

Legal Research Guide & Checklist

This is a basic step by step guide and checklist for legal research. This guide and checklist is designed to be printed and used for note-taking while you conduct legal research into your issue or question.

Use this guide & checklist along with the legal research resources available in the Legal Research section of the North Dakota Legal Self Help Center website.

Before you start your legal research, you should know the basic difference between substantive law and procedural law.

- **Substantive law** is the law that establishes our legal rights and responsibilities and grants jurisdiction (authority) to a court to hear and decide a case. Substantive law includes the North Dakota Constitution, laws (statutes) enacted by the North Dakota State Legislature, and the case law (opinions) of the North Dakota Supreme Court.

Substantive law answers questions like:

- Can I get a divorce in North Dakota? How are property and debt divided in a divorce?
- Can I ask a North Dakota state court to establish custody and visitation? What factors will the court use to decide who gets primary custody?
- Can I sue someone who owes me money in North Dakota Small Claims court?
- What are my rights and responsibilities as a tenant or a landlord? What are the reasons a landlord can evict a tenant?

- **Procedural law** is the law that governs the process of bringing a case to court and how the case proceeds once it gets to court. Procedural law is found in the court rules enacted by the North Dakota Supreme Court, including the North Dakota Rules of Civil Procedure and the North Dakota Rules of Evidence.

Procedural law answers questions like:

- How do I start a civil case and what legal documents do I need?
- How do I subpoena documents or a witness for my hearing?
- What kind of evidence can I present and how do I present my evidence?
- How do I ask the court to modify an order in an existing case?

Depending on your legal question or issue, you may need to research either the substantive law, or the procedural law, or both.

STEP ONE: What is the Legal Question/Legal Issue I Want to Answer?

<p>Legal Question/Legal Issue: <i>(Write down your question or issue.)</i></p>
<p>Relevant Facts: <i>(Write a short summary of the circumstances related to your legal question.)</i></p>
<p>Keywords: <i>(List words related to your legal questions/legal issue to use as search terms.)</i></p>
<p>Is this a substantive law issue, procedural law issue, or both: <i>(If you know the answer to this question, this can help you narrow the focus of your legal research. If you don't know the answer, the following steps may help you determine the answer.)</i></p>

STEP TWO: Research Secondary Sources of Law to Find out More

(Secondary sources of law explain the law, help you identify additional legal terms related to your issue, and help you identify primary sources of law for Step Three. You may not find a secondary source exactly related to your issue, but this step may help you identify other related issues you may need to address. You may also search for your keywords in the printed General Index of the North Dakota Century Code.)

Secondary Source:	Notes:
Legal Dictionaries <i>(i.e. Black’s Law, NOLO Plain English Law Dictionary)</i>	
Legal Encyclopedias <i>(i.e. Corpus Juris Secundum (CJS), American Jurisprudence 2d (AmJur2d); NOLO Encyclopedia of Everyday Law)</i>	
Law Reviews & Law Journals <i>(i.e. North Dakota Law Review, American Bar Association Journals)</i>	
Treatises <i>(i.e. Nutshell series – West Academic Publishing, Wigmore on Evidence)</i>	
Dakota Digest <i>(Case law index, including North Dakota case law)</i>	
Pattern Jury Instructions <i>(ND Legal Self Help Center website)</i>	
ND Legal Self Help Center Informational Guides & Research Guides	
Other	

STEP THREE: Find Primary Sources of Law Related to My Question/Issue

(Primary sources of law are the law itself. Mandatory primary sources are the laws a court must follow. Persuasive primary sources are the laws a court may choose to follow, but does not have to follow.)

List the Court(s) that are mandatory for your legal issue. *(Review Table T1 of “The Bluebook: A Uniform System of Citation.”)*

Mandatory Statutes and/or Rules & Regulations *(North Dakota state courts deciding state law issues must follow the statutes in the North Dakota Century Code, and the rules and regulations in the North Dakota Administrative Code.)*

<p>Mandatory Statutory Research <i>(If a topic or subject index is available, look for your keywords. Then, review the statutes associated with your keywords.)</i></p>	
<p>Mandatory Rules and Regulations <i>(If your issue involves an administrative (executive branch) agency, review that agency’s rules and regulations.)</i></p>	

Persuasive Statutes and/or Regulations *(Statutes and regulations of other states are not binding on North Dakota state courts, including the North Dakota Supreme Court. However, persuasive statutes and/or regulations may be useful to add support to a legal argument. You may not need persuasive primary sources.)*

<p>Persuasive Statutory Research <i>(If you are unable to find a mandatory statute, or want to add support to a mandatory statute)</i></p>	
<p>Persuasive Rules and Regulations</p>	

STEP THREE (CONTINUED): Find Primary Sources of Law Related to My Question/Issue

(Primary sources of law are the law itself. Mandatory primary sources are the laws a court must follow. Persuasive primary sources are the laws a court may choose to follow, but does not have to follow.)

