



EVIDENCE

A Research Guide for North Dakota State Civil Court Procedure

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 in this research guide IS NOT a complete statement of the law. This information is intended as a starting point for your research into evidence. This information is not intended for legal advice and cannot replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

The self-represented individual must make all decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. Use at your own risk.

OVERVIEW OF EVIDENCE:

What is evidence?

Evidence is information presented to a judge, a judicial referee, or a jury for the purpose of establishing the truth or falsity of an allegation.

What rules apply to evidence?

In North Dakota state district court cases, the North Dakota Rules of Evidence govern:

- The type of evidence presented and admitted.
- How evidence is presented and admitted.
- How to object to evidence presented by the other party for admission.

Carefully review the North Dakota Rules of Evidence to start researching the answer to your questions about presenting evidence for admission and objecting to evidence the other party wants admitted.

How do I gather evidence?

Evidence is gathered informally and formally at different stages of a civil action.

Informal evidence gathering is when a party gets information on their own from cooperative sources, before and after the civil action starts.

Discovery is formal evidence gathering from other parties or non-parties in the civil action. Discovery does not begin until after the civil action starts.

What are the types of evidence?

In general, the types of evidence are:

- Testimony: Testimony of witnesses.
- Documents: Materials, also called exhibits, which include *but are not limited to*, letters, reports, records, and emails.
- Real: Objects that played an actual or real part in the incident, transaction, or occurrence. For example, the actual club used in an assault.
- Demonstrative: Visual aids used to explain or provide clarity to testimony, or to present a summary of complicated or large numbers of documents. For example, charts, diagrams, and drawings.

What is not evidence?

In general, the following are not evidence:

- Opening and closing statements.
- Questions to witnesses.
- Answers to questions when the judge or judicial referee agrees with, or sustains, the other party's objection.
- Testimony, documents, or other evidence that the judge or judicial referee says cannot be admitted as evidence.

What is relevant evidence?

The starting point for presenting or objecting to evidence is whether the evidence is relevant.

Rule 401 of the North Dakota Rules of Evidence gives the test for relevance:

“1. It has any tendency to make a fact more or less probable than it would be without the evidence; and

2. The fact is of consequence in determining the action.”

What else, besides relevance, will determine whether evidence is admitted?

Along with relevance, other factors may determine whether evidence is admitted, including:

- Is the evidence unduly prejudicial, even if the evidence is relevant?
- Is the evidence authentic – is the evidence what you say it is?
- Does the witness have first-hand knowledge of the facts to which they testify?
- Is the evidence to prove someone's character? (This is generally not admissible.)
- Is the evidence of settlement offers or discussions? (This is generally not admissible.)

What is laying the foundation for an exhibit?

When a party wants to get an exhibit admitted as evidence, a witness who is familiar with the exhibit must answer some questions. This is called laying the foundation.

In general, questions to lay the foundation include:

- Does the witness have first-hand knowledge of the exhibit or know the facts surrounding the exhibit?
- Is the exhibit relevant evidence?
- Can the witness authenticate the exhibit – show that the exhibit is what you say it is?

Why would I object to evidence presented for admission?

Objections the judge or judicial referee agrees with, or sustains, prevents the jury (or judge or judicial referee in a bench trial) from using the evidence to make their decision.

Proper objections, regardless of whether the judge or judicial referee agree, preserve the issue for appeal. (If the issue is not preserved, generally an appeals court cannot consider it.)

Can ND Legal Self Help Center staff or State Court System staff help me make decisions about evidence?

No, ND Legal Self Help Center staff and court system staff cannot assist you in decision-making about your evidence.

Decision-making requires staff to take the facts of your situation, apply the evidence rules and give an opinion about what you should do. This is legal advice. Center staff and court system staff cannot provide legal advice.

If you feel you need assistance making decisions about evidence, consult an attorney.

Are there evidence resources available for self-represented individuals?

Representing yourself in a court proceeding, such as a hearing or a trial, is a complex and confusing process.

Review pre-trial and trial guidebooks for self-represented litigants and for lawyers. A pre-trial or trial guidebook may include chapters on evidence. If possible, review guidebooks specifically for evidence. Contact your local public or academic library to see if they have any print or electronic publications specifically for individuals representing themselves in court.

A copy of the North Dakota Rules of Evidence may be useful as a reference when reviewing pre-trial and trial guidebooks.

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code.)

Title 31: Judicial Proof www.legis.nd.gov/cencode/t31.html

NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to court and how the dispute is conducted. All of the court rules are found online at www.ndcourts.gov/legal-resources/rules.)

North Dakota Rules of Evidence: www.ndcourts.gov/legal-resources/rules/ndrev

NORTH DAKOTA CASE LAW:

(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 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.)

One way to research case law related to the North Dakota Rules of Evidence is to locate the short summaries of case law in the print version of the North Dakota Rules of Evidence. The case law summaries are located directly following the text of the individual rule. To view the full text of the opinion, go to www.ndcourts.gov and hover over the “Supreme Court” drop down menu and click on “Opinions.” Enter the case name or case citation.

You may also research case law related to evidence in the print version of the North Dakota Century Code. Case law summaries may be found directly after the section of the Century Code. To view the full text of the opinion, go to www.ndcourts.gov, hover over the “Supreme Court” drop down menu and click on “Opinions.” Enter the case name or case citation.

You may research North Dakota Supreme Court case law related to the topic of your civil action by searching by topic at www.ndcourts.gov. Hover over the “Supreme Court” drop down menu and click on “Opinions.” Use the “Topic” drop down list to narrow your search.

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PATTERN JURY INSTRUCTIONS:

(In civil actions where jury trials are permitted and requested, the judge instructs the jury concerning the law involved in the action. North Dakota has developed pattern jury instructions that can be used in civil actions. The Pattern Jury Instructions can be found online at www.ndcourts.gov/legal-self-help by clicking on the "Pattern Jury Instructions" link under "Legal Research".)

The North Dakota Pattern Jury Instruction Commission researches the laws and their requirements in order to develop these instructions. Then, the Commission drafts and publishes the instructions.

If your civil action can be decided by a jury, the Pattern Jury Instructions can be a useful starting point for research into the evidence required for your legal issue.

Pattern jury instructions are not available for every civil action.

LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULES AND RULINGS, AND COURT DECISIONS.

To determine how a law applies to your situation, review the applicable law or laws, administrative rules and 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 and North Dakota court rules 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.

OTHER LEGAL RESEARCH RESOURCES:

How to Research a Legal Problem: A Guide for Non-Lawyers, American Association of Law Libraries. (www.aallnet.org)

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LIBRARY RESOURCES: (Not all legal resources are available online.)

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (www.odin.nodak.edu/)

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

[A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.

[Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

[Objections at Trial](#), Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.

[Represent Yourself in Court: How to Prepare & Try a Winning Case](#), Paul Bergman, Sara Berman, NOLO, 2016.

[North Dakota Century Code Annotated](#), Lexis Nexis, Creation Date c1959 – present.

[North Dakota Court Rules Annotated](#), Lexis Nexis, Creation Date c1990 – present.

ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:

You are not required to hire an attorney to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

Attorney Resources

If you decide to find an attorney to represent you, the following options may be 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 of North Dakota** 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.
- **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 name or location.

Limited Legal Representation

Attorneys licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney 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 attorney handled. For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make the court appearance for you.

You and the attorney must agree in writing to Limited Legal Representation.