

ANSWERING A MOTION IN A CIVIL ACTION

CHECKLIST

This is a basic checklist for answering a motion in a civil action in North Dakota State District Court. There may be additional documents and procedures for your particular type of motion. If you are unsure how to proceed, consult a lawyer licensed to practice in North Dakota.

THE “MOTIONS” SECTION OF THE [GUIDE TO A CIVIL ACTION](#) on the ND Legal Self Help Center website has additional information and resources.

A motion is a written request to the court for an order. Motions may be made after the summons and complaint are filed with the court.

The party making the motion is called the “Moving Party.” The party answering the motion is called the “Opposing Party.”

The moving party notifies the opposing party of the motion by serving copies of the motion documents on the opposing party.

If an opposing party to the motion is served by handing it to the opposing party, leaving it at the opposing party’s office or residence, the opposing party has fourteen (14) days after service of the motion documents to serve and file their answer to the motion in writing.

If an opposing party to the motion is served by mail or third party commercial carrier, the opposing party has seventeen (17) days after service of the motion documents to serve and file their answer to the motion in writing.

An answer to a motion in a civil action is made up of a set of documents, including:

- Answer Brief to Motion;
- Affidavit in Support of Answer Brief;
- Other Supporting Documents; and
- Notice of Hearing on Motion (*if the opposing party requests a hearing*).

Carefully Review the Motion Documents:

Carefully review the notice of motion, motion, brief in support of motion, affidavit in support of motion and any other supporting documents you received.

The notice of motion will provide information about who to serve and the deadline to serve the written answer to the motion.

The other documents will list the legal authority that the moving party believes supports their motion request, and explain how and why the moving party believes the law, case law or court rules support their request.

Calculate the Deadline to Answer the Motion:

If the motion was served by handing it to the opposing party, leaving it at the opposing party’s office or residence, the opposing party has fourteen (14) days after service of the motion documents to serve and file their answer to the motion in writing.

If the motion is served by mail or third party commercial carrier, the opposing party has seventeen (17) days after service of the motion documents to serve and file their answer to the motion in writing.

Review the laws and rules from the motion documents to determine if the timeframe to answer the motion is different.

- Date the motion documents were served on you, the opposing party: _____
(Review [Rule 5 of the North Dakota Rules of Civil Procedure](#) for service of motions.)
- Using calendar days, calculate the date your written answer to motion must be served on the moving party and any other opposing parties: _____

Make a Copy of the Brief in Support of Motion to Mark Up:

Make at least one copy of the moving party’s brief in support of motion. Using the checklists on pages 2 and 3 go through your working copy of the brief in support of motion with a pencil and make notes. Make note of any points you want to make in your answer to the motion. Use your marked-up copy of the brief in support of motion, and pages 2 and 3 to help you organize and prepare your written answer to the motion.

Research North Dakota Laws and Court Rules:

Information and resources for legal research are available through the North Dakota Legal Self Help Center. Go to www.ndcourts.gov and click on the “Self Help” link. Scroll to the “Legal Research” section.

Review the motion and brief in support of the motion carefully!

A motion must include the legal authority that supports the motion request. Any motions to the court must refer to the laws, North Dakota Supreme Court case law, and court rules, or a combination of all three, upon which the motion is filed.

The brief in support of the motion explains how and why the moving party believes the law, case law, and/or court rule supports the moving party's request.

Research the laws, North Dakota Supreme Court case law, and/or court rules the moving party used to make their arguments. Determine if the laws and rules stand for what the moving party says they do.

Conduct your own research to determine if there are other laws, North Dakota Supreme Court case law, and/or court rules that support your argument.

- Does the brief in support of motion include any laws enacted by the North Dakota State Legislature? Do any laws enacted by the Legislature support your answer to the motion?

The [North Dakota Century Code](#) contains laws enacted by the Legislature. List the specific laws from the brief in support of the motion and any laws that support your answer: _____

_____.

- Does the brief in support of motion include any [North Dakota Supreme Court case law](#) Does any case law support your answer to the motion?

When the decision of a case is appealed from a North Dakota District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the case the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues. List the specific case law from the brief in support of the motion and any case law that supports your answer: _____

_____.

- Does the brief in support of motion include any court rules? Do any court rules support your answer to the motion?

[North Dakota Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. List the specific court rules from the brief in support of the motion and any court rules that support your answer:

(The North Dakota Century Code, and North Dakota Supreme Court case law, and North Dakota court rules are also found in print in many North Dakota public and academic libraries.)

