



Appealing a Workforce Safety and Insurance Decision An Informational Guide to a North Dakota District 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 appealing a Workforce Safety and Insurance decision 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. The Center cannot guarantee that all judges and courts will accept forms available through the Self Help Center. Use at your own risk.

WARNING – Appealing Workforce Safety and Insurance 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 an appeal of a Workforce Safety and Insurance decision to North Dakota District Court.

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 appealing a Workforce Safety and Insurance Decision to a North Dakota District Court is made up of two sections:

The first section gives general information about appealing a Workforce Safety and Insurance decision. (Pages 4-12)

The second section gives information about the basic process of appealing a Workforce Safety and Insurance decision from beginning to end. (Pages 13-23)

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SECTION ONE: INFORMATION ABOUT APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION TO A NORTH DAKOTA DISTRICT COURT

WHAT IS APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION?

A Workforce Safety and Insurance claimant may appeal a Workforce Safety and Insurance final decision to a North Dakota District Court when:

- Workforce Safety and Insurance denies a claimant on the ground that the injury was self-inflicted;
- Workforce Safety and Insurance denies a claimant on the ground that the accident did not arise in the course of employment;
- Workforce Safety and Insurance denies a claimant on any other ground going to the basis of the claim; or
- Workforce Safety and Insurance allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by the Workforce Safety and Insurance Title of the North Dakota Century Code.

The appeal must be in writing and must be filed with the Clerk of District Court.

WHAT IS THE DIFFERENCE BETWEEN WORKFORCE SAFETY AND INSURANCE HEARING(S) AND AN APPEAL TO A NORTH DAKOTA DISTRICT COURT?

Administrative Hearing – If you disagree with a Workforce Safety and Insurance (WSI) decision and want Workforce Safety and Insurance to change their decision, Workforce Safety and Insurance will review your case for a hearing. If Workforce Safety and Insurance still believes its decision is correct, your claim will be assigned to one of the lawyers who represent Workforce Safety and Insurance in claims disputes. Workforce Safety and Insurance’s lawyer will request that the Office of Administrative Hearings appoint an Administrative Law Judge to conduct a hearing. The judge will hear the facts of your claim and make a recommendation to Workforce Safety and Insurance on whether Workforce Safety and Insurance’s decision is correct. You must attend the hearing and testify, and you may also bring witnesses or other evidence you have which supports your claim.

District Court Appeal- If you disagree with the final decision of the Administrative Law Judge after an administrative hearing, you may appeal to a North Dakota District Court. While not required, it is strongly urged that you retain a lawyer for any appeals to District Court. You and Workforce Safety and Insurance will explain to the court, in writing, your positions, and then the judge will make a decision and enter judgment. The District Court judge will review the documents contained in Workforce Safety and Insurance's file and make a determination as to whether the Administrative Law Judge's findings are supported by the evidence and by the law.

The District Court's review of the Workforce Safety and Insurance decision is based only on the record created during the Workforce Safety and Insurance proceedings. The District Court does not retry the case, take new evidence, or weigh the credibility of witnesses.

DOES THE ND LEGAL SELF HELP CENTER HAVE FORMS FOR APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION?

Names and descriptions of the documents you will need to create for your appeal of a Workforce Safety and Insurance decision to District Court are found throughout this guide.

This Informational Guide includes some of the forms you may use to appeal a Workforce Safety and Insurance decision to District Court. 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 Administrative Appeal Documents Filed in District Court Cases

If you would like to see documents filed in other cases involving administrative appeals, 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 08/01/2016.
 - 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. You will need to identify the case numbers for appeals from Workforce Safety and Insurance 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 divorce, such as preparing legal documents, while you handle the rest of the divorce. You and the lawyer must agree in writing to Limited Legal Representation.

WHO ARE THE PARTIES IN A WORKFORCE SAFETY AND INSURANCE APPEAL?

Appellant – The person who is bringing the appeal of the Workforce Safety and Insurance decision to the North Dakota District Court.

