



## GUIDE TO A CIVIL ACTION

### An Informational Guide to North Dakota Civil Court Process

This is a basic guide through the process of a civil action in North Dakota State District Court. This guide is not a complete statement of the laws and rules that apply to civil actions in North Dakota State District Court.

**Caution!** Civil actions are often a complex and confusing process. You are held to the 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. **You will need to conduct additional research to prepare.**

The information contained in this guide cannot replace the advice of competent legal counsel licensed in North Dakota. If you are unsure whether you should use the information, contact a lawyer licensed to practice in North Dakota.

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

Go to the [North Dakota Legal Self Help Center](http://www.ndcourts.gov/legal-self-help) website for links to the following:

- North Dakota Century Code (State laws/statutes) and the North Dakota Constitution;
- North Dakota Court Rules; and
- A Glossary of many legal terms.

North Dakota court rules, the North Dakota Century Code, the North Dakota Constitution, and legal dictionaries can be found in print in many North Dakota public and academic libraries.

This guide includes references to checklists and general-use forms. Available checklists and general-use forms are listed within each section of the guide and at the end of the guide. To print the available checklists and forms, go to [www.ndcourts.gov](http://www.ndcourts.gov) and click on the "Self Help" link. Scroll to the "District Court Civil" section.

All of the informational guides, research guides, checklists and forms available through the ND Legal Self Help Center are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

If the form is not on the Center website, the form is not available through the Center. You may need to create your own legal documents.

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## **Legal Research Resources for North Dakota Laws and Court Rules**

Civil actions are often a complex and confusing process. Self-represented individuals are held to same requirements and responsibilities as a lawyer, even if the self-represented individual doesn't understand the rules or procedures. The self-represented individual will need to conduct their own legal research throughout the civil action.

### **How to Research Your Legal Issue**

Information and resources for legal research are available through the North Dakota Legal Self Help Center. Go to [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the "Legal Research" section."

### **North Dakota Century Code (N.D.C.C.)**

The North Dakota Century Code, also referred to as N.D.C.C., contains the laws enacted by the North Dakota State Legislature. The laws within the North Dakota Century Code are also called statutes.

The North Dakota Century Code is available at <http://www.legis.nd.gov/general-information/north-dakota-century-code>. The North Dakota Century Code is also available in print in many North Dakota public and academic libraries.

### **North Dakota Supreme Court Case Law (Opinions)**

When the decision of a case is appealed from a North Dakota State 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.

North Dakota Supreme Court case law is available at [www.ndcourts.gov](http://www.ndcourts.gov). Click on the “Supreme Court” link, then the “Docket Search” link. North Dakota Supreme Court case law is also available in print in many North Dakota public and academic libraries.

### **North Dakota Court Rules**

Court rules govern how a civil action makes its way to North Dakota State District Court and how the civil action is conducted.

North Dakota court rules are available at [www.ndcourts.gov/legal-resources/rules](http://www.ndcourts.gov/legal-resources/rules). North Dakota court rules are also available in print in many North Dakota public and academic libraries.

### **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. The North Dakota Pattern Jury Instruction Commission has developed pattern jury instructions that may be used in civil actions.

The Commission researches the laws and their requirements in order to develop pattern instructions. Then, the Commission drafts and publishes the Pattern Jury Instructions.

If the civil action can be decided by a jury, the Pattern Jury Instructions can be a useful starting point for research. The Pattern Jury Instructions are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “Legal Research” section.

### **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. Evidence includes witness testimony, documents, etc.

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

An Evidence Research Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help). Scroll to the “District Court Civil” section.

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## **Parties**

### **Parties to a Complaint**

The party who starts a civil action with a summons and complaint is called the Plaintiff. There can be more than one Plaintiff.

The party who is served with a summons and complaint requesting civil legal action against them is called the Defendant. There can be more than one Defendant.

### **Parties to a Petition**

The party who starts a civil action with a summons and petition is called the Petitioner. There can be more than one Petitioner.

The party who is served with a summons and petition requesting civil legal action against them is called the Respondent. There can be more than one Respondent.

**For the purpose of simplicity, the terms “Complaint,” “Plaintiff,” and “Defendant” will be used throughout the rest of this Guide,** but the terms include petitions, petitioners and respondents.

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## **Jurisdiction**

Before starting a civil action, the Plaintiff must determine if the North Dakota State District Courts have jurisdiction. Jurisdiction is the power of a court to inquire into the facts, apply the law, and determine and pronounce judgment.

Generally speaking, there are two types of jurisdiction, subject matter and personal. The Plaintiff must show how the court has both subject matter jurisdiction and personal jurisdiction over the Plaintiff’s civil action.

### **Subject Matter Jurisdiction**

Subject matter jurisdiction is the court’s power to hear and determine the type of case or controversy involved in the civil action.

Subject matter jurisdiction comes from the constitution and statutes. The parties cannot agree to, consent to or waive subject matter jurisdiction.

## **Personal Jurisdiction**

Personal jurisdiction is the court's power over the parties in a civil action.

[Rule 4 of the North Dakota Rules of Civil Procedure](#) gives the definition of a "person" and the requirements for exercising personal jurisdiction over a person. A party can voluntarily submit to the personal jurisdiction of a court.

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## **Venue (Location of Civil Action)**

Venue means the place, or geographical location, of the court that will hear the civil action. The Plaintiff must determine the proper venue for their civil action.

Venue requirements may be found in the laws related to the subject matter of the civil action. Venue requirements may also be found in [North Dakota Century Code Chapter 28-04](#).

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## **Calculating Time Periods**

[Rule 6 of the North Dakota Rules of Civil Procedure](#) describes how to calculate time periods during a civil action.

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## **Confidential Information in Documents Filed in a Civil Action**

Court records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is required to remain confidential, even if it is part of a public court record.

