve the parties because the Sheriff’s Office will supply you with an affidavit that states, under oath, the date that service was made upon each party. Mark the date of service on your calendar. If you are not served with an Answer to your Summons and Petition within twenty (20) days of the date you had the Respondent(s) served, the Respondent(s) are in default and you may be able to get a default judgment entered against them.

You, as Petitioner, must sign the Summons. Underneath your signature, it says “Signature of Petitioner, pro se”. This means that you are not going to be appearing in court with a lawyer. You must also fill in your street address so that the Respondent(s) know where to send their Answer. If you have a Co-Petitioner, the Co-Petitioner must also sign and fill in his/her address. This is so that all the parties in the lawsuit can be served. You must always serve **all** parties in the lawsuit with all documents.

### **AFFIDAVIT OF NON-MILITARY STATUS**

An affidavit is a voluntary declaration of facts written down and sworn to by the ***declarant*** before an officer authorized to administer oaths, such as a notary public. Affidavits allow evidence to be gathered from witnesses or participants who may not be available to testify in person before the court, or who may otherwise fear for their safety if their true identities are revealed in court.

The Affidavit of Non-Military Status is required for every civil lawsuit filed. A nonmilitary affidavit must establish the following factors: (1) the respondent is not in the military service of either the United States or an ally; (2) the investigation was done after the default occurred; (3) the investigation was performed shortly before it was submitted; and (4) the facts are put forth in a manner sufficient for the court's evaluation. The affidavit requirement is solely for the protection of the person in military service.

Enter the caption into the document just as you did for the Summons. In the space after “County of”, you need to enter the name of the county in which you sign the affidavit, not the county in which the lawsuit is being filed.

Enter your full name into the first blank before the phrase “being duly sworn, says”. This means that you are swearing under oath that everything written below is true, to the best of your knowledge. On the line next to the words “Respondent Mother” “Respondent Father” or “Respondent guardian or other custodian”, put a check mark next to each for which the statement “is not now nor was in the military or naval service of the United States at the date of the service of the Summons and Petition for Third Party Custody” is true. You must sign this document in front of a notary public. You can find a notary public at your bank, at a law firm or at your local court house where you got this form. You can also have a court clerk witness your signature. Sign the document on the line below the statement in front of the notary and have the notary fill in the notary block below your signature.

### **THIRD PARTY PETITION FOR CUSTODY**

Enter the caption into the document just as you did for the Summons. You are the Petitioner. On line 1a., fill in your information as the Petitioner – your name and address. Where it says Petitioner’s other names, put down any names that you have used in the past, including, but not limited to, maiden names, former married names, any other legal names and any aliases you have gone by in the past. If you have never been known by any other names, please write “none” on the line. On the line which begins “Petitioner is

related to the minor child as...” explain how you are either related to the child or what kind of a relationship you have with the child.

On line 1b., if there is a co-Petitioner, fill in the information for the co-Petitioner here. If you are the only Petitioner, write “none” in the space for the co-Petitioner’s name and skip down to the instructions for number 2. If there is a co-Petitioner, you must write down all the former names that the co-Petitioner has used, including, but not limited to, the co-Petitioner’s maiden names, former married names, any other legal names and aliases the co-Petitioner has used in the past. On the line “How is co-Petitioner related to the Petitioner?” explain how the co-Petitioner is related to you, for example, sister, husband, wife, parent, child, etc. Finally, on the line which begins “Co-Petitioner is related to minor child as...” tell the court how the co-Petitioner is related to the child you are petitioning for custody of.

Section two (2) is about the Respondents. On line 2a., you need to fill in the Respondent Mother’s information. Put the Respondent Mother’s full name – first name, middle name and last name. Enter the Respondent Mother’s address below her name. If the Respondent Mother has been known by any other names, list them on the line that starts “Respondent Mother’s other names...” Examples of names another person would use include, but are not limited to, maiden, former married or other legal name and aliases.

On line 2b., you need to fill in the Respondent Father’s information. Put the Respondent Father’s full name – first name, middle name and last name. Enter the Respondent Father’s address below her name. If the Respondent Father has been known by any other names, list them on the line that starts “Respondent Father’s other names...” Examples of names another person would use include, but are not limited to, maiden, former married or other legal name and aliases. If the Respondent Father is not known, put “N/A – Father unknown” on the line for Respondent Father’s full name. If the Father is unknown, you should attach the child(ren)’s birth certificate(s) to the Petition which state that the Father is unknown. If you are attaching birth certificate(s) to the Petition, write “N/A – Father unknown, see attached exhibit(s)” on the line for the Respondent Father’s full name. List any nicknames which the Father may have.

