



## APPEALING A NON-CRIMINAL TRAFFIC VIOLATION DECISION

### An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process.

**If you decide to represent yourself, you will need to do additional research to prepare.**

**When you represent yourself, you must abide by the following:**

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
  - North Dakota Rules of Civil Procedure;
  - North Dakota Rules of Court;
  - North Dakota Rules of Evidence;
  - North Dakota Administrative Rules and Orders;
  - Any local court rules.

Links to the laws, case law, and court rules can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link.

**When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.** If you are unsure if this information suits your circumstances, consult a lawyer.

***This information is not a complete statement of the law. This covers basic information about the process of appealing a Municipal Court decision on a non-criminal traffic violation to a North Dakota state district court. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.***

## **WHEN CAN A MUNICIPAL (CITY) OR DISTRICT COURT DECISION ON A TRAFFIC VIOLATION BE APPEALED?**

### **Municipal Court Decisions:**

Municipal court decisions on criminal and non-criminal traffic violations may be appealed to a North Dakota state district court.

### **District Court Decisions:**

Only district court decisions on criminal traffic violations may be appealed to the North Dakota Supreme Court. District court decisions on non-criminal traffic violations cannot be appealed to the North Dakota Supreme Court.

## **WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO APPEALS OF NON-CRIMINAL TRAFFIC VIOLATIONS?**

**North Dakota Century Code Chapter 39-06: Operator's Licenses.** Chapter 39-06 is available at [www.legis.nd.gov/cencode/t39c06.html](http://www.legis.nd.gov/cencode/t39c06.html).

**North Dakota Century Code Chapter 39-06.1: Disposition of Traffic Offenses.** Chapter 39-06.1 is available at [www.legis.nd.gov/cencode/t39c06-1.html](http://www.legis.nd.gov/cencode/t39c06-1.html).

- See Section 39-06.1-03 for non-criminal traffic violation appeals from municipal court to district court.
- See Section 39-06.1-05 for the list of criminal traffic violations.

**North Dakota Century Code Chapter 39-07: General Regulations Governing Traffic.** Chapter 39-07 is available at [www.legis.nd.gov/cencode/t39c07.html](http://www.legis.nd.gov/cencode/t39c07.html).

**North Dakota Century Code Section 40-18-19: Appeals From Determinations of Municipal Judge.** Section 40-18-19 is available at [www.legis.nd.gov/cencode/t40c18.pdf#nameddest=40-18-19](http://www.legis.nd.gov/cencode/t40c18.pdf#nameddest=40-18-19).

**Rule 16 of the North Dakota Supreme Court Administrative Rules** applies to appeals from municipal courts. Rule 16 is available at [www.ndcourts.gov/legal-resources/rules/ndsuptadminr/16](http://www.ndcourts.gov/legal-resources/rules/ndsuptadminr/16).

**The North Dakota Rules of Civil Procedure** apply to civil matters in North Dakota state district courts. The rules are available at [www.ndcourts.gov/legal-resources/rules/ndrcivp](http://www.ndcourts.gov/legal-resources/rules/ndrcivp).

**The North Dakota Rules of Criminal Procedure** apply to appeals of municipal court decisions to North Dakota state district courts. The rules are available at [www.ndcourts.gov/legal-resources/rules/ndcrimp](http://www.ndcourts.gov/legal-resources/rules/ndcrimp).

**The North Dakota Rules of Court** apply to civil matters in North Dakota state courts. The rules are available at [www.ndcourts.gov/legal-resources/rules/ndrct](http://www.ndcourts.gov/legal-resources/rules/ndrct).

**The North Dakota Rules of Evidence** apply to civil matters in North Dakota state courts. The rules are available at [www.ndcourts.gov/legal-resources/rules/ndrev](http://www.ndcourts.gov/legal-resources/rules/ndrev).

**Laws constantly change through legislation, administrative rulings and court decisions.** To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions.

Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

## **WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS RELATED TO APPEALS OF NON-CRIMINAL TRAFFIC VIOLATIONS?**

**Appeal** – A request made after trial, asking another court to decide whether the trial was conducted properly.

**Criminal Traffic Violations** – In general, traffic violations in state law (N.D.C.C. Chapter 39-07) and municipal ordinances are non-criminal. However, the following are criminal traffic violations (N.D.C.C. Section 39-06.1-05):

- Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. ([www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-01](http://www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-01))
- Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance. ([www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-03](http://www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-03))
- A violation of chapter 12.1-16 resulting from the operation of a motor vehicle. ([www.legis.nd.gov/cencode/t12-1c16.html](http://www.legis.nd.gov/cencode/t12-1c16.html))

- Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.  
([www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-04](http://www.legis.nd.gov/cencode/t39c08.pdf#nameddest=39-08-04))
- Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.  
([www.legis.nd.gov/cencode/t39c06.pdf#nameddest=39-06-42](http://www.legis.nd.gov/cencode/t39c06.pdf#nameddest=39-06-42))
- Violating subdivision b or c of subsection 5 of section 39-24-09.  
([www.legis.nd.gov/cencode/t39c24.pdf#nameddest=39-24-09](http://www.legis.nd.gov/cencode/t39c24.pdf#nameddest=39-24-09))
- Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46.  
([www.legis.nd.gov/cencode/t39c21.pdf#nameddest=39-21-46](http://www.legis.nd.gov/cencode/t39c21.pdf#nameddest=39-21-46))
- Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 5 of section 39-10-26.  
([www.legis.nd.gov/cencode/t39c10.pdf#nameddest=39-10-26](http://www.legis.nd.gov/cencode/t39c10.pdf#nameddest=39-10-26))

Individuals who are guilty of criminal traffic violations must pay a fine or fines, and will have a misdemeanor or felony on their criminal record.

**District Court** – The North Dakota state trial court of general jurisdiction with service in each of North Dakota’s 53 counties. All district courts are supervised and funded by the state. Decisions about criminal and non-criminal traffic violations may be handled by a district court. District courts are also the appeal courts for municipal court decisions involving criminal and non-criminal traffic violations.

**Municipal Court** – The trial court for the city or municipality. Municipal courts have jurisdiction over all violations of municipal ordinances, except certain violations involving juveniles. Municipal courts are funded by the city or municipality. Decisions about criminal and non-criminal traffic violations may be handled by a municipal court. Municipal court decisions about criminal and non-criminal traffic violations may be appealed to a North Dakota state district court.

**Non-Criminal (Administrative) Traffic Violations** – In general, traffic violations in state law (N.D.C.C. Chapter 39-07) and municipal ordinances are non-criminal. Individuals who are guilty of non-criminal traffic violations must pay a fine or fines, but will not have a misdemeanor or felony on their criminal record.

**North Dakota Department of Transportation** – A state agency to which criminal and non-criminal traffic convictions are reported by municipal and North Dakota state district courts.  
([www.dot.nd.gov](http://www.dot.nd.gov); (701) 328-2600)

**Points** – Many traffic violations are assigned a certain number of points based on the seriousness of the offense. When a driver accumulates 12 or more points on their record, the North Dakota Department of Transportation suspends the driver’s license. Contact the Department for information about options for point reductions.

**Prosecuting Attorney** – The lawyer who represents either the city or municipality for ordinance violations, or the lawyer who represents the State of North Dakota for state law violations.

**WHO ARE THE PARTIES IN A STATE LAW OR MUNICIPAL ORDINANCE NON-CRIMINAL TRAFFIC VIOLATION?**

**Plaintiff** – If the non-criminal traffic violation is a state law offense, the Plaintiff is the State of North Dakota. If the non-criminal traffic violation is a violation of a city or municipal ordinance, the Plaintiff is the city or municipality.

A prosecuting attorney represents the Plaintiff.

**Defendant** – The individual charged with the non-criminal traffic violation.

**WHO ARE THE PARTIES IN THE APPEAL OF A NON-CRIMINAL TRAFFIC VIOLATION TO DISTRICT COURT?**

**Appellant** – The Defendant in the Municipal Court non-criminal traffic violation case.

**Appellee** – The Plaintiff in the Municipal Court non-criminal traffic violation case.

*(This space left intentionally blank.)*

## **WHAT IS THE PROCESS FOR APPEALING A MUNICIPAL COURT DECISION ON A NON-CRIMINAL TRAFFIC VIOLATION TO DISTRICT COURT?**

If you requested a municipal court hearing on a non-criminal traffic violation, attended the hearing and you wish to appeal the municipal court decision on your non-criminal traffic violation, review the following information about the process.

**If you did not request a municipal court hearing for your non-criminal traffic violation, or if you did request a hearing but did not appear at the hearing, STOP.**

The ND Legal Self Help Center is unable to identify a process for appeal. Consult a lawyer licensed to practice in North Dakota to determine your options, if any.

### **FIRST: Determine if you have a criminal or non-criminal traffic violation.**

Review the ticket you received for the traffic violation. If your traffic violation is on the list of criminal traffic violations listed in the Definitions Section above, you have a criminal traffic violation.

If your traffic violation is not on the list of criminal traffic violations above, you have a non-criminal traffic violation.

