

Filing a Motion and Preparing for a Hearing in Family Court

Many battered women look to the courts to resolve issues of child custody, child support, maintenance, and property division. To obtain that help, a battered woman must formally ask a judge to make an order. However, judges will only make an order when the request complies with certain rules. Unfortunately, these rules can be confusing, preventing those without professional legal help from getting their request heard.

The way to ask the judge for an order in an existing case is to file a written “Notice of Motion and Motion” with a supporting affidavit. Examples of motions in family court include: motion to revise a temporary order, motion to order supervised visits, motion to revise child support, and motion to revise custody.

This technical assistance packet describes how to file a written motion. It also provides tips to prepare for the hearing. Attached is a blank copy of a Notice, Motion, Supporting Affidavit, and Affidavit of Service that can be filled out and filed with the court. The text of Rule 7.02, Minnesota Rules of Civil Procedure, as well as some of the most commonly referenced Minnesota Rules of Evidence, are provided in text boxes within the packet.

Note: There is a separate technical assistance packet devoted to the process of filing an Order for Protection. For more information, call Battered Women’s Legal Advocacy Project.

Attached:

- Notice of Motion and Motion
- Supporting Affidavit
- Affidavit of Service

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FILING A MOTION

What is a motion?

A motion is a written request to the court to order a change in an *existing* case. For example, a motion could be a request to change a temporary order, to appoint a *guardian ad litem*, to order that visits be supervised, to revise child support, or to revise custody. A motion is different from a “petition.” A petition starts a lawsuit whereas a motion requests a change in an existing lawsuit.

Rule 7.02, Minnesota Rules of Civil Procedure, states:

- (a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made *ex parte*. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.
- (b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.
- (c) All motions will be signed in accordance with Rule 11.

A motion is accompanied by an affidavit, which is a statement of facts supporting the request. The affidavit must be signed and sworn to in the presence of a notary public.

A motion must be accompanied by a notice. The notice tells the other party the date and time the judge will have a hearing to consider your request.¹ This date and time are scheduled by the judge's clerk or a clerk of the court and filled in on your motion papers. At this hearing, you will have the opportunity to present your evidence and your arguments. The other side of the case will have the opportunity to oppose your request and, if s/he chooses, present evidence and arguments.

Finally, you must have your motion delivered to the other party and provide proof to the court that you did so. Usually, this proof is an "Affidavit of Service by Mail." An affidavit of service by mail is your sworn written statement that you mailed a copy of your motion papers (including notice of the date and time of the scheduled hearing) to the other party.²

A woman can also file a motion by filling out the proper forms which can be found online at <http://www.courts.state.mn.us>. The court forms are found under the heading, "For Court Users." The forms themselves have very detailed directions that are relatively easy to follow and fill out. The advantage to filing a motion on-line is that the battered woman can have computer access to detailed directions about who can file specific motions and how to fill out the proper paperwork.

So, when you file a motion, you are actually going to file three documents: a Notice of Motion, a Motion, an Affidavit in Support of the Motion, and an Affidavit of Service. Blanks of all these forms are provided in this packet.

¹ In emergency situations, sometimes a motion can be filed "*ex parte*." *Ex parte* means a communication with the court that does not include the other party. Generally, it is prohibited for a judge to hear only one party's facts or arguments before making a decision. However, in emergency situations, upon an *ex parte* motion, a judge will make a temporary order based on only one party's presentation and then conduct a full hearing later. This technical assistance packet does not cover *ex parte* motions.

² Sometimes, when it is more convenient, a party may personally deliver the motion to the other party and then complete an "Affidavit of Service" indicating the place, date, and time of delivery. Or, a party may hire a process server or sheriff to personally deliver the motion, and then the process server or sheriff completes an Affidavit of Service accordingly.

What will happen at the hearing?

At the hearing, the judge will allow both parties to present their cases.³ Since you are requesting the order, the judge will ask for your arguments first. Then the judge will ask for the other party's arguments. Next, the judge will ask for your evidence, including your testimony, your witnesses' testimony, and any other evidence (such as exhibits) you wish to present. Next, the other party or parties will present their evidence, including testimony and exhibits. Each party will have the opportunity to cross-examine the other's witnesses. Finally, each party will have the opportunity to present a final argument. This is a general outline of the order of events, but it can vary with different judges.

The judge will decide whether or not to grant your motion. Sometimes, the judge will make an oral ruling right at the hearing. Other times, the judge will "take the matter under advisement" (some time to think about it) and will issue a written decision within several days or weeks, a judge has up to 90 days to make a decision

How do I file a motion?

A blank Notice of Motion and Motion, Supporting Affidavit, and Affidavit of Service are attached to this packet. You will need to fill in all the shaded parts.

Instructions for how to fill in the papers:.