On line 2c., you need to fill in the Respondent Guardian’s information. Put the Respondent Guardian’s full name – first name, middle name and last name. Enter the Respondent Guardian’s address below her name. If the Respondent Guardian has been known by any other names, list them on the line that starts “Respondent Guardian’s other names...” Examples of names another person would use include, but are not limited to, maiden, former married or other legal name and aliases. Finally, explain how the Respondent Guardian is related to the child(ren) you are petitioning for custody of. If there is no Respondent Guardian, put N/A on the line for Respondent Guardian’s full name.

If you do not know where the Respondent parents are located, you should try and find them. You can pay to do a search online to find the Respondent parents. These

searches usually cost around thirty (30) dollars. If you still cannot locate the Respondent parents after you do the search, make sure you save the paperwork because you are going to need to create an affidavit stating that you have tried to find the Respondent parents but you cannot locate them and you will need to attach the search as an exhibit. You will also have to do a service by publication. Minnesota Rules of Civil Procedure 4.04, subdivision (a) states that

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

Section three (3) requires information about the child(ren)'s biological father. Line three (3) requires you to fill in the first, middle and last name of the child(ren)'s biological father. The next part of the line requires you to fill in how you know the father is the biological father of the child(ren). There are a number of ways in which a father can give proof that he is the biological father of a child:

First, a man is presumed to be the biological father of a child if the father and Respondent mother were married at the time the child was born or if the child was born within two hundred and eighty (280) days after the man and the Respondent mother were divorced. A man will be presumed to be the biological father of a child if he holds himself out to be the biological father of the child and receives the child into his home.

Second, a man is legally the biological father of a child if he and Respondent Mother sign a Minnesota Recognition of Parentage for the child and each Minnesota Recognition of Parentage is filed with the Minnesota Department of Health.

Third, a man is legally recognized as the biological father of a child if the Respondent Mother and the man sign a Voluntary Acknowledgment of Paternity/Parentage in a state other than Minnesota for the child and the Voluntary Acknowledgment of Paternity/Parentage is filed with the state where it is signed.

Fourth, a man is presumed to be the biological father of a child if paternity genetic testing was done and it shows that Respondent is likely to be the father of the child.

Fifth, a man is presumed to be the biological father of a child if the man and the Respondent Mother signed a Declaration of Parentage before 1993 and the Declaration of Parentage was filed with the state Registrar of Vital Statistics.

Finally, a man is legally presumed to be the biological father of a child if there is a court order in stating that the father is the biological father of a child. If a court order is

issued declaring that Respondent Father is the biological father of the child, be sure to include which state and county the court order is filed in and the court file number on the order, if it is available. If possible, you may also want to attach any of the forms listed above as exhibits to the Petition.

Section four (4) contains information about the Service Member’s Civil Relief Act. The Service Member’s Civil Relief Act was signed into law in 2003 (“SCRA”).<sup>2</sup> The SCRA protects those persons who serve on active duty for the nation’s defense, from adverse consequences to their legal rights that may result because of such service, so that such persons may devote their full attention and all their energies to the nation’s defense.<sup>3</sup> The SCRA provides protection for members in civil court and administrative actions. It also provides protections for issues involving taxation, house/apartment leases, car leases, interest rates and insurance.<sup>4</sup> The SCRA applies to all military members on federal active duty. This includes the regular forces, the reserve forces, and the guard forces in Title 10 active duty. The SCRA also applies to the Coast Guard and officers in the Public Health Service and National Oceanic and Atmospheric Administration in support of the Armed Forces.<sup>5</sup> SCRA protections generally begin the first date of the active duty period, and may extend from 30 days up to 180 days after the member is released from active duty.<sup>6</sup>

The SCRA provides for an automatic stay of at least 90 days upon a proper request from the member in civil administrative and civil matters.<sup>7</sup> The member who is unable to appear in court on the date required because of active military service must request this SCRA protection in writing and include certain information with the request.<sup>8</sup> After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90-day delay.<sup>9</sup> A member may request the court to re-open a matter and set-aside a default judgment if the judgment was entered against the member during the member’s active duty period, or within 60 days after the member’s release from active military duty.<sup>10</sup> Because the SCRA provides protection for members of the military, you must provide information in this section about whether any of the parties to this case are in the military.