**If you have a criminal traffic violation, STOP.** Consult a lawyer licensed to practice in North Dakota to determine your options.

### **SECOND: Determine which court held the hearing for your non-criminal traffic violation.**

Hearings for traffic violations are held by either a North Dakota municipal court, or a North Dakota district court. Determine which type of court held the hearing that decided your non-criminal traffic violation.

Contact information for North Dakota municipal courts can be found online at [www.ndcourts.gov/court-locations#municipal-courts](http://www.ndcourts.gov/court-locations#municipal-courts).

Contact information for North Dakota district courts by county can be found online at [www.ndcourts.gov/district-court](http://www.ndcourts.gov/district-court).

**If your non-criminal traffic violation hearing was held by a North Dakota district court, STOP.** **District Court non-criminal traffic violation decisions cannot be appealed. The District Court decision is final.**

**THIRD: File a written notice of appeal with the Clerk of Municipal Court within 30 days of the final decision.**

Contact the municipal court clerk and ask if the municipal court has a preferred form for the notice of appeal. An example of a notice of appeal is included at the end of this guide.

Complete the notice of appeal. Make at least two copies. Keep one copy for your records. You will serve the other copy in the Fourth step.

File the original, written notice of appeal with the municipal court clerk.

**The notice must be filed within 30 days of the final decision of the municipal court on your non-criminal traffic violation.**

**FOURTH: The Clerk of Municipal Court serves a copy of the notice of appeal on the prosecuting attorney.**

Service is giving a copy of the notice of appeal on the prosecuting attorney.

As required by Rule 37 of the North Dakota Rules of Criminal Procedure, the Clerk of Municipal Court serves a copy of the notice of appeal on the prosecuting attorney.

- Rule 37 is available at [www.ndcourts.gov/legal-resources/rules/ndrcrimp/37](http://www.ndcourts.gov/legal-resources/rules/ndrcrimp/37).

**FIFTH: The Clerk of Municipal Court transmits all documents filed in the action to District Court.**

Within seven days after you file your written notice of appeal with the Clerk of Municipal Court, the clerk transmits all of the documents filed in your case to the Clerk of District Court.

The Clerk of District Court will file the documents in a District Court case and assign a case number.

You will be listed as the Appellant in the District Court case. The city or municipality will be listed as the Appellee.

**SIXTH: Appear for the District Court hearing at the scheduled place, date and time.**

**The District Court will conduct a new trial of the non-criminal traffic violation.**

- An Evidence Research Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by scrolling to the “District Court Civil” section of the webpage.
- A Subpoena Informational Guide is available at [www.ndcourts.gov/legal-self-help/subpoenas](http://www.ndcourts.gov/legal-self-help/subpoenas).

At the hearing, you will present your evidence. The Appellee may cross-examine your witnesses and object to your evidence.

The Appellee will have a chance to present their evidence. You may cross-examine the Appellee’s witnesses and object to their evidence.

Following the hearing, the court will make a finding of not guilty or guilty and impose fines accordingly.

The District Court decision on a non-criminal traffic violation **cannot** be appealed. The District Court decision is final.

**If you do not appear for the hearing, the District Court must affirm the Municipal Court judgment against you, and enter it as the District Court’s judgment. Unless, within seven days after the date of the scheduled hearing, you make a motion to the District Court that shows you had good cause to miss the hearing.**

**LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION**

You are not required to hire a lawyer to bring a civil action in North Dakota District or Municipal Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

**Lawyer Resources**

If you decide to find a lawyer to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. Call (800) 634-5263 or go to [www.legalassist.org](http://www.legalassist.org).



- The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The cost is \$30.00 for a 30 minute consultation with a lawyer. Call (866) 450-9579 or go to [www.sband.org](http://www.sband.org).
- For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at [www.ndcourts.gov/Lawyers](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.

### **Limited Legal Representation**

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled.

For example:

- You may want a lawyer to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with a lawyer to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with a lawyer who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire a lawyer just to make the court appearance for you.

You and the lawyer must agree in writing to Limited Legal Representation.

STATE OF NORTH DAKOTA

IN MUNICIPAL COURT

COUNTY OF

CITY OF

Case # \_\_\_\_\_

)  
)  
Plaintiff,)

vs.

NOTICE OF APPEAL

)  
)  
)  
\_\_\_\_\_, )  
)  
Defendant.)

TO THE ABOVE-NAMED COURT:

NOTICE IS HEREBY GIVEN that the above-named defendant hereby appeals to the district court for \_\_\_\_\_ county from the judgment of conviction entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Defendant (or attorney for defendant)

Address: