



SUBPOENAS IN CIVIL ACTIONS

An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process.

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

When you represent yourself, you must abide by the following:

- 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 www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov by clicking on the “Self Help” link.

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures. If you are unsure if this information suits your circumstances, consult a lawyer.

This information is not a complete statement of the law. This covers basic information about subpoenas in a North Dakota State District Court civil action. 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 of North Dakota. Use at your own risk.

CAUTION!

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

If a Plaintiff/Petitioner or Defendant/Respondent **is an artificial person, such as a business, corporation or limited liability company, a non-attorney cannot** represent the artificial person in a North Dakota state district court civil action. Consult an attorney!

WHAT IS A SUBPOENA?

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.

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.

LAWS AND RULES RELATED TO SUBPOENAS IN A CIVIL ACTION:

[Rule 45 of the North Dakota Rules of Civil Procedure](#) governs the subpoena process.

NOTE: This Informational Guide gives the basics of the subpoena process and does not cover every possible issue or situation. **Review Rule 45 carefully to meet the requirements for subpoenas in your civil action.** Other Rules may apply to your particular circumstances that are not included in this Informational Guide.

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

[Chapter 31-01 of the North Dakota Century Code](#) governs witness qualifications, rights and duties.

- [Section 31-01-16](#) of Chapter 31-01 of the North Dakota Century Code governs witness fees, mileage and travel expense reimbursement for witnesses.
- Also see [Section 44-08-04](#) and [Section 54-06-09](#) for calculating mileage and travel expense reimbursement for witnesses.

[Chapter 31-03 of the North Dakota Century Code](#) governs the means of compelling attendance of witnesses.

North Dakota court rules apply in North Dakota District Court. The rules are found online at www.ndcourts.gov/legal-resources/rules. The rules are found in print in many North Dakota public and academic libraries.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code 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.

WHO CAN ISSUE A SUBPOENA?

When you represent yourself in a civil action, you cannot issue a subpoena on your own.

Only a Clerk of Court or a lawyer for a party can issue a subpoena in a civil action.

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.

NOTE: 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.

The Clerk of Court may require you to provide your own subpoena document for the Clerk of Court to sign.

WHAT IS THE COST OF A SUBPOENA?

The Clerk of Court charges a fee for issuing a subpoena in a civil action. The fee is \$10.00.

WHO CAN REQUEST A SUBPOENA FROM THE CLERK OF COURT?

A party to a civil action can request that the Clerk of Court of the county where the civil action is filed issue a subpoena.

WHEN CAN A PARTY TO A CIVIL ACTION REQUEST A SUBPOENA?

A party to a civil action can request a subpoena from the Clerk of Court **after** the summons and complaint, summons and petition, or other initiating document of the civil action is filed with the court and a civil case number is assigned.

For information about filing a civil action in North Dakota District Court, review the “Filing Documents with the District Court” section of the [Guide to a Civil Action](#), which is available online at www.ndcourts.gov/legal-self-help by clicking on the [Guide to Civil Action](#) link.

WHAT INFORMATION IS NEEDED TO REQUEST AND PREPARE A SUBPOENA?

Before you request a subpoena, gather the following information (*a printable checklist is available at the end of this informational guide*):

- Names of the parties in the civil action, as listed in the caption of the summons and/or complaint;
- The name of 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;

NOTE: 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.

- 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.

IMPORTANT: You have a duty to take reasonable steps to avoid imposing an undue burden on a person subject to a subpoena. The court must enforce this duty and may impose sanctions on the party responsible for the subpoena.

IS THERE ANY OTHER INFORMATION INCLUDED IN THE SUBPOENA?

Depending on your particular circumstances, you may need to include additional information in your subpoena. **Review Rule 45 carefully to meet the requirements for subpoenas in your civil action.**

NOTE: 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.

WHEN IS NOTICE 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 you must prepare and arrange for service of notice before you can arrange for service of the actual subpoena.

- [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 you determine 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. You will need to arrange for service of the notice document.

General information about Rule 5 service requirements can be found at www.ndcourts.gov/legal-self-help by clicking on the [Service](#) link and reviewing the document titled "Information and Instructions for Service After a Civil Action Has Been Started." A variety of General-Use affidavit of service forms are also available by clicking on the link.

HOW IS THE SUBPOENA SERVED?

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

NOTE: 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 can be found at www.ndcourts.gov/legal-self-help by clicking on the [Service](#) link and reviewing the document titled "Information and Instructions for Service to Start a Civil Action." A variety of General-Use affidavit of service forms are also available by clicking on the link.

WHAT DUTIES DOES A PERSON HAVE 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.

REMEMBER: 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.

DOES A PERSON RESPONDING TO A SUBPOENA HAVE ANY PROTECTIONS?

Yes, 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.

DOES THE ND LEGAL SELF HELP CENTER HAVE EXAMPLES OF SUBPOENA DOCUMENTS?

No, the ND Legal Self Help Center does not have examples of subpoenas or related documents. However, Legal Services of North Dakota has an online Family Law Manual that includes an example of a subpoena and an example of a notice of deposition.

The Legal Services of North Dakota Family Law Manual is found at www.legalassist.org by clicking on the “Self Help Forms” link, then the “Family Law Manual” link.

(References to the Legal Services of North Dakota Family Law Manual are for your convenience only. The ND Legal Self Help Center does not endorse, warrant, or accept responsibility for the content or uses of the Family Law Manual. You must independently determine the legal sufficiency of the forms in the Family Law Manual. Use at your own risk.)

IS THERE HELP AVAILABLE FOR CREATING SUBPOENA DOCUMENTS?

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of your civil action. You and the lawyer must agree in writing to Limited Legal Representation.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

Lawyer Resources

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

If you decide to find a lawyer to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is 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. The cost is \$30.00 for a 30 minute consultation with a lawyer.
- 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

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled.

For example:

- You may want 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 legal documents, 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 lawyer must agree in writing to Limited Legal Representation.

INFORMATION NEEDED TO REQUEST & PREPARE A SUBPOENA CHECKLIST

When you represent yourself in a civil action, you cannot issue a subpoena on your own.

Only a Clerk of Court or a lawyer for a party can issue a subpoena in a civil action.

If you are unsure how to proceed, consult a lawyer licensed to practice in North Dakota.

Before you request a subpoena from the Clerk of Court, gather the following information:

- Names of the parties in the civil action (*as listed in the caption of the summons and/or complaint*): _____

- The name of 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: _____

If the subpoena will require the person's attendance:

- The date, time and place of the deposition, hearing or trial: _____

- For attendance at a deposition, the method of recording testimony: _____

- The amount of the witness fees, mileage and travel expenses: _____

NOTE: 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 subpoena will require production of documents, electronically stored information or tangible things:

A list of the specific documents, electronically stored information or tangible things: _____

*(If the 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) of the North Dakota Rules of Civil Procedure must be included in the subpoena.)*

If the subpoena will require inspection of the premises:

The address of the premises: _____

IMPORTANT: You have a duty to take reasonable steps to avoid imposing an undue burden on a person subject to a subpoena. The court must enforce this duty and may impose sanctions on the party responsible for the subpoena.

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*Use at your own risk****