The Plaintiff and Defendant are solely responsible for making sure confidential information does not appear in the documents they prepare. [Rule 3.4 of the North Dakota Rules of Court](#) describes the requirements.

Confidential information includes:

- Social security numbers
- Taxpayer identification numbers
- Birthdates
- Full name of a minor child
- Financial-account numbers

The documents filed with the court with references to confidential information must include only:

- The last four (4) digits of the social security number and taxpayer identification number
- The year of birth
- The minor child's initials
- The last four (4) digits of the financial-account number

If documents include references to confidential information, the party who files, or intends to file, the documents must prepare a Confidential Information form. The form must contain the full confidential information that is referenced in the documents.

The Confidential Information form is filed when the action is filed with the court. The information on the form is not placed in a publicly accessible portion of the file.

See the example of the Confidential Information form in [Appendix H](#) of the North Dakota Rules of Court.

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## **Starting a Civil Action**

In North Dakota, a civil action starts with service of a summons on the Defendant. A copy of the complaint must be served with the summons, unless the Defendant is served by publication.

In North Dakota, a summons and complaint are not required to be filed with the court to start a civil action.

See the Filing Documents with the District Court section below for more information about filing.

### **Summons**

A summons directs the Defendant to answer the complaint within a certain amount of time. The summons notifies the Defendant that a default judgment will be taken against them if the Defendant does not answer.

Certain information must be included in the summons. Requirements are found in [Rule 4 of the North Dakota Rules of Civil Procedure](#). An example of a civil summons is available in the Appendix of Forms to the North Dakota Rules of Civil Procedure.



A summons in divorce, separation, or actions to establish parental rights and responsibilities has additional requirements. See [Rule 8.4 of the North Dakota Rules of Court](#) and the example in [Appendix A](#) of the North Dakota Rules of Court.

The following forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Summons form – Civil Actions
- Summons (Petition) form – Civil Actions
- Summons form – Divorce or Separation Actions
- Summons form – Actions to Establish Parental Rights and Responsibilities

### **Complaint**

A complaint is a written demand or request for judgment granting the relief the Plaintiff is seeking.

[Rule 8 of the North Dakota Rules of Civil Procedure](#) requires that the complaint describe in short, plain statements the claim showing that the Plaintiff is entitled to relief, and a demand for relief. See the Appendix of Forms to the North Dakota Rules of Civil Procedure for examples of civil complaints.

The requirements for complaints apply to the following types of documents:

- Complaint – original written demand or request for judgment granting the relief the Plaintiff is seeking.
- Counterclaim – written demand or request for judgment granting the relief the Defendant is seeking. The counterclaim is included with the Defendant’s answer to the Plaintiff’s complaint. See [Rule 13 of the North Dakota Rules of Civil Procedure](#) for counterclaims.
- Crossclaim – written demand or request for judgment granting the relief a Plaintiff is seeking against a co-Plaintiff on the same side of the action. See [Rule 13 of the North Dakota Rules of Civil Procedure](#) for crossclaims.
- Third-party claim – written demand or request for judgment granting the relief a third-party person is seeking. See [Rule 14 of the North Dakota Rules of Civil Procedure](#) for requirements related to third-party claims.

The following checklist is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Starting a Civil Action – Checklist

### **Confidential Information in Documents Filed in a Civil Action**

See the Confidential Information in Documents Filed in a Civil Action section above.

## **Service to Start a Civil Action**

Service to start a civil action, also called service of process, requires delivery of the summons and a copy of the complaint to the Defendant. The Plaintiff is required to notify the Defendant of the claims and to give the Defendant time to respond.

The summons and a copy of complaint must be delivered in specific ways. See [Rule 4 of the North Dakota Rule of Civil Procedure](#) for the requirements.

For information about service to start a civil action, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

If the Defendant is not represented by a lawyer, the Plaintiff serves the Defendant. If the Defendant is known to be represented by a lawyer, the Plaintiff must serve the lawyer instead of the Defendant.

Proof of service is an important step in the legal process. The court will not act on papers filed with the court until proof of service is filed.

The proof of service to start a civil action tells the court when, how, and where the Defendant was served. An affidavit of service gives the court proof of service.

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## **Answering the Complaint**

The Plaintiff notifies the Defendant of the civil action by serving the summons and a copy of the complaint on the Defendant. The Defendant has twenty-one (21) days after service to respond or “answer” the complaint.

See [Rule 12 of the North Dakota Rules of Civil Procedure](#) for more information about time to serve the answer on the Plaintiff.

### **Answer**

An answer is a written response by a Defendant to a complaint.

[Rule 8\(b\) of the North Dakota Rules of Civil Procedure](#) requires that an answer admit or deny each of the claims in the complaint. If a Defendant does not have enough information to admit or deny a claim, the Defendant must say so. If a Defendant fails to deny a claim, the claim is considered admitted by the Defendant.

The answer must also state defenses to each of the claims in short, plain statements.

See Rule 8(b) for information on how to admit or deny each claim in the complaint. See the Appendix of Forms to the North Dakota Rules of Civil Procedure for an example of presenting defenses in an answer.

The following checklist and form are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Answering a Civil Summons and Complaint – Checklist
- Answer form

### **Affirmative Defenses**

An affirmative defense is a legal reason the Plaintiff should lose, even if the Plaintiff's claims are true. For example, expiration of the time allowed by law to bring a civil action, or statute of limitations, is an affirmative defense.

[Rule 8\(c\) of the North Dakota Rules of Civil Procedure](#) includes a list of affirmative defenses. The list does not include all possible affirmative defenses.

Affirmative defenses must be stated in the answer. A Defendant may not have any affirmative defenses.

In general, failure to state an affirmative defense results in a waiver of the defense and cannot be brought up later in the action.

See [Rule 8](#) and [Rule 12](#) of the North Dakota Rules of Civil Procedure for affirmative defense requirements.

See the Appendix of Forms to the North Dakota Rules of Civil Procedure for an example of presenting defenses in an answer.

