



# Evidence

## A Research Guide for North Dakota State Civil Court Procedure

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota State District Courts.

**The information provided in this research guide isn't a complete statement of the law.** This information is intended as a starting point for your research into evidence in North Dakota state courts. This information **isn't** intended for legal advice and **can't** replace the advice of a lawyer licensed to practice law in 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 doesn't 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.**

### Overview of Evidence

#### What is evidence?

Evidence is information presented to the fact-finder in the civil action, or civil case, for the purpose of establishing the truth or falsity of an allegation.

#### What is a fact-finder?

A fact-finder is a person, or persons, who hear(s) testimony, review(s) evidence, and make(s) a ruling (*decision*) on the issue.

The fact-finder in a civil case is either:

- The judge (*also called a bench trial*);
- The judicial referee (*also called a bench trial*); or
- The jury (*also called a jury trial*).

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## What rules apply to evidence?

In North Dakota State District Court cases, the North Dakota Rules of Evidence govern:

- The type of evidence presented and admitted.
- How evidence is presented and admitted.
- How to object to evidence presented by the other party for admission.

Carefully review the [North Dakota Rules of Evidence](#) to start researching the answer to your questions about presenting evidence for admission and objecting to evidence the other party wants admitted.

## How do I gather evidence?

Evidence is gathered informally and formally at different stages of a civil case.

**Informal evidence gathering** is when a party gets information on their own from cooperative sources, before and after the civil case starts.

**Discovery is formal evidence gathering** from other parties or non-parties in the civil case. Discovery doesn't begin until after the civil case starts. Generally, a civil case starts with service of the Summons and Complaint (*or Petition*).

## What are the types of evidence?

In general, the types of evidence are:

- **Testimony:** Testimony of witnesses.
- **Documents:** Materials, also called **exhibits**, which include *but aren't limited to*, letters, reports, records, and emails.
- **Real:** Objects that played an actual or real part in the incident, transaction, or occurrence. For example, the actual club used in an assault.
- **Demonstrative:** Visual aids used to explain or provide clarity to testimony, or to present a summary of complicated or large numbers of documents. For example, charts, diagrams, and drawings.

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## What isn't evidence?

In general, the following **aren't evidence**:

- Exhibits filed with the court **before** the hearing or trial. (See “*What is laying the foundation for an exhibit*” on page 3.)
- Exhibits **before** the judge or judicial referee decides whether to allow the exhibit to be admitted as evidence.
- Opening and closing statements.
- Questions to witnesses.
- Answers to questions when the judge or judicial referee sustains (*agrees with*) the other party's objection.
- Testimony, documents, exhibits, or other evidence that the judge or judicial referee says can't be admitted as evidence.

## What is relevant evidence?

**The starting point for presenting or objecting to evidence is whether the evidence is relevant.**

[Rule 401 of the North Dakota Rules of Evidence](#) gives the test for relevance:

- “1. It has any tendency to make a fact more or less probable than it would be without the evidence; and
2. The fact is of consequence in determining the action.”

## What else, besides relevance, determines whether evidence is admitted?

Along with relevance, other factors may determine whether evidence is admitted, including:

- Is the evidence unduly prejudicial, even if the evidence is relevant?
- Is the evidence authentic – is the evidence what you say it is?
- Does the witness have first-hand knowledge of the facts to which they testify?
- Is the evidence to prove someone's character? (*This generally isn't admissible.*)
- Is the evidence of settlement offers or discussions? (*This generally isn't admissible.*)

## What is laying the foundation for an exhibit?

When a party wants to get an exhibit admitted as evidence, a witness familiar with the exhibit must answer some questions. This is called laying the foundation.

In general, questions to lay the foundation include:

- Does the witness have first-hand knowledge of the exhibit **or** know the facts surrounding the exhibit?
- Is the exhibit relevant evidence?
- Can the witness authenticate the exhibit – show that the exhibit is what you say it is?

## What are objections?

Objections are challenges to the evidence presented. A party makes an objection to evidence when the party believes the evidence **isn't** admissible according to a specific rule of the [North Dakota Rules of Evidence](#).

The party objecting to the evidence presented must explain to the judge or judicial referee why the party objects. The party presenting the evidence explains why their evidence is admissible. The judge or judicial referee decides whether to sustain or overrule the objection.

## What does sustain the objection mean?

When a judge or judicial referee **sustains an objection, they agree** with the explanation of the party who objected to the evidence presented.

Evidence can't be presented that relates to the sustained objection. The judge, judicial referee, or jury can't consider the evidence that relates to the sustained objection.

## What does overrule the objection mean?

When a judge or judicial referee **overrules an objection, they don't agree** with the explanation of the party who objected to the evidence presented.

Evidence can continue to be presented that relates to the overruled objection. The judge, judicial referee, or jury can consider the evidence that relates to the overruled objection.

### **Why would I object to evidence presented for admission?**

Objections the judge or judicial referee sustains (*agrees with*) prevents the fact-finder from using the evidence to make their decision.

Proper objections, regardless of whether the judge or judicial referee sustains the objection, preserve the issue for appeal. If the issue **isn't** preserved, generally an appeals court **can't** consider it.

### **Can North Dakota Legal Self Help Center staff help me make decisions about evidence?**

**No.** North Dakota Legal Self Help Center staff and court system staff **can't** assist you in decision-making about your evidence.

Decision-making requires staff to take the facts of your situation, apply the evidence rules and give you an opinion about what you should do. This is legal advice. Center staff and court system staff **can't** give legal advice for any reason under any circumstances.