1. At the top of the form, fill in the caption of the case exactly as it appears on the court papers
2. Under "Notice of Motion and Motion," fill in the names and addresses of the other parties. Make sure you include the names and addresses of all parties, including your ex-partner, the *guardian ad litem* (if applicable), and the Child Support Agency (if applicable). There is space for two sets of names and addresses, but if there are more parties, add them to the form or type a completely new form. Leave the rest of the paragraph under the word "Notice of Motion" blank because it will be filled in by the clerk of the courts.
3. Under "the requested orders are as follows," fill in the orders you want the judge to make.
4. Under the Affidavit, fill in the facts that support your request. This should be a brief summary of all the evidence that you will present at the hearing (your testimony, your witnesses' testimony, and your exhibits). Some judges will not

³ In many cases, there are more than two parties. Other parties could be a *guardian ad litem*, the child support agency, and, less frequently, grandparents. At a hearing, all parties have the opportunity to present their case to the judge.

allow you to present any evidence that is not listed, at least briefly, on your affidavit.

5. Do not sign your papers until you are in front of a notary. Many court clerks, bank clerks, and advocates are notaries. Bring photo identification along to the notary.
6. Print your name, address, and phone number below your signature. If you do not want to give out your address and phone number, list an address and phone number at which you can receive messages, and then check the appropriate box. If you list an address at which you can receive messages, be sure that person can reach you or be sure to check often for messages so you do not miss any important legal notices or messages.
7. Go to your county's District Court Family Division office. The court clerk will fill in the rest of your Notice of Motion and Motion. Count how many parties there are in the case and make that many copies. (Include yourself, your ex-partner, the *guardian ad litem* (if applicable) and the child support agency (if applicable)). File the original with the court clerk and keep one copy for your records.
8. Fill in the Affidavit of Service as indicated. Be sure to include the names and addresses of each party. The form has space for two other parties, and if there are more than two, you will need to add the third somewhere or write up a new Affidavit of Service that has space to insert three parties. Do not sign until you are in front of a notary. Then, mail one copy of the Affidavit (with one copy of the Notice of Motion, Motion, and Affidavit Supporting Motion) to each party listed. Be sure to mail it all on the same date and from the same city where the Affidavit was written. You should file the Affidavit the same day you file your papers in the courthouse.
8. Often times, you will need to pay the clerk a filing fee. (For example, in Hennepin County, if it is a motion to change child support, the fee is \$55. If the motion is to change something else, the fee is \$55. The original petition filing fee is \$332.00. Other counties may have different fees.)
9. If you need a witness who will not agree to come voluntarily to the hearing, ask the court clerk for a subpoena form. Fill it out and take it to the sheriff for service. You must staple a check for the witness' time and expense to the subpoena. The amount of the check is around \$20 plus around 28¢ per mile for a round trip from the witness' home to the courthouse. There will also be a fee of about \$12 from the sheriff for serving the witness with the subpoena. With a subpoena, you can also require a witness to bring certain documents to the hearing.
10. If you feel you cannot afford the above fees because of low income, you can ask the clerk for an *in forma pauperis* form to fill out (these are forms requesting that

the state to pay the filing fees, service fees, and witness fees because you cannot afford to pay these fees) . At the time of the filling, be sure to bring proof of your income or proof of benefits from any form of public assistance, such as MA, SSSI, Social Security, MFIP, and MFAP. (Please see BWLAP's technical assistance packet on *In Forma Pauperis*)

11. Prepare for the hearing. You will not get a second chance to present your case, so bring everything and anyone with you to court that might be helpful to your case.

PREPARING FOR THE HEARING

It is important to prepare in advance for the hearing. Suggestions for how to prepare are:

1. Learn the difference between law and argument
2. Learn the relevant law.
3. Make a list of all the arguments you want to make.
4. Organize your documents.
5. Arrange for your witnesses to attend the hearing.
6. Write out your questions for each witness (including yourself).
7. Watch a court case in family court so you can have an idea of how it works.
8. Practice presenting your case to a friend.
9. Connect with a battered woman's advocate for assistance and support.

Below are more details on these nine suggestions.

1. Learn the difference between evidence and argument.

There are strict rules about when a person can present evidence and when a person can present argument. If you try to present evidence or argument at the wrong time, the judge will probably stop you before you have finished presenting your case. It is not always easy to tell the difference between a fact, evidence, and argument. A simple rule, however, is:

- A fact is an event that has happened or is happening.
- Evidence is something that shows that the event happened.
- Argument is a statement to a judge to convince the judge that your evidence proves your facts

See Next Page for Some Examples:

ARGUMENT (Brief examples)	FACT supporting argument	Some EVIDENCE proving the fact
<p>“I am asking the court to increase my child support because the law provides that when the payer’s income increases, the child support should increase.”</p>	<p>Your ex-spouse pays child support and his/her income has increased.</p>	<p>Copies of his/her income tax returns, copies of his/her pay stubs, copies of his/her business records, testimony from you or others of expensive purchases that he/she has made.</p>
<p>“I am asking the court to order that all contact between my spouse and our children be supervised. The evidence shows that he has hit them numerous times in the past and that they are in danger when they are with him. It is in their best interests that they be protected while seeing him.”</p>	<p>Your spouse has hit the children on numerous occasions, one of which required a hospital visit.</p>	<p>You testify (truthfully) that you saw your spouse hit the children, and that you saw the bruises on them. You testify that you took a child to the hospital. You call as a witness the nurse who saw your child to testify to the child’s injuries and that they are consistent with being hit by an adult.</p>
<p>“I am asking the court to keep our daughter in the same school because the evidence shows that she is well adjusted and happy at her current school. It would be against her best interest to move her to a different school where she would have to start over, make new friends and get used to a whole new environment.”</p>	<p>Your child is doing well in her current school.</p>	<p>You testify that she is doing well in school. You present copies of her report cards. You call as a witness one of her teachers who testifies that your child is getting good grades, has lots of friends, plays on the softball team after school, and seems happy.</p>