### **Defenses allowed by Motion**

Some defenses can be made in a motion, rather than in the answer. [Rule 12 of the North Dakota Rules of Civil Procedure](#) lists the defenses that can be made by motion, and when and how the motions can be made.

For information on motions in a civil action, go to the Motions section below.

### **Counterclaim**

A counterclaim is a written demand or request to the court for judgment granting the relief the Defendant is seeking. A counterclaim allows the Defendant to bring claims against the Plaintiff.

The counterclaim is included with the Defendant's answer to the Plaintiff's complaint. [Rule 13 of the North Dakota Rules of Civil Procedure](#) describes the requirements for counterclaims.

The counterclaim must meet all the requirements of a complaint. See the Starting A Civil Action section above.

There are two types of counterclaims: compulsory and permissive.

Compulsory counterclaims are claims that arise out of the same transaction or occurrence as the claims in the Plaintiff's complaint; and do not require adding another party over whom the court does not have jurisdiction.

In general, failure to include a compulsory counterclaim in the Defendant's answer results in a waiver of that claim. The Defendant cannot assert that claim later in the action, or bring the claim in a different action. A Defendant might not have any compulsory counterclaims.

Permissive counterclaims are claims against the Plaintiff that do not arise out of the same transaction or occurrence as the claims in the Plaintiff's complaint.

In general, failure to include a permissive counterclaim does not waive the Defendant's claim against the Plaintiff. The claim can be brought in a different action. A Defendant might not have any permissive counterclaims.

The following checklist and form are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Answering a Civil Summons and Complaint – Checklist
- Answer and Counterclaim form

### **Confidential Information in Documents Filed in a Civil Action**

See the Confidential Information in Documents Filed in a Civil Action section above.

### **Service of the Answer**

Service after a civil action has started requires that parties deliver documents filed, or intended to file, with the court to all other parties in the civil action. See [Rule 5 of the North Dakota Rules of Civil Procedure](#) for the requirements.

For information about service after a civil action has been started, go to the "District Court Civil" section on the [North Dakota Legal Self Help Center](#) website.

If a party is not represented by a lawyer, serve the party. If a party is known to be represented by a lawyer, serve the lawyer instead of the party.

Proof of service is an important step in the legal process. The court will not act on papers filed with the court until proof of service is filed.

The proof of service for documents served after a civil action has been started tells the court when, how, and where the party or parties were served. An affidavit of service gives the court proof of service.

### **Filing the Answer with the District Court**

In North Dakota, a summons and complaint are not required to be filed with the court to start a civil action. See the Filing Documents with the District Court section below for more information about filing and notice of filing.

After the summons and complaint are filed with the District Court, the party that filed the summons and complaint must service notice of filing on the other parties.

The Defendant must file the answer within a reasonable amount of time after being served the notice of filing the summons and complaint.

\*\*\*Proof of service of the answer on the Plaintiff must be filed with the answer.\*\*\*

The Defendant must serve notice of filing the answer on the Plaintiff.

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### **Answer to Counterclaim; Reply to Answer**

When a Defendant includes counterclaims in the answer to the Plaintiff's complaint, the Plaintiff must serve a written response, or "answer," to the counterclaims twenty-one (21) days after service of the Defendant's Answer and Counterclaim.

If the Defendant does not include counterclaims in the answer, the Plaintiff can reply to the answer if the court gives permission.

See the Answering a Complaint section above for information about answers.

The following form is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Answer to Counterclaim form
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### **Filing Documents with the District Court**

Filing is bringing or sending documents in a civil action, such as a pleading, motion, or brief, to the Clerk of Court's office and asking that it be filed.

If a filing fee is required, the filing fee is paid before the documents are accepted for filing. [Rule 5 of the North Dakota Rules of Civil Procedure](#) describes filing requirements.

\*\*\*Filing a document is not the same as serving a document. Proof of service of the document(s) must be filed with the court. For information about service of documents, go to the Service link on the [North Dakota Legal Self Help Center](#) website.

### **When to File the Summons and Complaint**

In North Dakota, a civil action starts with service of a summons and a copy of the complaint on the Defendant.

A summons and complaint are not required to be filed with the court to start a civil action.

There are actions that a court cannot take until the summons and complaint are filed, including (but not limited to):

- Requests for orders from the District Court;
- Subpoenas issued by the Clerk of Court.

Other actions that cannot be taken until the summons and complaint are filed may be found in the laws or rules related to the civil action.

\*\*\*Proof of service of the summons and complaint must be filed with the summons and complaint.\*\*\* See the Starting a Civil Action section above for information about service to start a civil action.

### **When the Defendant Can File the Summons and Complaint**

The Defendant can demand that the Plaintiff file the summons and complaint, or the Defendant can file the summons and complaint.

[Rule 5\(d\)\(2\) of the North Dakota Rules of Civil Procedure](#) describes the requirements.

If the Defendant demands that the Plaintiff file the summons and complaint:

- The demand must be written.
- The demand must contain notice that if the complaint is not filed within 20 days, service of the summons will be void, unless, after motion made within 60 days after service of the demand for filing, the court finds excusable neglect.
- If the Plaintiff is represented by a lawyer, the demand must be served on the lawyer under [Rule 5 of the North Dakota Rules of Civil Procedure](#). If the Plaintiff is not represented by a lawyer, the demand must be served on the Plaintiff under [Rule 4\(d\) of the North Dakota Rules of Civil Procedure](#).
- If the Plaintiff does not file the complaint within 20 days after service of the demand for filing, service of the summons is void.

If the Defendant files the summons and complaint:

- The Defendant must serve notice of filing the summons and complaint on all other parties. See the Notice of Filing Subsection below.
- The Defendant may request the court award the cost of the filing fee as provided in [Rule 54\(e\) of the North Dakota Rules of Civil Procedure](#).