Appellee – This is Workforce Safety and Insurance and the employer in the action. These are the parties in a cause against whom the appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment.

WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION?

“Act” – means the North Dakota Workers’ Compensation Act.

“Appeal” –means the review of a decision of a lower court by a higher court. E.g. The Supreme Court would review a decision by the District Court.

“Attempt to resolve” – means a prompt, active, honest, good-faith effort by the claimant to settle disputes with Workforce Safety and Insurance.

“Average weekly wage” – means the weekly wages the employee was receiving from all employments pursuant to North Dakota Century Code Chapter 65-01-02.

“Benefits” – means an obligation of the organization to provide a claimant with assistance as required by the Act.

“Brief” – The Appellant’s brief is a written document explaining why the Appellant is appealing the Workforce Safety and Insurance decision and what the Appellant thinks is wrong with the decision. The Appellee’s brief is a written response to the Appellant’s brief and explains why the Workforce Safety and Insurance decision is correct.

“Board” – means the Workforce Safety and Insurance board of directors.

“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.

“Certificate of completion” – means the form sent to the claimant when the office closes its file, which acknowledges the claimant made a good-faith effort to resolve the dispute.

“Compensable Injury” –means an injury by accident pursuant to North Dakota Century Code Chapter 65-01-02.

“Doctor” – means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor’s license.

“Employer” – means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the common-law test. The term includes:

- The state and all political subdivisions thereof.
- All public and quasi-public corporations in this state.
- Every person, partnership, limited liability company, association, and private corporation, includes a public service corporation.
- The legal representative of any deceased employer.
- The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
- The president, vice presidents, secretary, or treasure of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
- The managers of a limited liability company.
- The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative.
- The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- A multidistrict special education unit.
- An area career and technology center.
- A regional education association.

“Employee” – means a person who performs hazardous employment for another pursuant to North Dakota Century Code Chapter 65-01-02.

“Final Decision of Workforce Safety and Insurance” – If the final action of the organization denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the organization allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides.

“Hazardous employment” – means any employment in which one or more employees are employed regularly in the same business pursuant to North Dakota Century Code Chapter 65-01-02.

“Notice of Appeal” – written notification to Workforce Safety and Insurance, all parties to the proceeding before Workforce Safety and Insurance, and the District Court that a matter is being appealed. (See also “Specifications of Error”)

“Oral Argument” – are spoken to a judge or appellate court by a lawyer or parties when representing themselves of the legal reasons why they should prevail. Oral argument at the appellate level accompanies written briefs, which also advance the argument of each party in the legal dispute. Oral arguments operates by each party in a case taking turns to speak directly to the judge or judges with an equal amount of time allotted to each.

“Organization” – means Workforce Safety and Insurance, or the director, or any department heads, assistants, or employees of the organization designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.

“Specifications of Error” – list of the grounds or reasons for the appeal and a brief explanation of why the ground applies. (See also “Notice of Appeal”)

WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO WORKFORCE SAFETY AND INSURANCE?

Chapter 65-02 of the North Dakota Century Code governs Workforce Safety and Insurance Organizations. This Chapter can be found at <http://www.legis.nd.gov/cencode/t65c02.html>.

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 begin at Section 28-32-42. Review Sections 28-32-42 through 28-32-52 carefully.
- In the documents you file with the District Court, you will need to give the reasons, or grounds, for your appeal. Review Section 28-32-46 for reasons, or grounds, for appeal.

Chapter 92-01 of the North Dakota Administrative Code governs Workforce Safety and Insurance. This Chapter can be found at <http://www.legis.nd.gov/information/acdata/html/92-01.html>

Rule 9.1 of the North Dakota Rules of Court includes additional requirements and procedures for appealing the decision of a North Dakota administrative agency. 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 Appeals of Administrative Agency Decisions to District Court 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 Appeals of Administrative Agency Decisions to District Court 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 AN APPEAL OF A WORKFORCE SAFETY AND INSURANCE DECISION FILED?

