

## MAKING A MOTION IN A CIVIL ACTION CHECKLIST

**This is a basic checklist for making 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, you should 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.”

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.

Other documents may be required, depending on the court rule and/or law that apply to the type of motion you make.

**Is the Summons and Complaint (or Petition), Filed with the North Dakota State District Court?**

- Yes.** The case number is \_\_\_\_\_.
- No. DO NOT CONTINUE.** Motions cannot be made until the summons and complaint (or petition) and proof of service of the summons and complaint are filed with the North Dakota State District Court. Review the [Guide to a Civil Action](#) on the ND Legal Self Help Center website to determine how to proceed.

**Research North Dakota Laws and Court Rules:**

A motion to the court must include the legal authority that supports the motion request. The moving party must explain how and why the law, case law, and/or court rule supports the request.

- Do any laws enacted by the North Dakota State Legislature support the motion request?

The [North Dakota Century Code](#) contains laws enacted by the Legislature. List any specific laws that support the request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

- Does any [North Dakota Supreme Court case law](#) support the motion request?

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. List the specific case law that supports the request:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

- Do any court rules support the motion request?

[North Dakota Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. List the specific court rules that support the request:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

*(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 Make a Motion in a Civil Action:**

- Notice of Motion** (A General-Use Notice of 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 case number
  - Signed and dated by the moving party, or by the lawyer, if the moving party is represented
  - Make a copy for each opposing party, plus one copy to keep as a record

- Motion** (A General-Use 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 Notice of Motion
  - Fill in the title with the type of motion
  - List the North Dakota rules and/or laws that support the request(s)
  - List what you would like the court to order
  - Signed and dated by the moving party, or by the lawyer, if the moving party is represented
  - Make a copy for each opposing party, plus one copy to keep as a record
  
- Brief in Support of Motion** (A General-Use Brief in Support of 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 Notice of Motion
  - Fill in the title with the type of motion
  - Statement of Facts Section: List the facts that caused the moving party to decide to file a motion in the civil action
  - Law and Argument Section: Explain how each law, case law, or court rule you have identified supports the motion. Apply each law, case law, or court rule the moving party has identified to the facts listed in the Statement of Facts.
  - Conclusion Section: Summarize what the moving party is asking the court to do and why the court should grant the motion
  - Signed and dated by the moving party, or by the lawyer, if the moving party is represented
  - Make a copy for each opposing party, plus one copy to keep as a record
  
- Affidavit in Support of Motion** (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 Notice of Motion
  - Fill in the title with the type of motion
  - List the facts that caused the moving party to decide to file a motion in the civil action
  - Signed and dated by the moving party in the presence of a notary public or clerk of court
  - Make a copy for each opposing party, plus one copy to keep as a record

### **Gather Other Supporting Documents:**

A motion may include other supporting documents, such as affidavits or exhibits.

- Make a copy of each supporting document, if any, for each opposing party, plus one copy to keep as a record.

### **Service of Motion Documents:**

The moving party must serve copies of their motion documents on the other parties 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 each opposing party. If 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 each opposing party. If an opposing party is represented by a lawyer, arrange for service on the lawyer.
  - Notice of Motion;
  - Motion;
  - Brief in Support of Motion;
  - Affidavit in Support of Motion; and
  - Other supporting documents, if any.
- For each opposing party, get the signed and notarized affidavit of service of the motion documents from the person who served the motion documents.

### **File the Original Motion Documents with the North Dakota State District Court:**

The original of each of the 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 will file the motion for the following information:
  - Amount of the filing fee \$\_\_\_\_\_, if any, and how to pay
  - Options for submitting motion documents if the moving party cannot file the documents in person

- Gather the originals of the following documents (make copies for your records):
  - Notice of Motion;
  - Motion;
  - Brief in Support of Motion;
  - Affidavit in Support of Motion;
  - Other supporting documents, if any; and
  - Affidavit(s) of Service of a copy of each of the motion documents on each opposing party
  
- File the original documents with the clerk of court and pay the filing fee, if any.

**Opposing Party's Answer to Motion:**

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 answer 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 answer the motion in writing.

- The opposing party served a written answer to the motion on the moving party, or the moving party's lawyer, if represented.

Date the written answer to the motion was served: \_\_\_\_\_

(For information about service requirements after a civil action has been started, the [Service](#) link on the ND Legal Self Help Center website.)

**\*OR\***

- The opposing party did not serve a written answer to the motion on the moving party, or the moving party's lawyer, if represented.

If the opposing party failed 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.

### **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\*\*\**