For information about service, go to the Service link on the [North Dakota Legal Self Help Center](#) website.

### **How to File Documents in a Civil Action**

In general, the original document, rather than a copy, is filed with the court.

\*\*\* Proof of service of the document(s) must be filed with the court.\*\*\* For information about service of documents, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

The Clerk of Court accepts documents for filing in a civil action. Documents must meet the requirements of [Rule 3.1 of the North Dakota Rules of Court](#).

Documents that do not meet the requirements of Rule 3.1 above may not be filed. Documents filed in the wrong county will be returned to the filing party.

When a summons and complaint are accepted by the Clerk of Court for filing, the Clerk of Court will assign a case number.

Clerk of District Court contact information by county is found on the North Dakota Supreme Court website at [www.ndcourts.gov](http://www.ndcourts.gov).

### **Filing Fees**

A filing fee is an amount of money, set by law, that a party must pay when filing documents in an action. Filing fee amounts can be found in [North Dakota Century Code Chapter 27-05.2](#) and by calling the clerk of court in the county where the documents will be filed.

In general, the filing fees for District Court are:

- \$80.00 to file a Summons and Complaint (or Petition)
- \$50.00 to file an Answer to a Summons and Complaint (or Petition)
- \$30.00 to file a Motion or an Answer to a Motion to modify an order for alimony, property division, child support, or child custody

If a type of document requires payment of a filing fee, the filing fee is paid before the document is filed.

If a party cannot pay filing fees because of financial hardship, forms are available to ask the court to file documents in a civil action without paying the required filing fee. The forms are found online at the [North Dakota Legal Self Help Center](#) website.

(The filing fee for Small Claims Court is \$10.00. Forms and instructions for bringing or answering a claim in Small Claims court are found online at the [North Dakota Legal Self Help Center](#) website.)

### **Notice of Filing**

[Rule 5\(d\)\(2\) of the North Dakota Rules of Civil Procedure](#) describes the requirements.

The party that files the summons and complaint must serve notice of filing on all other parties.

The notice of filing and proof of service of the notice of filing on all other parties must be filed with the Clerk of Court.

The Defendant must serve notice of filing the answer on the Plaintiff.

The Defendant must file the notice of filing and proof of service of the notice of filing on the Plaintiff with the Clerk of Court.

For information about service of documents after a civil action has been started, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

The following form is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Notice of Filing form

### **Confidential Information in Documents Filed in a Civil Action**

See Confidential Information in Documents Filed in a Civil Action above.

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### **Motions**

A motion is a request to the Court to issue an order for a specific purpose. Motions are made after the summons and complaint are filed with the court. **Motions cannot be used to start a civil action.**

The basic requirements for motions are found in [Rule 6](#), [Rule 7](#) and [Rule 43](#) of the North Dakota Rules of Civil Procedure; and [Rule 3.2 of the North Dakota Rules of Court](#).



See the rules that apply to the type of motion being made and the laws that apply to the subject matter of the civil action for additional motion requirements.

The party making the motion is called the moving party.

- The moving party in a motion may be either the Plaintiff or the Defendant.

The party answering the motion is called the opposing party.

A motion can request an order for the kinds of relief described in the rules and in the laws that apply to the subject matter of the civil action.

Motions may be decided entirely on the documents submitted by the parties. A party can make a timely request for an oral argument or an evidentiary hearing on the motion. [Rule 3.2 of the North Dakota Rules of Court](#) describes how to make a timely request for an oral argument or an evidentiary hearing on the motion. (See also [Rule 6 of the North Dakota Rules of Civil Procedure](#).)

The Appendix of Forms to the North Dakota Rules of Civil Procedure includes examples of some motion forms.

### **Making a Motion**

A motion in a civil action must:

- Be in writing, unless the motion is made during hearing or trial;
- Specifically state the legal authority in rule and law that supports the request and state the specific facts that support the request; and
- State the relief sought from the court.

A written motion in a civil action is made up of a set of documents, including:

- Notice of Motion;
- Motion;
- Brief in support of motion;
- Affidavit in support of motion; and
- Other supporting documents.

A Notice of Motion is a required written notice to the opposing party that the moving party will request an order. The Notice of Motion must state whether the motion will be decided on the written motion documents or whether the moving party has requested an oral argument or an evidentiary hearing on the motion. If the moving party requests an oral argument or an evidentiary hearing, the Notice of Motion must include the date, time and location of the oral argument or evidentiary hearing. (An opposing party may request a hearing, even if the moving party does not.)

A Motion is a required written request to the court for an order. The request is a short, plain statement that includes the specific rules and laws that support the request.

A Brief in support of motion is a required written explanation of why the moving party should have the motion granted. A brief takes the specific rules and laws that support the request and explains how they apply to the facts of a particular situation. Facts referred to in the brief should also appear in the affidavit.

If the moving party does not file a brief, the court may consider the failure an admission by the moving party that the motion does not have merit.

An Affidavit in support of motion is a required written statement of fact of the moving party, which is made under oath. Facts referred to in the brief should also appear in the affidavit. The affidavit must be signed by the moving party in the presence of a notary public or clerk of court.

Other supporting documents may be submitted with the required motion documents.

Copies of the motion documents must be served on the opposing party or parties. See the Service subsection below.

The original motion documents must be filed with the clerk of court in the county where the existing civil action is filed. See the Filing Documents with the District Court section above.

Even if an answer brief is not served and filed by the opposing party, the moving party must still prove to the court that it is entitled to the relief requested.

The following checklist and forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Making a Motion – Checklist
- Notice of Motion form
- Motion form
- Brief in Support of Motion form
- Affidavit form

## Answering a Motion

The moving party notifies the opposing party of the motion by serving copies of the motion documents on the opposing party. The opposing party generally has fourteen (14) days after service to serve and file an answer brief and other supporting documents on the moving party.

An answer is a written response to the motion by the opposing party.

