



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 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.

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.

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 appealing a Municipal Court (City) decision on a non-criminal traffic violation to a North Dakota 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.

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

Municipal (City) Court Decisions:

Municipal (City) court decisions on criminal and non-criminal traffic violations may be appealed to a North Dakota 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 found online at <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 found online at <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 found online at <http://www.legis.nd.gov/cencode/t39c07.html>.

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.

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.

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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.
(<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. (<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.
(<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.
(<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.
(<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.
(<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.
(<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.
(<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 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 of North Dakota. 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 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 district courts. (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.

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

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 <http://www.ndcourts.gov/Court/municipal.asp>.

Contact information for North Dakota district courts by county can be found online at <http://www.ndcourts.gov/Court/Counties/Counties.htm>.

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: Serve a copy of the notice of appeal on the prosecuting attorney, as soon as possible after filing the notice of appeal.

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

You must serve a copy of the notice of appeal on the prosecuting attorney. You may contact the municipal court clerk for the name and address of the lawyer that represented the city or municipality in your municipal court non-criminal traffic violation hearing.

You must prove to the municipal and district courts that the copy of the notice appeal was served on the prosecuting attorney. Proof of service tells the court how, when and where the prosecuting attorney was served and the documents that were served. An affidavit of service is your proof of service.

Service can be completed in a number of ways. For information about service and options for completing service, go to www.ndcourts.gov/ndlshc/ and click on the "Service" link. Review the information and blank proof of service forms in the "After a Civil Action Has Been Started" section.

Two ways to serve a prosecuting attorney are outlined below:

- By Mail:
 - Mail a copy of the notice of appeal to the prosecuting attorney. Postage must be prepaid.
 - The person who mailed the copy of the notice of appeal must fill out an Affidavit of Service by Mail and sign the affidavit in front of a clerk of district court or a notary public.
 - The person who mailed the copy of the notice of appeal will need to show a driver's license or photo identification card to the clerk of district court or notary public.
 - The clerk of district court or notary public will witness the signature and fill out and sign the Notary Public lines.
 - (An example of an Affidavit of Service by Mail is included at the end of this guide.)
- By Delivering to the Prosecuting Attorney's Office:
 - Arrange for someone at least 18 years of age and not a party to nor interested in the action to leave a copy of the notice of appeal at the prosecuting attorney's office.
 - The copy of the notice of appeal must be left with a clerk or other person in charge.
 - If there is no one in charge, the document(s) must be left in a conspicuous place in the office.

- The person who delivered the copy of the notice of appeal must fill out an Affidavit of Service by Mail and sign the affidavit in front of a clerk of district court or a notary public.
- The person who delivered the copy of the notice of appeal will need to show a driver's license or photo identification card to the clerk of district court or notary public.
- The clerk of district court or notary public will witness the signature and fill out and sign the Notary Public lines.
- (An example of an Affidavit of Service by Office Delivery is included at the end of this guide.)

FIFTH: File the Affidavit of Service with the Clerk of Municipal Court.

File the affidavit of service of the notice of appeal on the prosecuting attorney with the municipal court clerk.

The completed affidavit of service is your proof that the prosecuting attorney was served a copy of the notice of appeal. If a completed affidavit of service is not filed with the clerk, your appeal may be dismissed.

The municipal court clerk will send the information to the district court clerk and you will be notified of a hearing place, date and time in district court.

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.

At the hearing, the Plaintiff will present their evidence. You may cross-examine witnesses and object to the Plaintiff's evidence.

You will have a chance to present your evidence. The Plaintiff may cross-examine your witnesses and object to your 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.

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. 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.

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:

STATE OF NORTH DAKOTA

IN MUNICIPAL COURT

COUNTY OF _____

CITY OF _____

CASE # _____

_____,
Plaintiff

AFFIDAVIT OF SERVICE BY MAIL

vs.

_____,
Defendant

I, _____ (Person Serving Documents), swear that I am at least 18 years of age, and on _____ (Date), pursuant to Rule 5(b)(3) of the N.D. Rules of Civil Procedure, I served the Notice of Appeal, in the above entitled case, on the following party by placing a true and correct copy of each in an envelope to the last known address of:

and depositing the envelope, with sufficient postage, in the United States mail at the Post Office located in _____ (City), _____ (State).

Dated: _____

(Signature of Person Who Mailed Envelope)

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

Clerk or Notary Public _____ County, North Dakota
If notary, my commission expires: _____

STATE OF NORTH DAKOTA

IN MUNICIPAL COURT

COUNTY OF _____

CITY OF _____

CASE # _____

Plaintiff

vs.

AFFIDAVIT OF OFFICE SERVICE

Defendant

I, _____ (Person Serving Documents), swear that I am at least 18 years of age, not a party to nor interested in the action, and on _____ (Date), pursuant to Rule 5(b)(3) of the N.D. Rules of Civil Procedure, I served the Notice of Appeal, in the above entitled case, by delivering them, in person, to the office of the party to be served: _____ (Name of Party Served), located at: _____ (Address), during normal business hours for that office where I: (Choose One)

_____ left the documents with _____ (Name), who is a person in charge.

(OR)

_____ left the documents in a conspicuous place in the office, specifically _____, because there is no person in charge.

Dated: _____

(Signature of Person Who Served Documents)

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

Clerk or Notary Public _____ County, North Dakota
If notary, my commission expires: _____