

Information For Service By Publication to Start a Civil Action, or Civil Case

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters, or civil case, 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 using service by publication to start a 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 competent legal counsel licensed in North Dakota. Use at your own risk.

Caution!

A self-represented individual can 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!](#)

Parties in a Civil Case

For Civil Cases Starting with a **Summons and Complaint**:

- **Plaintiff**: The party who starts a civil case with service of a Summons and Complaint.
- **Defendant**: The party who is served with a Summons and Complaint requesting civil legal action against them.

For Civil Cases Starting with a **Summons and Petition**:

- **Petitioner**: The party who starts a civil case with service of a Summons and Petition.
- **Respondent**: The party who is served with a Summons and Petition requesting civil legal action against them.

Service of a Summons starts a civil case in North Dakota. This is called service of process. A copy of the Complaint/Petition must be served with the Summons.

Service to start a civil case, also called service of process, requires the Plaintiff/Petitioner to arrange delivery of the Summons and a copy of Complaint/Petition to the Defendant/Respondent.

The Plaintiff/Petitioner is required to notify the Defendant/Respondent of the claims and to give the Defendant/Respondent time to respond.

Proof of service tells the court how and when each Defendant/Respondent was served and the documents that were served. The document showing proof of service **must be filed** with the clerk of court. If proof of service isn't filed, the court **won't** take action on your civil case.

You must follow the service rules in the [North Dakota Rules of Civil Procedure](#). See [Rule 4](#) to start a civil case. You're responsible for making sure documents are served correctly.

Rule 4(e) of the North Dakota Rules of Civil Procedure governs service by publication when starting a civil case in North Dakota State District Court.

In general, the Plaintiff/Petitioner (*person starting the civil case*) must arrange for service of the Summons and Complaint/Petition in one of three ways.

1. By Personal Service.
2. By Mail.
3. By Obtaining the Other Party's Signature.

Review Rule 4 for the specific requirements for each type of service listed above. Information about service to start a civil case and blank proof of service forms are available at the ND Legal Self Help Center webpage by clicking on the [Service Instructions and Forms](#) link.

Review the [North Dakota laws](#) that apply to your civil case. If a North Dakota law tells the specific method of service that must be used, use that method of service.

If you're unable to locate the other party or parties and can't provide proof of service by any of the three options above, you may be allowed to serve the Summons by publication in a newspaper.

Note: Except in a case for divorce, Defendants/Respondents served by publication may be allowed to defend the case up to 3 years after entry of Judgment, if the Defendant/Respondent meets certain requirements.

Service by publication isn't available in all types of civil cases. For example, service by publication isn't an option in Small Claims Court cases. Review the [North Dakota laws](#) that apply to your civil case to determine if service by publication is allowed **and** if the law changes the requirements for service by publication.

Service by publication on a Defendant/Respondent is **only allowed when:**

1. The claim for relief is based on one or more grounds for the exercise of personal jurisdiction under [Rule 4\(b\)\(2\) of the North Dakota Rules of Civil Procedure](#);
2. The subject of the civil case is real or personal property in North Dakota, and:
 - a. The Defendant/Respondent has a lien or claims a lien or other interest in the property, whether vested or contingent,
 - b. The relief demanded against the Defendant/Respondent consists wholly or partly in excluding the Defendant/Respondent from that lien or interest or in defining, regulating, or limiting that lien or interest, or
 - c. the case otherwise affects the title to the property;

3. The case is to foreclose a mortgage, cancel a contract for sale, or to enforce a lien on or a security interest in real or personal property in North Dakota;
4. The Plaintiff/Petitioner has acquired a lien on the Defendant's/Respondent's property or credits within this state by attachment, garnishment, or other judicial processes and the property or credit is the subject matter of the litigation or the underlying claim for relief relates to the property or credits;
5. The case is for divorce, separation, or annulment of a marriage of a North Dakota resident;
6. The case is to determine parenting rights and responsibilities of an individual subject to the court's jurisdiction; **or**
7. The case is to award, partition, condemn, or escheat real or personal property in North Dakota.

If you decide that you meet the requirements of [Rule 4\(e\)](#) and can serve your Summons by publication, and the law that applies to your civil case doesn't change the requirements for service by publication, follow these six steps:

Step One: Use diligent efforts to locate an address to serve the Defendant/Respondent. Keep track of your efforts and the results, including dates.

Following are examples of ways to find people for service:

- Last known address.
 - Contact the U.S. Post Office for more information.
- Friends, family, employers.
- Online search engines.
- Government entities, such as Department of Motor Vehicles or County Recorder.
- North Dakota business entity search, available at the ND Secretary of State website.
- Social Security Death Index.
- Utility companies.
- Social networking websites.
- Reverse directories.
 - A reverse directory allows someone to search by phone number to find an address. *(Your local public library may have access to reverse directories.)*

Step Two: Attempt to serve the Defendant/Respondent by personal service, by mail or by obtaining the Defendant's/Respondent's signature. Keep records of your attempts and the results.