2. Learn the Relevant law.

The judge's job is to apply and enforce the law, which makes knowing the law very important. You can ask an attorney for help in learning what law applies to your case, or an advocate might be able to help. You can also do your own research at a law library, and often times a librarian will help you get started.

There are two types of law: statutes and case law. Statutes are the law passed by the Minnesota State Legislature or the Federal Congress. They are organized into chapters and subchapters. Most of the statutory laws for family law cases are the following Minnesota Statutes:

Chapter 518 (Marriage Dissolution)
Chapter 518B (Domestic Abuse)
Chapter 518C (Interstate Child Support)
Chapter 518D (Interstate Custody)
Chapter 257 (Paternity).

You can find these chapters at any law library. Or, you can go on line at <http://www.revisor.leg.state.mn.us/stats/>

Case Law, on the other hand, is made by the Appellate Court and Supreme Courts of Minnesota and the Federal Court System. These laws tell district courts how to follow the statutes. To find case law on a particular statute, find the "Statutes Annotated" books at the law library. The statutes are listed chronologically, and under each statute are summaries of case law that pertains to that statute. Read the summaries and, if the case looks helpful, write down the citation to the case. The citation will look something like, "517 N.W.2d 21" or "20 N.W.2d 500". Ask the clerk or librarian for help in finding the case in the "Northwest Second" books (abbreviated N.W.2d). The books will contain the entire case, rather than just a brief summary. Case law can be found on line at <http://www.courts.state.mn.us>, although it is not easy to do legal research on-line.

If you find a case with similar facts to yours, cite this case to judge during your hearing and it could greatly increase your chances of winning.

You may also wish to review the Minnesota Rules of Evidence, which are found in the book "Minnesota Rules of Court," pages 409 – 445 (2001 version), and at the following website http://www.courts.state.mn.us/rules/R_Evid.htm. Finally, if you need ideas or help with relevant case laws or statutes, call the BWLAP.

3. Make a list of all the arguments you want to make.

After you become familiar the law, you will be better prepared to make your arguments. For example, if you are asking the judge to change the child support order, know what standards the judge will use and organize your arguments within those standards. If you are asking the judge to change the custody order, and the law provides that the judge is to consider certain factors in determining the best interests of the child, then make arguments based on those standards.

A common way of organizing arguments is:

- 1) State your request
- 2) State the law that pertains to your request
- 3) Summarize your evidence (your testimony, your witnesses' testimony, and your exhibits)
- 4) Show step by step how the law applied to your evidence means that your request should be granted

Request	I am asking the court to order that all visits between our daughter and her father be supervised until he has a track record of not hurting her.
Law	The law provides that the court shall, upon the request of either parent, grant such parenting time on behalf of the child and noncustodial parent as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with the noncustodial parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the noncustodial parent prior to the commencement of the proceeding. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time. (Minn. Stat. § 518.175 Subd. 1.)

Evidence	<p>The court heard my testimony that I saw Bruce hit Amy on numerous occasions when we were married. The court heard Amy’s teacher’s testimony that Amy came to school after a weekend with her father in May and she had bruises on her arm. The court heard my friend’s testimony that she saw him hit Amy on August 17, 2001. The court has received into evidence a picture of Amy that was taken two days later that shows a bruise where Bruce hit her. The court has heard testimony from the emergency room nurse who examined Amy after this incident. The court has heard from Amy’s therapist that she is afraid of Bruce. The therapist testified that she believes it would be best for Amy to continue to have a relationship with Bruce, but only if the relationship is supervised, so that Amy’s physical safety is assured. The therapist testified that she thought visits between 1:00 – 4:00 p.m. would be appropriate for the time being. The court has heard from my uncle, who is a big and strong man, that he is available to supervise visits between 1:00 –4:00 p.m. on Sundays and that he would be willing to intervene if it looked like Bruce was going to hurt Amy.</p>
Argument	<p>The evidence shows that unsupervised parenting time between Amy and her father results in her being physically endangered. In this type of situation, the court has the authority to restrict Bruce’s parenting time as circumstances warrant. Here, supervising Bruce’s time with Amy is warranted because it would protect Amy from physical harm while allowing her and Bruce to continue to maintain a parent to child relationship. It would protect her because it is very unlikely that Bruce would hurt Amy with my uncle present. Even if he tried, my uncle is big enough to be able to intervene on behalf of Amy. My uncle is available on Sundays from 1:00 –4:00 p.m., which is for now enough time to allow Amy and Bruce to maintain their relationship, especially given that she is fearful of him. Until Bruce shows the court that he will not hurt Amy anymore, and until Amy is not afraid of her father, it is in Amy’s best interests to have her time with her father supervised by my uncle from 1:00-4:00 p.m. on Sundays.</p>

Finally, in addition to your arguments that coincide with the law (above), you can make arguments of fairness and common sense. For example, as part of your motion to increase child support, you can argue that it is simply not fair that your child suffer because you cannot afford to sign her up for after school activities when her father’s income has increased so much that he can afford luxury cars.

