



## RESTORING THE RIGHT TO POSSESS FIREARMS

### 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](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).

**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 the process of petitioning a North Dakota State District Court to restore the right to possess firearms under North Dakota law. 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.***

***It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a North Dakota state district court.***

***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.***

***This Informational Guide gives the basics of the process. If you decide to represent yourself, you will need to do additional research to prepare.***

**This Informational Guide to restoring the right to possess firearms in North Dakota is made up of two sections:**

**The first section gives general information about restoring the right to possess firearms. (Pages 2 - 9)**

**The second section gives information about the basic process of petitioning a North Dakota District Court restore the right to possess firearms from beginning to end. (Pages 10 - 16)**

## **SECTION ONE: INFORMATION ABOUT RESTORING THE RIGHT TO POSSESS FIREARMS IN NORTH DAKOTA**

### **WHAT IS RESTORING THE RIGHT TO POSSESS FIREARMS?**

North Dakota law prevents a person convicted of a felony, convicted of certain types of misdemeanors, or found mentally deficient from possessing firearms.

However, North Dakota law allows for the restoration of the right to possess firearms when a North Dakota state district court revoked the individual's right to purchase, possess or have control of a firearm.

### **CAN I ASK A NORTH DAKOTA STATE COURT TO RESTORE THE RIGHT TO POSSESS FIREARMS IF I HAVE AN OUT-OF-STATE OR FEDERAL COURT CONVICTION?**

**NO!** If you are prohibited from possessing a firearm due to an out-of-state or federal criminal conviction, **STOP!** You **CANNOT** petition a North Dakota state district court to restore the right to possess firearms using North Dakota state law.

If you are prohibited from purchasing, possessing or having control of a firearm due to an out-of-state or federal court finding of mental deficiency or disability, **STOP!** You **CANNOT** petition a North Dakota state district court to restore the right to purchase, possess or have control of firearms using North Dakota state law.

You may wish to consult an attorney who can advise you on federal laws or the other state's laws about restoration of the right to possess firearms.

## **WHO CANNOT POSSESS FIREARMS IN NORTH DAKOTA?**

**A person who has been convicted anywhere of a felony offense involving violence or intimidation.**

- The person cannot possess or have control of a firearm for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

**A person who has been convicted anywhere of a felony offense or a Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon.**

- The person cannot own, possess or have control of a firearm for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- The individual who was convicted of the offense in North Dakota state court may petition the North Dakota state district court for restoration of the individual's firearm rights.

**A person who is or has ever been diagnosed and confined or committed to a hospital or other institution due to mental deficiency.**

- The person cannot purchase, possess or have control of a firearm, unless the person has not suffered from the disability for the previous three years.
- If a North Dakota state district court revoked the individual's right to purchase, possess or have control of a firearm, that individual may petition a North Dakota state district court for restoration of the individual's firearm rights.

**If you are unsure whether your firearm rights have been revoked** it may be helpful to look at your previous criminal judgments that would state your loss of rights. You may also wish to consult a lawyer who can advise you of your rights and responsibilities.

**If you are unsure whether you are required to petition a North Dakota district court to restore your firearm rights,** consult a lawyer who can advise you of your rights and responsibilities.

*(This space left intentionally blank.)*

## **WHAT ARE THE REQUIREMENTS FOR RESTORING THE RIGHT TO POSSESS FIREARMS?**

### **Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:**

The petitioner (*the person making the request*) must prove to the North Dakota state district court by clear and convincing evidence that:

- All fines imposed for the violation which resulted in loss of rights have been paid.
- All terms of imprisonment for the violation have been served.
- All conditions of probation or parole imposed for the violation have been successfully completed.
- Their personal record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.

### **Rights lost due to mental deficiency or disability:**

The North Dakota state district court will receive and consider evidence concerning:

- The circumstances of the original order, appointment, or finding.
- The individual's mental health and criminal history records, if any;
- The individual's reputation; and
- Changes in the individual's condition or circumstances relevant to the relief sought.