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

- Answer brief;
- Affidavit in support of answer brief;
- Other supporting documents; and
- Notice of hearing on the motion.

An Answer brief is a required written answer to the motion by the opposing party. An answer brief takes the relevant laws or rules and explains how they apply to the facts of a particular situation. Facts referred to in the answer brief should also appear in the affidavit.

If the opposing party does not file an answer brief, the court may consider the failure an admission by the opposing party that the motion has merit.

An Affidavit in support of the answer brief is a required written statement of fact of the opposing party, which is made under oath. Facts referred to in the answer brief should also appear in the affidavit. The affidavit must be signed by the opposing party in the presence of a notary public or clerk of court.

Other supporting documents may be submitted with the required motion documents.

Notice of Hearing on the motion is required only if the opposing party requests an oral argument or an evidentiary hearing on the motion. The opposing party may request an oral argument or an evidentiary hearing, even if the moving party requested a decision on the written documents. The opposing party must include the date, time and location of the oral argument or evidentiary hearing in the Notice of Hearing on motion.

The Notice of Hearing on a motion can be a separate document, or the first section of the answer brief.

The copies of the answer to motion documents must be served on the moving party or parties. See the Service subsection below.

The originals of the answer to motion documents must be filed with the clerk of court in the county where the existing civil action is filed. See the Filing Documents with the District Court section above.

The following checklist and forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Answering a Motion – Checklist
- Notice of Hearing on Motion form
- Answer Brief to Motion form
- Affidavit form

### **Replying to the Answer**

After service of the opposing party's answer documents, the moving party may serve and file a reply brief on the opposing party. The moving party has seven (7) days after service of the opposing party's answer documents to serve and file a reply brief and supporting documents.

### **Requesting a Hearing on a Motion**

The party requesting a hearing on a motion must schedule a time for the oral argument or evidentiary hearing by contacting the clerk of court where the civil action is filed.

The party requesting the motion must serve a notice of the oral argument or evidentiary hearing on all other parties.

Requests for an oral argument or an evidentiary hearing on the motion must be made no later than seven (7) days after expiration of the time for filing the answer brief.

Clerk of District Court contact information by county is found on the North Dakota Supreme Court website at [www.ndcourts.gov](http://www.ndcourts.gov).

### **Confidential Information in Documents Filed in a Civil Action**

See the Confidential Information in Documents Filed in a Civil Action Section above.

### **Service**

The moving party and opposing party must serve copies of their motion documents on the other parties in the civil action. For information about service after a civil action has been started, go to the "District Court Civil" section on the [North Dakota Legal Self Help Center](http://www.ndcourts.gov/legal-self-help) website.

\*\*\*If a party requests an evidentiary hearing on the motion, the copies of motion documents must be served on the other party or parties at least twenty-one (21) days before the scheduled date of the evidentiary hearing.\*\*\*

If a party is not represented by a lawyer, serve the party. If a party is known to be represented by a lawyer, serve the lawyer instead of the party.

Proof of service is an important step in the legal process. The court will not act on papers filed with the court until proof of service is filed.

The proof of service for documents served after a civil action has been started tells the court when, how, and where the party or parties were served. An affidavit of service gives the court proof of service.

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## **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. Evidence includes witness testimony, documents, etc.

The [North Dakota Rules of Evidence](#) govern the type of evidence that can be presented, how to present evidence, and how to object to evidence.

The following research guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Evidence Research Guide

### **Gathering 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.

### **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.”

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## **Discovery**

Discovery in a civil action is a formal process where a party asks the other party or non-party for information.

See [Rules 26 through 37 of the North Dakota Rules of Civil Procedure](#) for types of discovery available.

Also see the [North Dakota Rules of Evidence](#).

**Caution!** Discovery is often a complex and confusing process. Self-represented individuals are held to same requirements and responsibilities as a lawyer, even if they don't understand the rules or procedures. Conduct additional research to prepare.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Public and academic libraries may have resources available.

Discovery is not filed with the clerk of court unless:

- The discovery materials are being submitted to the court for disposition of a pending motion;
- The court orders the discovery material to be filed; or
- A party certifies that the filing is necessary for safekeeping of the documents or exhibits pending completion of the civil action, in which event the party must state the reasons safekeeping is necessary.

### **Three Common Types of Discovery**

Three common types of discovery are interrogatories, production of documents, and requests for admission. Review the discovery rules for other types of discovery available in civil actions.

Interrogatories – [Rule 33 of the North Dakota Rules of Civil Procedure](#): Written questions that are answered in writing under oath.

A party may ask interrogatories of any other party.

- An interrogatory may relate to any matter that may be inquired into under [Rule 26\(b\) of the North Dakota Rules of Civil Procedure](#).
- There is a limit of no more than fifty (50) written interrogatories, including discrete subparts.

- The interrogatories and answers/objections to the interrogatories must be served on the parties as required by [Rule 5 of the North Dakota Rules of Civil Procedure](#).
  - The interrogatories and answers/objections to the interrogatories are not filed with the clerk of court except as listed above.
- The interrogatories must be answered by the party to whom they are directed.
- The answers/objections to the interrogatories must be served on the requesting party within thirty (30) days of being served the interrogatories.

Production of Documents – [Rule 34 of the North Dakota Rules of Civil Procedure](#): Written request to produce discoverable documents, electronically stored information or tangible things and permit them to be copied.

This request is available only to any other party.

- The request for production of documents must:
  - Describe with reasonable particularity each item or category of items to be inspected;
  - Specify a reasonable time, place and manner for the inspection and for performing the related acts; and
  - Specify the form or forms in which electronically stored information is to be produced.
- The request for production of documents and answers/objections to the request must be served on the parties as required by [Rule 5 of the North Dakota Rules of Civil Procedure](#).
  - The requests for production of documents and answers/objections to the request are not filed with the clerk of court except as listed above.
- The answers/objections to the requests must be served on the requesting party within 30 days of being served the requests.

