

ANSWERING A DEBT COLLECTION SUMMONS AND COMPLAINT CHECKLIST

If you have any doubts about whether it's proper for the Plaintiff to sue you in North Dakota to collect a debt, consult a lawyer **IMMEDIATELY**, and **BEFORE** you serve or file any written response, answer, counterclaim or any other court paper.

You must serve a copy of your answer on each Plaintiff **within 21 days of service** of the summons and complaint.

This isn't a complete statement of the law.

An answer is a written response by a Defendant to a civil summons and complaint.

This is a basic checklist for answering a civil summons and complaint to collect a debt in North Dakota State District Court.

If you're unsure how to proceed, consult a lawyer licensed to practice in North Dakota who can agree to represent you.

The "[ANSWERING A SUMMONS AND COMPLAINT](#)" section of the [ND Legal Self Help Center webpage](#) has more information and resources, including general-use answer forms.

UNAUTHORIZED PRACTICE OF LAW – CAUTION!

This checklist may be used by a Defendant who is a natural person, also known as a human being. A natural person can perform the functions of a lawyer for themselves at their own risk. This is called legal self-representation.

This checklist may not be used on behalf of a Defendant who is an artificial person, also known as an entity created by law. An entity created by law includes a business, a corporation or a limited liability company. In general, an artificial person can't be represented in a North Dakota state district court by a non-lawyer. This is called unauthorized practice of law (UPL).

If the Defendant is an artificial person, consult a lawyer licensed to practice in North Dakota. Contact the State Bar Association of North Dakota Lawyer Referral Service at (866) 450-9579. An online directory of all lawyers licensed to practice in North Dakota is available at ndcourts.gov/lawyers.

Carefully Review the Summons and Complaint to Collect a Debt:

Carefully read the summons, complaint, and all papers you were served (*received*).

- The summons provides information about the deadline to serve your written answer to the complaint to collect a debt, who to serve, and the consequences of missing the deadline.
- The complaint lists the claims the Plaintiff is making against you.

Calculate the Deadline to Answer a Civil Summons and Complaint to Collect a Debt:

You, the Defendant, have twenty-one (21) days after you're served the summons and copy of the complaint to respond or "answer" the complaint. Your answer must be in writing.

See [Rule 12 of the North Dakota Rules of Civil Procedure](#) for more information about timeframes for serving an answer. See [Rule 6 of the North Dakota Rules of Civil Procedure](#) for more information about computing time.

- Date the summons and complaint were served on you, the Defendant: _____
- Using calendar days, calculate the date your written answer must be served on the Plaintiff(s): _____

How to Calculate:

- A. Don't include the day of the event that triggers the period (*the date you were served*);
- B. Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- C. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Make a Copy of the Complaint to Mark-Up:

Make at least one copy of the complaint to collect a debt. Using the following checklists, go through your working copy of the complaint with a pencil and make notes. Note any points you want to make in your answer.

Use your marked-up copy of the complaint, and the following checklists, to help you organize and prepare your written answer.

Jurisdiction:

For a Plaintiff to start a civil action, they must show that North Dakota State District Courts have

1. Subject matter jurisdiction; **and**
 - The North Dakota laws and/or rules that say the court can hear and make decisions about the case.
2. Personal jurisdiction.
 - The connection the Plaintiff(s) and Defendant(s) have to North Dakota.

(See the “Jurisdiction” section of the [Guide to a Civil Action](#) for additional information and legal research resources for subject matter jurisdiction and personal jurisdiction.)

- Research the [laws and/or rules](#) the Plaintiff included in their complaint.
- Do you agree that North Dakota State District Courts have subject matter jurisdiction over the collection of the debt the Plaintiff claims you owe? Yes No

If you **don’t** agree, explain why the laws and/or rules in the complaint **don’t** give subject matter jurisdiction to North Dakota State District Courts: _____

- Do you agree that North Dakota State District Courts have personal jurisdiction over each of the parties in the civil action? Yes No

If you **don’t** agree, explain why North Dakota State District Courts **don’t** have authority over each of the parties. ([Rule 4 of the North Dakota Rules of Civil Procedure](#) gives the definition of a “person” and the requirements for exercising personal jurisdiction over a person): _____

Statute of Limitations:

Statute of limitations is the amount of time allowed by law that a Plaintiff can bring a claim in a civil action. If the time has passed, the Plaintiff can’t bring the claim.

- Start your statute of limitations legal research with Chapter 28-01 of the North Dakota Century Code (legis.nd.gov/cencode/t28c01.html). If the debt collection action **doesn’t** relate to real estate, start your research with Section 28-01-16.

- The Section(s) of the North Dakota Century Code with the statute of limitation for collecting this debt is: _____

and the statute of limitations is _____ years.