The petitioner must prove by a preponderance of the evidence that:

- The individual likely will not act in a manner dangerous to public safety; and
- Granting of the relief would not be contrary to the public interest.

## **DOES THE ND LEGAL SELF HELP CENTER HAVE FORMS TO PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?**

**No**, the ND Legal Self Help Center does not have a packet of forms to petition a North Dakota District Court to restore the right to possess firearms. If you decide to represent yourself, you will need to create and prepare your own legal documents. **Names and descriptions of the documents you will need to create and prepare are found throughout this guide.**

Although the ND Legal Self Help Center does not have forms or instructions for petitioning to restore the right to possess firearms in North Dakota district court, a variety of General-Use template forms are available as a starting point for creating your own legal documents.

The Guide to a Civil Action and General-Use template forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by scrolling to the “District Court Civil” section.

## **IS THERE HELP AVAILABLE FOR CREATING LEGAL 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.

## **WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?**

**Clear and Convincing Evidence** – the burden of proof, by which the petitioner must prove the requirements of restoring their right to possess firearms, which were lost due to a felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon. The clear and convincing burden of proof is more than a preponderance of evidence, but less than beyond a reasonable doubt.

**Conviction** – is a determination that the person committed one of the crimes in [North Dakota Century Code Section 62.1-02-01](#) upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere.

**Dangerous Weapon** – means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

**Firearm or Weapon** – means any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

**Handgun** – means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

**Mentally Deficient Person** – means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing that person's affairs and to require supervision, control, and care for that person's own or the public welfare.

**Preponderance of the Evidence** – the burden of proof, by which the petitioner must prove the requirements of restoring their right to possess firearms, which were lost due to a finding of mental deficiency or disability. The preponderance of evidence burden of proof is less than clear and convincing and less than beyond a reasonable doubt.

**Venue** – the North Dakota county district court where the petition is filed:

For convictions in North Dakota state district court: the North Dakota state district court in the North Dakota county where the offense occurred.

For convictions in another state court and convictions in federal court: the federal court or other state court where the right to possess firearms was revoked.

- **IMPORTANT!** The processes and laws in this Informational Guide **DO NOT** apply in federal court or other state courts. Consult an attorney who can advise you on federal laws or the other state's laws about restoration of the right to possess firearms.

For findings of mental deficiency or disability by a North Dakota state district court: the North Dakota state district court that issued the finding, or the North Dakota state district court in the county where the individual resides.

For findings of mental deficiency or disability by a court of another state or a federal court: the federal court or other state court where the right to possess firearms was revoked.

- **IMPORTANT!** The processes and laws in this Informational Guide **DO NOT** apply in federal court or other state courts. Consult an attorney who can advise you on federal laws or the other state's laws about restoration of the right to possess firearms.

## **WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO RESTORING THE RIGHT TO POSSESS FIREARMS?**

**Chapter 62.1-01 of the North Dakota Century Code** [www.legis.nd.gov/cencode/t62-1c01.html](http://www.legis.nd.gov/cencode/t62-1c01.html) contains definitions and general provisions related to weapons.

**Chapter 62.1-02 of the North Dakota Century Code** [www.legis.nd.gov/cencode/t62-1c02.html](http://www.legis.nd.gov/cencode/t62-1c02.html) governs possession of weapons.

- See Section 62.1-02-01 for laws related to individuals who cannot possess firearms.

- See Section 62.1-02-01.1 for laws related to restoring the right to possess firearms due to a felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon.
- See Section 62.1-02-01.2 for laws related to mental disability and restoring the right to possess firearms.

**Rule 5.4 of the North Dakota Rules of Court** [www.ndcourts.gov/legal-resources/rules/ndrct/5-4](http://www.ndcourts.gov/legal-resources/rules/ndrct/5-4) relates to where to file a petition for restoration of the right to possess firearms.

