

## Answering a Motion in a Civil Action, or Civil Case Checklist

This is a basic checklist for Answering a Motion in a civil action, or civil case, in North Dakota State District Court. There may be additional documents and procedures for your particular type of Answer to Motion. If you're unsure how to proceed, [consult a lawyer](#) licensed to practice in North Dakota.

A Motion is a written request to the court for an order. Motions may be made **after** the Summons and Complaint are filed with the court.

An Answer to Motion is the required written response to a Motion.

The moving party notifies the opposing party of the Motion by serving copies of the Motion documents on the opposing party.

If an opposing party to the Motion is served by handing the Motion documents to the opposing party, or leaving them at the opposing party's office or residence, the opposing party has fourteen (14) calendar days after service of the Motion documents to serve and file their Answer to the Motion in writing.

If an opposing party to the Motion is served by mail or third party commercial carrier, the opposing party has seventeen (17) calendar days after service of the Motion documents to serve and file their Answer to the Motion in writing.

An Answer to a Motion in a civil case is made up of a set of documents, including:

1. Answer Brief to Motion;
2. Affidavit in Support of Answer Brief, or Declaration in Support of Answer Brief;
3. Other Supporting Documents;
4. Notice of Hearing on Motion (*if the opposing party requests a hearing*).

The "Motion" section of the [Guide to a Civil Action, or Civil Case](#) on the ND Legal Self Help Center webpage has additional information and resources.

### Parties In A Motion

**Plaintiff:** The party (or parties) listed as the Plaintiff in the original civil case.

**Defendant:** The party (or parties) listed as the Defendant in the original civil case.

**Moving party:** The party bringing the Motion, in other words, the party who completes and signs the Notice of Motion, Motion, Brief in Support of Motion, and Affidavit in Support of Motion. The moving party in a Motion may be either the Plaintiff or the Defendant.

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

### Carefully Review the Motion Documents:

Carefully review the Notice of Motion, Motion, Brief in Support of Motion, Affidavit in Support of Motion, or Declaration in Support of Motion, and any other supporting documents you received.

The Notice of Motion provides information about who to serve and the deadline to serve your written Answer to the Motion.

The other documents list the legal authority that the moving party believes supports their Motion request, and explains how and why the moving party believes the law, case law or court rules support their request.

### Calculate the Deadline to Answer the Motion:

If the Motion was served by handing it to the opposing party, leaving it at the opposing party's office or residence, you, the opposing party have fourteen (14) calendar days after service of the Motion documents to serve and file your Answer to the Motion in writing.

If the Motion is served by mail or third party commercial carrier, you, the opposing party have seventeen (17) calendar days after service of the Motion documents to serve and file your Answer to the Motion in writing.

Review the laws and rules from the Motion documents to determine if the timeframe to Answer the Motion is different.

- Date the motion documents were served on you, the opposing party: \_\_\_\_\_  
(Review [Rule 5 of the North Dakota Rules of Civil Procedure](#) for service of motions.)
- Using calendar days, **calculate** the date your written Answer to motion must be served on the moving party and any other opposing parties: \_\_\_\_\_

**Make a Copy of the Brief in Support of Motion to Mark Up:**

Make at least one copy of the moving party’s Brief in Support of Motion. Using the checklists on pages 3 – 4, go through your working copy of the Brief in Support of Motion with a pencil and make notes. Make note of any points you want to make in your Answer to the Motion. Use your marked-up copy of the Brief in Support of Motion, and pages 3 - 4 to help you organize and prepare your written Answer to the Motion.

**Research North Dakota Laws and Court Rules:**

Information and resources for legal research are available through the North Dakota Legal Self Help Center. Go to [ndcourts.gov/legal-self-help](http://ndcourts.gov/legal-self-help). Scroll to the “Legal Research” section.

**Research the Laws and Rules in the Motion and Brief in Support of the Motion carefully!**

Research the laws, North Dakota Supreme Court case law, and/or court rules the moving party used to make their arguments. Decide if the laws and rules stand for what the moving party says they do.

Conduct your own research to decide if there are other laws, North Dakota Supreme Court case law, and/or court rules that support your argument.

- Does the Brief in Support of Motion include any laws enacted by the North Dakota State Legislative Process? Do any laws enacted by the legislative process support your Answer to the Motion?

The [North Dakota Century Code](#) contains laws enacted by the legislative process. List the specific laws from the Brief in Support of the Motion and any other laws that support your Answer:

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- Does the Brief in Support of Motion include any [North Dakota Supreme Court case law](#) Does any case law support your Answer to the Motion?

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 case the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with

similar facts and issues. List the specific case law from the Brief in Support of the Motion and any case law that supports your Answer:

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- Does the Brief in Support of motion include any court rules? Do any court rules support your Answer to the Motion?