4. Organize your documents.

Documents can be extremely persuasive pieces of evidence. Think of any documents you could get which could support your case. For example:

- A child's report cards can be evidence as to whether she or he is happy in school.
- A doctor's report can be evidence as to an injury your child suffered.
- A tax return can be evidence as to how much money your former spouse made last year.
- A lease can be evidence as to when you separated from your former partner.
- A police report can be evidence of your being injured or afraid of being injured by your former partner.
- A therapist's notes can be evidence as to what specific issues your child is dealing with now.
- A person's driving record can be evidence of alcoholism (e.g., if she or he has been pulled over for drinking and driving).

Figure out what documents you have and what documents you need to obtain. If they are official documents, find out how you can obtain them. If a private person is unwilling to give you a copy of a document you need, ask the court clerk how to subpoena a document.

Once you have all the documents, make at least three copies of each document. One copy will be for you to keep, one will be for the other party, and one will be for the court. (The court will want to see the originals and may even want to keep the originals.) Keep them well organized and, at the hearing, ask that they be marked as exhibits.

You will need to make sure that the author of the document attends the hearing. If she or he is unwilling to do so, ask the court clerk how to subpoena the witness. The author will have to testify that she or he wrote the document. They will also have to give details about the document so the judge can accept them into evidence.

5. Arrange for your witnesses to attend the hearing.

You will need to have any witness who might be helpful to your case at the hearing. Even if it ends up that you don't need all their testimony, all potential witnesses should be present.

Some witnesses will be happy to come on your behalf. For those who are not, ask the court clerk how to subpoena them so that their presence is required at the hearing.

A written statement from a witness will not substitute for him or her being there. A judge will not look at a written statement from a person without the person who wrote it being in court to testify.

Make sure the witnesses that you are calling have personal knowledge of the subject of their testimony.⁴ If they do not have personal knowledge of the subject about which you want testimony, they should not testify and someone else should be found.

Do not call any witness to testify as to what a third person said. Instead, bring the third person to court. This is called the “hearsay” rule.⁵

6. Write out your questions for each witness (including yourself).

For each witness (including yourself!), make a list of the facts that he or she knows that relate directly to your motion and your argument.

Then, for each witness, make a list of the questions to ask which will show evidence of these facts to the court. If a list is made beforehand, it will be more likely that you will not forget anything important. Remember that witnesses give testimony, not argument, to the court.

For your own testimony, write something that you can refer to when you are making your statement. It may be helpful for you to start each sentence on a new line to avoid getting lost.

Questioning Witnesses

There are many rules regarding how to ask questions. In addition, the types of questions you can ask depend upon whether you are questioning a “friendly” witness, an “adverse” witness, or cross examining an adverse witness. Some tips and examples are provided below.

Generally, it is best to try to get in all your facts by questioning all of the friendly witnesses. You may need to call an adverse witness,⁶ but it is generally much more difficult to question an adverse witness than a friendly witness. By questioning a hostile witness, there is a risk of getting evidence that might damage the case. Some examples are provided on the next page.

⁴ Rule 602, Minnesota Rules of Evidence.

⁵ Rule 801(c), Minnesota Rules of Evidence.

⁶ For example, if you need to give the judge evidence about the other party’s income, you will most likely want to subpoena documents such as paycheck stubs and tax returns. However, the judge will not accept documents unless the person they belong to testifies that they are indeed his or her paycheck stubs and/or tax returns. So you would need to call the other party as a witness to ask him/her to identify (and maybe explain) the paycheck stubs and tax returns.

A. Questions for a friendly witness.

First, some identification questions are necessary. Ask the witness his or her name and address (unless the witness does not want to disclose the address).

Next, some “foundation” questions are necessary. Ask the witness whether or not she or he knows you, and if so, how? Then, ask questions to establish whether and how the witness knows certain facts that are relevant to your motion.

Next, you can ask the witness about the facts that you want the judge to hear.

On direct exam, your questions must be open-ended and not leading. Leading questions are questions that tell the witness the answer.⁷

For example:

You cannot ask:	Did you see Bruce hit Amy in the face?
Instead, ask:	What, if anything, did you see when you came over on August 17, 2004?

You cannot ask:	Was I a quiet tenant?
Instead, ask:	What kind of tenant was I, if you know?

You cannot ask:	Does Owen seem happy in school?
Instead, ask:	How is Owen doing in school, if you know?

Also, you need to avoid asking “hearsay questions.” For example:

You cannot ask:	What did the nurse say about Amy’s condition?
Instead:	You must call the nurse as a witness to testify what she said about Amy’s condition

You cannot ask:	What did my landlord tell you about me?
Rather:	You must call the landlord as a witness to testify what he thinks of you as a tenant.