Consult a lawyer licensed to practice in North Dakota for help with decision-making.

### **Are there evidence resources available for self-represented individuals?**

Representing yourself in a court proceeding, such as a hearing or a trial, is a complex and confusing process.

Review pre-trial and trial guidebooks for self-represented litigants and for lawyers. A pre-trial or trial guidebook may include chapters on evidence. If possible, review guidebooks specifically for evidence.

Contact your local public or academic library to see if they have any print or electronic publications specifically for people representing themselves in court.

A copy of the [North Dakota Rules of Evidence](#) may be useful as a reference when reviewing pre-trial and trial guidebooks.

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## Evidence 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 and signed by the Governor.)

### [Title 31](#). Judicial Proof

### North Dakota Court Rules:

([Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. All of the court rules are found online.)

- [North Dakota Rules of Evidence](#)
- [North Dakota Rules of Civil Procedure](#)
  - Rules 26 through 37 are referred to as the “Discovery Rules.”

### North Dakota Case Law:

(When the decision of a case is appealed from a North Dakota state 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 the [North Dakota Rules of Evidence](#) is in the print version of the North Dakota Century Code, Court Rules Annotated. Case law summaries are located directly after the text of a rule of the Court Rules Annotated.

To view the full text of the opinion you located in the print version of the North Dakota Century Code, click on “[Supreme Court Opinions](#).” Enter the case name or case citation.

You may research North Dakota Supreme Court case law related to the topic of your civil case by clicking on “[Supreme Court Opinions](#).” Use the “Topic” drop down list to narrow your search.

## **Pattern Jury Instructions:**

*(In civil cases where jury trials are permitted and requested, the judge or judicial referee instructs the jury concerning the law involved in the case. North Dakota has developed pattern jury instructions that may be used in civil cases. The Pattern Jury Instructions are available at [ndcourts.gov/legal-self-help](https://ndcourts.gov/legal-self-help) by clicking on the "Pattern Jury Instructions" link under "Legal Research".)*

The [North Dakota Pattern Jury Instruction Commission](#) researches the laws and their requirements in order to develop the Pattern Jury Instructions. Then, the Commission drafts and publishes the instructions.

If your civil case can be decided by a jury, the Pattern Jury Instructions may be a useful starting point for research into the evidence required for your legal issue.

Pattern jury instructions aren't available for every civil case.

## **Laws constantly change through legislation, administrative rules and rulings, and court decisions.**

To determine how a law or rule applies to your situation, review the applicable law or laws, court rules, administrative rules and rulings, and court decisions.

Only a lawyer licensed to practice in North Dakota who agrees to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

## **Other Legal Research Resources:**

[How to Research a Legal Problem: A Guide for Non-Lawyers](#), American Association of Law Libraries. ([aallnet.org](https://aallnet.org))

[10 Steps for Presenting Evidence in Court](#), Resource Center on Domestic Violence: Child Protection and Custody (RCDV:CPC) and National Council of Juvenile and Family Court Judges (NCJFCJ).

[How to Gather Technology Abuse Evidence for Court](#), RCDV:CPC and NCJFCJ.

**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. ([polaris.odinlibrary.org](http://polaris.odinlibrary.org))

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:

**A Short & Happy Guide to Evidence**, Sydney Beckman, West Academic Publishing, 2018.

**Courtroom Evidence Handbook: 2018-2019 Student Edition**, Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

**Essential Evidence Outlines**, Daniel Ryan, iUniverse, 2011.

**Evidence for Paralegals**, Joelyn D. Marlowe, Wolters Kluwer, 2016.

**Objections at Trial**, Ronald Carlson, Edward Imwinkelried, Myron Bright, National Institute for Trial Advocacy, c2015.

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, Paul Bergman, Sara Berman, NOLO, 2016.

**Trial Advocacy in a Nutshell**, Paul B. Bergman, West Academic Publishing, 2017.

**North Dakota Century Code Annotated**, Lexis Nexis, Creation Date c1959 – present.

**North Dakota Court Rules Annotated**, Lexis Nexis, Creation Date c1990 – present.

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## Lawyer Resources & Limited Legal Representation

You aren't required to hire a lawyer to access the state court system. 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

For information about finding a lawyer to represent you, go to [ndcourts.gov/legal-self-help/finding-a-lawyer](https://ndcourts.gov/legal-self-help/finding-a-lawyer).

- **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 [legalassist.org](https://legalassist.org).
- **Dakota Plains Legal Services** is a non-profit legal services organization that provides free legal assistance to low-income individuals, older Americans and veterans. Dakota Plains Legal Services (DPLS) has eight offices and serves communities across South Dakota and North Dakota, including nine tribal nations. DPLS is committed to increasing access to justice with quality legal assistance. Contact information is available on the DPLS webpage of [dpls.org](https://dpls.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 [sband.org](https://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 [ndcourts.gov/Lawyers](https://ndcourts.gov/Lawyers).

### Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil cases. 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 paperwork, 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 the court appearance for you.

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

### **North Dakota Free Legal Answers**

This civil legal program is a partnership of the American Bar Association and the State Bar Association of North Dakota.

The purpose of the program is to provide free answers to **specific** civil legal question to low-moderate income North Dakotans who submit their questions online. Anonymous volunteer lawyers answer your question, but can't represent you.

Go to [nd.freelegalanswers.org](https://nd.freelegalanswers.org) for information about the program, the online application, and, if you qualify, ask your civil legal question.

Please note that this program **doesn't** provide any assistance with criminal legal questions.