**The North Dakota Rules of Criminal Procedure** apply criminal matters in North Dakota state district courts. The rules are found at [www.ndcourts.gov/legal-resources/rules/ndrcrimp](http://www.ndcourts.gov/legal-resources/rules/ndrcrimp).

**The North Dakota Rules of Court** apply to civil and criminal matters in North Dakota state district courts. The rules are found at [www.ndcourts.gov/legal-resources/rules/ndrct](http://www.ndcourts.gov/legal-resources/rules/ndrct).

**The North Dakota Rules of Evidence** apply to civil and criminal matters in North Dakota state district courts. The rules are found at [www.ndcourts.gov/legal-resources/rules/ndrev](http://www.ndcourts.gov/legal-resources/rules/ndrev).

**The North Dakota Rules of Civil Procedure** apply to civil matters in North Dakota state district courts. The rules are found at [www.ndcourts.gov/legal-resources/rules/ndrcivp](http://www.ndcourts.gov/legal-resources/rules/ndrcivp).

**North Dakota case law** is useful for interpreting what the law means for your individual circumstances. When the decision of a case is appealed from a North Dakota 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 followed by North Dakota courts deciding later cases with similar facts and issues.

You may use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries follow the text of the Century Code Section. To view the full text of the opinion, go to [www.ndcourts.gov](http://www.ndcourts.gov), click on the “Supreme Court Opinions” link, enter the case name or case citation.

**Laws constantly change through legislation, administrative rulings and case law (court decisions).** To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law (court decisions). Notes of case law (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 ARE THE PARTIES IN A PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?**

**Petitioner** –The individual who is petitioning a North Dakota state district court to restore the right to possess firearms.

**Respondent for rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon**

- The States Attorney in the county where the petition is being filed.

**Respondents for rights lost due to mental deficiency or disability**

- The director of the treatment facility and the prosecuting attorney of the county in which the original case was filed.

## **WHERE IS A PETITION TO RESTORE THE RIGHT TO FIREARMS FILED (VENUE)?**

**State Felony Conviction-** An individual who is prohibited from possessing a firearm due to a felony conviction in this state files their petition for restoration of firearms rights with the state district court in the county where the offense occurred.

**Out-of-State or Federal Conviction-** An individual who is prohibited from possessing a firearm due to a felony conviction in another state court or in a federal court must file their petition for restoration of firearms rights in the court where the rights of the individual were revoked.

- **STOP!** You **CANNOT** file a petition in a North Dakota state district court.

**Mental Disability-** An individual who is prohibited from possessing a firearm due to a mental disability may submit a petition for restoration of firearms to the North Dakota state district court that issued the finding of disability or the North Dakota state district court in the county where the petitioner resides.

**Out-of-State or Federal Finding of Mental Disability-** An individual who is prohibited from possessing a firearm due to an out-of-state court or federal court determination of mental deficiency or disability files their petition for restoration of firearms rights in the court where the rights of the individual were revoked.

- **STOP!** You **CANNOT** file a petition in a North Dakota state district court.



## **LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION**

You are not required to hire a lawyer to bring a civil action in 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.

### **Lawyer Resources**

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](http://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](http://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](http://www.ndcourts.gov/Lawyers).

### **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 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 legal documents, 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 court appearances for you.

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

## SECTION TWO:

### THE PETITION PROCESS IN NORTH DAKOTA

#### **PART ONE: GATHER YOUR DOCUMENTATION**

If are prohibited from possessing a firearm due to an out-of-state or federal criminal conviction, **STOP!**

- You **CANNOT** file a petition in a North Dakota state district court.

If you are prohibited from purchasing, possessing or having control of a firearm due to an out-of-state or federal court determination of mental deficiency or disability, **STOP!**

- You **CANNOT** file a petition in a North Dakota state district court.