You may file in either the county where you live or the county where the injury occurred.

WHAT IS THE DEADLINE FOR APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION?

Within thirty (30) days after notice of the final Workforce Safety and Insurance decision, a notice of appeal and specifications of error must be served on Workforce Safety and Insurance, on the attorney general or an assistant attorney general, and on all the parties to the Workforce Safety and Insurance proceeding; and the notice of appeal and specifications of error must be filed, with proof of service, with the clerk of the district court to which the appeal is taken.

WHAT DOES THE APPELLANT NEED TO PROVE?

The Appellant has the burden of proof in an appeal of a Workforce Safety and Insurance decision to District Court. The burden of proof is preponderance of the evidence. The Appellant must prove their grounds, or reasons, for their appeal.

The grounds for appealing a Workforce Safety and Insurance decision are limited to:

- The order of Workforce Safety and Insurance is not in accordance with the law;
- The order of Workforce Safety and Insurance is in violation of the constitutional rights of the appellant;
- The provisions of 28-32 have not been complied with in the proceedings before Workforce Safety and Insurance;
- The rules or procedure of Workforce Safety and Insurance have not afforded the appellant a fair hearing;
- The findings of fact made by Workforce Safety and Insurance are not supported by a preponderance of the evidence;
- The conclusions of law and order of Workforce Safety and Insurance are not supported by its findings fact;
- The findings of fact made by Workforce Safety and Insurance do not sufficiently address the evidence presented to the agency by the appellant;
- The conclusions of law and order of Workforce Safety and Insurance do not sufficiently explain the agency'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 appeal they listed in their specifications of error, the court must affirm the Workforce Safety and Insurance decision.

WHAT DOES THE DISTRICT COURT CONSIDER WHEN DECIDING IF THE APPELLANT PROVED THEIR GROUNDS FOR APPEAL?

The District Court's review of the Workforce Safety and Insurance decision is based only on the record created during the Workforce Safety and Insurance proceedings. The District Court does not retry the case, take new evidence, or weigh the credibility of witnesses.

When reviewing Workforce Safety and Insurance'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 Workforce Safety and Insurance proceedings.

The conclusions of law in the Workforce Safety and Insurance 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.

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.

SECTION TWO: THE PROCESS FOR APPEALING A WORKFORCE SAFETY AND INSURANCE DECISION TO A NORTH DAKOTA DISTRICT COURT

APPEAL DEADLINE!

Within thirty (30) days after notice of the final Workforce Safety and Insurance decision, a notice of appeal and specifications of error must be served on Workforce Safety and Insurance, on the attorney general or an assistant attorney general, and on all the parties to the Workforce Safety and Insurance proceeding; and the notice of appeal and specifications of error must be filed, with proof of service, with the clerk of the district court.

PART ONE: THE APPELLANT CREATES THE NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR

The Appellant Determines the Grounds for Appeal:

The Appellant needs to determine which grounds apply to the appeal. There can be more than one ground for appeal. In the specifications of error, the appellant includes a brief explanation for each ground that applies to their specific appeal.

The following are grounds or reasons for appeal:

- The order is not in accordance with the law;
- The order is in violation of the constitutional rights of the appellant;
- The provisions of 28-32 have not been complied with in the proceedings before the Workforce Safety and Insurance;
- The rules or procedure of Workforce Safety and Insurance have not afforded the appellant a fair hearing;
- The findings of fact made by Workforce Safety and Insurance are not supported by a preponderance of the evidence;
- The conclusions of law and order of Workforce Safety and Insurance are not supported by its findings fact;
- The findings of fact made by Workforce Safety and Insurance do not sufficiently address the evidence presented to the agency by the appellant;
- The conclusions of law and order of Workforce Safety and Insurance do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

The Appellant Creates the Following Documents:

Notice of Appeal

- This document notifies Workforce Safety and Insurance, all parties to the proceeding before Workforce Safety and Insurance, and the District Court that a matter is being appealed.
- The notice of appeal must specify:
 - The name of the party or parties taking the appeal;
 - The date of the judgment or order sought to be reviewed;
 - The court, the judge, and the number of the case in the district court;
 - The name of the court to which the appeal is taken; and
 - In an appeal from a civil case, a preliminary statement of issues.
- A notice of appeal form is found at the end of this guide.

