



Subpoena For A Proceeding In An Out-Of-State Court A Research Guide for a North Dakota State 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 District Courts.

The information provided in this research guide isn't a complete statement of the law. This information is intended as a starting point for your research into obtaining a subpoena for a proceeding in an out-of-state court. This information **isn't** intended for legal advice and **can't** replace the advice of a lawyer licensed to practice law in North Dakota.

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

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

No Court Forms Available

The North Dakota Legal Self Help Center and the North Dakota Court System **don't** have forms or instructions available specifically for court processes related to requesting a North Dakota state district court issue a subpoena for a court case taking place in an out-of-state court.

For information about subpoena requirements in civil cases filed in North Dakota state court, go to ndcourts.gov/legal-self-help/subpoenas.

If you represent yourself, you need to create your own legal documents, or retain a lawyer to do so.

If you're interested in finding a lawyer to represent you, go to Pages 8-9 for all of the lawyer resources available through the ND Legal Self Help Center.

If you'd like to learn more information about finding a lawyer to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

Overview Of Subpoenas For Out-Of-State Court Cases

What is a subpoena for an out-of-state court case, also called domesticating a foreign subpoena?

A party in an out-of-state court case may need to subpoena witnesses located in North Dakota, records, documents and other tangible items (*tangible is something that can be shown or touched*) located in North Dakota, or to inspect premises located in North Dakota.

The party in the out-of-state court case may be required to request that a North Dakota state district court issue a subpoena. The subpoena issued by the North Dakota State District Court mirrors the subpoena issued by the out-of-state court.

This process is also called **domesticating a foreign subpoena**.

[Rule 5.1 of the North Dakota Rules of Court](#) governs requests to North Dakota state district courts for subpoenas for out-of-state court cases.

Are there definitions that are helpful for understanding the process?

Yes. Following are the definitions from [Rule 5.1 of the North Dakota Rules of Court](#) that apply to requesting subpoenas for out-of-state court cases:

- **Foreign Jurisdiction:** A state other than North Dakota.
- **Foreign Subpoena:** A subpoena issued under the authority of a court of a foreign jurisdiction.
- **Person:**
 - An individual;
 - A corporation;
 - A business trust;
 - An estate;
 - A trust;
 - A partnership;
 - A limited liability company;
 - An association;
 - A joint venture;
 - A public corporation;
 - A government or governmental subdivision;
 - An agency or instrumentality; or
 - Any other legal or commercial entity.

- **State:** A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- **Subpoena:** A document, however named, issued under the authority of a state court requiring a person to:
 - Attend and give testimony at a deposition;
 - Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
 - Permit inspection of premises under the control of the person.

Who issues a subpoena for an out-of-state court case?

Only a North Dakota Clerk of Court can issue a subpoena for an out-of-state court case under [Rule 5.1 of the North Dakota Rules of Court](#). Parties in an out-of-state court case and lawyers representing the parties **aren't** allowed to issue a subpoena.

The request is made to the Clerk of Court of the North Dakota county where the subject of the subpoena is located or will occur.

- To attend and give testimony at a deposition, make the request in the North Dakota county where the deposition takes place.
- To produce and permit inspection and copying of designated books, documents, etc., make the request in the North Dakota county where the designated books, documents, etc. are located.
- To permit inspection of premises, make the request in the North Dakota county where the premises are located.

Contact information for Clerks of District Court by North Dakota county is available at ndcourts.gov/court-locations.

Does a request to issue a subpoena mean the party in the out-of-state court case is making an "appearance" in a North Dakota state district court?

No. An appearance is an action taken by the party that lets a North Dakota state district court know the party, or the party's lawyer, will participate in a case.

A request for a North Dakota state district court to issue a subpoena in an out-of-state court case, on its own, **isn't** an appearance by the party, or the party's lawyer.

What is the minimum the Clerk of District Court needs to issue a subpoena?

At minimum, the party requesting the subpoena must submit the following to the Clerk of Court:

- The foreign subpoena issued under the authority of the foreign jurisdiction; and
- A \$10.00 fee.

What else does the Clerk of Court need to issue a subpoena?

Depending on the procedure of each individual county, the Clerk of Court may require the party requesting the subpoena to submit a completed, unsigned subpoena for the Clerk of Court to sign.

The completed, unsigned subpoena must incorporate the terms used in the foreign subpoena.

The completed, unsigned subpoena must also contain, or be accompanied by, the names, addresses, and telephone numbers of all lawyers of record in the out-of-state court case and all self-represented parties in the out-of-state court case.

The Clerk of Court issues the subpoena with their signature and the party who requested the subpoena may arrange for service.

What if the Clerk of Court issues a blank subpoena?

If the Clerk of Court issues a signed, blank subpoena, the party requesting the subpoena completes the subpoena before arranging for service.

The subpoena must incorporate the terms used in the foreign subpoena.

The completed subpoena must also contain, or be accompanied by, the names, addresses, and telephone numbers of all lawyers of record in the out-of-state court case and all self-represented parties in the out-of-state court case.

After the subpoena is completed, the party who requested the subpoena may arrange for service.

What are the service requirements for subpoenas issued under Rule 5.1?

Service requires delivery of the subpoena to the person to whom the subpoena is directed. A proof of service document shows when, how and where the person was served.

The service requirements for subpoenas issued under [Rule 5.1 of the North Dakota Rules of Court](#) depend on the type of case taking place in the out-of-state court:

- **Civil Cases:** the subpoena must be served as required by [Rule 45\(b\) of the North Dakota Rules of Civil Procedure](#).
 - 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!
 - See also the information in the [“Service to Start a District Court Civil Action, or Civil Case”](#).
- **Criminal Cases:** the subpoena must be served as required by [Rule 17\(d\) of the North Dakota Rules of Criminal Procedure](#).
- **Juvenile Cases:** the subpoena must be served as required by [Rule 13\(b\) of the North Dakota Rules of Juvenile Procedure](#).