**If you are prohibited from possessing a firearm by a North Dakota state court, gather your documentation to include as exhibits to your petition.**

You must prove that you have met all of the requirements specified by North Dakota Century Code Chapter 62.1-02. *(A link North Dakota Century Code Chapter 62.1-02 is found on page 6 of this Informational Guide.)*

You make all the decisions on what documentation fulfills the North Dakota Century Code Chapter 62.1-02 requirements for restoration of firearms.

The list below is not a complete summary and meant only for example. Include documentation that you believe helps your specific case. If you need assistance, consult with a lawyer licensed to practice in North Dakota who can agree to represent you.

**Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:**

- Case number(s) of your North Dakota state court conviction(s).
- Affidavit(s) in support of the petition.
- Proof of payment for all fines; receipts/bank account statement.
- Other supporting documentation.

**Rights lost due to mental deficiency or disability:**

- Case number(s) of the North Dakota state district court findings revoking the right to purchase, possess or having control of firearms.
- Affidavit(s) in support of the petition.
- Supporting statements from medical professionals.
- Other supporting documentation.

**Make a copy of your documentation and type or write an exhibit identifier on each copy.** For example, Exhibit A, Exhibit B, Exhibit C. When you refer to your documentation in your petition, include the name you gave the Exhibit.

Make copies of your marked exhibits to serve on each Respondent in Part Three.

**PART TWO: CREATE AND PREPARE YOUR LEGAL DOCUMENTS****Determine the Respondent(s):**

Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:

- The States Attorney in the county where the petition is being filed.

Rights lost due to mental deficiency or disability:

- The director of the treatment facility; and
- The prosecuting attorney of the county in which the original case was filed.

**Determine the Case Number for the Petition:**

If you are prohibited from possessing a firearm due to a North Dakota state criminal conviction you may submit your petition in the existing North Dakota criminal case, or submit your petition as a new civil case.

- If you submit your petition in the existing North Dakota case, the case number will be the same as the case number of the existing criminal case.
- If you submit your petition as a new civil case, leave the case number blank on your summons and petition. A case number will be assigned by the clerk of district court in Part Four, if your petition is accepted for filing.

If you are prohibited from possessing a firearm due to a finding mental deficiency or disability by a North Dakota state district court, you may submit your petition to the North Dakota state district court that issued the finding of disability, or the North Dakota state district court in the county where you reside.

- If you submit your petition in the existing North Dakota state district court case, the case number will be the same as the case number of the existing case.
- If you submit your petition as a new civil case, leave the case number blank on your summons and petition. A case number will be assigned by the clerk of district court in Part Four, if your petition is accepted for filing.

**Prepare the Summons** *(required if submitting petition as a new civil case):*

- If you submit your petition as a new civil case, prepare a summons.
- A General-Use summons form for a petition is available at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

**Create the Petition to Restore the Right to Possess Firearms:**

At minimum the petition must include the following:

- Statements of subject matter jurisdiction of the North Dakota district court and personal jurisdiction of the North Dakota district court over the persons named in the petition.
  - Subject matter jurisdiction: The specific law(s) that relate to the subject of the petition that give the district court authority to hear and determine the petition.
  - Personal jurisdiction: How the district court has authority over each of the persons named in the petition. (See [Rule 4 of the North Dakota Rules of Civil Procedure](#).)
- Statement of why the North Dakota county is the proper venue for the petition.
  - *(See page 8 of this Informational Guide for information on where to file the petition.)*
- List the all of the case number(s) of the North Dakota state court case(s) that revoked your right to firearms.
  - **DO NOT** list federal court or other state court case(s).
- Statements of 1) the reasons why you are bringing the petition; 2) the steps you took to meet the North Dakota Century Code Chapter 62.1-02 requirements for firearm restoration; and 3) why the North Dakota district court should restore the right.
  - Include references to your documentation by using the exhibit letters you assigned when you marked your exhibits in Part One.

