



PETITIONING FOR REVIEW OF AN UNEMPLOYMENT BENEFITS 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 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 petitioning a North Dakota District Court to review an unemployment benefits decision. 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. The Center cannot guarantee that all judges and courts will accept forms available through the Self Help Center. Use at your own risk.

WARNING – Petitioning for review of an unemployment benefits decision can have serious legal and financial consequences. It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition for judicial review of an unemployment benefits decision.

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.

This informational guide gives only the basics of the process. If you decide to represent yourself, you will need to do additional research to prepare.

This informational guide to petitioning a North Dakota District Court to review an unemployment benefits decision is made up of two sections:

The first section gives general information about petitioning for review of an unemployment benefits decision. (Pages 4-12)

The second section gives information about the basic process of petitioning for review of an unemployment benefits decision from beginning to end. (Pages 13-23)

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SECTION ONE: INFORMATION ABOUT PETITIONING A NORTH DAKOTA DISTRICT COURT TO REVIEW AN UNEMPLOYMENT BENEFITS DECISION

WHAT IS A PETITION FOR JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION?

If Job Service of North Dakota denied unemployment benefits, or did not granted the amount of unemployment benefits to which you believe you are entitled under law, you may ask a North Dakota District Court to review the final decision.

This process is called petitioning a North Dakota District Court to review a final decision of Job Service North Dakota. This process may also be referred to as an appeal of a Job Service North Dakota final decision to a North Dakota District Court.

WHAT IS THE DIFFERENCE BETWEEN JOB SERVICE NORTH DAKOTA HEARING(S) AND JUDICIAL REVIEW OF A JOB SERVICE NORTH DAKOTA DECISION?

The biggest difference is that a judicial review of a Job Service North Dakota decision is **NOT** a brand new trial. Rather, the judicial review is an appeal of Job Service North Dakota decision. The judicial review is based **ONLY** on the record created as part of the Job Service North Dakota administrative hearing. The District Court **DOES NOT** retry the case, take new evidence, or weigh the credibility of the witnesses which were introduced at the Job Service North Dakota administrative hearing.

At the Job Service North Dakota administrative hearing, all of the facts and evidence were introduced and decided by the Administrative Law Judge. The administrative hearing was the trial.

When a Petitioner asks a North Dakota District Court for judicial review of a Job Service North Dakota decision, the Petitioner does not get a brand new trial. Instead, the Petitioner argues that Job Service North Dakota decision, or decisions, should be overturned. The Petitioner makes their argument by showing that the decision was wrongly decided based on the evidence and facts that were presented at the Job Service North Dakota Hearing. The Petitioner's argument is made in writing.

DOES THE ND LEGAL SELF HELP CENTER HAVE FORMS TO PETITION FOR JUDICIAL REVIEW OF AN JOB SERVICE NORTH DAKOTA DECISION?

Names and descriptions of the documents you will need to create for your petition for judicial review of an unemployment benefits decision are found throughout this guide.

This Informational Guide includes some of the forms you may use to petition for judicial review of an unemployment benefits decision. If the form you need is not included in this guide, the form is not available through the ND Legal Self Help Center. You may need to create some of your own legal documents.

If a form is not available and you need to create your own legal document, a variety of General-Use forms are available in the Guide to a Civil Action. You may find the General-Use forms of interest as a starting point for creating your own legal documents.

The Guide to a Civil Action is available at www.ndcourts.gov/ndlshc by clicking on the "Guide to Civil Action" link. Links to the General-Use forms are located at the **end** of the Guide. You must scroll to the end of the Guide to find the active links to the forms.

Public Access to Petitions for Judicial Review Filed in District Court Cases

If you would like to see documents filed in other North Dakota District Court cases involving petitions for review of administrative agency decisions, you may want to review publically available court records.

You can find individual court cases and lists of the documents filed in each case by going to the North Dakota Court Records Inquiry at <http://www.ndcourts.gov/publicsearch/default.html>.

- Read the information, and then click "Click Here to Proceed."
- Select a location from the pull down menu. Select a county or the State of North Dakota.
- Click "Civil, Family & Probate Case Records."
- To search for a type of case within a date range:
 - Under "Search by:" click the button next to "Date Filed."
 - Enter a date range in the "Date Filed:" boxes. For example, 01/01/2014 and 10/01/2016.
 - Select "Administrative Appeal" in the "Case Types:" box.
 - Click the "Search" box.
 - The screen will list publically accessible court cases based on your search.
- To review an individual case and to see the list of documents filed, click on the case number. Case numbers are listed on the left-hand side of the page. (You cannot view the documents themselves.)

- Please note that the cases listed in the search are for all administrative agency appeals to North Dakota District Court. You will need to identify the case numbers for appeals from Job Service decisions.
- Each filed document is assigned a document number. The document number is listed to the right of the name of the document. For example, "Doc ID# 1."