Specifications of Error

- This document must include the grounds or reasons for appeal that are listed above and a brief explanation of why the ground applies.
- A specifications of error form is found at the end of this guide.

PART TWO: THE APPELLANT SERVES THE NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR

Service is providing copies of the Notice of Appeal and Specifications of Error that 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 Appellant Arranges for Service of the Notice of Appeal and Specifications of Error on:

1. Workforce Safety and Insurance;
2. The attorney general or an assistant attorney general; AND
3. All the parties to the proceeding before Workforce Safety and Insurance.

Failure to serve the Notice of Appeal and Specifications of Error on the above listed persons within the thirty (30) day appeal deadline may result in dismissal of your appeal.

The Notice of Appeal and Specifications of Error May be Served in the Following Ways:

For a list of service options, go to the “Service” link at www.ndcourts.gov/ndlshc. Review the forms and instructions for “Service After a Civil Case has started.”

Three commonly used methods of service are:

- Service by Mail
 - Mail copies of the Notice of Appeal and Specifications of Error to the person's last known address, postage must be prepaid.
 - 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.
 - You will file the completed Affidavit of Service by Mail with the clerk of court in Part Three.
 - An Affidavit of Service by Mail form is found at the end of this guide.

- Service by Personal Delivery
 - Hand copies of the Notice of Appeal and Specifications of Error to the person
 - 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.
 - You will file the completed Affidavit of Service by Personal Delivery with the clerk of court in Part Three.

- Service by Office Delivery
 - Leave copies of the Notice of Appeal and Specifications of Error at the person's 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 person's office completes the affidavit of service and signs in the presence of a notary.
 - You will file the completed Affidavit of Service by Office Delivery with the clerk of court in Part Three.

Service When a Lawyer Represents a Party:

If a lawyer represents a party, serve the lawyer, rather than the party.

Serving Workforce Safety and Insurance – 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 a copy of appeal 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 Workforce Safety and Insurance, contact the agency directly and ask.

Serving an Agent Not Authorized to Receive Process

If service is made on an agent who is not expressly authorized by appointment or by law to receive service of process on behalf of the defendant, a copy of the appeal documents must be mailed or delivered via a third-party commercial carrier to the defendant with return receipt requested not later than ten days after service by depositing a copy of the appeal documents, with postage or shipping prepaid, in a post office or with a commercial carrier in this state and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

PART THREE: THE APPELLANT FILES THE ORIGINAL, COMPLETED APPEAL DOCUMENTS AND PROOF OF SERVICE

The original, completed appeal documents and the documents showing proof of service must be filed with the clerk of court.

File the Following Original, Completed Documents with the clerk of court:

- Notice of Appeal
- Specifications of Error
- Proof of Service on:
 - Workforce Safety and Insurance;
 - The attorney general or an assistant attorney general; AND
 - All the parties to the proceeding before Workforce Safety and Insurance.
- Petition to waive the filing fees
 - If you cannot pay the filing fee or paying it would be hard for you, you can ask the court to waive (not make you pay) the filing fee by filing a motion.

Filing Fees/Waiver of Filing Fees

You will be required to pay a filing fee. The filing fee for filing an appeal from a decision of an administrative agency is \$80. You can find the Fee Schedule at

<https://www.ndcourts.gov/cle/fees.pdf>

If you make a request to the court to waive the \$80.00 filing fee, you may file your petition to waive filing fees at the same time as the original, completed appeal documents. Forms and instructions to request a filing fee waiver can be found at <http://www.ndcourts.gov/ndlshc/OtherForms/OtherForms.aspx>. These forms may also be used to request waiver of the cost of preparing the agency record. (See Part Four)

Contact information for clerks of court by county may be found here:
<http://www.ndcourts.gov/court/email/frclerks.htm>.