Requests for Admission – [Rule 36 of the North Dakota Rules of Civil Procedure](#): Written request to admit the truth of any matters within the scope of [Rule 26\(b\) of the North Dakota Rules of Civil Procedure](#).

This request is available only to any other party.

- The request for admission must relate to:
  - The facts, the application of law to fact, or opinions about either; and
  - The genuineness of any described documents.
- Requests for admission may be served on the plaintiff after the civil action starts.

- Requests for admission may be served on any other party after service of the summons and complaint on the party.
  - Requests for admission are not filed with the clerk of court except as listed above.
- The answers/objections to the requests must be served on the requesting party within 30 days of being served the requests. Review Rule 36 for limited exceptions to this timeline.
  - A matter is admitted if an answer or objection is not served within the timeline.

For information about service after a civil action has been started, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

### **Discovery Sanctions**

When a party fails to make or cooperate in discovery, the other party may make a motion to the court for discovery sanctions.

See [Rule 37 of the North Dakota Rules of Civil Procedure](#) for discovery sanction requirements, options and process information.

See the Motions Section above.

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### **Subpoenas**

A subpoena is the process to require the attendance of a non-party witness at deposition, hearing or trial. A subpoena is also the process to require a non-party to produce documents, electronically stored information or tangible things; or to require the inspection of premises.

Before a self-represented individual may use a subpoena, the following must be filed with the court:

- The summons;
- The complaint; and
- Proof of service of the summons and complaint on each Defendant.

See [Rule 45 of the North Dakota Rules of Civil Procedure](#) for the subpoena process and requirements. See also [Rule 5\(d\) of the North Dakota Rules of Civil Procedure](#) for additional subpoena requirements.



Subpoenas may be used by a party in a civil action to require a person to do the following at a specific time and place:

- Attend and testify at a deposition, hearing or trial;
- Produce the documents listed in the subpoena;
- Produce the electronically stored information listed in the subpoena;
- Produce the tangible things listed in the subpoena (the tangible things must be in the person's possession, custody or control); or
- Permit the inspection of the premises listed in the subpoena.

If a party wants to require a person to do more than one of the actions listed above, the party may include the actions in one subpoena, or use a separate subpoena for each action.

Only a Clerk of Court or a lawyer for a party can issue a subpoena in a civil action. When you represent yourself in a civil action, you cannot issue a subpoena on your own.

When a party in a civil action requests a subpoena from the Clerk of Court of the county where the civil action is filed, the Clerk of Court shall issue a subpoena to the party. **The Clerk of Court cannot issue subpoenas until after the civil action is filed.**

The subpoena will be signed by the clerk, but will otherwise be blank. The party requesting the subpoena must complete the subpoena before arranging for service of the subpoena.

See the Filing Documents with the District Court section above for more information about filing the summons and complaint and notice of filing.

### **Information Needed to Request and Prepare a Subpoena**

Gather the following information before requesting a subpoena from the Clerk of Court:

- Names of the parties in the civil action, as listed in the caption of the summons and/or complaint;
- The name of the court where the civil action is filed, including the judicial district and county;
- The civil case number;
- Name and address of the person to whom the subpoena is directed;
- The date, time and place of the deposition, hearing or trial, if the subpoena will require the person's attendance;
- The method of recording testimony, if the subpoena will require the person's attendance at a deposition;

- The amount of the witness fees, mileage and travel expenses, if the subpoena will require the person’s attendance;
  - If the subpoena requires the person’s attendance and you do not include payment of one day’s witness fees, mileage and travel expenses with the subpoena, the person does not need to obey the subpoena. To calculate fees and expenses, see [North Dakota Century Code Sections 31-01-16, 44-08-04 and 54-06-09](#).
- A list of the specific documents, electronically stored information or tangible things, if the subpoena will require their production;
- The address of the premises, if the subpoena will require inspection.

The subpoena may need to include additional information. Review Rule 45 carefully to determine if a particular subpoena should include additional information.

- If your subpoena requires only pre-trial or prehearing production of documents, electronically stored information, or tangible things or the inspection of premises, the text of the notice in Rule 45(f) must be included in the subpoena.

### **Service of the Subpoena**

The party who requested the subpoena arranges for service of the subpoena on the person to whom the subpoena is directed.

- If the subpoena requires the person’s attendance and you do not include payment of one day’s witness fees, mileage and travel expenses with the subpoena, the person does not need to obey the subpoena. If the fees, mileage and travel expenses will be paid by the state or a political subdivision, you do not need to include payment with the subpoena.

Subpoenas must be served by one of the options in Rule 4(d) of the North Dakota Rules of Civil Procedure. Review Rule 4(d) carefully!

General information about Rule 4 service requirements is available at the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

### **When Notice is Required Before the Subpoena is Served**

There are situations where notice must be served before the actual subpoena can be served.

Review Rule 45(b) carefully to determine if notice must be served **before** the actual subpoena can be served.

- [Rule 27](#), [Rule 30](#) and [Rule 34](#) of the North Dakota Rules of Civil Procedure include requirements for notice of deposition and notice of demand for production or inspection. Other Rules may apply.

If notice is required, see Rule 5(b) of the North Dakota Rules of Civil Procedure for the ways notice of the subpoena can be served. The party who requested the subpoena must arrange for service of the notice document.

General information about Rule 5 service requirements can be found at the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

### **Duties When Responding to a Subpoena**

A person who is served a subpoena has certain duties when they respond to the subpoena, depending on the contents of the subpoena.

Review Rule 45(d) carefully to determine the duties that apply.

The court may hold a person in contempt if they do not have an adequate excuse for disobeying the subpoena.

### **Protections for a Person Responding to a Subpoena**

Rule 45(c) provides a number of protections to a person who was served a subpoena.