If you want to view and/or obtain copies of any of the documents lists in a case, you must contact the clerk of court of the county where the case was filed.

You will need to give the clerk of court the case number **and** document number of each document you would like to view/copy. Ask the clerk of court for the amount of the fee for copying documents.

IS THERE HELP AVAILABLE FOR CREATING LEGAL DOCUMENTS?

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your petition for judicial review of a Job Service North Dakota decision, such as preparing legal documents, while you handle the rest of the petition for judicial review. You and the lawyer must agree in writing to Limited Legal Representation.

WHO ARE THE PARTIES IN A PETITION FOR JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION?

Petitioner – The person bringing the petition for judicial review of a Job Service North Dakota decision.

Respondent – All other parties involved in the proceedings. Job Service North Dakota is one of the Respondents. (Review your documents from the Job Service North Dakota proceedings to determine if there are any other Respondents. You will list all the Respondents in your petition for judicial review.)

WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION?

Additional Claim – A notification filed at the beginning of a second or subsequent series of claims within a benefit year when reemployment and subsequent separation have occurred since the last claim was filed.

Benefits - The money payments payable to an individual with respect to the individual's unemployment as provided in North Dakota Century Code Chapter 52-06 and in the event of a disqualification for benefits as provided for in Subsection 1, 2, or 3 of North Dakota Century Code Section 52-06-02, the payment of benefits must be postponed for the period of time prescribed therein.

Brief – The Petitioner’s brief is a written document explaining why the Petitioner is asking for review of the unemployment benefits decision and what the Petitioner thinks is wrong with the decision. The Respondent’s brief is a written response to the Petitioner’s brief and explains why the unemployment benefits decision is correct.

Case Law – When a final decision of a North Dakota District Court is appealed to the North Dakota Supreme Court, the Supreme Court writes an opinion to explain how and why the Supreme Court interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

Claimant – An individual who has requested determination of insured status in connection with a claim for benefits.

Continued Claim – An application for waiting period credit or benefit payment and certifies to the completion of a week for which waiting period credit or benefits are claimed.

Full-Time Work – Means the number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

Insured Status – A claimant’s status when it has been determined by the division that the claimant has earned qualifying wages in accordance with North Dakota Century Code Section 52-06-04.

New Claim – An application for determination of insured status, benefit amount, and duration.

Oral Argument: Statements that are given orally by a lawyer or a self-represented individual, either to defend their legal position, or to rebut the opposing party’s legal position. An oral argument in a review of an unemployment benefits decision gives the Petitioner and Respondent an opportunity to explain their legal reasons why they should win the appeal. Oral argument is limited to the legal reasons the Petitioner and Respondent included in their briefs.

Part Totally Unemployed Worker – An individual who during any week is not employed full time or during which week the individual’s earnings from casual employment or odd jobs are less than the individual’s weekly benefit amount.

Partially Unemployment Worker – One who during a particular week:

- A. Earned less than his weekly benefit amount;
- B. Was employed by a regular employing unit;
- C. Worked less than the normal customary full-time hours for such regular employing unit because of a lack of full-time work; and
- D. Has a reasonable expectancy of obtaining full-time work from such employing unit.

Petition for Judicial Review – Written notification to Job Service North Dakota, all parties to the proceeding before Job Service North Dakota, and the District Court that a party is petitioning the District Court for review of the decision. The Petition for Judicial Review lists the grounds or reasons for judicial review and a brief explanation of why each ground applies.

Reopened Claim – A notification following a break in the claim series due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

Totally Unemployed Worker – An individual who with respect to any week performs no services and with respect to which no wages are payable to the individual for services performed during such week.

Valid Claim – A claim filed by an individual who has registered for work and who has earned wage credits during the individual's base period sufficient to entitle the individual to benefits under North Dakota Century Code Section 52-06-04.

Week – The calendar week of seven consecutive calendar days, beginning at 12:01 a.m. Sunday and ending 12 midnight the following Saturday, except that for the purposes of payment of benefits to partially unemployed workers, whose wages are paid on a weekly basis, the term week means the pay period week of such worker.

WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO PETITIONING FOR REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION?

Chapter 52-06 of the North Dakota Century Code governs the requirements and process of petitioning a North Dakota District Court to review a Job Service North Dakota decision.

<http://www.legis.nd.gov/cencode/t52c06.html>.

- Petition for judicial review requirements and process are found in Section 52-06-27 of Chapter 52-06. Review this carefully.

Chapter 28-32 of the North Dakota Century Code governs requirements and process for judicial review of a North Dakota administrative agency decision. This Chapter can be found at

<http://www.legis.nd.gov/cencode/t28c32.html>.

