

## SERVICE INFORMATION AFTER A CIVIL ACTION HAS BEEN STARTED

### IMPORTANT! READ BEFORE USING THIS INFORMATION

**ND Legal Self Help Center staff and Court employees cannot help you fill out forms. If you are unsure how to proceed, you should consult a lawyer.**

This information covers basic procedure for service after a civil action has been started and is not a complete statement of the law. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you will have to abide by the state or federal laws that apply to your civil action, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Rules of Evidence, 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](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc).

*\*\*\*Disclaimer: 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 by the Center is not intended for legal advice but only a general guide to the court process. 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.\*\*\**

### Parties in a Civil Action

The party who starts a civil action with a complaint is called the Plaintiff. There can be more than one Plaintiff.

The party who is served with a complaint requesting civil legal action against them is called the Defendant. There can be more than one Defendant.

The party who starts a civil action with a petition is called the Petitioner. There can be more than one Petitioner.

The party who is served with a petition requesting civil legal action against them is called the Respondent. There can be more than one Respondent.

**Service is an important step in the legal process. Everything filed with the court after a civil action has started must be served on the other parties in the action.**

[Rule 5 of the North Dakota Rules of Civil Procedure](#) gives the requirements for service of documents after a civil action has been started. (Requirements for service to start a civil action are found in [Rule 4 of the North Dakota Rules of Civil Procedure](#).)

Generally, each of the following documents must be served under Rule 5 on every party, unless the rules, the laws that apply to your civil action, or the court provide otherwise:

- An order;
- A pleading served after the original summons and complaint (see [Rule 7 of the North Dakota Rules of Civil Procedure](#) for types of documents that are pleadings);
- A discovery document required to be served on a party (see [Rule 5\(d\)\(3\) of the North Dakota Rules of Civil Procedure](#) for discovery documents that are filed with the court);
- A written motion, except one that may be heard ex parte;
- A written notice, appearance, demand, or offer of judgment, or any similar document; and;
- Every document filed with the clerk or submitted to the judge.

Review the [North Dakota laws](#) that apply to your civil action. If a North Dakota law tells the specific method of service that must be used, use that method of service.

If the party is not represented by a lawyer, serve the party. If the party is known to be represented by a lawyer, serve the lawyer instead of the party.

\*\*\*In general, copies of documents are served. Original documents are filed with the court.\*\*\*

**Proof of service tells the court how, when and where the parties were served and the documents that were served.**

Proof of service is an important step in the legal process. If proof of service is not filed, the court will not act on your documents.

The proof of service for documents served after a civil action has been started tells the court when, how, and where the party or parties were served. An affidavit of service gives the court proof of service.

Affidavit of Service forms can be found under the Service link on the [ND Legal Self Help Center](#) website. Forms are not available for every method of service under Rule 5.

**Self-Represented parties are not required to serve documents electronically.**

[Rule 5 of the North Dakota Rules of Civil Procedure](#) requires electronic service of documents. Self-represented parties are exempt from this requirement. (See [Rule 3.5 of the North Dakota Rules of Court.](#))

**You must locate the addresses of the parties for service.**

Following are examples of ways to find people for service:

- Last known address.
  - Contact the U.S. Post Office for information on how to determine if the defendant left a forwarding address.
- Friends, family, employers.
- Online search engines.
- Government entities, such as Department of Motor Vehicles or County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
- A reverse directory allows someone to search by phone number to find an address. (Your local library may have access to reverse directories.)

**In general, documents may be served by self-represented parties as follows:**

**1. By handing documents to the other party:**

If you decide to serve copies of documents by handing them to the other party:

- a. The person who handed the documents to the other party must be at least 18 years of age and not a party to nor interested in the action.
- b. The person who handed the documents to the other party must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who handed the documents to the other party will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service with the clerk of court.

**2. By leaving documents at the other party's office or the other party's dwelling:**

If you decide to serve copies of documents by leaving them at the other party's office, you must have someone at least 18 years of age and not a party to nor interested in the action:

- a. Leave the document(s) with a clerk or other person in charge.
- b. If there is no one in charge, leave the document(s) in a conspicuous place in the office.
- c. The person who left the documents at the other party's office must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who left the documents at the other party's office will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- d. File the completed Affidavit of Service with the clerk of court.

If you decide to serve copies of documents by leaving them at the other party's dwelling, you must have someone at least 18 years of age and not a party to nor interested in the action:

- a. Leave the document(s) with someone of suitable age and discretion who lives at the other party's dwelling.
- b. The person who left the documents at the other party's dwelling must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who left the documents at the other party's dwelling will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service with the clerk of court.

**3. By mailing documents to the other party's last known address:**

If you decide to serve copies of documents by mailing them to the other party's last known address, the person who mails the documents must be at least 18 years of age.

- a. Mail copies of the documents to the other party. Postage must be prepaid.
- b. The person who mailed the documents must fill out an Affidavit of Service by Mail and sign the affidavit in front of a clerk of court or a notary public.

The person who mailed the documents will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service by Mail with the clerk of court.
- d. Service is complete upon mailing.

**4. By sending documents by a third-party commercial carrier to the other party's last known address:**

If you decide to serve copies of documents by sending them by a third-party commercial carrier to the other party's last known address, the person who mails the documents must be at least 18 years of age.

- a. Send copies of the documents to the Other Party by third-party commercial carrier to the last known address. Delivery charges must be prepaid. A third-party commercial carrier means that the carrier must not be a party or interested in the action, and it must be the regular business of the carrier to make deliveries for profit.
- b. The person who sent the documents must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who sent the documents will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service with the clerk of court.

- d. Service is complete upon depositing the document(s) to be served with the third-party commercial carrier.

**5. By leaving documents with the clerk of court (Requires an order of the court):**

If no address is known and you want to request a court order for service by leaving the document(s) with the clerk of court, you must:

- a. Make a written request to the court for permission to serve the document(s) by leaving the document(s) with the clerk of court. You must detail the methods you used to find the address of the other party you want to serve.
- b. If the court approves your written request, the court will issue an order.
- c. The person who leaves the document(s) with the clerk of court must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who leaves the document(s) with the clerk of court will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- d. File the completed Affidavit of Service with the clerk of court.

**6. By sending documents by electronic means (Requires the written consent of the other party (or parties) being served.):**

If you decide to serve copies of documents by sending them by electronic means, you must:

- a. Get the written consent of the other party. The written consent must be given by the party you want to serve by electronic means.
- b. The person who serves the document(s) by electronic means must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who serves the document(s) by electronic means will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service with the clerk of court.
- d. Service is complete upon transmission, unless the serving party learns that it did not reach the party to be served.

**7. By delivering documents by other means (Requires the written consent of the other party being served):**

If you decide to serve copies of documents by delivering them by other means, you must:

- a. Get the written consent of the other party. The written consent must be given by the party you want to serve by other means. The written consent must identify the other means.
- b. The person who serves the document(s) by other means must fill out an Affidavit of Service and sign the affidavit in front of a clerk of court or a notary public.

The person who serves the document(s) by other means will need to show a driver's license or photo identification card to the clerk of court or notary public.

The clerk of court or notary public will witness the signature and fill out and sign the Notary Public lines.

- c. File the completed Affidavit of Service with the clerk of court.