



Demand for Filing Summons And Complaint (Petition) in Civil Actions, or Civil Cases 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 state district courts. The information provided in this informational guide **isn't** intended for legal advice but only as a general guide to a civil court process.

If you decide to represent yourself, you need to do additional research to prepare.

If you're unsure how to proceed, don't know if this informational guide suits your needs, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. For more information about finding a lawyer, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

When you represent yourself, you're expected to know and follow the law, including:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders;
 - Any local court rules.

Links to the laws, case law, and court rules can be found at ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help/glossary.

When you represent yourself, you're held to same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

This information isn't a complete statement of the law. This covers basic information about a Demand for Filing for a civil action, or civil case, in a North Dakota state district court. The Center isn't responsible for any consequences that may result from the information provided. The information can't replace the advice of a lawyer licensed in North Dakota.

Use at your own risk.

Caution!

A self-represented individual may only represent themselves in a North Dakota state district court civil action, or civil case.

If a Plaintiff/Petitioner or Defendant/Respondent **is an artificial person, such as a business, corporation or limited liability company, a non-lawyer can't** represent the artificial person in a North Dakota state district court civil case. Consult a [lawyer](#) licensed to practice in North Dakota.

Why Isn't the Case Number on the Summons and Complaint (or Petition)?

When you're served the Summons and Complaint (or Petition), the documents won't have a case number. **In North Dakota, a civil case starts with service of a Summons and a copy of the Complaint (or Petition) on the Defendant. A Summons and Complaint (or Petition) aren't required to be filed to start a civil case.** You and the clerk of court won't be able to find a case number in North Dakota State District Court case files.

- **The Plaintiff can't file the Summons and Complaint** (or Petition) until the Plaintiff gets proof of service that they served copies on the Defendant. The Summons and Complaint (or Petition) and proof of service are then filed together and a case number is assigned.

If you want to take part in the case, you must serve your written Answer to the Summons and Complaint (or Petition) within 21 days after you were served. You serve your written Answer to the Summons and Complaint (or Petition) without a case number. (See [Answering a Summons and Complaint](#).)

- If you don't serve your written Answer within **21 calendar days after the date you were served**, you may be found in default. This means you won't have a chance to take part in the case or be heard on the matter. The court may give the Plaintiff what they requested in the Complaint (or Petition) without your input.

Don't Wait to Serve Your Answer! If you wait until the Summons and Complaint (or Petition) are filed before serving your written Answer, you may miss your **21 day deadline**. If you miss your deadline, the Plaintiff is allowed to ask the court to find you in default.

What is a Demand for Filing?

A Demand for Filing is the process where you, the Defendant, demand in writing that the Plaintiff file the initiating pleadings, also called the Summons and Complaint (or Petition), in the case within 20 calendar days after being served the Demand for Filing.

If the Plaintiff doesn't file the Summons and Complaint (or Petition) that were served on you within 20 calendar days, the case is void, meaning the case is over.

(Be aware that the Plaintiff may be able to start the same case again by serving another Summons and Complaint (or Petition)).

Exception: If the Plaintiff makes a motion to the court within 60 calendar days after being served the Demand for Filing, **and the court finds excusable neglect**, the Summons and Complaint (or Petition) will be considered valid, which means the case will continue.

How Do I Make a Demand for Filing?

Remember your 21 day deadline for servicing your Answer. Filing doesn't meet your deadline!

If the Plaintiff hasn't filed the Summons and Complaint (or Petition) and you want to file your written Answer and proof of service, you have two options:

Option 1. You can file your copy of the Summons and Complaint (or Petition) which were served on you and your original written Answer and proof of service. You're required to pay the \$80 filing fee for the Plaintiff and the \$50 filing fee for you, the Defendant.

- You, the Defendant, must serve a [Notice of Filing](#) on the Plaintiff (or Plaintiff's lawyer.)
- After the court makes a judgment in the case, you may ask the court to award you the cost of the \$80 filing fee. (See [Rule 54\(e\) of the North Dakota Rules of Civil Procedure](#).)

Option 2. You can serve a Demand for Filing demanding the Plaintiff file their Summons and Complaint (or Petition) within 20 calendar days of being served the Demand for Filing. If the Plaintiff doesn't file the Summons and Complaint (or Petition) within the deadline, service of the Summons on you is void, meaning the current case is over.