If none of the parties are in the military, check the box next to “[n]one of the Petitioners or Respondents is an active duty member of the Armed Forces.” If a party to this case is on active duty, you must fill in the information pertaining to the party member. This information includes the name of the party on active duty and the name of the party’s Commanding Officer. You will also need to fill in the name and rank of the party on active duty, and his/her military address.

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<sup>2</sup> Fact Sheet: What You Should Know About the Servicemembers Civil Relief Act (SCRA), [http://legalassistance.law.af.mil/content/legal\\_assistance/cp/scra\\_fact\\_sheet\\_dec04.pdf](http://legalassistance.law.af.mil/content/legal_assistance/cp/scra_fact_sheet_dec04.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Section 5 deals with jurisdiction. Jurisdiction is a legal term that means “a court's power to decide a case or issue a decree.”<sup>11</sup> A court must have jurisdiction over the parties and the subject matter of the case in order to hear a case. In the case of Section 5, you are establishing subject matter jurisdiction for the court. Subject matter jurisdiction is defined as “Jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.”<sup>12</sup>

You must state that you are seeking custody of the child(ren) as either a de facto custodian or as an interested third party. A de facto custodian is one of the people who can petition for custody of a child. Section 257C.01 of the Minnesota Statutes defines a de facto custodian as a person who has been the primary caretaker for a child.<sup>13</sup> The child must have resided with the caretaker without the child’s parent being present within twenty-four months preceding the filing of a third party petition.<sup>14</sup> If the child is between one and three years of age, the parent of the child must not have participated in the child’s life for a period of six months or more, which need not be consecutive.<sup>15</sup> If the child is three years of age or older, the parent of the child must not have participated in the child's life for one year or more, which need not be consecutive.<sup>16</sup> The statute states that a de facto custodian does not include a person who has a child placed with him through a custody consent decree, a court order, a voluntary placement decree, or through an adoption.<sup>17</sup> If you would like more information on de facto custodians, it may be helpful to refer to *Legal Steps*.<sup>18</sup>

Subdivision 6 of Minnesota Statute Section 257C.03 sets forth the factors that a person must establish to prove that he or she is a de facto custodian in order to proceed with a petition for third party custody.<sup>19</sup> The de facto custodian must prove all of these factors in order to prove that he or she is a de facto custodian. First, the de facto custodian must prove, by clear and convincing evidence, that he or she has met the requirements of living with the child stated in the preceding paragraph.<sup>20</sup> Clear and convincing evidence is evidence which indicates that the thing to be proved is highly probable or reasonably certain.<sup>21</sup> To prove something by "clear and convincing evidence", the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is true. Second, a de facto custodian must prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian (see the discussion below of Minnesota Statute

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<sup>11</sup> Black’s Law Dictionary (8<sup>th</sup> ed. 2004).

<sup>12</sup> *Id.*

<sup>13</sup> Minnesota Statute Section 257C.01 (2008).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Laurie Hanson and Irene Opsahl. *Legal Steps: Kinship Caregiver Resource Manual*, 2008 Edition.

<sup>19</sup> Minnesota Statutes Section 257C.03 (2008).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Section 257.025 of what the courts look for when determining what the best interests of a child are).<sup>22</sup> A preponderance of the evidence is the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force – superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.<sup>23</sup> If you meet all of the qualifications of a *de facto* custodian, check the box next to “am seeking custody of (child(ren)’s name) as a De Facto Custodian.” Fill in the child(ren)’s name. Next, fill in the number of month’s that you have been the primary caretaker of the child(ren). If you do not meet all of the factors listed above, leave the box blank.

Many people may not be *de facto* custodians but still have an interest in and want to care for a child. These people are called interested third parties. Section 257C.01 of the Minnesota State Statutes defines an interested third party as an individual who is not a *de facto* custodian but who can prove one of three factors in Section 257C.03, subdivision 7.<sup>24</sup> These three factors are that an interested third party must show by clear and convincing evidence that the parent has abandoned, neglected or otherwise exhibited disregard for the child’s well-being to the extent that the child will be harmed by living with the parent; or takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child or both; or that other extraordinary circumstances exist.<sup>25</sup> An interested third party does not include an individual who has a child placed in the individual's care: through a custody consent decree under section 257C.07 of the Minnesota State Statutes; through a court order or voluntary placement under chapter 260C of the Minnesota State Statutes; or for adoption under chapter 259 of the Minnesota State Statutes.<sup>26</sup>