- Requests for relief, also called demands of relief.
  - Tell the court what you want the court to do.
- Dated and signed by you, the Petitioner.
  - Directly following your signature, write or type your printed name, address and phone number.
- Your verification of the correctness, truth or authenticity of the petition.
  - Your notarized verification statement comes after the date and signature block on the petition.

You may find two general-use forms useful as a starting point for creating your petition. The general-use forms are available at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

- Caption and Signature (Petition) Form
- Verification (Petition) Form

### **Make Copies of the Completed Documents:**

Make a copy of the completed summons and petition for each Respondent you listed in the summons and petition. You will serve the copy of the summons and petition on each Respondent in Part Three.

Make a copy of the completed summons and petition for your records.

## **PART THREE: SERVE COPIES OF THE PETITION DOCUMENTS ON EACH RESPONDENT**

### **Service of Petition for Rights Lost Due to Felony Conviction or Class A Misdemeanor Offense Involving Violence or Intimidation and the Use of a Dangerous Weapon:**

The Respondent must be served with one copy of the following completed documents:

- Summons (*required if submitting petition as a new civil case*)
- Petition
- Exhibits (*if any*)

You must provide proof of service on each Respondent to the North Dakota state district court.

A completed and signed affidavit of service from the person who served the documents is your proof of service. If you do not provide proof of service to the district court, the court will not act on your petition. (*You will file proof of service in Part Four.*)

For information about the requirements and process for serving a summons and petition to start a civil action, including blank affidavit of service forms, are available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action).

Carefully review the information in the “Service After a Civil Action Has Started” section of the webpage.

### **Service of Petition for Rights Lost Due to Mental Deficiency or Disability:**

**\*\*For individuals petitioning to restore their rights lost due to mental deficiency or disability, you must serve both the prosecuting attorney and the treatment facility director.\*\***

The Respondents must be served with one copy of the following completed documents:

- Summons (*required if submitting petition as a new civil case*)
- Petition
- Exhibits (*if any*)

You must provide proof of service on each Respondent to the North Dakota state district court.

A completed and signed affidavit of service from the person who served the documents is your proof of service. If you do not provide proof of service to the district court, the court will not act on your petition. (*You will file proof of service in Part Four.*)

For information about the requirements and process for serving a summons and petition to start a civil action, including blank affidavit of service forms, are available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action).

### **Each Respondent Has 20 Days from Service to Respond to the Petition:**

Each Respondent has 20 days from the date they were served the copy of the summons, petition and exhibits (*if any*) to respond or “answer” the petition. An answer is a written response by a Respondent to your petition to restore your right to possess firearms.

## **PART FOUR: FILE THE ORIGINAL PETITION DOCUMENTS WITH THE CLERK OF COURT; FILE PROOF OF SERVICE ON EACH RESPONDENT**

After serving each respondent, file the originals of the following completed documents with the clerk of district court:

- Summons (*required if submitting petition as a new civil case*)
- Petition
- Exhibits (*if any*)
- Proof of Service on Each Respondent

**If you are filing in your existing criminal case:**

If the clerk of the North Dakota state district court accepts your documents for filing you will not be charged a filing fee.

**If you are filing in a new civil case:**

If the clerk of the North Dakota state district court accepts your documents for filing the clerk will assign a case number.

You will be required to pay an \$160.00 filing fee.

If you are unable to afford the \$160.00 filing fee, forms and instructions for asking the court to waive the \$160.00 filing fee can be found at: [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver).

**\*\*\*Filing a document is not the same as serving a document. Filing does not meet the requirements of service. Proof of service of the document(s) must be filed with the court. (See Part Three.)\*\*\***

**PART FIVE: AFTER THE PETITION IS FILED**

After the petition is filed, the case is assigned to a judge. The judge reviews the documents filed in the case and makes decisions.

**You May be Required to Provide Additional Information to the Court:**

After reviewing the documents you filed, the judge may require you to provide additional information before the court will act on your petition. It is up to you to follow up on anything the court requires you to do.