- Appeal requirements and process being at Section 28-32-42. The requirements and process go through 28-32-52. Review these carefully.
- In the petition you file with the District Court, you will need to give the reasons, or grounds, for your appeal. The reasons, or grounds, can be found in Section 28-32-46. Review these carefully.

Title 27 of the North Dakota Administrative Code contains the Administrative Rules of Job Service North Dakota. In addition to the North Dakota Century Code Chapters 52-06 and 28-32, you may find additional requirements and process for judicial review. This Title can be found at <http://www.legis.nd.gov/information/acdata/html/Title27.html>. See particularly:

- Section 27-03-07-03 (Representation of claimant in district court - Attorney fee.)

Rule 9.1 of the North Dakota Rules of Court includes additional requirements and procedures for judicial review of North Dakota administrative agency decisions. Rule 9.1 can be found at <http://www.ndcourts.gov/court/rules/NDROC/rule9.1.htm>.

The North Dakota Rules of Civil Procedure apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Civil Procedure, North Dakota Rules of” link.

The North Dakota Rules of Court apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Rules of Court, North Dakota” link.

The North Dakota Rules of Evidence apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Evidence, North Dakota Rules of” link.

Case Law Related to District Court Review of Administrative Agency Decisions may be found online at www.ndcourts.gov by clicking on the “Opinions” link, the “By Topic” link, and the “Administrative Proceeding” link.

Snapshots of case law related to District Court Review of Administrative Agency Decisions may also be found in the print versions of the North Dakota Century Code. Short summaries of case law related to each section of the North Dakota Century Code is located directly following the text of the section of the code. To view the full text of the opinion, go to www.ndcourts.gov and click on the “Opinions” link. Enter the name or case citation.

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.

WHERE IS A PETITION FOR JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION FILED?

The petition is filed in the North Dakota District Court of the county in which the Petitioner resides.

WHAT IS THE DEADLINE FOR PETITIONING FOR JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION?

Within thirty (30) days of the mailing date of the Job Service North Dakota final decision, the petition for judicial review must be filed with the North Dakota District Court of the county in which the Petitioner resides.

If the Job Service North Dakota final decision is not mailed, within thirty (30) days of delivery of the decision to the party, the petition for judicial review must be filed with the North Dakota District Court of the county in which the Petitioner resides.

WHAT DOES THE PETITIONER NEED TO PROVE?

The Petitioner has the burden of proof in the petition for judicial review process. The burden of proof is preponderance of the evidence. The Petitioner must prove their grounds, or reasons, for their petition for judicial review of the Job Service North Dakota decision.

The grounds for review of a Job Service North Dakota decision are limited to:

- The order of Job Service North Dakota is not in accordance with the law.
- The order of Job Service North Dakota is in violation of the constitutional rights of the petitioner.
- The provisions of this chapter have not been complied with in the proceedings before Job Service North Dakota.
- The rules or procedure of Job Service North Dakota have not afforded the appellant a fair hearing.
- The findings of fact made by Job Service North Dakota are not supported by a preponderance of the evidence.
- The conclusions of law and order of Job Service North Dakota are not supported by its findings of fact.

- The findings of fact made by Job Service North Dakota do not sufficiently address the evidence presented to the agency by the appellant.
- The conclusions of law and order of the agency do not sufficiently explain Job Service North Dakota's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

If the District Court decides that the Petitioner did not prove the grounds for review they listed in their petition for judicial review, the court must affirm the Job Service North Dakota decision.

WHAT DOES THE DISTRICT COURT CONSIDER WHEN DECIDING IF THE PETITIONER PROVED THEIR GROUNDS FOR THE PETITION FOR JUDICIAL REVIEW?

The District Court's review of the Job Service North Dakota decision is based only on the record created during the Job Service North Dakota proceedings. The District Court does not retry the case, take new evidence, or weigh the credibility of witnesses.

When reviewing Job Service North Dakota's findings of fact, the District Court decides whether a reasoning mind reasonably could have determined the findings were proven by the weight of the evidence from the entire record created during the Job Service North Dakota proceedings.

The conclusions of law in the Job Service North Dakota decision, however, are fully reviewable by the District Court.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

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

When Lawyer's Fees May be Paid by Job Service North Dakota

§ 27-03-07-03 of the North Dakota Administrative Code states that the Petitioner's lawyer fees are paid by the Job Service North Dakota only if the Petitioner finally prevails. Those fees are the fees that the lawyer would charge the Petitioner for representing the Petitioner in a petition for judicial review of a Job Service North Dakota final decision.

No lawyer fees are awarded if the lawyer is employed by or a member of, the staff of any legal services organization funded totally or in part by public funds.

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. The phone number is (800) 634-5263 and the website is www.legalassist.org.

The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is www.sband.org. The cost is \$30.00 for a 30 minute consultation with a lawyer.