- Do you agree that the Plaintiff started the debt collection case within the statute of limitations to collect this debt? Yes No

If you **don't** agree, explain why the Plaintiff did not meet the statute of limitations to collect this debt: _____

Venue (Location of Civil Action within North Dakota):

The Plaintiff(s) must determine the proper county in North Dakota for the North Dakota State District Court to hear and decide the subject matter of the civil action. (See the [laws and/or rules related to the subject matter and/or North Dakota Century Code Chapter 28-04.](#))

- Do you agree that the North Dakota State District Court in _____ County is the proper county in North Dakota to hear and decide the subject matter of the action? Yes No

If you **don't** agree, what is the proper North Dakota county? _____

Explain why: _____

Admit, Deny, or Insufficient Knowledge:

For every claim in the Plaintiff's complaint to collect a debt, your answer must either:

1. Admit (*agree*);
2. Deny (*disagree*); or
3. State you don't have enough knowledge or information to admit or deny the claim.

(See [Rule 8\(b\) of the North Dakota Rules of Civil Procedure](#) for additional information.)

- Do you admit (*agree with*) any of the allegations (*claims*) listed in the complaint?

List the specific paragraph numbers of the claims with which you **completely admit**:

- Do you deny (*disagree with*) any of the allegations (*claims*) in the complaint?

List the specific paragraph numbers of the claims with which you **completely deny**:

- Do you admit (*agree*) in part and deny (*disagree*) in part any of the allegations (*claims*) in the complaint?

List the specific paragraph number of the claims you **admit in part and deny in part**. For each, explain the part of the claim you admit and the part of the claim you deny:

- Do you have insufficient knowledge or information to either admit (*agree*) or deny (*disagree*) any of the allegations (*claims*) in the complaint?

List the specific paragraph number of the claims you can't admit **or** deny:

Affirmative Defenses:

An affirmative defense is a legal reason the Plaintiff should lose, even if the Plaintiff's claims are true.

Affirmative defenses **must** be stated in your answer. You may have more than one affirmative defense. It's also possible that you won't have any affirmative defenses.

You need to prove all affirmative defenses you list at trial.

IMPORTANT! Inability to pay the debt **isn't** an affirmative defense to the debt.

- Begin your research with [Rule 8](#), [Rule 9](#) and [Rule 12](#) of the North Dakota Rules of Civil Procedure for possible affirmative defenses and their requirements.
- Do you have any affirmative defenses?

Following are common affirmative defenses to debt collection civil actions. The following affirmative defenses aren't all of the possible affirmative defenses. You **must** research affirmative defenses more yourself.

- The North Dakota State District Court doesn't have of subject-matter jurisdiction.
(See *Jurisdiction section above*.)

- The summons and complaint weren't properly served.

(To determine if you were properly served, see www.ndcourts.gov/legal-self-help/service-in-a-civil-action for requirements for service of a summons and complaint.)

- The Plaintiff is suing the wrong person.

(If this affirmative defense applies, explain why you believe the Plaintiff is suing the wrong person. For example, victim of identity theft or mistaken identity.)

- The debt is paid in full.

(If this affirmative defense applies, include proof you paid the debt in full when you serve and file your answer.)

- An amount was paid that the Plaintiff accepted as payment in full.

(If this affirmative defense applies, include proof of the amount you paid and, if possible, proof the Plaintiff accepted that amount as payment in full.)

- You have a pending bankruptcy case that includes the debt.

*(This affirmative defense may apply if you: 1) filed for bankruptcy; 2) the bankruptcy case isn't finished; **and** 3) this debt was included in your bankruptcy filing. Include the filing date and case number for your bankruptcy case.)*

- The debt was discharged in bankruptcy.

(This affirmative defense may apply if you filed for bankruptcy and this debt was discharged as part of your bankruptcy case. Include the filing date and case number for your bankruptcy case.)

- A different court has already decided this claim.

(This affirmative defense may apply if this debt was already part of a different court case and that court reached a decision. Include a certified or authenticated copy of the order or judgment when you serve and file your answer.)

- The Plaintiff didn't start the case before the statutes of limitations ran out.

(If this affirmative defense applies, list the statute of limitation in your answer. Include the Section of the North Dakota Century Code that applies, the timeframe, and a brief explanation why this affirmative defense applies.)

- You are an active duty military member.

(Active duty military members have protections from debt collection while on active duty. See the federal [Servicemembers Relief Act](#) and scra.dmdc.osd.mil/scra for more information.)

- The Plaintiff isn't the original owner of the debt and hasn't provided adequate documentation to show Plaintiff owns the debt.

(This affirmative defense may apply if: 1) the Plaintiff is a "debt collector"; 2) you asked for proof, in writing, that you owe the debt; and 3) you didn't receive adequate documentation that the Plaintiff now owns the debt.

*A "debt collector" is someone who regularly collects debts **owed to others**. Including, collection agencies, lawyers who collect debts on a regular basis, and other companies that buy delinquent debts and try to collect them.*

*If the Plaintiff is the original creditor, this affirmative defense **doesn't** apply.)*

Answer Requests:

You, the Defendant, must state what you want the court to do, based on your responses in the answer, and fully explain each request.

- List each request for relief, based on your responses in your answer:

Counterclaim:

A counterclaim is a written demand or request to the court for judgment granting the relief you, the Defendant, is seeking and allows you to bring claims against the Plaintiff. **You may not have any counterclaims.**

- Research [Rule 13 of the North Dakota Rules of Civil Procedure](#) for counterclaim requirements. *(A counterclaim must meet all the requirements of a complaint.)*

- Do you have any counterclaims?