You cannot ask:	What did Owen’s math teacher tell you about his adjustment to school?
Rather:	You must call the teacher as a witness to testify about her impressions of Owen’s adjustment to school.

⁷ Rule 611(c), Minnesota Rules of Evidence.

Example scenario for a friendly witness:

I would like to call Joleen Emerson as a witness. (The court gives witness the oath.)

- “Please state your name and address.” (Answer: My name is Joleen Emerson. I live at 123 Cedar Ave, Minneapolis.)
- “What is your occupation?” (I work full time as a janitor at Ann Sullivan school.)
- Do you know me? (Yes.)
- How do you know me? (We have been friends since 1991 and you now baby-sit my son while I’m at work.)
- How often do we see each other? (I come over every weekday to pick up my son and we see each other.)
- Do you come in to the house? (Usually.)
- Do you know whether I have any children? (Yes, I know that you have two children, Owen and Amy.)
- Do you know their ages? (I think Owen is about 17 and Amy is about 12.)
- Do you see them ever? (I usually see them when I pick up my son.)
- Do you know Bruce, their father? (Yes, I used to see him every now and then when he was home from work, before he moved out in July.)
- Did you come by my house on August 17, 2004? (Yes.)
- On that day, did you see anything unusual when you came by? (Yes, I saw Bruce punching Amy with a closed fist. She was trying to get away from him and he just hauled off and punched her.)
- Did you see where he punched her? (Yes, it was in the face, over her left eye.)
- Do you know what happened before that? (No. I just saw him punching her.)
- Do you know what happened right after he punched her? (She started to scream and he said if she didn’t shut up he’d give her something to really cry about. Then she got really quiet. Then Bruce saw me and he stormed out of the house and drove off. Then you took Amy and drove to the hospital as I was leaving with my son.)
- I’m showing you what has been marked as Exhibit 1. Can you identify this? (Yes, that is a picture that I took of Amy two days later, on August 19.)
- How do you know it was August 19? (Well, it was two days after the day I saw him hit her, and my camera has a feature that tells you the date the picture was shot. The date is on the picture.)
- Why did you take a picture of her? (Because you asked me to, you said your camera was broken.)
- What does this picture show? (This picture shows the black eye that she got in the place that Bruce hit her.)
- Thank you. I have no other questions. I ask the court to accept exhibit 1 into evidence.

Second example scenario for a friendly witness:

I would like to call Sue Olson as a witness. (The court gives witness the oath.)

- “Please state your name and address.” (My name is Susan Olson. I live at 456 Cedar Ave, Minneapolis.)⁸
- “What is your occupation?” (I work in a factory first shift.)
- Do you know me? (Yes.)
- How do you know me? (I rented the apartment next to yours.)
- Can you tell the court what kind of tenant I was, in terms of being loud or quiet? (You were a quiet tenant. Not like the people down the hall who are always playing their music really loudly.)
- Were you home a lot? (I was always home in the evening because I have two children.)
- Did you notice whether or not I had a lot of visitors at night? (I did not notice that you had visitors.)
- Do you think you would have noticed if they were loud? (Yes, I do, because the walls are very thin.)
- Did you ever have any complaints about me? (No, I thought you were a good neighbor. You were quiet and you helped me out sometimes watching my children.)
- Thank you. I have no more questions.

Third example scenario for a friendly witness:

- “Please state your name and address.” (My name is Nina Fernan. I live at 789 Franklin Ave, Minneapolis.)
- “What is your occupation?” (I am a schoolteacher.)
- In the course of your work as a teacher, have you had the occasion to meet me? (Yes.)
- How do you know me? (Your son, Owen, is in my English class at school and you have come in to see me at parent/teacher conferences.)
- What kind of grades does he get in your class? (He consistently gets A’s on his papers, sometimes he gets a B.)
- I’m showing you what has been marked as Exhibit 1. Can you identify this for the court? (Yes, this is a copy of Owen’s report card for the fall semester.)
- From this report, can you tell the court what Owen’s grades were? (Yes, he got all A’s, except for a B+ in math.)
- Do you know Owen in any other context? (Yes, I am an assistant coach for the boys’ track team, and he is one of the long distance runners. I coach the long distance runners.)

⁸ Note: If a witness does not want to give her street address, she won’t be forced to.

- What can you tell me about Owen from your personal observations of him? (He is typically an outgoing, friendly boy. He has a lot of friends on the track team and seems to really enjoy practice. He is an average runner. He is a great supporter of the other boys on the team. He's a really likeable kid.)
- Do you have a sense as to whether he likes his school or would want to leave it? (Yes, he seems to be thriving where he is. His grades are good. He has a good network of friends. He appears to be happy. And he is in the 12th grade, which is generally a difficult year to move to a different school and get used to a totally new environment.)
- Thank you. I have no other questions. I ask the court to accept into evidence exhibit 1.