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. You can narrow your search by city by clicking on "Cities" in the blue NAVIGATION box in the upper left of the webpage.

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.

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SECTION TWO: THE PETITION FOR JUDICIAL REVIEW OF AN UNEMPLOYMENT BENEFITS DECISION PROCESS

PETITION FOR JUDICIAL REVIEW DEADLINE!

Within thirty (30) days of the mailing date of the Job Service North Dakota final decision, the petition for judicial review must be filed with the North Dakota District Court of the county in which the Petitioner resides.

If the Job Service North Dakota final decision is not mailed, within thirty (30) days of delivery of the decision to the party, the petition for judicial review must be filed with the North Dakota District Court of the county in which the Petitioner resides.

PART 1: THE PETITIONER CREATES THE PETITION FOR JUDICIAL REVIEW OF A JOB SERVICE NORTH DAKOTA DECISION

The person who is starting the petition (Petitioner) for a review of a Job Service North Dakota decision creates a petition for the District Court. The petition must be filed with the District Court in the North Dakota county in which the Petitioner resides. The Petition must be served upon Job Service North Dakota, as well.

The Petitioner Determines the Grounds for the Petition for Review:

The Petitioner needs to determine which grounds apply to their petition for judicial review. There can be more than one ground for judicial review.

In the petition for judicial review, the Petitioner includes a brief explanation for each ground that applies to their specific case. The Petitioner does not have to include each of the following grounds for appeal. State the ground or grounds that apply specifically to your case and a brief explanation of why it applies.

Grounds for Judicial Review:

- The order is not in accordance with the law.
- The order is in violation of the constitutional rights of the Petitioner.
- The provisions of this chapter have not been complied with in the proceedings before Job Service North Dakota.
- The rules or procedure of Job Service North Dakota have not afforded the Petitioner a fair hearing.

- The findings of fact made by Job Service North Dakota are not supported by a preponderance of the evidence.
- The conclusions of law and order of Job Service North Dakota are not supported by its findings of fact.
- The findings of fact made by Job Service North Dakota do not sufficiently address the evidence presented to the agency by the Petitioner.
- The conclusions of law and order of Job Service North Dakota do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

The Petitioner Creates the Following Document:

The Petition for Judicial Review begins the review process.

Verified Petition for Judicial Review

- A verified Petition for Judicial Review form is found at the end of this guide.
- The petition must include the grounds for the judicial review.
- Each ground must include a brief explanation of why it applies.
- The petition must be verified by the Petitioner and notarized by a notary public or clerk of court.

PART 2: THE PETITIONER FILES THE PETITION FOR JUDICIAL REVIEW OF A JOB SERVICE NORTH DAKOTA DECISION

The Petitioner Files the Following Completed, Original Document with the Clerk of Court:

- Petition for Judicial Review

The Petition for Judicial Review must be filed within 30 days after the date of mailing of the Job Service decision to the Petitioner's last known address. File the Petition for Judicial Review in the North Dakota county in which the Petitioner resides.

Section 52-06-27 of the North Dakota Century Code lays out the requirements for filing the Petition for Judicial Review. Review this Section carefully.

<http://www.legis.nd.gov/cencode/t52c06.pdf#nameddest=52-06-27>

The Petitioner is not Required to Pay a Filing Fee:

The Petitioner, upon filing the Petition for Judicial Review, will not be required to pay a filing fee.

PART 3: THE PETITIONER SERVES THE PETITION FOR JUDICIAL REVIEW OF A JOB SERVICE NORTH DAKOTA DECISION

Service is providing copies of the Petition for Judicial Review you have filed or intend to file with the District Court to all other parties in the appeal. In order for the District Court to act on your documents, you must file proof of service with the court. An affidavit of service gives the court proof of service.

The Petitioner Makes Copies of the Completed Petition for Judicial Review:

Count the number of respondents listed in the Petition for Judicial Review. Make a copy of the completed Petition for Judicial Review for each respondent.

The Petitioner Arranges for Service of copies of the Petition for Judicial Review on Job Service North Dakota:

Service of the Petition for Judicial Review is when the Petitioner gives copies of the Petition for Judicial Review to Job Service North Dakota. Service gives Job Service North Dakota notice that the Petitioner is filing an appeal of a Job Service North Dakota decision and that that they must defend the appeal. Service also tells Job Service North Dakota they have certain, other obligations to fulfil.

The Petition for Judicial Review must be served upon Job Service North Dakota to the chairman, or any other representative Job Service North Dakota has designated as its representative. If Job Service North Dakota is represented by a lawyer, the Petitioner must serve the lawyer with all copies of the Petition for Judicial Review.

The Petitioner must give as many copies of the Petition for Judicial Review to Job Service North Dakota as there are respondents. Once the Petition for Judicial Review is served upon Job Service North Dakota, Job Service will send a copy to the other respondents.