The protections include:

- The party responsible for the subpoena must take reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena.
- The person may ask the court to quash (stop) or modify the subpoena.
- When a subpoena requires production of documents, electronically stored information, or tangible things, or to permit inspection of premises, but does not also require the person to appear, the person is not required to appear at the deposition, hearing or trial.
- The person may object in writing to inspection, copying, testing, or sampling any or all of the commands in a subpoena for production of documents or tangible things, or to permit inspection of premises.

- North Dakota residents may only be required to attend depositions in the county where the person resides, is employed or transacts business. However, the court may order attendance at a convenient place.
- North Dakota residents may be required to attend a hearing or trial any place within North Dakota.

The following informational guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Subpoena Informational Guide
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## **Alternative Dispute Resolution**

See [Alternative Dispute Resolution in North Dakota](#).

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## **Pre-Trial Preparation**

If parties in the civil action do not reach a settlement on all issues, the civil action will eventually go to trial. Issues on which the parties do not agree will be decided by a District Court Judge or a Judicial Referee.

**Caution!** Preparing for trial is often a complex and confusing process. Self-represented individuals are held to the same requirements and responsibilities as a lawyer, even if they don't understand the rules or procedures. Conduct additional research to prepare.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Public and academic libraries may have resources available.

### **Prepare for and Attend the Pre-Trial Conference:**

All parties must attend the pre-trial conference, unless excused by the court.

All parties must come to the pre-trial conference prepared to discuss the matters and issues listed in [Rule 16 of the North Dakota Rules of Civil Procedure](#).

### **Review the scheduling order carefully!**

Each party is required follow the requirements and deadlines in the scheduling order.

Copies of documents each party prepares as required by the scheduling order must be served on the other parties. The original must be filed with the Clerk of District Court.

The Plaintiff arranges for service of copies of documents on the Defendant.

The Defendant arranges for service of copies of documents on the Plaintiff.

For information about service after a civil action has been started, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

### **Finish Pre-Trial Preparations:**

Review the [North Dakota Rules of Evidence](#) carefully! The North Dakota Rules of Evidence govern whether evidence is admitted at trial. The Rules also govern how parties object to evidence the other party wants to admit at trial.

Organize the information, documents, etc. for the trial. At minimum, prepare an outline of your remarks and arguments.

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## **Pre-Trial Conference**

The pre-trial conference in a civil action is a meeting of the judge and lawyers, or self-represented parties, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

See [Rule 16 of the North Dakota Rules of Civil Procedure](#) for pre-trial conferences in civil matters.

The purpose of a pre-trial conference includes the following:

- To expedite the final determination of the civil action;
- To establish early and continuing control so that the civil action will not be extended because of lack of management;
- To discourage wasteful pre-trial activities;
- To improve the quality of the trial through more thorough preparation;
- To facilitate settlement of the civil action; and
- To discuss the desirability of using alternative dispute resolution.

In any civil action, the court may order the parties to appear for one or more pretrial conferences.

However, there are certain triggering events which require a court to order a pretrial conference and issue a scheduling order.

The triggering events that require a court to order a pretrial conference are:

- More than six (6) months have passed since filing of the summons and complaint or answer without final disposition of the case or filing of a dispositive motion;
  - The summons and complaint or answer was served more than six (6) months before filing and ninety (90) days have passed since filing without final disposition of the case or filing of a dispositive motion;
  - A notice under [Rule 40\(e\) of the North Dakota Rules of Civil Procedure](#) has been issued and any response to the notice contained a request that the case be left open; or
  - Any party makes a written request for a pretrial conference to enter a scheduling order.
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## **Trial**

The trial is an examination of the facts and law, presided over by the judge. The trial is the final hearing in a contested civil action.

The decision of the judge or jury in a civil action is called a judgment.

**Caution!** A trial is often a complex and confusing process. Self-represented individuals are held to the same requirements and responsibilities as a lawyer, even if they don't understand the rules or procedures. Conduct additional research to prepare.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Public and academic libraries may have resources available.

## **Conduct of the Trial**

The judge or judicial referee hears both sides and then issues a final judgment. Sometimes, the final judgment is issued at the end of the trial. Often, the final judgment is issued at a later date.

In general, a trial proceeds in the following order:

- Opening Statements
  - Each party gives an opening statement. Usually, the Plaintiff goes first.
- Plaintiff Presents Witnesses and Evidence
  - The Plaintiff presents their case first. The Defendant may cross-examine witnesses and object to the Plaintiff's evidence.
- Defendant Presents Witnesses and Evidence
  - The Defendant presents their case after the Plaintiff. The Plaintiff may cross-examine witnesses and object to the Defendant's evidence.

- Closing Arguments
  - Each party gives a closing argument.

### **Proposed Findings of Fact, Conclusions of Law and Order for Judgment**

See [Rule 52 of the North Dakota Rules of Civil Procedure](#) and [Rule 7.1 of the North Dakota Rules of Court](#).

Findings of fact are the judge's or judicial referee's written determination of the facts made from the evidence presented. This explains what facts the judge or judicial referee found to be true.

Conclusions of law are the rulings of law made by the judge or judicial referee based on, or in connection with, the findings of fact. These are the legal consequences of the facts the judge or judicial referee found to be true.

The judge or judicial referee may require one or more parties to prepare and file proposed findings of fact, conclusions of law and an order for judgment.

The proposed findings of fact, conclusions of law and an order for judgment must also be served on all parties, and proof of service filed with the Clerk of District Court.

For information about service after a civil action has been started, go to the "District Court Civil" section on the [North Dakota Legal Self Help Center](#) website.

The judge or judicial referee will decide whether the proposed findings of fact, conclusions of law and order for judgment are appropriate. If the judge or judicial referee decides they are appropriate, the judge or judicial referee will sign and date the findings of fact, conclusions of law and order for judgment. The findings of fact, conclusions of law and order for judgment are not official until signed and dated by the judge or judicial referee.