Mandatory Case Law *(North Dakota Supreme Court case law is binding on North Dakota state courts deciding cases with similar facts and issues.)*

List the Court(s) that are mandatory for your legal issue. <i>(Review Table T1 of "The Bluebook: A Uniform System of Citation.")</i>	
Mandatory Case Law Research	

Persuasive Case Law *(Case law from courts of other states are not binding on North Dakota state courts, including the North Dakota Supreme Court. However, persuasive case law may be useful to add support to a legal argument. You may not need persuasive case law.)*

Do you need to use persuasive case law because little or no mandatory case law exists? Or, do you wish to add additional support using persuasive case law?	
Persuasive Case Law Research	

STEP FOUR: Are the Primary Sources of Law I’ve Identified Still Good Law?

(You need to determine if the laws on which you’re relying have been subsequently amended, limited, overruled, reversed, or invalidated. At the same time, you may discover other primary sources of law related to your legal issue. This process involves taking each primary source of law and tracking every time a court references the law, or the legislature takes action on the law. This process is commonly referred to as “Shepardizing.”)

Statutes, Rules & Regulations (Mandatory & Persuasive)

(The print versions of the North Dakota Century Code & the North Dakota Court Rules Annotated include references to previous amendments and case law notes. The online North Dakota Administrative Code includes references to previous amendments, and statutory authority for the rule. Review print & online legal research resources for more suggestions.)

<p>Review statutes for legislative action, & case law.</p> <p>Review procedural rules for amendments, & case law.</p> <p>Review administrative rules and regulation for agency or legislative action, & case law.</p>	
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Case Law (Mandatory & Persuasive)

(You may find online legal research resources that provide a subsequent history search for either a paid subscription, or free of charge – review each subsequent case to determine how the court decided. Search the citation for the case using the Opinions search on the ND Supreme Court website – review each subsequent case to determine how the court decided. Review print & online legal research resources for more suggestions.)

<p>Review for case law & legislative action amending, overruling, reversing, or invalidating.</p>	
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STEP FIVE: Am I Finished Researching?

It can be challenging to determine if you are finished with your legal research.

- Did you follow Steps One through Four?
- Did you answer your question(s) from Step One; OR did you determine there is not an on-point answer to your question(s)?

It may be time to stop researching when:

- You keep reading the same, or similar, legal rule.
- You keep being referred back to the same statutes or the same cases.

STEP SIX: How Do the Primary Sources of Law Apply to My Circumstances.

After you complete Steps One through Five, you analyze, or interpret, what the primary sources of law you have identified mean as they apply to your situation or circumstances.

Step Six is an essential part of legal representation. This is how you determine your legal rights and responsibilities, build your legal argument to support your side of the case, and build your legal argument to challenge the other party's side of a case.

Tips for analyzing how your primary sources of law apply to your circumstances:

- Type or write your analysis. If you decide to bring your issue to a court, you'll have your written or typed analysis as a reference when you prepare your legal documents.
- Start your analysis by listing your legal issue or question.
 - It may be the same as you listed in Step One, or may have changed based on your legal research.
 - If you have more than one issue, you may wish to analyze each issue separately.
- List the relevant facts related to your legal issue or question.
 - They may be the same facts as you listed in Step One, or may have revised based on your research.
- Analyze or discuss how and why each primary source of law you've identified relates to your legal issue or question. This is the heart of Step Six.
 - Compare how the facts of a case on which you rely are similar or different (or both) to your relevant facts.
 - Discuss why each primary source of law applies or does not apply to your circumstances.
- Type or write a brief summary of your analysis.

Review print & online legal research resources for more information. You may find resources that include explanations about writing legal memoranda (memos) or writing legal briefs of interest.

STEP SEVEN: What is the Appropriate Process to Get my Issue to Court

(If you decide to take your legal issue to a court, research the procedural law of the court to determine the appropriate process.)

In general, starting a new civil action in a North Dakota state district court requires the Plaintiff to arrange for service of a summons and a copy of a complaint on each Defendant. In general, when making a request to a North Dakota state district court in an existing civil action, the request is made in writing in the form of a motion.)

Review the Informational & Research Guides at the ND Legal Self Help Center website. *(Does the Center have a guide available?)*

Search for keywords in the printed General Index of the North Dakota Century Code. *(To determine if a court rule is listed under a topic in the General Index, see the Table of Abbreviations on Page vii at the beginning of the printed General Index. The abbreviations for all of the North Dakota court rules are at the top of the list.)*

Search the Index at the beginning of each set of North Dakota court rules. *(Indexes are available for each set of North Dakota court rules in both the printed North Dakota Rules Annotated and the North Dakota Supreme Court website.)*

Review the mandatory statutes you identified for your legal issue to determine if the statute changes any process requirement from the North Dakota court rules. *(Statutes may change or add additional requirements to a process.)*