[North Dakota Court rules](#) govern how a dispute makes its way to court and how the dispute is conducted. List the specific court rules from the Brief in Support of the Motion and any other court rules that support your answer:

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*(The North Dakota Century Code, and North Dakota Supreme Court case law, and North Dakota court rules are also found in print in many North Dakota public and academic libraries.)*

### Create the Documents to Answer a Motion in a Civil Case:

The following General-Use forms are available at [Answering a Motion](#).

- [Answer Brief to Motion](#)
  - Complete the caption (top of document) exactly as it appears in the Plaintiff's Complaint (or the Petitioner's Petition)
  - Fill in the title with the type of Motion
  - Statement of Facts Section:** List your version of the facts related to the Motion
  - Law and Argument Section:** Respond to each argument in the moving party's Brief in Support of Motion. Explain how each law, case law, or court rule supports your argument. Apply the law, case law, or court rule to the facts listed in the Statement of Facts.
  - Conclusion Section:** Summarize the Answer to the Motion and what you're asking the court to do
  - Signed and dated by you, the opposing party.
  - Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record

- [Affidavit in Support of Answer Brief](#) or [Declaration in Support of Answer Brief](#)**
  - Complete the caption exactly as it appears in the Answer Brief to Motion.
  - Fill in the title with the type of Motion
  - List your version of the facts related to the Motion
  - Signed and dated by you, the opposing party
    - If this is an Affidavit, **signed in the presence** of a notary public, clerk of court, or other notarial officer
    - If this is a Declaration, it **doesn't need to be signed in the presence** of a notary public, clerk of court, or other notarial officer
  - Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record
  
- [Notice of Hearing on Motion](#)** *(Required only if you, the opposing party, requests an oral argument or an evidentiary hearing on the Motion.)*
  - Complete the caption exactly as it appears in the Answer Brief to Motion
  - Include the date, time and location of the scheduled hearing
  - Signed and dated by you, the opposing party
  - Make a copy for the moving party and each opposing party, if any, plus one copy to keep as a record

#### **Gather Other Supporting Documents:**

An Answer to a Motion may include other supporting documents, such as Affidavits, Declarations, or exhibits.

- If including other supporting documents with your Answer to Motion, make sure to reference each supporting document in the Answer Brief to Motion and Affidavit in Support of Answer Brief, or Declaration in Support of Answer Brief.
- Make a copy of each supporting document, if any, for the moving party and each opposing party, if any, plus one copy to keep as a record.

#### **Service of Answer to Motion Documents:**

You, the opposing party, must serve copies of your Answer to Motion documents on the moving party and each opposing party, if any, in the civil case. A completed Affidavit of Service, or Declaration of Service is proof that service occurred.

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

- Get the address for service for the moving party and each opposing party, if any. If the moving party or an opposing party is represented by a lawyer, get the address for service for the lawyer.
- Arrange for service of copies of the following documents on the moving party and each opposing party, if any. If the moving party or an opposing party is represented by a lawyer, arrange for service on the lawyer.
  - Answer Brief to Motion;
  - Affidavit in Support of Answer Brief, or Declaration in Support of Answer Brief;
  - Other supporting documents, if any; and
  - Notice of Hearing on Motion, if you requested a hearing.
- For each opposing party, get the following:
  - For an Affidavit of Service, a signed **and** notarized Affidavit of Service by the person who served the documents.
  - For is a Declaration of Service, a signed Declaration of Service by the person who served the documents.
- If the opposing party fails to serve a written Answer fourteen (14) days or seventeen (17) days after service of the Motion documents, the court will decide the Motion on the documents filed, unless a hearing was requested within the hearing-request timelines.

**File the Original Answer to Motion Documents with the North Dakota State District Court:**

The original of each of the Answer to Motion documents and the document(s) showing proof of service must be filed with the clerk of court.

\*\*\* Filing **doesn't** meet the requirements for service.\*\*\*

- Contact the clerk of court's office in the County where the moving party filed their Motion documents for the following information:
  - Amount of the filing fee \$\_\_\_\_\_, if any, and how to pay
  - Options for submitting Answer to Motion documents if the opposing party can't file the documents in person
- Gather the originals of the following documents (make copies for your records):
  - Answer Brief to Motion;
  - Affidavit in Support of Answer Brief, or Declaration in Support of Answer Brief;

- Other supporting documents, if any;
  - Notice of Hearing on Motion, if applicable; and
  - Affidavit(s) of Service, or Declaration(s) of Service of a copy of each of the answer to Motion documents on the moving party and each opposing party, if any.
- File the original documents with the clerk of court and pay the filing fee, if any.

**The Court Decides the Motion:**

If either you, the opposing party, the moving party, or an opposing party, if any, appropriately requested a hearing on the motion within the hearing-request timelines, the court decides the Motion following the hearing.

If neither you, the opposing party, the moving party, nor an opposing party, if any, appropriately requested a hearing on the Motion within the hearing-request timelines, the court decides the Motion on the documents filed with the court.

You're notified in writing of the court's decision on the Motion.

*\*\*\*Disclaimer: 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 can't guarantee that all judges and courts will accept forms available through the Legal Self Help Center. 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.\*\*\**