



ADOPTION

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 courts.

The information provided in this research guide IS NOT a complete statement of the law. This information is intended as a starting point for your research into adoption in North Dakota. This information is not intended for legal advice and cannot replace the advice of competent legal counsel licensed to practice law in the state of 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 does not 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.

*(Neither the North Dakota Legal Self Help Center nor the North Dakota Court System have forms or instructions available specifically for use in adoption cases. **If you represent yourself, you will need to create your own adoption legal documents, or retain an attorney to do so.***

The basic steps in the adoption court process start on Page 6. The steps include the names and general descriptions of some of the legal documents you will need to create and prepare.)

OVERVIEW OF ADOPTION:

What is adoption?

Adoption is a civil court process in North Dakota state district court that creates the relationship of parent and child between the individual petitioning to adopt and the adopted individual.

The adopted individual is considered a legitimate blood descendant, for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

Are adoption cases confidential?

Yes. Adoptions are confidential cases in North Dakota state district court.

The documents filed in an adoption case cannot be viewed by the public. Adoption cases are not included in the online public court records search.

Who may be adopted?

Any individual may be adopted. This includes both adults and minors.

- Adults are 18 years of age or older.
- Minors are under 18 years of age.

Who may adopt?

The following individuals may adopt:

- A husband and wife together, even when one or both are minors.
- An unmarried adult.
- The unmarried father or mother of the individual to be adopted.
- A married individual without the other spouse joining as a petitioner, **if** the individual to be adopted **is not** the adopting person's spouse, **and if**:
 - The petitioner is a step-parent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;
 - The petitioner and the other spouse are legally separated; or
 - The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court.

Does North Dakota law require people to consent to adoption?

Yes, North Dakota adoption law includes requirements for consent to adoption. Whether consent is required depends on the specific circumstances of the adoption.

Review Section 14-15-05 of the North Dakota Century Code for the list of persons who are required to consent to adoption.

<https://www.legis.nd.gov/cencode/t14c15.pdf#nameddest=14-15-05>

Are there any exceptions to the consent requirements?

Yes, North Dakota adoption law includes exceptions to the requirements for consent to adoption. The exceptions depend on the specific circumstances of the adoption.

Review Section 14-15-06 of the North Dakota Century Code for the list of exceptions to persons who are required to consent to adoption.

<https://www.legis.nd.gov/cencode/t14c15.pdf#nameddest=14-15-06>

NOTE: In some circumstances, notice of the adoption hearing or hearings must still be given to individuals whose consent to the adoption is not required.

What are some of the differences when a step-parent adopts a minor?

Some of the requirements for adopting a minor **do not** apply in a step-parent adoption of a minor.

For example:

- The step-parent may not be required to provide an accounting to the court of expenditures connected to the adoption.
- The investigation into whether the proposed adoptive home is suitable is not required for step-parent adoption.
- The six-month waiting period for a final decree of adoption is not required for step-parent adoption.

What are some of the differences for adoption of an adult?

Some of the requirements for adopting a minor do not apply in adoption of an adult.

For example:

- The investigation into whether the proposed adoptive home is suitable is not required for adoption of an adult.

Other differences include:

- The adult to be adopted **must** give their written consent.
- If the adult to be adopted has a spouse, the spouse **must** give their written consent.
- Written consent of biological parents **is not** required, **but** notice of the hearing on the petition for adoption **must** be given to each living parent of the adult to be adopted.

Can I petition the court to validate an internationally decreed adoption?

Yes, North Dakota law includes a civil court process to recognize or validate an adoption granted by an international court.

Review Section 14-15-17 of the North Dakota Century Code for the requirements.

<https://www.legis.nd.gov/cencode/t14c15.pdf#nameddest=14-15-17>

Information about the process is also available through the North Dakota Department of Human Services website.

Go to <http://www.nd.gov/dhs/services/childfamily/adoption/steps.html>. Review the information in the final step – “Complete the legal procedures.”

ADOPTION LEGAL RESEARCH RESOURCES

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found online at <http://www.legis.nd.gov/general-information/north-dakota-century-code>.)

Chapter 14-13: Interstate Child Placement Compact.

<http://www.legis.nd.gov/cencode/t14c13.html>

Chapter 14-15: Revised Uniform Adoption Act.

<http://www.legis.nd.gov/cencode/t14c15.html>

Chapter 14-15.1: Child Relinquishment to Identified Adoptive Parents

<https://www.legis.nd.gov/cencode/t14c15-1.html>

FEDERAL STATUTES:

(Federal statutes are found in the United States Code (USC). The United States Code contains the laws enacted by the United States Congress. The USC is found online at <http://uscode.house.gov/>.)