Subdivision 7 of Minnesota Statute Section 257C.03 states that to establish that an individual is an interested third party the individual must show by clear and convincing evidence that one of three factors exist.<sup>27</sup> You must show that you qualify under each of the factors in order to qualify as an interested first party. First, the interested third party must show that the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent.<sup>28</sup> Second, the interested third party must show that placement of the child with the interested third party takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both.<sup>29</sup> Finally, the interested third party must show other extraordinary circumstances.<sup>30</sup> If you qualify as an interested third party rather than a *de facto* custodian, check the box next to “I am seeking custody of (child(ren)’s name) as an Interested Third Party because

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Minnesota Statute §257C.01, subd. 3 (2008).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

I do not qualify as a De Facto Custodian.” You must also fill in the reasons why you qualify as an interested third party under the factors listed above.

Section 6 is your formal request for formal and legal custody of the child(ren). Subdivision a requires you to fill in information about the child(ren) you are seeking custody of. You must enter in the information for each child on a separate line in the table. You must fill in the child(ren)’s full name – first name, middle name, last name. Next fill in the child’s age, including year and months, for example, 0 years, 11 months or 3 years, 2 months. Finally, list the birth date of each child in numerical form, i.e. 09/02/2004.

Subdivision b of Section 6 requires you to name the type of legal custody you are requesting. Legal custody means having a right to participate in the major decisions regarding the child’s life, including education, religious upbringing and medical treatment. This is where you list whether you are seeking sole custody of the child or whether someone else is seeking custody of the child with you. If you and you alone are seeking custody of the child(ren), check the box next to “sole custody”. If you are seeking custody of the child(ren) along with someone else, check the box next to “joint custody” and check the box next to the person you are seeking joint custody of the child(ren) with.

Subdivision c of Section 6 requires you to name the type of physical custody you are requesting. Physical custody identifies who will handle the routine daily care and control of the child, and who the child will live with. If you and you alone are seeking physical custody of the child(ren), check the box next to “sole custody.” If you are seeking custody of the child(ren) with someone else, check the box next to “joint custody” and then check the box of the person whom you are seeking custody with. If you checked “joint physical custody” and the other person you want to share joint physical custody with is not your spouse, then you will need a schedule stating who takes care of the child when. Write the schedule in the blanks underneath “describe the schedule that you want.”

Section 7 requests that you fill in information about the child(ren). In the box in Section 7, list the current legal and physical custodial status (who has custody) for each child and the current order about custody for each child. If there is no court order about custody, the mother has sole legal and sole physical custody under Minnesota law. In the first column, enter in the child(ren)’s name – first name, middle name, last name. In the column entitled “legal custody”, explain, briefly, who has legal custody of the child. For example, joint to Mom and Dad. In the column labeled “physical custody”, explain, briefly, who has physical custody of the child(ren). For example, sole custody to mother. In the column labeled “court file number and state where court file is located,” you should fill in the information for the court and court order where legal custody was awarded of the child. If there is no court order, write “None” under “court file number and court date.”

Subdivision b of Section 7 asks you to fill in information about how long the child(ren) has lived in Minnesota. List the length of time that each child has lived in Minnesota. Under the column entitled “child’s name,” list the child(ren)’s name(s) – first name, middle name, last name. Under the column entitled “number of years or months child has lived in Minnesota” enter the number of years and months the child(ren) has lived in Minnesota. For example four years, five months – all of her life.

Subdivision c of Section 7 requests information about how long the child(ren) has lived with you. Write the child’s full name and the number of years or months the child has lived with you.

Subdivision d of Section 7 asks you to briefly explain how the child(ren) came to live with you.

Subdivision e of Section 7 requests information about the child(ren)’s brothers and sisters. Check the yes box if the child has any brothers or sisters. If the answer is no, move on to Subdivision f. If the answer is yes, check the yes or no box next to the question which asks if the brothers and/or sisters live with you. If the brothers and/or sisters do not live with you, move to the next question. If the brothers and/or sisters do live with you, move on to Subdivision f. If the brothers and/or sisters do not live with you, you must fill in the grid below. In the grid fill out the name of the child(ren) – first name, middle name and last name. In the second column of the grid entitled “name of the person the child is living with”, enter in the legal name of the person the child(ren) lives with. Finally, in the last column, list the relationship between the person living with the brothers and/or sisters of the child(ren) you are seeking custody of and the brothers and/or sisters.