Create the Documents to Answer a Motion in a Civil Action:

- Answer Brief to Motion** *(A General-Use Answer Brief to Motion form is available in the "District Court Civil" section of the [ND Legal Self Help Center](#) website.)*
 - Complete the caption (top of document) exactly as it appears in the Plaintiff's complaint (or the Petitioner's petition)
 - Fill in the title with the type of motion
 - Statement of Facts Section:** List your version of the facts related to the motion
 - Law and Argument Section:** Respond to each argument in the moving party's brief in support of motion. Explain how each law, case law, or court rule supports your argument. Apply the law, case law, or court rule to the facts listed in the Statement of Facts.
 - Conclusion Section:** Summarize the answer to the motion and what you are asking the court to do
 - Signed and dated by you, the opposing party, or by the lawyer, if the opposing party is represented
 - Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record
- Affidavit in Support of Answer Brief** *(A General-Use Affidavit form is available in the "District Court Civil" section of the [ND Legal Self Help Center](#) website.)*
 - Complete the caption exactly as it appears in the Answer Brief to Motion.
 - Fill in the title with the type of motion
 - List your version of the facts related to the motion

- Signed and dated by you, the opposing party, in the presence of a notary public or clerk of court
- Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record
- Notice of Hearing on Motion** (*Required only if the opposing party requests an oral argument or an evidentiary hearing on the motion. A General-Use Notice of Hearing on Motion form is available in the "District Court Civil" section of the [ND Legal Self Help Center](#) website.*)
 - Complete the caption exactly as it appears in the Answer Brief to Motion
 - Include the date, time and location of the scheduled hearing
 - Signed and dated by you, the opposing party, or by the lawyer, if the opposing party is represented
 - Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record

Gather Other Supporting Documents:

An answer to a motion may include other supporting documents, such as affidavits or exhibits.

- If including other supporting documents with your answer to motion, make sure to reference each supporting document in the answer brief to motion and/or affidavit in support of answer brief.
- Make a copy of each supporting document, if any, for the moving party and each opposing party, if any, plus one copy to keep as a record.

Service of Answer to Motion Documents:

The opposing party must serve copies of their answer to motion documents on the moving party and each opposing party, if any, in the civil action. A signed and notarized affidavit of service is proof that service occurred.

- Review service requirements for motions in [Rule 5 of the North Dakota Rules of Civil Procedure](#). For more information about service requirements after a civil action has started, go to the [Service](#) link on the ND Legal Self Help Center website.
- Obtain the address for service for the moving party and each opposing party, if any. If the moving party or an opposing party is represented by a lawyer, obtain the address for service for the lawyer.

- Arrange for service of copies of the following documents on the moving party and each opposing party, if any. If the moving party or an opposing party is represented by a lawyer, arrange for service on the lawyer.
 - Answer Brief to Motion;
 - Affidavit in Support of Answer Brief;
 - Other supporting documents, if any; and
 - Notice of Hearing on Motion, if applicable.
- For the moving party and each opposing party get the signed and notarized affidavit of service of the answer to motion documents from the person who served the answer to motion documents.

If the opposing party fails to serve a written answer fourteen (14) days or seventeen (17) days after service of the motion documents, the court will decide the motion on the documents filed, unless a hearing was requested within the hearing-request timelines.

File the Original Answer to Motion Documents with the North Dakota District Court:

The original of each of the answer to motion documents and the document(s) showing proof of service must be filed with the clerk of court.

*** Filing does not meet the requirements for service.***

- Contact the clerk of court's office in the County where the moving party filed their motion documents for the following information:
 - Amount of the filing fee \$_____, if any, and how to pay
 - Options for submitting answer to motion documents if the opposing party cannot file the documents in person
- Gather the originals of the following documents (make copies for your records):
 - Answer Brief to Motion;
 - Affidavit in Support of Answer Brief;
 - Other supporting documents, if any;
 - Notice of Hearing on Motion, if applicable; and
 - Affidavit(s) of Service of a copy of each of the answer to motion documents on the moving party and each opposing party, if any.
- File the original documents with the clerk of court and pay the filing fee, if any.

The Court will Decide the Motion:

If either the moving party or an opposing party appropriately requested a hearing on the motion within the hearing-request timelines, the court will decide the motion following the hearing.

If neither the moving party nor an opposing party appropriately requested a on the motion within the hearing-request timelines, the court will decide the motion on the documents filed with the court.

You will be notified in writing of the court's decision on the motion.

****The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided by the Center is not intended for legal advice but only a general guide to the civil court process. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state. Use at your own risk****