Step Three: File the Complaint/Petition, a Declaration for Service by Publication, and proof of your attempts to serve the Defendant/Respondent with the Clerk of District Court. (*See page 6 for when a Summons must also be filed.*)

- **The Complaint/Petition:**

The Complaint/Petition must set forth a claim in favor of the Plaintiff/Petition and against each Defendant/Respondent. The Complaint/Petition must be based on one or more situations where service by publication is permitted. (*See above.*)

- **The Declaration for Service by Publication:**

The Declaration must be completed, signed and dated by the self-represented Plaintiff/Petitioner.

The Declaration must include the following factual information:

- A statement that specifically tells the court which of the situations the Complaint/Petition is based on, where service by publication is permitted (*see above*);
- Detailed statements explaining your diligent efforts to serve the Defendant(s)/Respondent(s); **and**
- **Must state one or more** of the following:
 - That after diligent inquiry, personal service of the Summons can't be made on the Defendant/Respondent in North Dakota to the best of your knowledge, information, and belief;
 - That the Defendant/Respondent is a domestic corporation that has forfeited its charter or right to do business in this state or has failed to file its annual report as required by law;
 - That the Defendant/Respondent is a domestic or foreign corporation and has no officer, director, superintendent, managing agent, business agent, or other agent authorized by appointment or by law on whom service of process can be made on its behalf in this state; **or**
 - That all persons having or claiming an estate or interest in, or lien or encumbrance on, the real property described in the complaint, or under any other title or interest, and not in possession, nor appearing of record in the office of the register of deeds, the clerk of the district court, or the county auditor of the county in which the real property is situated, to have such claim, title or interest in the property, are proceeded against as

unknown persons defendant under N.D.C.C. Chs. [32-17](#) or [32-19](#), and stating facts necessary to satisfy the requirements of those chapters.

- **The Proof of Attempt(s) to Serve Defendant/Respondent by Mail, Personal Service, or to Obtain Defendant's/Respondent's Signature:**
 - Provide documentation of every failed attempt at service.
- **The Summons (*only applies to divorce, legal separation, and cases to determine parental rights and responsibilities*):**
 - If your civil case is a divorce, legal separation or a case to determine parental rights and responsibilities, you must also file a Summons that includes the restraining provisions and Clerk of Court **must** date and sign as required by [Rule 8.4 of the North Dakota Rules of Court](#).
 - **However**, you may publish the Summons in Step Four without [Rule 8.4's](#) restraining provisions.

If your Complaint/Petition, Declaration for Service by Publication and proof of attempts to serve the Defendant/Respondent are accepted for filing by the clerk of court, a case number is assigned.

Step Four: Publish the Summons in a newspaper in the North Dakota county where the civil case is pending. If no newspaper is published in that county, publication may be made in a newspaper having general circulation in the county.

- First publication of the Summons must be made within sixty (60) days after filing the Declaration for Service by Publication with the Clerk of District Court.
- Service by publication is made by publishing the Summons three (3) times, once each week, for three (3) consecutive weeks.
- Publication can be done in the print edition, in the e-edition, or both.

If your civil case is a divorce, legal separation or a case to determine parental rights and responsibilities, you may publish the Summons **without** including the restraining provisions required by [Rule 8.4 of the North Dakota Rules of Court](#).

The Summons you filed in Step Three **must** include [Rule 8.4's](#) restraining provisions **and** be signed and dated by the Clerk of District Court.

Service by publication is complete fifteen (15) days after the first publication of the Summons.

Step Five: Mail or deliver a copy of the Summons and Complaint/Petition to the Defendant's/ Respondent's last reasonably ascertainable (*discoverable*) address.

- A copy of the Summons and Complaint/Petition must be deposited in a post office or with a third-party commercial carrier, postage or shipping prepaid, and directed to the Defendant/Respondent at their last reasonably ascertainable address.
- The copy of the Summons and Complaint/Petition must be mailed or delivered after the filing of the Declaration for Service by Publication and no later than fourteen (14) days after the first publication of the Summons in the newspaper in the county where the case is pending.
- The person who deposited the copy of the Summons and Complaint/Petition in a post office or with a third-party commercial carrier must complete an Affidavit of Service or Declaration of Service.

If your civil case is a divorce, legal separation or a case to determine parental rights and responsibilities, the Summons mailed or delivered to the Defendant/Respondent **must** include [Rule 8.4](#)'s restraining provisions **and** be signed and dated by the Clerk of District Court.

Step Six: File proof of service with the clerk of court in the county where the case is pending. File the Declaration of Publication or Affidavit of Publication from Step Four and the Affidavit of Service or Declaration of Service from Step Five.