- Section 52-06-27 of the North Dakota Administrative Code lays out the requirements of service the petition. Review this Section carefully.

<http://www.legis.nd.gov/cencode/t52c06.pdf#nameddest=52-06-27>

The person who serves the copies of the petition on Job Service North Dakota's representative must complete an affidavit of service.

- An Affidavit of Service by Mail form for serving a Petition for Judicial Review is found at the end of this guide.

Failure to serve copies of the Petition for Judicial Review on Job Service North Dakota may result a dismissal of your appeal.

The Copies of the Petition for Judicial Review May be Served on Job Service North Dakota in the Following Ways:

1. Service by Mail (most common)

- Mail copies of the Petition for Judicial Review on Job Service North Dakota.
- The person who mails the documents must be at least 18 years of age.
- The person who mailed the documents completes the affidavit of service and signs in the presence of a notary.
- Service is complete upon mailing.
- File the affidavit of service by mail with the clerk of court.
- An affidavit of service by mail form is found at the end of this informational guide.

2. Service by Personal Delivery

- Hand copies of the Petition for Judicial Review to the designated representative of Job Service North Dakota.
- 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.
- The person who handed the documents to the other party completes the affidavit of service and signs in the presence of a notary.
- File the affidavit of service by personal delivery with the clerk of court.

3. Service by Office Delivery

- Leave copies of the Petition for Judicial Review at the appropriate Job Service North Dakota office with a clerk or other person in charge, or, if no one is in charge, leave the copies in a visible place in the office.
- The person who left the documents at the person's office must be at least 18 years of age and not a party to nor interested in the action.
- The person who left the documents at the Job Service North Dakota office completes the affidavit of service and signs in the presence of a notary.

Additional information about service can be found on the North Dakota Supreme Court Self-Help Website. The following link will take you directly there;

<http://www.ndcourts.gov/ndlshc/Service/Service.aspx>. Review the information for service after a civil action has started.

Serving Job Service North Dakota – a State Agency:

Review Rule 4(d) of the North Dakota Rules of Civil Procedure carefully!

Service must be made on a state agency by delivering documents to the managing head of the state agency or to the attorney general or an assistant attorney general.

If you are unsure who to serve at Job Service North Dakota, contact the agency directly and ask.

The Petitioner Files the Following Completed, Original Document with the Clerk of Court:

- Affidavit of Service

The completed affidavit of service of the Petition for Judicial Review on Job Service North Dakota must be filed with the District Court.

Failure to file the completed affidavit of service with the District Court may result a dismissal of your appeal.

PART 4: JOB SERVICE NORTH DAKOTA PREPARES THE RECORD; PETITIONER PAYS ESTIMATED COSTS OF PREPARING THE RECORD

Within 30 days after you serve and file your verified petition for judicial review, Job Service North Dakota prepares, certifies and files a copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the Job Service North Dakota's findings, conclusions, and decision.

The Job Service North Dakota record of the case consists of the following:

- The complaint, answer, and other initial pleadings or documents.
- Notices of all proceedings.
- Any prehearing notices, transcripts, documents, or orders.
- Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- A statement of matters officially noticed.
- Offers of proof and objections and rulings thereon.
- Proposed findings, requested orders, and exceptions.
- The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
- Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.

- Any information considered pursuant to section 28-32-25.
- Matters placed on the record after an ex parte communication.

The Petitioner is required to pay the estimated costs of preparation and filing of the entire record of the Job Service North Dakota proceedings. Job Service North Dakota will notify the Petitioner of the estimated costs after Job Service North Dakota is served the Petition for Judicial Review.

You may ask the court to waive the estimated cost of preparing the record based on an inability to pay. Forms and instructions can be found at <http://www.ndcourts.gov/ndlshc/OtherForms/OtherForms.aspx>.

PART 5: JOB SERVICE NORTH DAKOTA FILES THE RECORD; THE DISTRICT COURT ISSUES A SCHEDULING ORDER

Once service and filing of the documents for judicial review is complete, Job Service North Dakota prepares, certifies and files the record with the district court. The district court will issue a scheduling order with timelines for filing legal briefs and requesting oral argument.

PART 6: REQUESTING ORAL ARGUMENTS

Carefully review the scheduling order. If the Petitioner wants to request oral arguments, the written request must be made on or before the Petitioner's deadline for filing their legal brief.

The District Court will decide whether to allow oral arguments. The District Court is not required to permit oral arguments. If the court allows oral arguments, the arguments are limited to the issues the Petitioner and Respondent included in their legal briefs.

