



APPLYING FOR POST-CONVICTION RELIEF

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 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.

Carefully read this information and any instructions, laws, or court rules to which you are referred. If you are unsure if this information suits your circumstances, consult a lawyer.

You may go to court without a lawyer, but you must abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov/ndlshc.

This information is not a complete statement of the law. This covers basic information about the process of applying to a North Dakota District Court for post-conviction relief. 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.

A person convicted of a crime may file an application for post-conviction relief. Post-conviction proceedings are designed to resolve genuine factual disputes which might affect the validity of the conviction.

LAWS AND RULES RELATED TO POST-CONVICTION RELIEF:

[North Dakota Century Code \(NDCC\)](#). The laws of North Dakota enacted by the North Dakota State Legislature. You will see a series of numbers beginning with the letters NDCC. The numbers refer to Title, Chapter and Section. You can find the North Dakota Century Code (NDCC) at www.legis.nd.gov and in print in many North Dakota public and academic libraries.

[North Dakota Century Code Chapter 29-32.1: Uniform Post-Conviction Procedure Act](#). The procedures and requirements for applying for post-conviction relief are found in this Chapter of the NDCC. Case law of ND Dakota Supreme Court decisions related to this Chapter can be found in the print versions of the NDCC.

[North Dakota Rules of Civil Procedure](#). The rules that govern procedures in civil actions in district court. You can find them at www.ndcourts.gov/rules and in print in many North Dakota public and academic libraries.

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.

STEP ONE – REVIEW THE LAW:

Carefully review North Dakota Century Code Chapter 29-32.1. Requirements and procedures are found in this Chapter. If your application for post-conviction relief does not meet the requirements, your application may be dismissed or denied.

Section 29-32.1-01(1) lists eight conditions for applying for post-conviction relief. You will need to show that your conviction meets at least one of the conditions.

Applications for post-conviction relief must be filed within 2 years of the date the conviction became final. If more than 2 years has passed since the date the conviction became final, you will need to determine if an exception applies. Exceptions can be found in Section 29-32.1-01(3).

STEP TWO – PREPARE THE APPLICATION FOR POST-CONVICTION RELIEF:

Prepare your application for post-conviction relief.

The ND Legal Self Help Center does not have forms or instructions for applying for post-conviction relief. You will need to create your own document.

The application must:

- Name the State of North Dakota as the Respondent;
- Identify the proceedings in which the applicant was convicted and sentenced;
- Give the date of the judgment and sentence complained of;
- Set forth a concise statement of each ground for relief;
- Specify the relief sought; and
- Identify all proceedings for direct review of the judgment of conviction or sentence and all previous post-conviction proceedings taken by the applicant to secure relief from the conviction or sentence;
 - Identify the grounds asserted therein; and
 - The orders or judgments entered.

The application does not need to contain arguments, citations to laws, or discussions of authorities.

An example of an application for post-conviction relief is attached to this informational guide. You may find this of interest as a formatting template. Please be aware that this is not a ND Legal Self Help Center form and the Center does not guarantee or certify its accuracy or legal sufficiency. Use at your own risk.

Make a copy of the completed application for post-conviction relief. Keep the copy of each completed document for your records. The original documents are filed with the clerk of court.

STEP THREE – FILE THE ORIGINAL, COMPLETED APPLICATION FOR POST-CONVICTION RELIEF WITH THE CLERK OF COURT:

Take your completed application to the North Dakota clerk of district court in which your conviction and sentence took place. You will not be required to pay a filing fee.

If the clerk of court accepts your application for filing, the clerk of court will deliver a copy to the state's attorney of the county in which the criminal action was filed.

The clerk of court will notify you that assistance of counsel may be available to persons unable to obtain counsel. The clerk of court will inform you of the procedure for obtaining counsel.

WHAT TO EXPECT AFTER AN APPLICATION FOR POST-CONVICTION RELIEF IS FILED:

The State must respond within 30 days of docketing the application by the clerk of court.

The State may ask the court to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings.

The State's response may raise the following defenses:

- The application demonstrates no entitlement to post conviction relief and no purpose would be served by any further proceedings;
- The claim has been fully and finally determined in a previous proceeding; or
- The application constitutes misuse of the application for post-conviction relief process.

The court may do the following:

- On its own motion, before any response by the State, enter a judgment denying a meritless application on any and all issues raised in the application.
- Allow amendment of the application or any pleading or motion.
- Allow further pleadings or motions.
- Extend the time for filing any pleading.
- Allow you to withdraw the application without prejudice. This is allowed for good cause.
- Allow either party to use the discovery procedures available in criminal or civil proceedings. This is allowed for good cause and may be used only to the extent and in the manner the court has ordered, or to which the parties have agreed.
- On its own motion, summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
- On its own motion, dismiss any grounds of an application which allege ineffective assistance of post-conviction counsel. You may not claim constitutionally ineffective assistance of post-conviction counsel in proceedings under Chapter 29-32.1.
- Grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no

genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

- If an evidentiary hearing is necessary, determine which issues of material fact are in controversy and appropriately restrict the hearing.

If the court determines an evidentiary hearing is necessary:

- Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.
- A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
- The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

Appeal of final judgment:

A final judgment entered in an application for post-conviction relief under Chapter 29-32.1 may be reviewed by the North Dakota Supreme Court upon appeal as provided by rules of the North Dakota Supreme Court.

(A formatting example of an application for post-conviction relief is found on the next three pages of this informational guide.)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

 (Petitioner))
)
 PETITIONER,)
 Vs)
)
 State of North Dakota)
 (Respondent))
)
 RESPONDENT.)

Case No. _____

APPLICATION FOR
POST CONVICTION RELIEF

Comes Now the above-named Petitioner and Defendant, pro se, and respectfully makes Application for post-conviction relief, pursuant to Chapter 29-32.1 of the North Dakota Century Code, and in support thereof represents and shows to the Court:

1. Date of judgment of conviction: _____.
2. Presiding Judge, Case Number: _____.
3. Crime(s) convicted of and sentence(s): _____

 _____.
4. (Check one) Open guilty plea () Plea bargain () Bench trial () Jury trial ()
 If you entered a guilty plea to one count or indictment and a no-guilty plea to another count or indictment, please give details: _____

 _____.
5. Give details of any previous action taken to secure relief from conviction and sentence: _____

 _____.
6. Give condition (a-h) under NDCC 29-32.1-01(1) which qualifies petitioner for post-conviction relief: _____

Format example ONLY. This is NOT a NDLSHC form.

By providing this formatting example, the ND Legal Self Help Center DOES NOT imply or state that the content of the example is legally sufficient or suitable for your individual circumstances. Use at your own risk.

7. State *concisely* every ground which you claim that you are being held unlawfully.

Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

For your information, the following is a list of frequently raised grounds for relief in post-conviction proceedings.

- a) Conviction was obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding the nature of the charge and the consequences of the plea.
- b) Conviction obtained by use of coerced confession.
- c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- e) Conviction obtained by a violation of the privilege against self-incrimination.
- f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g) Conviction obtained by a violation of the protection against double jeopardy.
- h) Conviction obtained by action of a grand jury which was unconstitutionally selected and impaneled.
- i) Denial of effective assistance of counsel.
- j) Denial of right to appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

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