PART FOUR: WORKFORCE SAFETY AND INSURANCE PREPARES THE RECORD; APPELLANT PAYS ESTIMATED COSTS OF PREPARING THE RECORD

Within 30 days of service and filing of the notice of appeal and specifications of error, Workforce Safety and Insurance will prepare and file either the original or a certified copy of the entire record of the Workforce Safety and Insurance proceedings. This timeframe can be extended, but requires an order from the court.

What is included in the record?

- 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 ruling 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.

Who is responsible for paying the estimated cost of preparing the record?

The person bringing the appeal, the appellant, will be required to pay the estimated costs of preparation and filing of the entire record of the Workforce Safety and Insurance proceedings.

Workforce Safety and Insurance will notify you (the appellant) of the estimated costs after they are served the notice of appeal and specifications of error. The estimated costs are paid to Workforce Safety and Insurance.

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 FIVE: WORKFORCE SAFETY AND INSURANCE FILES THE RECORD; THE DISTRICT COURT ISSUES A SCHEDULING ORDER

Once service and filing of the notice of appeal and specifications of error is complete, Workforce Safety and Insurance 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 SIX: REQUESTING ORAL ARGUMENT

Carefully review the scheduling order. If you, the Appellant, want to request oral arguments, the written request must be made on or before your deadline for filing your 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 you and Workforce Safety and Insurance included in your legal briefs.

PART SEVEN: PREPARING, SERVING, AND FILING THE APPELLANT BRIEF

One important requirement is the legal brief. The legal brief may be your only opportunity to present your argument to the court.

What is a legal brief?

- A written document filed by a party where the party represents the facts, law and argument of how the facts apply to the law. This is the chance for each party to argue why Workforce Safety and Insurance's decision should, or should not, stand.

What goes into a brief?

- Statement of Facts
- Issues Presented
- Law and Argument
- Conclusion

Appellant Prepares Their Legal Brief:

Statement of Facts:

- The Statement of Facts is when you explain the events led up to the appeal of the Workforce Safety and Insurance decision.
- List only specific facts connected to the issues on appeal.
- The district court can only consider information that was provided during the Workforce Safety and Insurance proceedings. This means now you cannot include new facts or evidence that was not presented during the Workforce Safety and Insurance proceedings.
- If you can, you should include the specific page or pages in the record where the fact can be found.

Issues Presented:

- **REFER TO YOUR SPECIFICATIONS OF ERROR.**
- List the issues you want the district court to review.
- The issues should have been listed in your specifications of error when you filed the appeal with the clerk of district court.

Law and Argument:

- **REFER TO SECTION ONE: WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO WORKFORCE SAFETY & INSURANCE.**
- **REFER TO YOUR SPECIFICATIONS OF ERROR.**
- You must research the applicable statutes and case law to build your argument that legal errors were made during the Workforce Safety & Insurance proceeding that the district court can correct.
- The Argument is where you apply the law to the facts and tell the district court why the decision was wrong.
- Address each ground or reason you listed in your specifications of error.
- Focus on the *legal* issues and whether the law was correctly applied.
- While you may be unhappy with the decision, or think that it contains some minor mistakes, that may not mean the decision is legally wrong.

Conclusion:

- Briefly tell the district court what you want.
- In other words, how do you want your legal issued to be resolved? How do you want the Workforce Safety and Insurance decision to be resolved?

Appellant Arranges for Service of the Legal Brief on:

1. Workforce Safety and Insurance;
2. The attorney general or an assistant attorney general; AND
3. All the parties to the proceeding before Workforce Safety and Insurance.

Each party is required to file and serve a legal brief of the facts, law and argument of the appeal.

Failure to serve copies of your Appellant Brief may result in dismissal of the appeal.