PART 7: PREPARING, SERVING AND FILING THE PETITIONER'S LEGAL BRIEF

One important requirement of the District Court review process is the legal brief. Each party is required to file and serve a legal brief of the facts, law and argument of the judicial review. This is the chance for the Petitioner to argue why Job Service North Dakota's decision should not stand. Essentially, the legal brief is a written version of what the Petitioner would argue in front of the judge, if the judge allows oral arguments. The legal brief is not for new evidence and a new trial will not be conducted.

The Petitioner's legal brief must be served on Job Service North Dakota the other respondents by the deadline in the District Court's scheduling order.

The Petitioner Prepares Their Legal Brief:

There are six main components to a legal brief:

- Introduction
- Procedural History
- Jurisdiction
- Statement of Facts
- Law and Argument
- Conclusion.

The Introduction is a quick overview of what happened at the Job Service North Dakota administrative hearing and stating the court should grant your petition. The introduction is not a long section. It is usually a brief paragraph so the judge knows what you will be talking about in your legal brief.

The Procedural History Section is essentially the same length or shorter than the introduction section. The Petitioner states what happened at the Job Service North Dakota administrative hearing, what the final ruling of the hearing was, and why Job Service North Dakota ruled the way they did.

The Jurisdiction Section is a quick statement stating why the District Court of North Dakota is able to hear the appeal.

Statement of Facts is a longer section. Here, the Petitioner explains the events that led to the unemployment benefits decision, what type of evidence was introduced and any other relevant factual information that happened at the Job Service North Dakota administrative hearing.

List only the specific facts connected to the issues on appeal. If possible, include the specific page or pages in the record where the fact can be found.

The District Court can only consider information that was provided during the Job Service North Dakota administrative hearing process. The Petitioner cannot include new facts or evidence that was not presented to Job Service North Dakota during the administrative hearing process.

The Law and Argument Section is the most important section of the brief. The Law and Argument section focuses on the *legal* issues and whether the law was correctly applied after deciding any factual disputes during the Job Service North Dakota administrative hearing process.

Refer to the Petition for Judicial Review to build the Law and Argument section. Each ground for appeal the Petitioner listed in the Petition for Judicial Review must be included in the Law and Argument section.

The Petitioner must research relevant statutes and case law to determine whether Job Service North Dakota made legal errors that the District Court can correct. The Petitioner refers to the relevant statutes and case law, and then explains how the statute or case law fits with the relevant facts from the Statement of Facts.

The Conclusion is a quick summary of why the court should grant your petition and why you should win your case. This is usually one paragraph.

Petitioner Arranges for Service of Copies of the Completed Legal Brief:

In order for the District Court to act on your legal brief, you must file proof of service with the court. An affidavit of service gives the court proof of service.

Make a copy of the completed Legal Brief for each respondent. Make a copy for your records.

The Legal Brief must be served upon the following:

- Job Service North Dakota – the chairman, or any other representative Job Service North Dakota has designated as its representative.
 - If Job Service North Dakota is represented by a lawyer, serve the lawyer with the Legal Brief.
- All Other Respondents from the Job Service North Dakota proceedings.
 - If a respondent is represented by a lawyer, serve the lawyer with the Legal Brief.

The person who serves the copies of the Legal Brief on Job Service North Dakota's representative must complete an affidavit of service.

- An Affidavit of Service by Mail form for serving the Petitioner Brief is found at the end of this guide.

Failure to serve copies of the Petitioner's Legal Brief on Job Service North Dakota and all other respondents by the deadline in the scheduling order may result a dismissal of your appeal.

The Copies of the Legal Brief May be Served on Job Service North Dakota in the Following Ways:

1. Service by Mail (most common)
 - Mail copies of the Legal Brief to Job Service North Dakota, the respondent, or, if represented by a lawyer, to the lawyer.
 - The person who mails the documents must be at least 18 years of age.
 - The person who mailed the documents completes the affidavit of service and signs in the presence of a notary.
 - Service is complete upon mailing.

- File the affidavit of service by mail with the clerk of court.
- An affidavit of service by mail form for serving the Petitioner’s legal brief is found at the end of this informational guide.

2. Service by Personal Delivery

- Hand copies of the Legal Brief to the designated representative of Job Service North Dakota, the respondent, or, if represented by a lawyer, to the lawyer.
- 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.
- The person who handed the documents to the other party completes the affidavit of service and signs in the presence of a notary.
- File the affidavit of service by personal delivery with the clerk of court.

3. Service by Office Delivery

- Leave the copy of the Legal Brief at the appropriate office of Job Service North Dakota, the respondent, or, if represented by a lawyer, to the lawyer.
- The person serving the documents must leave the documents with a clerk or other person in charge, or, if no one is in charge, leave the copies in a visible place in the office.
- The person who delivered the documents to the office must be at least 18 years of age and not a party to nor interested in the action.
- The person who left the documents at the Job Service North Dakota office completes the affidavit of service and signs in the presence of a notary.
- File the affidavit of service by personal delivery with the clerk of court.