25 U.S.C. §§ 1901-1963: Indian Child Welfare Act (ICWA)

<http://uscode.house.gov/browse/prelim@title25&edition=prelim>

Applies to minor children who are **1)** members or citizens of a Native American tribe; **or 2)** eligible for membership or citizenship in a Native American tribe **and** the biological child of a member or citizen of the tribe.

NORTH DAKOTA CASE LAW:

(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 are followed by North Dakota courts deciding later cases with similar facts and issues.)

One way to research case law related to adoption 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, go to www.ndcourts.gov, click on the "Opinions" link and enter the case name or case citation.

You may also research case law by topic at www.ndcourts.gov. Click on the "Opinions" link, the "By Topic" link, and then on the link for "Adoption."

NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to state court and how the dispute is conducted. All of the court rules are found online at <http://www.ndcourts.gov/Rules/>.)

At minimum, review the following:

North Dakota Rules of Civil Procedure: <http://www.ndcourts.gov/rules/civil/frameset.htm>.

North Dakota Rules of Court: <http://www.ndcourts.gov/rules/NDROC/frameset.htm>.

North Dakota Rules of Evidence: <http://www.ndcourts.gov/rules/evidence/frameset.htm>.

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.

Legal advice can only be given by a lawyer licensed to practice in North Dakota who has agreed to represent you. 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. (<http://www.odin.nodak.edu/>)

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

Adoption Law Handbook: Practice, Resources, and Forms for Family Law Professionals, Jennifer Fairfax, American Bar Association, 2011.

The Legal Answer Book for Families, Emily Doskowauthor, Marcia Stewart, NOLO, 2014.

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. (www.aallnet.org)

The North Dakota Department of Human Services maintains a website with adoption information. The link to the website is <http://www.nd.gov/dhs/services/childfamily/adoption/>.

BASIC COURT PROCESS FOR ADOPTION:

CAUTION !!

Individual Courts May Have a Differently Ordered Process AND/OR Additional Requirements to the Basic Process!!

The adoption process is complicated and highly dependent on the specific circumstances of the adoption case. The information that follows is the basic court process for adoption.

HOWEVER, there are many possible variations to the basic process.

Individual state district courts may require you to follow a differently ordered process than the basic process that follows. Individual state district courts may have additional requirements to those that follow.

If you feel you need assistance, consult a lawyer licensed to practice in North Dakota.

Parties in an Adoption:

Petitioner: The self-represented individual bringing the adoption petition. There may be more than one petitioner.

Respondent: The person responding to or answering the petition. There may be more than one respondent.

Adoption Documents to Start the Case:

In general, the following documents must be filed with the North Dakota state district court:

- Adoption Petition
 - Verification of Petitioner
- Written Consent(s) of People Required to Give Consent

Adoption Petition Requirements:

Refer to North Dakota Century Code Sections 14-15-04 and 14-15-09 to determine the minimum requirements of what must be included in the petition for adoption. Other sections of Chapter 14-15 may apply. Review the Chapter carefully!

The verification of the petitioner directly follows the date and signature on the petition document.

- Verification of the adoption petition is a sworn statement of the correctness, truth or authenticity of the document by the petitioner.

Written Consent(s) Requirements:

Refer to North Dakota Century Code Sections 14-15-05 and 14-15-06 to determine the people who are required to give written consent. Other sections of Chapter 14-15 may apply. Review the Chapter carefully!

Filing the Original, Completed Adoption Documents:

The petitioner files their original adoption documents, including written consent of people required to consent, with the district clerk of court. Make copies of all documents for your records.

An \$80.00 filing fee is required to be paid at the time of filing.

Forms and instructions to ask the court to waive the filing fee can be found on the ND Legal Self Help Center at <http://www.ndcourts.gov/ndlshc/OtherForms/WaiverFees/WaiverofFees.aspx>.

The completed fee waiver request forms are filed at the same time as the adoption documents.

Request a Hearing on the Petition for Adoption:

A court hearing on the petition for adoption is required.

If the adoption documents are accepted by the clerk of district court for filing, the petitioner requests a hearing on the petition for adoption. Follow the requirements of the individual state district court for requesting a hearing.

After the hearing date is scheduled, the clerk of court may serve notice of the hearing, or the petitioner may be required to prepare and serve notice of the hearing.

Serving Copies of the Adoption Documents:

Serving (giving) copies of the adoption documents is an important step in the legal process.