**The Judge May Decide your Petition Based Only on the Documents Filed:**

After reviewing the documents you and any Respondents filed, the judge may grant or deny your petition without holding an in-person hearing.

**The Judge May Decide to Hold an In-Person Hearing:**

After reviewing the documents you and any Respondents filed, the judge may decide to hold an in-person hearing before deciding whether to grant or deny your petition.

If the judge decides to hold a hearing, the court notifies you in writing of the date, time and location of the hearing.

At the hearing, you, the Petitioner, must prove the information you provided in your petition. Each Respondent may present evidence to disprove the information you provided in your petition.

**Caution!** Preparing for a hearing is often a complex and confusing process. You are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. You will need to conduct additional research to prepare.

At minimum, review and research the laws and rules listed throughout this Informational Guide. You will use the North Dakota Rules of Evidence, in particular, to present your evidence and object to each Respondent's evidence.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

#### **If Your Petition is Dismissed:**

Review the order dismissing your petition.

If your petition is dismissed with prejudice, you cannot re-file the petition.

If your petition is dismissed without prejudice, you may re-file the petition at a later date.

This North Dakota Legal Self Help Center resource was created by Mallory Block, as part of the University of North Dakota School of Law Externship Program, Summer 2017.

#### **Appendices:**

- **A formatting example of a summons in a new civil case.**
- **A formatting example of a petition in a new civil case.**
- **A formatting example of an affidavit of petitioner.**
- **A formatting example of a proposed order to restore the right to possess firearms.**



**This example is provided for general formatting purposes ONLY. As a self-represented individual, you must determine the laws that apply to your North Dakota state district court action, create the content of your legal documents, and determine if the documents you create are legally sufficient. The ND Legal Self Help Center can't review your documents or advise you.**

STATE OF NORTH DAKOTA	IN DISTRICT COURT
COUNTY OF XXXXXXXXXX	XXXXXXXXXXXX JUDICIAL DISTRICT
John Doe	Case No. XX-20XX-CV-00XXX
PETITIONER,	
vs	PETITION FOR RESTORATION OF RIGHT
State of North Dakota	TO POSSESS FIREARMS
RESPONDENT.	

1. An individual prohibited from possessing a firearm due to a conviction of a felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court for restoration of the individual's firearm rights. If the felony offense was committed in this state, the petition must be filed with the district court in the county where the offense occurred. If the offense was a felony of another state or the federal government, the petition must be filed in the venue where the rights of the individual were revoked. A copy of the petition must be served on the state's attorney's office in the county where the petition is filed in accordance with Rule 5 of the North Dakota Rules of Civil Procedure. The state's attorney's office has twenty days to file a written response to the petition with the district court.
2. The district court may restore the right of an individual to possess a firearm if the court determines, by clear and convincing evidence, that all of the following circumstances exist:
  - a. The individual has paid all fines imposed for the violation resulting in the prohibition;
  - b. The individual has served all terms of imprisonment imposed for the violation resulting in the prohibition;

**FORMATTING EXAMPLE OF A PETITION – USE AT YOUR OWN RISK**

- c. The individual has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition; and
  - d. The individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.
2. Jurisdiction is proper in XXXXXX County, North Dakota. Petitioner resides in XXXXXXXXXXXX, North Dakota. Petitioner's criminal conviction arose out of XXXXXXXX County District Court in the State of North Dakota.
3. To Petitioner's knowledge, he is currently prohibited from possessing a firearm due to a felony burglary conviction resulting from a guilty plea entered on or about January 5, 20XX in XXXXXXXX County, North Dakota, case number XX-20XX-CR-000XX.
4. To Petitioner's knowledge, no other government, jurisdiction, or entity has ever restricted his right to possess, purchase or own firearms, other than the State of North Dakota.
5. Photocopies of Petitioner's public criminal records are attached as EXHIBIT 1.
6. As of January 31, 20XX, Petitioner successfully completed his sentence for the above conviction, including the payment of all fines and fees, imprisonment, and probation.
7. Petitioner's record and reputation are such that he is not likely to act in a manner dangerous to the safety of others.
8. Petitioner's affidavit outlining the reasons for his request is attached as EXHIBIT 2.
9. The affidavit of Petitioner's employer showing Petitioner's reputation as a law abiding individual who poses no risk or danger of safety to others is attached as EXHIBIT 3.
10. The affidavit of Petitioner's neighbor showing Petitioner's reputation as a law abiding individual who poses no risk or danger of safety to others is attached as EXHIBIT 4.

