

Instructions to Answer a Motion to Limit Non-Party Access or Availability to Audio Recordings of Court Proceedings

Important! Read Before Using this Packet of Forms.

ND Legal Self Help staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

ND Legal Self Help Center forms **aren't** official court forms. Judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer for information about finding a lawyer to represent you.

When you represent yourself, you're expected to know and follow the law, including:

- 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; and
 - Any local court rules.

Links to the state laws, case law, and court rules can be found at ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help.

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

These instructions and forms **aren't** a complete statement of the law. They cover the basic procedure for answering a Motion (request) for an order limiting access or availability of audio recordings of court proceedings in civil and criminal cases. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided. Use these forms and instructions at your own risk.

★Don't Delay!★ You have limited time to answer a Motion!

- ➔ You have 14 days to answer if served by personal delivery or at your office.
- ➔ You have 17 days to answer if served by mail or third-party carrier.

(See Page 4 to calculate your deadline.)

What is a Court Proceeding?

In general, a court proceeding is a hearing or trial held in a civil or criminal court case. Many court proceedings are recorded.

Who May Use These Forms?

If you object, or disagree, with the Motion for an Order limiting non-party access to or availability of audio recordings of court proceedings in a case, this form set is your formal, written Answer to the Motion.

[Rule 40, Section 2\(c\) of the North Dakota Supreme Court Administrative Rules](#) allows a person to make a Motion for an Order to limit non-party access to or availability of audio recordings of a court proceeding.

[Rule 3.2 of the North Dakota Rules of Court](#) requires a person who objects, or disagrees, with the Motion to serve and file a formal, written response.

- This form set includes the documents that are generally required when you answer a Motion.

You may use these forms if you oppose (disagree with) the request in the Motion, and:

- **You're a self-represented party in the case** and you've been served a Motion to limit access to or availability of audio recordings of court proceedings by another party, witness, or victim in the case;
- or
- **You're a self-represented person or entity identified in the audio recording** and you've been served a Motion to limit access to or availability of audio recordings of court proceedings by another party, witness, or victim in the case.

Caution! A self-represented individual may only represent themselves when using this packet of forms. An individual can perform the functions of a lawyer for themselves at their own risk. This is called legal self-representation.

- An individual **can't** delegate legal self-representation to a non-lawyer. Legal documents signed by a non-lawyer on behalf of a self-represented individual are considered void.

Who are the Parties in this Motion?

Plaintiff/Petitioner: The party (or parties) listed as the Plaintiff or Petitioner in the civil or criminal case.

Defendant/Respondent: The party (or parties) listed as the Defendant or Respondent in the civil or criminal case.

Moving Party: The self-represented Plaintiff/Petitioner, Defendant/Respondent, witness, or victim making the Motion to Limit Access or Availability to Audio Recording.

Opposing Party: (Also called the **Non-moving Party**.) The other party (or other parties) in the case. In other words, the party or parties who didn't bring the Motion and must answer the Motion.

The Opposing Party may also be a person or entity identified in the audio recording. If the judge or judicial referee requires the moving party to serve the Motion on a person or entity identified in the recording, they may be allowed to answer the Motion.

(This space left intentionally blank.)

Four Steps To Answer A Motion For An Order To Limit Access Or Availability To Audio Recording

Step 1 – Calculate your Deadline to Answer the Motion.

You have 14 calendar days to answer if you were served the Motion by personal delivery or at your office.

- The date of service is the date the Motion was personally delivered or left at your office.

You have 17 calendar days to answer if you were served the Motion by mail or third party commercial carrier.

- The date of service is the date the Motion was mailed.
- Keep the envelope with the postmarked date for reference.

When calculating the days of your deadline:

- Don't include the date of service.
- Count by calendar days, including Saturdays, Sundays, and State holidays.
- Include the last day of deadline, **but** if the last day is a Saturday, Sunday, or State holiday, the deadline continues to run until the end of the next day that **isn't** a Saturday, Sunday, or State holiday.

If you, the opposing party, object to (disagree with) the Motion and you **don't** serve and file a formal, written Answer, the judge or judicial referee is allowed to assume that you believe the Motion has merit.

Step 2 – Complete Form 1 and Form 2.

Complete the following forms in the packet:

- Form 1: Answer Brief to Motion to Limit Access or Availability to Audio Recording; and
- Form 2: Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording.