With friendly witnesses, it can be helpful to review your questions with them before the hearing. Practice asking them the questions and having them answer the questions. Many attorneys do this in advance of a hearing because it will help the witnesses understand what to expect at the hearing. You must be careful, however, not to put words in a witness' mouth or to tell them to change the substance of the testimony. Make it clear to the witnesses that they must tell the truth.

B. Questions for an adverse witness.

An adverse witness is someone who will testify against you in your hearing. Another party could call an adverse witness, or you could call him or her (for example, calling the other party as a witness).

When you question adverse witnesses, you run the risk of getting answers that either you did not foresee or that you did not want. In general, avoid questioning adverse witnesses unless it is necessary, because it is difficult to know how to respond when you get answers you do not want.

If you do decide to call an adverse witness, make sure you do not get into an argument with him or her. Only ask questions, do not answer questions from the witness, and do not try to argue him or her into a different answer.

It takes more work to prepare for questioning an adverse witness because you never know in advance what she or he will say, so plan for several scenarios. Also, unlike questioning your own witnesses, when questioning an adverse witness, you CAN ask leading questions. For example:

- You are the respondent in the action, correct?
- You are the father of Justin, correct?
- You know you have the duty to support Justin, correct?
- You currently work full time at Friskies, correct?
- According to your last year's tax returns, you earned \$21,648 in 2004, correct?

If he says “no” to any of the questions to which you think the answer should be “yes,” then you would ask him to explain his answer. If you had evidence to the contrary, you could introduce it and ask him to explain. For example, if he says he did not earn \$21,648 in 2004, then you can introduce as an exhibit (if you have it), his 2004 tax return which shows \$21,648 and then ask:

- I’m showing you what’s been marked as exhibit 1. This is your 2004 tax return, correct?
- At the bottom of page 1, it shows that you earned \$21,648 in 2004, correct?
- So, you earned \$21,648 in 2004, correct?

You can also ask open-ended questions during an adverse examination. These are best used when you think the witness will dig himself or herself into a hole, often times giving you more helpful information. For example:

- How much money did you make in 2004? (I don’t know, but I think it was a pretty bad year. I bet I made only about \$15,000.)
- I’m showing you what’s been marked as exhibit 1. This is your 2004 tax return, correct?
- At the bottom of page 1, it shows that you earned \$21,648 in 2004, correct?
- So, you earned \$21,648 in 2004, correct?

Another example of an open-ended question giving you some information that you can use:

- Did you pay your child support as ordered in the month of October? (Yes, I did.)
- I’m showing you what’s marked as exhibit 2, the child support records, which show that you did not. I’ll ask you again, did you pay all your child support as ordered in the month of October? (I paid most of it.)
- Why did you not pay *all* the child support as ordered during the month of October? (Because I didn’t have the money.)
- Were you out of work? (No.)
- Why do you say that you did not have the money? (Because I had to pay other bills.)
- So, isn’t it true that you had the money but chose to pay other bills ahead of your obligation to your child?

Listen carefully to make sure the witness has answered the question that you asked. If she or he has not, then simply re-ask the question again until you get an answer to your question. If the witness continues to be evasive, politely ask the judge to instruct the witness to answer the question. For example:

- So you lost your job at Friskies? (Yes.)
- When did you lose that job? (It wasn’t my fault though.)

- Thank you. But my question was when did you lose that job? (Ask anyone and they'll tell you my boss had it out for me ever since I started there.)
- Thank you. First I need to know when did you lose that job? (I'm looking for work now.)
- Judge, please instruct the witness to answer the question.
- *When did you lose that job?* (I don't remember.)
- *What is your best guess?* (A while ago.)
- *When?* (A while ago.)
- *Was it within the past year?* (Yeah.)
- *Was it before or after the Memorial Day Holiday?* (Before.)
- *Was it before or after Mother's Day?* (After.)
- *So it was sometime between Mother's day and Memorial Day.* (Yeah.)

C. Cross examination questions.

A cross-examination is when you question a witness that someone else has called. The witness has already testified, and now it is your turn to ask questions of the witness. It is best to limit your questions to those that are absolutely necessary, because again, you run the risk of getting answers that you do not want.

If the witness has not said anything that you think is bad for your case, then do not cross-examine him or her. You have the right to pass, and if you have nothing of value to ask, then pass.

If the witness has said something that you think is untrue or that you want more information on, then you may want to cross-examine the person. Note: Cross-examination is to find out more facts, or to call into question the truthfulness or value of the testimony that the person gave. It is not the time to argue.

Under the rules of evidence, you are generally allowed to ask cross-examination questions only of topics that were raised in the direct questioning. Although, if you think something is really important to ask, you should try asking it.⁹ (If the judge does not allow you to ask it under cross-examination, you could perhaps call that witness as an adverse witness later.)

When cross-examining, it is best to ask only two types of questions: 1) questions that you already know the answer to and 2) questions that you can prove the answer if the witness does not give the right answer. For example:

- On direct examination, you said that you earned only \$15,000 in 2004. Do you remember that testimony? (Yes.)
- I'm showing you what's been marked as Exhibit 1. Can you identify this? (It is my tax return for 2004.)
- At the bottom of page one, does it say that you earned \$21,156 in 2004? (Yes.)