Section 8 requests you to fill in information about the Father and Mother’s involvement with the child(ren). The information is requested so that the court can determine whether there has been any indication from the parent(s) that the parent(s) want the child to live with you permanently.

Subdivision a of Section 8 asks you to explain, briefly, the Mother’s parenting time with the child(ren). Explain how often the child(ren)’s Mother has seen the child since the child has been with you. Explain where these visitations have taken place and, under what circumstances these visitations have taken place, and how often these visitations took place.

Subdivision b of Section 8 requests that you explain, briefly, the Father’s parenting time with the child(ren). Explain how often the child(ren)’s Father has seen the child since the child has been with you. Explain where these visitations have taken place and, under what circumstances these visitations have taken place, and how often these visitations took place.

Subdivision c of Section 8 asks you to fill in information about whether the child(ren)’s Mother and Father were ever married. Check the yes or no box after the

question asking if the Mother and Father of the child(ren) were ever married. If you check the no box, skip down to Subdivision d. If you check the yes box, answer the question of whether either the Mother or Father filed papers in a court in Minnesota or another state to get a divorce or legal separation. If you check the yes box, on the lines below enter the name of the county and state in which the court papers were filed.

Subdivision d of Section 8 requests information on whether the Mother has committed acts of physical violence, emotional abuse or neglect of the child(ren). If you check no, skip to Subdivision e. If you check yes, check yes or no next to the box that asks if there a Court Order that says that the Mother cannot have custody of the child. If you check no that there is no Court Order that says the Mother cannot have custody of the child, skip the rest of Subdivision d and move down to Subdivision e. If you checked yes that there is a Court Order that says that the Mother cannot have custody of the child, fill in the date of the Court Order, the file number of the Court Order and the County and State in which the Court Order was issued and the name of the party the Court Order gave custody to. Finally, state whether the Mother followed the conditions were set in the Court Order for custody to be returned to her or that there were no conditions were set in the Court Order.

Subdivision e of Section 8 asks you to fill in information on whether the Father has committed acts of physical violence, emotional abuse or neglect of the child(ren). If you check no, skip to Section 9. If you check yes, check yes or no next to the box that asks if there is a Court Order that says that the Mother cannot have custody of the child. If you check no that there is no Court Order that says the Mother cannot have custody of the child, skip the rest of Subdivision d and move down to Section 9. If you checked yes that there is a Court Order that says that the Mother cannot have custody of the child, fill in the date of the Court Order, the file number of the Court Order and the County and State in which the Court Order was issued and the name of the party the Court Order gave custody to. Finally, state whether the Mother followed the conditions were set in the Court Order for custody to be returned to her or that there were no conditions were set in the Court Order.

Section 9 requests information about other people who have provided care to the child(ren). Subdivision a asks if a standby custodian has been named by the Mother or Father. A standby custodian is a person officially named by a parent to care for the child if something happens to that parent. If you check the no box, please skip the rest of the question and moved down to Subdivision b. If you check the yes box and a standby custodian has been named by the Mother or Father of the child(ren), enter in the full name of the standby custodian and whether it was the Father or the Mother who appointed the standby custodian.

Subdivision b of Section 9 asks you to fill in the information of any other people who have cared for the child(ren) in their home for an extended period of time without the parents' involvement. If no one else has had the child(ren) stay with them for a period of time without the involvement of the mother or father, skip to Section 10. If

anyone else has cared for the child(ren), write the name of the person, for example John and Jane Doe; how that person is related to the child, for example Aunt and Uncle (brother and sister-in-law of Father); and the time period during which the child lived with that person, for example three months – from July to September of 2004.

Section 10 asks you to state the reasons it is in the best interests of the child(ren) for you to have custody of the child(ren).

Subdivision a asks what each of the parties wants for legal custody of the child(ren). This means, who each of the parties wants to see end up with legal custody of the child (ren). Fill in the answer for each of the parties. If there is no custodian or guardian, put N/A on the line next to custodian or guardian.

Subdivision b requests you to fill in information about what the child(ren) want for custody, if they are old enough to express a preference. Fill in the chart with the full name of the child – first name, middle name and last name; what the child’s preference is, for example John wants to live with the Petitioner; and the child’s age, for example ten years and four months.

Subdivision c asks you to name the child(ren)’s primary caretaker.

Subdivision d requests you to briefly and factually describe how close the child is to everyone involved in the case. The court wants you to take into consideration all of the child(ren)’s relationships including the intimacy of the relationships and interactions with siblings and significant others. This information must be taken into consideration by the court. For example: “You might consider writing about who puts the child to bed at night, who prepares the child’s meals, who plays with the child, supervises homework, changes diapers, takes the child to any special activities or lessons the child participates in, provides discipline as needed, takes the child to the dentist and doctor, etc.”

Subdivision e asks you to briefly and factually describe the relationships and interactions the child has with you, with the child’s parent(s), brother(s) and sister(s), or any other person who has played an important role in the child’s life.

Subdivision f requests information about the level of adjustment the child has to life at home, in school, and in the community. Explain how the child has adjusted to life at your home, in the school the child(ren) attend while living with you, if the child(ren) is old enough to attend school, and how the child(ren) has adjusted to the community to live in. For example: “statements about the child’s attitude toward school or day care; that the child has x number of friends at school, in the neighborhood, on his/her soccer team, etc. You may also state, for example, that the child seems well-adjusted; the child has a certain GPA at school or attach a recent report card; or a letter from the teacher or childcare provider.”

Subdivision g requests information about where the child(ren) lives. Explain whether the child has lived in a stable, safe place; how long has the child lived in the stable, safe place; and where that place is.

Subdivision h asks for information about who else lives in your home, other than the child(ren) you are seeking custody of. This subdivision further asks you to explain whether these other people living in your home are part of what you consider to be part of your permanent family unit. Is this the permanent home that the child(ren) will be living in?

Subdivision i asks you to explain the mental and physical health of all the people involved in this case.

Subdivision j asks you to explain how able you are to give the child love, affection, and guidance. This guidance includes religious guidance. Explain your capacity to give the child love, affection, and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any

Subdivision k requests information about the child's cultural background.

Subdivision l asks if there has ever been any violence by any of the parties to this case against another party to the case. If you check the no box, skip down to Section 11. If you check the yes box, explain, briefly, which parties were involved in the violent episode(s), what happened and when the violence took place. If there has been violence between any of the parties to this case, describe how this violence has affected the child(ren).

Section 11 asks for information about whether you are seeking joint legal and physical custody with another person of the child(ren). You must answer this question the same way that you answered question 6(b). If you are not seeking joint custody, fill out the acknowledgment and verification and skip the rest of the questions. If you answer yes, fill out the rest of the questions. Briefly explain how you and the other party who you are asking to share joint custody will resolve disagreements over major decisions about the child's life. Finally, the petition asks whether you believe it would be negative or bad for the child(ren) if either you or the other party who you are asking to share joint custody with had sole authority over raising the child rather than joint authority with the other party. Explain your reasoning behind your answer.

The verification and acknowledgment confirms that you have read Third Party Petition for Custody that you have just filled in and are signing and that you understand its implications. The verification and acknowledgment also states that you have not been found by another court to be a frivolous litigant. A frivolous litigant is someone who files lawsuits that don't have any legal merit. The statement that you are signing also states that you are not serving the Third Party Petition for custody for any improper purposes. Finally, the verification and acknowledgment states that if any of the

information you have put in the Petition is found to be false or misleading, you can be ordered by the court to pay money to the Respondents.

### **ADMISSION OF SERVICE**

Enter the caption into the document just as you did for the Summons. That is all you have to do with this document. Make sure you serve this document with the Summons and Complaint because the Respondent(s) has to fill in the rest of the document stating that he/she received the document and that he/she understands that you have started this lawsuit to take custody of his/her child(ren).

### **ORDER GRANTING THIRD PARTY CUSTODY**

The only thing that you need to fill in on the Order Granting Third Party Custody is the caption. You should not fill any other part of the order. The court will fill in the remainder of the order when it has made a decision in the case. You do not need to serve the order with the Petition when you serve the Respondent(s). When you receive the order from the court, if you win, you need to serve the other parties with the order. Once the parties have been served with the order, you must have the judgment docketed by the county in which the case was heard. You may also want to docket the order in the county in which you and the child(ren) reside, if that is different from the county in which the case was heard. In order to docket the order, call the county judgment department of the county in which you want to docket the order. They will tell you the fee for docketing the judgment and tell you what to do to docket the judgment.