You must complete both forms.

Form 1: Answer Brief to Motion to Limit Access or Availability to Audio Recording

This form is your required written explanation of why you, the opposing party, object to (disagree with) the moving party's Motion. The Answer Brief takes the relevant laws or rules and explains how they apply to the facts that support your objections.

Top of Form (Caption): Fill in the caption exactly as it appears in the moving party's Notice of Motion.

Review and complete all Paragraphs of the form.

- Paragraphs 2 through 3, and Paragraphs 8 through 9 must be completed.

Date and Signature: Complete the date and signature block.

- Fill in the date you signed this document.
- Sign the signature line.
- Print your name.
- Fill in the address lines. If you have a physical address and a mailing address, type or write both addresses using the lines provided, and the space below the address lines.
- Fill in the telephone number and email address.

Form 2: Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording

This form is your required written statement of fact. The Declaration must be dated and signed by you, the opposing party.

Top of Form (Caption): Fill in the caption exactly as it appears in the moving party's Notice of Motion.

- Fill in your full name in the first sentence directly below the Caption.

Complete Paragraphs 1 through 3.

Review Paragraph 4 carefully! You're stating under penalty of perjury that everything you stated in the Motion is true and correct.

Date and Signature: Complete the date and signature block.

- Fill in the date you signed this document.
- Fill in the city, county, state, and country where you signed this document.
- Sign the signature line.

- Print your name.
- Fill in the address lines. If you have a physical address and a mailing address, type or write both addresses using the lines provided, and the space below the address lines.
- Fill in the telephone number and email address.

Step 3 – Serve Completed Form 1 and Form 2 on All Other Parties.

Service is providing copies of your completed Answer to Motion documents to the moving party and all other parties in the case.

The court won't act on your answer to Motion until you file proof of service with the court. A Declaration of Service gives the court proof of service.

Make at least two copies of the following completed forms:

- Form 1: Answer Brief to Motion to Limit Access or Availability to Audio Recording; and
- Form 2: Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording.

Keep one copy for your records. You arrange to serve the other copy or copies on the moving party and all other parties in the case. You file the originals with the Clerk of Court in Step 4.

Arrange to serve the copies on the moving party and all other parties by mail:

- Put the copies in an envelope.
- Address the envelope with the moving party or the other party's last known address.
 - If you know the moving party or other party is currently represented by a lawyer, address the envelope with the lawyer's address.
- List your address as the return address on the envelope.
- Put the correct first class postage on the envelope.
 - Postage must be prepaid.
 - **It's very important to put the correct postage on the envelope.** If you don't, the envelope may be returned to you.
- Service by mail is complete upon mailing.

Form 3: Declaration of Service by Mail

The person who mailed the envelope **must** complete Form 3: Declaration of Service by Mail.

- If the envelope is mailed at a United States Post Office, the United States Post Office employee **doesn't** complete Form 3: Declaration of Service by Mail.

Complete the Caption exactly as it appears in the moving party's Form 1: Notice of Motion.

- Follow the directions on the form.
- Make **one copy** of the completed, dated, and signed Declaration of Service by Mail form for your records.

You file the original Declaration of Service by Mail with the Clerk of District Court in Step 4.

Service by mail is a common way to serve Motion documents. However, there are other ways to serve your documents.

To review other service options, go to "[Service After a District Court Civil Action Has Started](#)".

Step 4 – File the Original Forms with the Clerk of Court.

File the following original, completed forms with the Clerk of Court.

- Form 1: Answer Brief to Motion to Limit Access or Availability to Audio Recording; and
- Form 2: Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording; and
- Form 3: Declaration of Service for the moving party and each other party served.

You'll be notified in writing by the court if the moving party's motion is granted or denied.

State Of North Dakota

In District Court

County Of _____

_____ Judicial District

Plaintiff/Petitioner,
vs

Defendant/Respondent.

)
) Case No. _____
)
) **Answer Brief to Motion to**
) **Limit Access or Availability to**
) **Audio Recording**
)
)

1. The opposing party files this Answer Brief to object to the moving party's Motion under [N.D.Sup.Ct.Admin.R. 40, Section 2\(c\)](#) asking the Court to enter an Order limiting access or availability to non-parties of audio recordings of court proceedings in this case.