What if a person doesn’t obey the subpoena?

If the person to whom the subpoena is directed doesn’t obey the subpoena, the party, or the party’s lawyer, in the out-of-state court case may apply to the North Dakota State District Court to enforce the subpoena issued under [Rule 5.1 of the North Dakota Rules of Court](#).

The application must comply with North Dakota subpoena and discovery court rules, statutes, and case law.

Caution: An application to enforce the subpoena may be considered an “appearance” in the North Dakota State District Court that issued the subpoena.

Does a person responding to a subpoena have any protections?

Yes, under [Rule 5.1 of the North Dakota Rules of Court](#), a person to whom the subpoena is directed may apply to the North Dakota State District Court for a protective order, or to quash (*stop*) or modify the subpoena.

The application must comply with North Dakota subpoena and discovery court rules, statutes, and case law.

Caution: If the person applying for a protective order, or to quash or modify the subpoena is an entity created by law, the person **can’t** be represented by a non-lawyer in North Dakota State District Court.

See the definition of “**Person**” on Page 2 of this Research Guide. Except for “an individual,” all other persons listed are entities created by law.

Entities created by law **Must** be represented by a lawyer licensed to practice in North Dakota.

Legal Research Resources

North Dakota State Statutes:

North Dakota state statutes are found in the [North Dakota Century Code](#) (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature.

North Dakota Case Law:

(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 appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)

One way to research case law related to subpoenas and discovery is to use the print version of the North Dakota Century Code to locate the short summaries of case law after each Section. Case law summaries directly follow the text of the Century Code Section.

To view the full text of the opinion you located in the print version of the North Dakota Century Code, or the print version of the Court Rules Annotated, click on "[Supreme Court Opinions.](#)" Enter the case name or case citation.

You may research North Dakota Supreme Court case law related to the topic of your civil case by clicking on "[Supreme Court Opinions.](#)" Use the "Topic" drop down list to narrow your search.

North Dakota Court Rules:

([Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. All of the court rules are found online.)

At minimum, review the following:

[North Dakota Rules of Civil Procedure:](#)

- Rule 26 through Rule 37 govern discovery in civil actions.
- Rule 45 governs subpoenas in civil actions.

[North Dakota Rules of Criminal Procedure:](#)

- Rule 15 through Rule 16 govern depositions and discovery in criminal actions.
- Rule 17 governs subpoenas in criminal actions.

[North Dakota Rules of Juvenile Procedure:](#)

- Rule 12 through Rule 12.1 govern depositions and discovery in juvenile court actions.
- Rule 13 governs subpoenas in juvenile court actions.

[North Dakota Rules of Court:](#)

- Rule 5.1 governs interstate depositions and discovery, including subpoenas, in civil, criminal, and juvenile court actions.

Laws Constantly Change Through Legislation, Administrative Rules And Rulings, And Court Decisions.

To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law. If you need help determining whether specific laws, rules or case law apply to your situation, or determining how they apply to your situation, consult a lawyer licensed to practice in North Dakota who agrees to represent you.

Only a lawyer who agrees to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your circumstances.

Library Resources (Not all legal resources are available online):

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (polaris.odinlibrary.org)

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

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

A Short & Happy Guide to Civil Procedure, Richard D. Freer, West Academic Publishing, 2019.

A Short & Happy Guide to Criminal Procedure, Leslie W. Abramson, West Academic Publishing, 2019.

Deposition Handbook: The Essential Guide for Anyone Facing or Conducting a Deposition, Paul Bergman, Albert Moore, NOLO, 2018.

One Hundred Days Before Trial: A Family Lawyer's Guide to Preparation and Strategy, Steven N. Peskind, American Bar Association, 2015.

Represent Yourself in Court: How to Prepare & Try a Winning Case, Paul Bergman, Sara Berman, NOLO, 2019.

North Dakota Century Code Annotated, Lexis Nexis, Creation Date c1959 – present.

North Dakota Court Rules Annotated, Lexis Nexis, Creation Date c1990 – present.

Other Legal Research Resources:

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

Lawyer Resources And Limited Legal Representation

You aren't required to hire a lawyer to access the state 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.

Lawyer Resources

For information about finding a lawyer to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

- **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 legalassist.org.
- **Dakota Plains Legal Services** is a non-profit legal services organization that provides free legal assistance to low-income individuals, older Americans and veterans. Dakota Plains Legal Services (DPLS) has eight offices and serves communities across South Dakota and North Dakota, including nine tribal nations. DPLS is committed to increasing access to justice with quality legal assistance. Contact information is available on the DPLS webpage of dpls.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 sband.org.

- **For a list of all lawyers who are licensed to practice in North Dakota**, go to the North Dakota Supreme Court website at ndcourts.gov/Lawyers.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil cases. 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 a lawyer to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with a lawyer to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with a lawyer who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire a lawyer just to make the court appearance for you.

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

North Dakota Free Legal Answers

This civil legal program is a partnership of the American Bar Association and the State Bar Association of North Dakota.

The purpose of the program is to provide free answers to **specific** civil legal question to low-moderate income North Dakotans who submit their questions online. Anonymous volunteer attorneys answer your question, but can’t represent you.

Go to nd.freelegalanswers.org for information about the program, the online application, and, if you qualify, ask your civil legal question.

Please note that this program **doesn’t** provide any assistance with criminal legal questions.