The service rules are in Rule 4 of the North Dakota Rules of Civil Procedure.

Review North Dakota Century Code Chapter 14-15 to determine who must be served the notice of hearing on the adoption petition. See Sections 14-15-06 and 14-15-11, in particular.

Proof of service of the following documents is required for each respondent and each person required to receive notice of the hearing:

- Notice of Hearing on the Adoption Petition
- Adoption Petition
 - Including Verification of Petitioner

An affidavit of service is the proof of service. However, if a sheriff served the documents, a certificate of service is the proof of service.

The document showing proof of service must be filed with the clerk of district court.

The court will not act on the adoption petition until proof of service is filed for all respondents on all people who must be provided with notice of the hearing.

Information about service to start a civil action and blank proof of service forms are available at www.ndcourts.gov/ndlshc by clicking on the “Service” link.

Respondents Attend the Hearing to Present Objections:

In general, when a respondent is served a Notice of Hearing on the Adoption Petition and a copy of the Adoption Petition, if the respondent objects, the respondent must appear at the hearing to have their objections heard by the court.

Read the notice of hearing carefully and follow the requirements.

NOTE: In some adoption cases, the adoption case may start by serving a Summons and a copy of the Adoption Petition on each respondent, rather than serving a notice of hearing and a copy of the adoption petition.

This research guide does not include information on the process of answering a Summons and Adoption Petition.

If you are a respondent who was served a Summons and a copy of the Adoption Petition, review the following resources for more information on the answer process available at www.ndcourts.gov/ndlshc, “Guide to Civil Action” link:

Guide to a Civil Action

Answering a Civil Summons and Complaint - Checklist

Prepare Your Case:

The petitioner must prove the allegations in your adoption petition and the grounds (reasons) for the adoption.

Each respondent may present evidence to disprove the petitioner's allegations and proof.

Caution! Preparing a case 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 above. You will use the North Dakota Rules of Evidence, in particular, to present your evidence and object to the 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.

Attend the Hearing

There may be more than one hearing, depending on the specific circumstances of the case. Be prepared for every hearing.

Organize the information, documents, etc. that you think you will need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Arrive Early to the Courthouse on the Date of the Hearing:

Do not miss your hearing date and time. If you have a serious, unavoidable reason you cannot get to court on the date and time scheduled for trial, call the courthouse as soon as you can.

Conduct of the Hearing:

The judge hears both sides and then issues a final judgment. Sometimes, the final judgment is issued at the end of the hearing. Often, the final judgment is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
 - Each party gives an opening statement. Usually, the petitioner goes first.
- Petitioner Presents Witnesses and Evidence
 - The petitioner presents their case first.
 - The respondent may cross-examine witnesses and object to the petitioner's evidence.

- Respondent Presents Witnesses and Evidence
 - The respondent presents their case after the petitioner.
 - The petitioner may cross-examine witnesses and object to the respondent's evidence.
- Closing Arguments
 - Each party gives a closing statement. Usually the Respondent goes first.

The judge of the district court will decide if the petitioner proved the grounds for the adoption. If the judge decides the petitioner proved the grounds for adoption, the adoption will be finalized.

Before You Leave the Courthouse:

Make sure you understand what happens next. Ask if you are not sure what, if anything, you need to do next.

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GENERAL-USE TEMPLATE FORMS:

The North Dakota Legal Self Help Center **does not** have forms or instructions available for adoption. If you decide to represent yourself, you will need to create your own legal documents, or retain an attorney to do so.

Although the ND Legal Self Help Center does not have forms or instructions for adoption, the following General-Use template forms are available in the Guide to a Civil Action. You may find the General-Use template forms useful as a starting point for creating your own adoption legal documents.

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

The Guide to a Civil Action is available at www.ndcourts.gov/ndlshc/ by clicking on the "Guide to Civil Action" link.

Legal Services of North Dakota created a Family Law Manual for lawyers. The Family Law Manual is available at <http://www.legalassist.org/?id=128&page=ND+Family+Law+Manual>. There are examples of documents available under the "Adoption" section. You may find the examples of interest for general formatting purposes.

(The reference to the Legal Services of North Dakota Family Law Manual is for formatting only. Including this reference does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the Family Law Manual. Use at your own risk.)

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

You are responsible for the information on the documents you file with the court.

ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:

You are not required to hire an attorney to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

Attorney Resources

If you decide to find an attorney 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 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.
- 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

Attorneys licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney 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 attorney 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 paperwork, 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 attorney must agree in writing to Limited Legal Representation.