⁹ Rule 611(b), Minnesota Rules of Evidence

- So, it would be more accurate to say that you earned \$21,156, not \$15,000, right?

Cross-examination can also be used to get more detail about a witness' testimony if you think the testimony was vague or untrue. Sometimes, greater detail from a witness can make their story seem less believable. For example:

- On direct examination, you stated that you were fired from your job, right? (Yes.)
- Can you tell me more about being fired? For example, who fired you? (Todd Moore, the plant manager.)
- How long did you work for Friskies before you were fired? (Two years.)
- Prior to being fired, had you any reason to believe they weren't happy with your work? (No.)
- Were you given any warnings before you were fired? (No.)
- So, your testimony is that after having worked there for two years, you were just fired without any warning and without any indication of dissatisfaction on the part of the company? (Yeah.)

This line of questions got enough detail from the witness that it looks like he might be lying about quitting his job. You need to be careful though, because sometimes the witness can give greater detail which makes your case look bad.

7. Go watch a court case in family court so you have an idea of how it works.

If you can, watch a court case in front of the judge who is assigned to your case so that you get an idea of what the judge is like.

8. Practice presenting your case to a friend.

Even if you feel confident about what you are going to say and how you are going to say it, it always helps to practice presenting your lists of questions and arguments with a friend. Get feedback from your friend about how you can improve.

9. Connect with a battered woman's advocate for assistance and support.

Moral support during the hearing will be helpful. Usually, an advocate will be willing to come with you for at least part of the hearing. If you need help in finding an advocate, call the Battered Women's Legal Assistance Project. If an advocate is not able to accompany you, arrange for a friend to come to the hearing with you.

SOME TIPS FOR THE HEARING

Before the hearing.

- ❑ Dress in neat, clean clothes. This shows respect for the court.
- ❑ Bring a notepad and pen to court to write down ideas as they occur to you (if you do not write them down, you may forget them).
- ❑ Show up early with enough time to settle in and thus avoid feeling flustered.
- ❑ Go over your lists of questions and arguments.
- ❑ Bring an advocate or friend to support you.
- ❑ Do not bring children to the hearing.
- ❑ Pay attention. The judge or clerk will announce your case before it starts. Be ready to go when you are called.

During the hearing.

- ❑ Speak clearly. Do not chew gum or put your hands in front of your mouth.
- ❑ Be extremely polite to the judge and to the other side. If the judge is talking, never interrupt him or her. If the judge interrupts you, stop talking immediately and listen to what the judge is saying.
- ❑ Do not interrupt the other party no matter how obnoxious he or she is. If you believe she or he is lying, wait until she or he is finished to ask the judge if you can respond. (It may help to write down what you want to say so that you do not forget it when your turn comes.)
- ❑ Maintain your composure. Even if you think the judge is being unfair, stay focused and keep calm. Losing your temper could undermine your arguments.
- ❑ During the hearing, never talk directly to another party. Talk only to the judge. The only exception is when you are testifying and the other party is asking you questions. If you are presenting arguments and the other person says something to you, ignore it unless the judge instructs you to answer it. Parties are supposed to address themselves only to the judge and it is irritating to many judges when parties break this rule of decorum.

- ❑ Maintain your credibility, or believability, by presenting only evidence that is true and only arguments that you can back up. If you lose your credibility on even one point, the judge may question the truthfulness of your entire case.
- ❑ Do not say anything in the bathrooms or hallways that you do not want the other party to overhear.
- ❑ Remember to turn off pagers or cell phones.

Specific tips for the hearing.

- ❑ Ask the judge for permission to have the clerk mark (or number) your exhibits. The clerk will keep the copy or original that is marked for the record. It is sometimes easier to mark them all at one time. Remember to keep a copy for your reference (and mark on your copy the exhibit number the clerk tells you) and to give a copy to the other party. You must also ask the judge to accept your exhibits into evidence. Some people do this at the end of the testimony of the witness, and others do it at the end of all of the testimonies. If you do not have the judge accept the exhibits into evidence, however, they will not be considered when the judge is making the final decision.
- ❑ Ask the judge when to present your argument and when to present your evidence. When you are in doubt as to which you should be presenting, you can ask the judge “Do you want argument now, or evidence?” Also, ask the judge’s permission to call your witnesses.
- ❑ When the judge or another party asks you a question, listen carefully. Make sure you understand the question before answering it. Be straightforward, but do not volunteer information that is not asked. You may wish to give extra detail if it is the judge who is asking the question. *Always tell the truth.*
- ❑ If you do not know the answer to a question, say so. It is okay to admit that you do not know something. If you guess or pretend to know, it could harm you in the long run.
- ❑ In your argument, if you think that a witness’ testimony was not believable, tell the court why. For example, “Joe testified that he was fired from his job. He also testified that he was given no warning and given no indication of any dissatisfaction on the part of the company. This testimony is not consistent with real life situations, where big companies don’t just fire people suddenly for no reason. I ask the court to find Joe’s testimony unbelievable and find that he was not fired but rather quit his job in order to avoid paying child support.”