Three commonly used methods of service are:

- Service by Mail
 - Mail copies of the Appellant Brief to the person's last known address, postage must be prepaid.
 - 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.
 - You will file the completed Affidavit of Service by Mail with the clerk of court in Part Three.
 - An Affidavit of Service by Mail form is found at the end of this guide.
- Service by Personal Delivery
 - Hand copies of the Appellant Brief to the person.
 - 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.
 - You will file the completed Affidavit of Service by Personal Delivery with the clerk of court in Part Three.
- Service by Office Delivery
 - Leave copies of the Appellant Brief at the person's 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 person's office completes the affidavit of service and signs in the presence of a notary.
- You will file the completed Affidavit of Service by Office Delivery with the clerk of court in Part Three.

Service When a Lawyer Represents a Party:

If a lawyer represents a party, serve the lawyer, rather than the party.

Serving Workforce Safety and Insurance – 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 a copy of appeal 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 Workforce Safety and Insurance, contact the agency directly and ask.

Serving an Agent Not Authorized to Receive Process

If service is made on an agent who is not expressly authorized by appointment or by law to receive service of process on behalf of the defendant, a copy of the appeal documents must be mailed or delivered via a third-party commercial carrier to the defendant with return receipt requested not later than ten days after service by depositing a copy of the appeal documents, with postage or shipping prepaid, in a post office or with a commercial carrier in this state and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

Appellant Files the Following with the Clerk of Court:

The original, completed Appellant Brief and the documents showing proof of service must be filed with the clerk of court. If proof of service is not filed, the appeal may be dismissed.

PART EIGHT: WORKFORCE SAFETY AND INSURANCE SERVES AND FILES THE ANSWER BRIEF

Workforce Safety and Insurance Arranges for Service of Copies their Answer Brief on:

1. You (the Appellant);
2. The attorney general or an assistant attorney general; AND
3. All the parties involved in the proceeding

Workforce Safety and Insurance Files their Original Answer Brief with the Clerk of Court.

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

In an appeal to the district court, the district court judge will review the documents contained in Workforce Safety and Insurance's file and make a determination as to whether the Administrative Law Judge's findings are supported by the evidence and by the law.

If oral arguments are requested and granted, the judge may ask you and Workforce Safety and Insurance for additional information on the law. You and Workforce Safety and Insurance will then explain your positions to the court.

Review your legal brief and Workforce Safety and Insurance's answer brief when preparing for oral arguments.

Knowing the Governing Law

If oral arguments are granted, you will want to be educated on the governing law. You will want to know all the statutes associated with a Workforce Safety and Insurance appeal. Statutes can be found at SECTION ONE: What are North Dakota Laws and Rules Related to Workforce Safety and Insurance, in your legal brief, and in Workforce Safety and Insurance's answer brief. By knowing the relevant law that governs your appeal, you will be prepared in oral arguments if the judge asks you a question regarding the law or if a representative from Workforce Safety and Insurance misstates the law. Again, it is highly recommended that you consult an attorney because this is a complex issue.

Knowing Case Law

In addition, to knowing the governing law you must know precedent case law that helps and hurts your case. Precedent case law is when the North Dakota Supreme Court has issued an opinion on the issue at hand and the opinion is now the governing case law for Workforce Safety and Insurance cases. With this case law you will be able to explain to the court how your facts are similar or distinguishable from that case in order to defend your case at hand.

In addition, there is persuasive case law that you may use to make your argument stronger. Persuasive case law is from another jurisdiction that is not governing law for your court. However, you could use this case as a way to make your argument stronger by saying that the court in "X" location found in favor of your position.

Presenting the Oral Argument

When presenting your argument you must be respectful to all parties present in the court, which includes the lawyer for Workforce Safety and Insurance. In addition, by knowing the governing law and case law the appellant will be confident in presenting his/her case to the

court. When speaking, make a clear and concise argument that shows how your facts are similar or different from the governing law at hand.

