

## SERVICE INFORMATION FOR STARTING A CIVIL ACTION

### 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 to start a civil action 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 of a summons starts a civil action in North Dakota. This is also called service of process. A copy of the complaint (or petition) must be served with the summons.**

Service to start a civil action, also called service of process, requires delivery of the summons and a copy of complaint to the Defendant. The Plaintiff is required to notify the Defendant of the claims and to give the Defendant time to respond.

The summons and a copy of complaint must be delivered in specific ways. [Rule 4 of the North Dakota Rules of Civil Procedure](#) gives the requirements for service to start a civil action.

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 Defendant is not represented by a lawyer, the Plaintiff serves the Defendant. If the Defendant is known to be represented by a lawyer, the Plaintiff must serve the lawyer instead of the Defendant.

\*\*\*Please note that, in general, copies of documents are served. The 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 to start a civil action tells the court when, how, and where the Defendant was 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.

**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, the summons and copy of the complaint (or petition) may be served in three different ways.**

**1. By Mail:**

If you decide to serve documents by mail, the person who mails the documents must be at least 18 years of age.

- a. Mail the summons and copy of the complaint (or petition) to the other party or parties. Send the documents by Certified Mail, Return Receipt Requested (Restricted Delivery). The envelope should be marked “Deliver to Addressee Only.”
- 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 Affidavit of Service by Mail, together with the green card receipt that is signed to show actual delivery, with the clerk of court.

**2. By Personal Service:**

If you decide to serve documents by personal service, the person who serves the documents must be at least 18 years old and not a party in the action nor interested in the action.

- a. You can give the summons and copy of the complaint (or petition) to the sheriff for personal service on the Other Party. (You will be charged a fee.) The sheriff will provide an affidavit of service.

**OR**

- b. You may have another person who is at least 18 years of age and not a party to nor interested in the action give the summons and copy of the complaint (or petition) to the other party or parties. The person must serve the documents as required by [Rule 4\(d\) of the North Dakota Rules of Civil Procedure](#).

- c. The person who served the documents must fill out an Affidavit of Service by Personal Delivery and sign the affidavit in front of a clerk of court or notary public.

The person who served 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.

- d. File the Affidavit of Service by Personal Delivery with the clerk of court.

**3. By Obtaining the Other Party's Signature:**

You may ask the Defendant to admit to service of the summons and copy of the complaint (or petition):

- a. Ask the Defendant to complete an Admission of Service and fill in the date the Defendant was given the summons and copy of the complaint (or petition).
- b. Ask the Defendant to sign the Admission of Service. You or the Defendant must file the signed Admission of Service with the clerk of court.
- c. If the Defendant does not agree to admit to service, you must serve the documents as required by [Rule 4 of the North Dakota Rules of Civil Procedure](#).

**If you are unable to locate the other party or parties to serve the summons and copy of the complaint (or petition) by any of the three options above, you may be able to serve by publication. Service by publication is not available in all types of actions. See Rule 4(e) of the North Dakota Rules of Civil Procedure for the requirements for service by publication. (Contact the ND Legal Self Help Center at [ndselfhelp@ndcourts.gov](mailto:ndselfhelp@ndcourts.gov) and ask for the Service By Publication Informational Guide.)**