Additional information about service can be found on the North Dakota Supreme Court Self-Help Website. The following link will take you directly there;

<http://www.ndcourts.gov/ndlshc/Service/Service.aspx>. Review the information for service after a civil action has started.

Serving Job Service North Dakota – a State Agency:

Review Rule 4(d) of the North Dakota Rules of Civil Procedure carefully!

Service must be made on a state agency by delivering documents to the managing head of the state agency or to the attorney general or an assistant attorney general.

If you are unsure who to serve at Job Service North Dakota, contact the agency directly and ask.

The Petitioner Files the Following Completed, Original Documents with the Clerk of Court:

- Legal Brief
- Affidavit(s) of Service for Job Service North Dakota and other respondents

Failure to file affidavits of service of the Legal Brief on Job Service North Dakota and all other respondents may result in dismissal of your appeal.

PART 8: JOB SERVICE NORTH DAKOTA SERVES AND FILES THEIR ANSWER BRIEF

Job Service North Dakota serves a copy of their Legal Brief (which is Job Service North Dakota answer to the Petitioner’s Legal Brief) to the Petitioner by the deadline in the scheduling order. Job Service North Dakota will send their Legal Brief to the Petitioner’s address. Job Service North Dakota will also send a copy of their Legal Brief to each Respondent listed in the Petitioner’s Legal Brief and Petition for Judicial Review.

Job Service North Dakota files the original of their Legal Brief with North Dakota District Court.

PART 9: PREPARE FOR ORAL ARGUMENTS, IF REQUESTED AND GRANTED

If the District Court decides to allow oral arguments, the Petitioner must be ready to answer questions from the judge and respond to arguments made by Job Service North Dakota. The Petitioner must know the underlying law, case law, and be able to make a compelling argument tying the facts of the case and the law together to support the Petitioner’s case.

The Petitioner will only be allowed to argue the issues that the Petitioner listed in their Petition for Judicial Review and their Legal Brief. The Petitioner will be allowed to counter issues and arguments brought forward in Job Service of North Dakota’s Legal Brief.

Knowing the Underlying Law

The underlying laws are the statutes from the North Dakota Century Code which are cited in the Petition for Judicial Review, the Petitioner’s Legal Brief and Job Service of North Dakota’s Legal Brief. If the Petitioner does not know the underlying law, the Petitioner will have a tough time tying the facts to the Petitioner’s case. The judge will be looking at what the underlying law is at the beginning. The Petitioner does not need to know the statute word for word but must know the key parts of the statute in order to counter any argument being made by Job Service North Dakota. The Petitioner can have a copy of the statute with them at the oral arguments to help reference the statute.

Knowing Case Law

Case law is where a final decision of a North Dakota District Court is appealed to the North Dakota Supreme Court and the Supreme Court writes an opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. Case law related to petitions to review administrative decisions is followed by North Dakota District Courts deciding later cases with similar facts and issues. Case law may help decide the case for the judge.

The Petitioner spent a lot of research and time finding case law when preparing and writing their Legal Brief. The Petitioner should know the case law that both helps the Petitioner and hurts the Petitioner. Case law that would hurt the Petitioner is important because then the Petitioner can counter any argument being made by Job Service North Dakota.

Making a Compelling Oral Argument

The Petitioner will need to tie the facts to the statutes and case law to make a sound and compelling oral argument to the judge. Being able to do this effectively can help decide the case in the Petitioner's favor. This is a hard task, but knowing the statutes, case law, facts of the case and the grounds for review are part of preparing for oral argument.

The Petitioner should practice their argument before going to court. Practicing the argument allows the Petitioner to become familiar with the information. Being familiar with the information will give the Petitioner more confidence in their argument. Having confidence will come from knowing the statute, case law, the facts of the case, and the grounds for appeal cited by the Petitioner.

PART 10: THE DISTRICT COURT DECIDES THE PETITION FOR JUDICIAL REVIEW

The District Court will decide the case on the Legal Briefs from both Petitioner and Job Service North Dakota and the oral arguments from the Petitioner and Job Service North Dakota, if oral arguments were requested and granted. The judge may not make a decision at the close of oral arguments in front of the Petitioner and Job Service North Dakota. If the judge does not make a decision at the close of oral arguments, the judge will take the Legal Briefs and notes the judge took at oral arguments and decide the case at a later date. Once the judge has made a decision, the judge will send a written decision to both the Petitioner and each Respondent.

If the judge does not rule in favor of the Petitioner, the Petitioner may appeal the District Court's decision to the North Dakota Supreme Court. If the judge does rule in favor of Job Service North Dakota, they may appeal the District Court's decision to the North Dakota Supreme Court.