PART TEN: THE DISTRICT COURT DECIDES THE APPEAL

In an appeal to the District Court, the District Court judge will review the documents contained in Workforce Safety and Insurance's file and make a determination as to whether the Administrative Law Judge's findings are supported by the evidence and by the law. If oral arguments are requested and granted, the judge will consider those arguments in his final judgment. After reviewing all documents submitted to the court and oral arguments explaining their positions, then the judge will make a decision and enter judgment.

If the order of the agency is not affirmed by the court, it must be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

If the judge does not rule in your favor, you may appeal the district court's decision to the North Dakota Supreme Court. If the judge does not rule in Workforce Safety and Insurance's favor, 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 Michael J. Sloane, 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. _____

APPELLANT,)

Vs)

NOTICE OF APPEAL

Workforce Safety and Insurance (WSI);)

_____)

(All other parties from WSI proceeding))

APPELLEES.)

TO: THE ABOVE NAMED APPELLEES:

PLEASE TAKE NOTICE THAT I, _____ (your name),
appeals to the District Court, County of _____, _____ Judicial
District, State of North Dakota, from the "Findings of Fact, Conclusions of Law and Order" of
_____ (name of Administrative Law Judge),
dated _____, 20____ (date of WSI decision).

This appeal is on the grounds and for the reasons in the attached Specifications of Error,
which are incorporated by reference.

This appeal is taken pursuant to Chapters 28-32 and 65-10 of the North Dakota Century
Code.

_____ (your name) reserves the right to
make application to the Court for attorney's fees and costs as provided by N.D.C.C. § 65-10-03,
and as also provided by N.D.C.C. § 28-32-50 because Workforce Safety & Insurance has "acted
without substantial justification" throughout.

Dated this _____ day of _____, 20_____.

(Signature)

(Printed Name)

(Address)

(Telephone Number)

(City, State, Zip Code)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

(Your name))

Case No. _____

APPELLANT,)

Vs)

SPECIFICATIONS OF ERROR

Workforce Safety and Insurance (WSI);)

_____)

(All other parties from WSI proceeding))

APPELLEES.)

_____ (your name), the appellant, appeals to the District Court, County of _____, _____ Judicial District, State of North Dakota and for appellant's Specifications of Error states the following: *(State concisely each ground which you claim gives your reason for this WSI appeal. After stating the ground, briefly describe the support for each ground. 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, Appellant resides at _____

_____. *(Your address)*

Dated this _____ day of _____, 20_____.

(Signature)

(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

(Your name))

Case No. _____

APPELLANT,)

Vs)

AFFIDAVIT OF SERVICE BY MAIL

Workforce Safety and Insurance (WSI);)

_____))

(All other parties from WSI proceeding))

APPELLEES.)

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 and Specifications of Error upon the following person(s) by placing a copy of same in the United States mail at the Post Office located in _____ (city, state) with sufficient postage, in an envelope addressed as follows:

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 DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

(Your name)

APPELLANT,

Vs

Workforce Safety and Insurance (WSI);

(All other parties from WSI proceeding)

APPELLEES.

Case No. _____

Appellant Brief

STATEMENT OF FACTS

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

ISSUE(S) PRESENTED

(List the specifications of error from the Specifications of Error filed with the District Court.)

LAW AND ARGUMENT

(Refer to the Specifications of Error filed with the District Court to build the arguments. Explain with laws and facts how the WSI decision was incorrect.)

CONCLUSION

(Summarize why the court should grant the petition.)

Dated this _____ day of _____, 20____.

(Signature)

(Printed Name)

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

(Telephone Number)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

(Your name))

Case No. _____

APPELLANT,)

Vs)

Workforce Safety and Insurance (WSI);)

AFFIDAVIT OF SERVICE BY MAIL

_____)

(All other parties from WSI proceeding))

APPELLEES.)

I, _____ (person serving the brief), 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 Appellant Brief upon the following person(s) by placing a copy of same in the United States mail at the Post Office located in

_____ (city, state) with sufficient postage, in an envelope addressed as follows:

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: _____