Facts

2. The above-named case is one for (*state type of case*) _____.
3. The opposing party was served with the Motion to Limit Access or Availability to Audio Recording and supporting documents on (*date you were served the Motion and supporting documents*) _____.
4. The moving party claims there are relevant facts as to why they brought this Motion. The opposing party's response to this is stated in the Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording.

Law And Argument

5. [Administrative Rule 40, Section 2\(c\)](#) states that "[a] person seeking to limit access to or availability of an audio recording under subsection 2(b)(1) or (2) must submit a written motion to the Court."

6. Under subsection 2(b)(1) of Administrative Rule 40, a judge may limit access to or availability of an audio recording to a non-party if the recording of the court proceeding “would materially interfere with a party’s right to fair trial.”

7. Under subsection 2(b)(2) of Administrative Rule 40, a judge may limit access to or availability to a non-party of an audio recording of a court proceeding if “a witness or party has objected and shown good cause why it should not be available.”

8. The moving party claims that non-party access to or availability of audio recordings of the court proceedings in this case should be limited because *(select the reason(s) the moving party is requesting limits to access or availability)*:

☐ Access or availability would materially interfere with a party’s right to fair trial in this case.

☐ The moving party objects and has shown good cause why copies of the audio recordings should not be available.

9. The moving party does not meet the requirements of Administrative Rule 40, Section 2(c) to limit access or availability of audio recordings because *(take the facts from your Declaration and apply them to the requirements of Administrative Rule 40, Section 2(c). This is how you make your argument that the moving party doesn’t meet the requirements to get the order granted. If you want to include any of the moving party’s facts from their Declaration, you may do so here. Paragraph 9 continues on next pages)*:

(Paragraph 9, continued.)

(Paragraph 9, continued.)

10. The opposing party respectfully requests that the Court enter an Order denying the Motion to Limit Access or Availability to Audio Recording.

Dated _____.

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email Address

State Of North Dakota

In District Court

County Of _____

_____ Judicial District

Plaintiff/Petitioner,
vs

Defendant/Respondent.

)
) Case No. _____
)
) **Declaration in Support of Answer**
) **Brief to Motion to Limit Access or**
) **Availability to Audio Recording**
)

My name is _____. I understand that I must tell the truth.

1. I am the (*choose one*) ☐ Plaintiff/Petitioner ☐ Defendant/Respondent ☐ Other (*state relationship*) _____ in this case.

2. The moving party claims that non-party access to or availability of audio recordings of the court proceedings in this case should be limited because (*select the same options as Paragraph 8 of your Answer Brief to Motion*):

- ☐ Access or availability would materially interfere with a party's right to fair trial in this case.
- ☐ The moving party objects and has shown good cause why copies of the audio recordings should not be available.

3. I provide the following facts in response to the moving party's claims (*state your facts clearly and concisely. Facts can be proven true or false, such as who, what, when, where, and how. Any facts you use in Paragraph 9 of your Answer Brief to Motion must be included here.*

Paragraph 3 continues on next pages):

(Paragraph 3 continued.)

(Paragraph 3 continued.)

4. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration is true and correct.

Signed on _____ (date) in _____ (city),
_____ (county), _____ (state), _____ (country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email Address

State Of North Dakota

In District Court

County Of _____

_____ Judicial District

Plaintiff/Petitioner,

vs

Defendant/Respondent.

)
)
)
)
)
)
)

Case No. _____

Declaration of Service by Mail

The person serving court documents by mail states:

1. My name is _____ (*name of person who mailed documents*). I am at least 18 years of age.

2. List of Court Documents Served:

(*Use "Other" to write the title of each document served that isn't already listed. Otherwise, write "Not Applicable" on the "Other" line.*)

- Answer Brief to Motion to Limit Access or Availability to Audio Recording
- Declaration in Support of Answer Brief to Motion to Limit Access or Availability to Audio Recording
- Other: _____
- Other: _____

3. Service by Mail:

I served a true and correct copy of each of the court documents listed in Paragraph 2 by mailing them, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to the person(s) listed in Paragraph 5.

4. **Date of Service by Mail:**

Date Court Documents Were Served by Mail: _____

5. **Person(s) Served by Mail:**

Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

6. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Mail is true and correct.

Signed on _____ (date) in _____ (city),
_____ (county), _____ (state), _____ (country).

(Signature of Person Who Mailed Documents)

(Printed Name)

(Address) (City, State, Zip Code)

(Telephone Number) (Email Address)