This North Dakota Legal Self Help Center resource was created by Nathan Osberger, as part of the University of North Dakota School of Law Externship Program, Spring 2017.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____)	
(Your name))	Case No. _____
PETITIONER,)	
Vs)	
Job Service North Dakota;)	PETITION FOR
_____)	JUDICIAL REVIEW
(All other parties from Job Service proceeding))	
RESPONDENTS.)	

_____ (your name), Petitioner, pursuant to N.D.C.C. § 52-06-07, respectfully submits this **PETITION FOR JUDICIAL REVIEW** for a review of a Job Service North Dakota decision made on _____, 20____, which denied Petitioner _____.

 (State what you were denied)

Grounds for this **PETITION FOR JUDICIAL REVIEW** are as follows: *(State concisely each ground which you claim gives you reason for the Petition for Judicial Review. After stating the ground, briefly describe the support for why the ground applies. List each ground and explanation in a separate paragraph.)*

1. Ground one:

2. Ground two:

3. Ground three:

4. Ground four:

5. Ground five:

For jurisdictional purposes, Petitioner resides at _____
_____. (Your address)

WHEREFORE, Petitioner prays relief from this Honorable Court for a fair and just review of (his/her) claim.

Dated this _____ day of _____, 20_____.

(Signature)

(Printed Name)

(Address) (City) (State) (Zip Code)

(Telephone Number)

VERIFICATION

_____ (your name)

being first duly sworn on oath, deposes and says that I am the Petitioner in the above-entitled action; that I have read the PETITION FOR JUDICIAL REVIEW and know the contents thereof and that the same is true, except as to matters stated therein upon information and belief as to those matters I state that I believe them to be true.

Dated _____, 20_____

(Signature)

State of: _____

County of: _____

Signed and sworn to before me on _____, 20_____ by

IN DISTRICT COURT, _____, COUNTY, STATE OF NORTH DAKOTA

Petitioner

CASE # _____

Vs.

AFFIDAVIT OF SERVICE BY MAIL

Job Service North Dakota;

Respondents.

I swear that I am at least 18 years of age; and that on the date shown below, I served the Petition for Review in the above entitled case, on the following party by placing a true and correct copy in an envelope to the following last known address and depositing the envelope, with sufficient postage, in the United States mail at the Post Office listed below.

Name of Person who Mailed Papers:	Time Mailed (hr:min): <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Mailed:
Person to whom Papers were Mailed:	Street Address where Mailed:	
City:	State:	Zip Code:
Mailed at U.S. Post Office in the City of:	State of:	

Dated: _____

(Signature of Person who Mailed Envelope)

Subscribed and sworn to before me this _____ day of _____, 20_____.

(Clerk of Court or Notary Public)

_____ County, North Dakota

If Notary Public, my commission expires: _____

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

(Your name)

)
) Case No. _____

PETITIONER,)

Vs)

PETITIONER BRIEF

JOB SERVICE NORTH DAKOTA;)

(All other parties from Job Service proceeding)

RESPONDENT.)

INTRODUCTION

(Explain why you are bringing this action. Usually a short paragraph.)

PROCEDURAL HISTORY

(Explain the history of procedural events up to the final Job Service North Dakota hearing.)

JURISDICTION

(Explain why the District Court is able to hear your case. See Section 1 of the Informational Guide for more information about Jurisdiction.)

STATEMENT OF FACTS

(Explain the events that led to the unemployment benefits decision and other relevant facts. List only specific facts connected to the issues on review.)

LAW AND ARGUMENT

*(Refer to the Petition for Judicial Review filed with the District Court to build the arguments.
Explain with laws and facts how the Job Service North Dakota decision was incorrect.)*

CONCLUSION

(Summarize why the court should grant the petition. Usually a short paragraph.)

Dated this _____ day of _____, 20_____.

(Signature)

(Printed Name)

(Address) *(City)* *(State)* *(Zip Code)*

(Telephone Number)

IN DISTRICT COURT, _____, COUNTY, STATE OF NORTH DAKOTA

Petitioner

CASE # _____

Vs.

AFFIDAVIT OF SERVICE BY MAIL

Job Service North Dakota;

Respondents.

I swear that I am at least 18 years of age; and that on the date shown below, I served the Petitioner Brief in the above entitled case, on the following party by placing a true and correct copy in an envelope to the following last known address and depositing the envelope, with sufficient postage, in the United States mail at the Post Office listed below.

Name of Person who Mailed Papers:	Time Mailed (hr:min): <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Date Mailed:
Person to whom Papers were Mailed:	Street Address where Mailed:	
City:	State:	Zip Code:
Mailed at U.S. Post Office in the City of:	State of:	

Dated: _____

(Signature of Person who Mailed Envelope)

Subscribed and sworn to before me this _____ day of _____, 20_____.

(Clerk of Court or Notary Public)

_____ County, North Dakota

If Notary Public, my commission expires: _____