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11. The Petitioner meets all the statutory requirements for restoration of his right to own and possess firearms. The Petitioner respectfully requests that the Court issue an Order granting this request.

Dated this 20th day of September, 20XX

*(Signature of Petitioner, John Doe)*, Petitioner

John Doe

XXXXXX E XXth Street,

City of XXXXXXXXXXXX, North Dakota 58XXX

Phone Number: (701) XXX-XXXX

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**The ND Legal Self Help Center can't review your affidavit or advise you.**

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9. I have substantial training in the safe use of firearms and have successfully completed hunter safety education. I understand and appreciate safe firearm handling requirements.
10. I do not and will not act in any manner likely to endanger others.
11. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Affidavit is true and correct.

STATE OF NORTH DAKOTA    )  
  )  
COUNTY OF XXXXXXXXXXXX    )  
  )  
COUNTRY OF UNITED STATES)

Signed on this 20th day of September, 20XX.

*(Signature of Petitioner, John Doe),* Petitioner

John Doe  
XXXXXX E XXth Street,  
City of XXXXXXXXXXXX, North Dakota 58XXX  
Phone Number: (701) XXX-XXXX

STATE OF NORTH DAKOTA	)	IN DISTRICT COURT
COUNTY OF XXXXXXXXXX	)	XXXXXXXXXXXX JUDICIAL DISTRICT
John Doe	)	Case No. XX-20XX-CV-00XXX
PETITIONER,	)	
vs	)	ORDER RESTORING RIGHT
State of North Dakota	)	TO POSSESS FIREARMS
RESPONDENT.	)	

- Page 1 of 3

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**FORMATTING EXAMPLE OF A PROPOSED ORDER – USE AT YOUR OWN RISK**

5. The Petitioner has served all terms of imprisonment imposed for the violation resulting in the prohibition.
6. The Petitioner has successfully completed all conditions of probation imposed for the violation resulting in the prohibition.
7. The Petitioner's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.
8. According to Section 62.1-02-01.1 of the North Dakota Century Code, a person who has been dispossessed of the right to possess firearms as a result of a felony conviction may petition the Court for an Order restoring the right to own and possess firearms. Upon clear and convincing proof of successful completion of probation, and similar proof that a Petitioner is not likely to act in a manner dangerous to others, the Court may restore the right to possess firearms for a person whose right was revoked as a result of a felony conviction.
9. Based upon the foregoing, the Court hereby **ORDERS** as follows:
10. The Petitioner's right to own and possess firearms is hereby **RESTORED**, subject to whatever federal restrictions may remain in place since this order addresses North Dakota state firearm laws and not federal firearm laws.
11. The Petitioner is cautioned that this Order affects his right to possess a firearm solely within the State of North Dakota. The Petitioner is instructed to make proper legal inquiry before attempting to purchase or possess a firearm in another state, as the law of the State may preclude Petitioner's firearm possession irrespective of this Order.



**FORMATTING EXAMPLE OF A PROPOSED ORDER – USE AT YOUR OWN RISK**

12. **IT IS FURTHER ORDERED** that the Clerk of Court shall provide a signed copy of this Order to the Petitioner, Counsel for the State of North Dakota, and to the records division of the North Dakota Bureau of Criminal Investigation.

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Judge of District Court

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