If no, **don't** include a counterclaim in your answer.

If yes, list the counterclaim(s) and the specific [law or laws](#) that support each counterclaim:

- Do North Dakota State District Courts have subject matter jurisdiction over the counterclaim?

List the specific [law or laws](#) that give North Dakota State District Courts authority to hear and determine and counterclaim: _____

- Do North Dakota State District Courts have personal jurisdiction?

Explain how the North Dakota State District Court has authority over each of the parties in the civil action. ([Rule 4 of the North Dakota Rules of Civil Procedure](#) gives the definition of a “person” and requirements for exercising personal jurisdiction over a person):

Counterclaim Requests:

You, the Defendant, must state what you want the court to do, based on the claims in your counterclaim against the Plaintiff(s).

- List each request for relief, based on your counterclaims:

Create Your Documents to Answer a Civil Summons and Complaint to Collect a Debt:

- Answer** (*Used when you **don't** have counterclaims*)
 - Fill in the top of the [Answer](#) exactly as it appears on the top of the summons
 - List the paragraphs from the complaint that you admit (*agree with*)
 - List the paragraphs from the complaint that you deny (*disagree with*)
 - List the paragraphs from the complaint that you admit and deny. Explain the part of the claim you admit and the part you deny
 - List the paragraphs from the complaint that you don't have sufficient knowledge to either admit or deny
 - List your affirmative defenses, if any, in short plain sentences
 - List your requests for relief, based on your answer responses
 - Don't include** confidential information as required by [Rule 3.4 of the North Dakota Rules of Court](#)
 - Signed and dated by you, the Defendant
 - Make a copy for each Plaintiff, plus one copy to keep as a record. The original will be filed with the Court

OR

Answer and Counterclaim (Used when you **do** have counterclaims)

- Fill in the top of the [Answer and Counterclaim](#) exactly as it appears on the summons

Answer:

- List the paragraphs from the complaint that you admit
- List the paragraphs from the complaint that you deny
- List the paragraphs from the complaint that you admit and deny. Explain the part of the claim you admit and the part you deny
- List the paragraphs from the complaint that you don't have sufficient knowledge to either admit or deny
- List your affirmative defenses, if any, in short plain sentences
- List your requests for relief, based on your answer responses

Counterclaim:

- Explain how the court has subject matter jurisdiction and personal jurisdiction
- Explain how the North Dakota county is the proper venue for the civil action
- Describe the counterclaim(s) in short, plain statements showing the you're entitled to relief
- List your demands for relief, based on your counterclaim
- Don't include** confidential information as required by [Rule 3.4 of the North Dakota Rules of Court](#)
- Signed and dated by you, the Defendant
- Make a copy for each Plaintiff, plus one copy to keep as a record. The original will be filed with the Court

AND

Confidential Information Form

- Fill in the top of the [Confidential Information Form](#) exactly as it appears on the top of the summons
- Fill in the full information that can't be included in documents filed with the Court ([See Rule 3.4 of the North Dakota Rules of Court](#))
- Make a copy to keep as a record, the original will be filed with the Court

Service of Answer *OR* Answer and Counterclaim:

You must arrange to serve a copy of your answer (*or answer and counterclaim*) on each Plaintiff within twenty-one (21) days of service of the summons and complaint to collect a debt. A completed and signed declaration of service, or affidavit of service, is proof that service occurred.

Review service requirements in [Rule 5 of the North Dakota Rules of Civil Procedure](#). For more information about service requirements after a civil action has been started, go to the [Service](#) link of the ND Legal Self Help Center webpage.

Find the address for each Plaintiff, or, the Plaintiff's lawyer, if the Plaintiff is represented.

Arrange for service of a copy of your answer, and attachments (*if any*), on each Plaintiff.

If a Plaintiff is represented by a lawyer, arrange to serve the lawyer instead of the Plaintiff.

For each Plaintiff, get the completed and signed declaration of service, or affidavit of service, of the answer.

Filing the Answer and Confidential Information Form with the North Dakota State District Court:

(See the "Filing Documents with the District Court" section of the [Guide to a Civil Action](#) for additional information, including when a Defendant can file the summons and complaint.)

***** Filing a document isn't the same as serving a document. Filing doesn't meet the requirements for service. *****

You must file your original answer, attachments (if any), confidential information form, and proof of service of the answer on each Plaintiff within a reasonable amount of time after being served the notice of filing the summons and complaint.

You'll be required to pay a filing fee. **The filing fee for an answer is \$50.00.**

If you can't afford to pay the \$50.00 filing fee, you may ask to have the filing fee waived. Forms and instructions are available at ndcourts.gov/legal-self-help/fee-waiver. File the request at the same time you file your answer, confidential information form, and proof of service.

You must serve notice of filing the answer on the Plaintiff.

****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 by the Center isn't intended for legal advice but only a general guide to the civil court process. The Center isn't responsible for any consequences that may result from the information provided. The information can't replace the advice of competent legal counsel licensed in the state.*

*Use at your own risk.****