- However, if the Plaintiff misses the 20 day deadline, they can make a motion to the court within 60 calendar days after service of the Demand for Filing. If the court finds excusable neglect, the case will continue.

How Do I Arrange to Serve the Demand for Filing on the Plaintiff?

You, the Defendant, must arrange for your Demand for Filing to be served as follows:

- If served on the Plaintiff's lawyer use one of the options in [Rule 5\(b\) of the North Dakota Rules of Civil Procedure](#). Review Rule 5(b) carefully!

- Check to see who signed the Summons and Complaint (or Petition). If a lawyer signed the documents, you **must** use this method for service.
- You may also want to review [Information and Instructions for Service After a District Court Civil Action Has Started](#).
- If served on the Plaintiff because the Plaintiff isn't represented, use one of the options in [Rule 4\(d\) of the North Dakota Rules of Civil Procedure](#). Review Rule 4(d) carefully!
 - You may also want to review [Information and Instructions for Service to Start a District Court Civil Action](#).

General information about Rules 4 and 5 service requirements and affidavit of service forms are also available at ndcourts.gov/legal-self-help/service-in-a-civil-action.

Laws and Rules Related to Demand for Filing in a Civil Action

[Rule 4 of the North Dakota Rules of Civil Procedure](#) gives requirements for serving a Demand for Filing on a Plaintiff who isn't represented by a lawyer.

[Rule 5 of the North Dakota Rules of Civil Procedure](#) gives filing requirements and requirements for serving a Demand for Filing on a lawyer representing the Plaintiff.

[Rule 5\(d\) of the North Dakota Rules of Civil Procedure](#) requires that the summons and complaint, a summons and petition, or other initiating document of the civil case **must be filed with the court before** a subpoena may be issued.

[Rule 5\(d\)\(2\)\(A\) of the North Dakota Rules of Civil Procedure](#) gives requirements for the Demand for Filing process.

[Rule 54\(e\) of the North Dakota Rules of Civil Procedure](#) gives requirements for requesting fees.

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 are available in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are available 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.

Lawyer Resources and Limited Legal Representation

Lawyer Resources

You're not required to hire a lawyer to bring a civil case in a North Dakota state court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

If you'd like to learn more about finding a lawyer to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

You may also 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 legalassist.org.
- **Dakota Plains Legal Services** is a non-profit legal services organization that provides free legal assistance to low-income individuals, older Americans and veterans. Dakota Plains Legal Services (DPLS) has eight offices and serves communities across South Dakota and North Dakota, including nine tribal nations. DPLS is committed to increasing access to justice with quality legal assistance. Contact information is available on the DPLS webpage of dpls.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 sband.org.
- **For a list of all lawyers who are licensed to practice in North Dakota**, go to the North Dakota Supreme Court website at ndcourts.gov/Lawyers. You can narrow your search by name or location.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil cases. 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 paperwork, 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.

North Dakota Free Legal Answers

This civil legal program is a partnership of the American Bar Association and the State Bar Association of North Dakota.

The purpose of the program is to provide free answers to **specific** civil legal question to low-moderate income North Dakotans who submit their questions online. Anonymous volunteer lawyers answer your question, but can't represent you.

Go to nd.freelegalanswers.org for information about the program, the online application, and, if you qualify, ask your civil legal question.

State of North Dakota

In District Court

County of _____

_____ **Judicial District**

(If unknown, leave blank)

_____,)
Plaintiff (*person bringing the case/suing the*)
Defendant),)

Case No. _____

vs.)

Demand for Filing

_____,)
Defendant (*person who the case is against/*)
person being sued).)

1. I am the Defendant in this case.
2. Pursuant to Rule 5(d)(2)(a)(iii) of the North Dakota Rules of Civil Procedure, I demand that within 20 calendar days after service of this Demand for Filing, you, the Plaintiff, file the Complaint in this case. If the Complaint is not filed within 20 calendar days after service of this demand on you, the Summons served on me is void, unless you, the Plaintiff, make a motion to the court within 60 calendar days after service of this Demand for Filing, and the court finds excusable neglect.
3. I also demand that if you file the Complaint, you serve a Notice of Filing on me.

Dated _____.

(Signature of Defendant)

(Printed Name of Defendant)

(Address)

(City) _____ *(State)* _____ *(Zip)*

Phone Number: _____

Email Address: _____