**SAMPLE NOTICE OF MOTION AND MOTION, AND
SUPPORTING AFFIDAVIT, BLANK FORMS FOLLOW**

STATE OF MINNESOTA
COUNTY OF **HENNEPIN**

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FAMILY COURT

DIVISION

Rose Javorek
Plaintiff
AFFIDAVIT

NOTICE OF MOTION,
MOTION, AND

Steven Javorek
Defendant

Case Type 4

FILE NO: **XXXXXX**

NOTICE OF MOTION AND MOTION

To:

Steve Javorek
113 East Main St
Minneapolis, MN 55999

Please take notice that **Rose Javorek** is making a motion for the court to make the orders listed below. This motion will be heard at _____ (time) on _____ (date), before the Honorable _____, Referee or Judge of District Court, at the following location:

The requested orders are as follows:

I am asking the court to order that all visits between Steven and our daughter Amy be supervised by my uncle until Steven demonstrates that he will not hurt Amy. I would like the supervised times to be from noon to four on Sunday afternoons. I would also like an order that Steven go to therapy to deal with anger issues so that he can be a better parent to Amy.

For any such other and further relief as the court may deem just, fair, and equitable. All responsive pleadings shall be served and mailed to or filed with the court administrator no later than five (5) days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question.

The undersigned certifies to the best of his or her knowledge that: this document is not being filed for an improper reason, such as harassment or delay; these claims are supported by the law; and there is evidence for the claims and/or denials. The undersigned knows he or she may be fined or sanctioned by the court if this certification is false.

This motion is based upon the attached affidavits and pleadings. The court may grant any or all of the above requested relief even if the responding party does not appear.

Dated: **October 20, 2004**

Signed:

55499

(name **Rose Jaworek**

(address) **209 E. Grand St, Mpls,**

(telephone) **612/ 222-2222**

AFFIDAVIT

I, the undersigned, being first duly sworn, under oath respectfully represents to the court that:

I have seen Steven hit our daughter Amy (who is 12) on numerous occasions since she was just 6 or 7. Sometimes he hits her hard enough that she bruises. Since we have separated, he sees her just on every other weekend. But it seems that he is hitting her more. Her teacher at school saw Amy after Amy spent a weekend with her father in May, and Amy had several bruises. She comes home from her visits with him often and tells me that he has hit her maybe once every couple of weeks. Most recently, on August 17, 2004, he hit Amy so hard at my house that I had to take her to the emergency room. My friend saw him do it, too, and she took a picture of Amy two days later which shows the bruise on her face. The nurse at the emergency room who saw her will come to the hearing to testify, too. Amy is seeing a therapist and the therapist will testify that Amy is terrified of her dad. Under these conditions, it is in Amy's best interests that any contact with her father be supervised so that someone makes sure that he does not physically hurt her any more. He should also go to therapy to address whatever it is that makes him hit our

little girl. My uncle will come to the hearing and he is willing to be the supervisor. He is free on Sundays from noon to four.

I make this affidavit in support of my attached motion.

Dated: **October 20, 2004**

Signed:

Subscribed and sworn to before me
this ____ day of _____
55499

(name **Rose Jaworek**
(address) **209 E. Grand St, Mpls,**
(telephone **612/ 222-2222**

Notary Public

- This is my address and phone number.
- This is an address and phone number at which I can receive messages and mail.

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STATE OF MINNESOTA
COUNTY OF _____
DISTRICT

_____ DISTRICT COURT
_____ JUDICIAL

FAMILY COURT

DIVISION

Plaintiff
AFFIDAVIT

NOTICE OF MOTION,
MOTION, AND

Defendant

Case Type _____

FILE NO: _____

NOTICE OF MOTION AND MOTION

To: _____

Please take notice that _____ is making a motion for the court to make the orders listed below. This motion will be heard at _____ (time) on _____ (date), before the Honorable _____, Referee or Judge of District Court, at the following location:

The requested orders are as follows:

(This page left blank.)

(This page left blank.)

I make this affidavit in support of my attached motion.

Dated: _____ Signed:

Subscribed and sworn to before me
(name) _____
this ____ day of _____
(address) _____
(telephone) _____

Notary Public _____

- This is my address and phone number.
- This is an address and phone number at which I can receive messages and mail.

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STATE OF MINNESOTA
COUNTY OF _____
DISTRICT _____

_____ DISTRICT COURT
_____ JUDICIAL

FAMILY COURT

DIVISION _____

Plaintiff

AFFIDAVIT OF SERVICE

Defendant

Case Type _____

FILE NO: _____

I, _____ (your name), being first sworn/affirmed, state under oath that I swerved the attached Notice of Motion, Motion, and Affidavit to the below named parties by mailing to him/her/them true and correct copies of the above documents, enclosed in an envelope, postage prepaid, and by depositing the envelope in the United States Mail at _____ (name of city), Minnesota on _____ (date of mailing), directed to his/her last known address as follows:

Dated: _____

Signed: _____

Subscribed and sworn to before me

(name) _____

this ____ day of _____

(address) _____

(telephone) _____

Notary Public

- This is my address and phone number.
- This is an address and phone number at which I can receive messages and mail.

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