### **Proposed Judgment**

Review [Rule 54 of the North Dakota Rules of Civil Procedure](#) and [Rule 7.1 of the North Dakota Rules of Court](#).

The judgment is the written order of the judge's or judicial referee's final decision.

The judge or judicial referee may require one or more parties to prepare and file a proposed judgment. The proposed judgment must also be served on all parties, and proof of service filed with the Clerk of District Court.

For information about service after a civil action has been started, go to the “District Court Civil” section on the [North Dakota Legal Self Help Center](#) website.

The judge or judicial referee will decide whether the proposed judgment is appropriate. If the judge or judicial referee decides it is appropriate, the judge or judicial referee will sign and date the judgment.

### **Statement of Costs and Disbursements**

See [North Dakota Century Code Chapter 28-26, Rule 54](#) and [Rule 68](#) of the North Dakota Rules of Civil Procedure.

A party awarded costs and disbursements must submit a detailed, verified statement of the costs and disbursements to the Clerk of Court. Upon receipt of the Order for Judgment granting costs and disbursements, the clerk will allow those costs and disbursements.

If the party awarded costs and disbursements also prepares the judgment, the party inserts the costs and disbursements into the judgment. If the clerk prepares the judgment, the clerk inserts the costs and disbursements into the judgment.

The following form is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Statement of Costs and Disbursements form

### **Notice of Entry of Judgment**

See [Rule 58 of the North Dakota Rules of Civil Procedure](#).

Within 14 days after the judgment is entered, the prevailing parent must serve notice of entry of judgment on the other party or parties. A copy of the judgment must be included with the notice of entry of judgment.

After service is complete, the prevailing party must file the original, completed Notice of Entry of Judgment and proof of service on the other party or parties with the Clerk of District Court.

The following form is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help):

- Notice of Entry of Judgment form



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## **Appeals to the North Dakota Supreme Court**

For information about appeals to the North Dakota Supreme Court, go to [www.ndcourts.gov](http://www.ndcourts.gov) and click on the “Self Help” link. Scroll to the “Appeals” section.

Appeals to the North Dakota Supreme Court are based only on the record created during the North Dakota State District Court proceedings. The Supreme Court does not retry the civil action, take new evidence, or weigh the credibility of witnesses.

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## **Document Formatting Requirements**

See [Rule 10](#) and [Rule 11](#) of the North Dakota Rules of Civil Procedure; and [Rule 3.1 of the North Dakota Rules of Court](#).

Requirements include:

- 8 ½ x 11 inch, white paper.
- Writing is double-spaced and on one side of the page only.
- The caption, or heading, of the document has:
  - The court’s name,
  - The county in which the action is brought,
  - The names of the parties,
  - The case number, if known, and
  - The title of document per [Rule 7 of the North Dakota Rules of Civil Procedure](#).
  - (See caption of the Summons example in the Appendix of Forms of the North Dakota Rules of Civil Procedure.)
- Each paragraph of the document is numbered.
- Signature:
  - Signed by the party who prepared the document.
  - If the party is represented by a lawyer, the document is signed by the lawyer.
  - The name of the person who signed the document is typed or printed beneath the signature.
  - The address, email address (for electronic service), and telephone number of the person who signed the document is on the document. This information generally comes after the signature and typed or printed name.
- Each page of the document is numbered.
- The document is readable.

## **Verification**

Verification of a document is a sworn statement of the correctness, truth or authenticity of the document by the party submitting the document. For example, a verified complaint has a notarized statement of the plaintiff that the complaint is true.

In general, a pleading does not need to be verified. See [Rule 7 of the North Dakota Rules of Civil Procedure](#) for a list of documents that are pleadings.

If a rule or law specifically says a pleading or other document must be verified, verification is required.

Pleadings that must be verified include, but are not limited to, the following:

- Petition for Adoption (See [North Dakota Century Code Chapter 14-15](#))
- Petition for Foreign Adoption (See [North Dakota Century Code Chapter 14-15](#))
- Petition for a Deposition Before the Civil Action is Filed (See [Rule 27 of the North Dakota Rules of Civil Procedure](#))

## **Notarization**

A notarized document has the signature of the party required to sign the document and the signature of the notary public who witnessed the signature. A notarized document also has the official stamp of the notary public's official notary seal. For example, an affidavit is a notarized document.

The following forms are available in the online Guide to a Civil Action:

- Caption and Signature form
- Caption and Signature (Petition) form
- Verification form
- Verification (Petition) form
- Affidavit form
- Affidavit (Petition) form

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## **Checklists and Forms**

The following basic checklists and forms are available at the [North Dakota Legal Self Help Center](#) website in the “District Court Civil” section. The North Dakota Legal Self Help Center does not have checklists and forms available for every part of a civil action.

All of the informational guides, checklists and forms available through the ND Legal Self Help Center are found at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc). If the form is not on the Center website, the form is not available through the Center. You may need to create your own legal documents.

### **Start a Civil Action**

- Starting a Civil Action – Checklist
- Summons form – Civil Actions
- Summons (Petition) form – Civil Actions
- Summons form – Divorce or Separation Actions
- Summons form – Actions to Establish Parental Rights and Responsibilities

### **Answer a Complaint or Counterclaim**

- Answering a Civil Summons and Complaint – Checklist
- Answer form
- Answer and Counterclaim form
- Answer to Counterclaim form

### **Filing Documents with the District Court**

- Notice of Filing form

### **Motion Documents**

- Making a Motion – Checklist
- Answering a Motion – Checklist
- Motion form
- Notice of Motion form
- Notice of Hearing on Motion form
- Brief in Support of Motion form
- Answer Brief to Motion form

## **Trial**

- Notice of Entry of Judgment form
- Statement of Costs and Disbursements forms

## **Other**

- Caption and Signature form
- Caption and Signature (Petition) form
- Verification form
- Verification (Petition) form
- Affidavit form
- Affidavit (Petition) form