



CHANGE OF VENUE RESEARCH GUIDE

A Research Guide for a North Dakota Civil Court Process

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

The information provided in this research guide is intended as a starting point for your research into change of venue. The information provided in this research guide is not intended for legal advice and cannot replace the advice of competent legal counsel licensed in the state.

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.

OVERVIEW OF CHANGE OF VENUE:

What is venue?

Venue is the location (county court) in which the North Dakota state court will hear the civil case.

Venue is not the same as jurisdiction. Jurisdiction is the type of court authorized to hear the civil case. For example, state court or federal court, or North Dakota small claims court or North Dakota state district court. Venue is determined after jurisdiction is determined.

What is a motion for change of venue?

A motion for change of venue asks the current North Dakota state court to allow a court in a different North Dakota county to hear the case.

Why would somebody file a motion for change of venue?

Possible examples are: (**this is not an exhaustive list**)

- It is too expensive to travel to the county designated for the case.
- It may be too difficult for potential witnesses to travel where the case is currently located.
- The venue of the current case was improper.

When do you file for a change of venue?

You must raise the issue of change of venue at your earliest chance. Otherwise you may accidentally waive it.

You can either write your objection to the venue in your answer to the summons and complaint (or petition) OR file a separate motion for change of venue with the court before you file any more pleadings.

(See Rule 12(b)(3) of the North Dakota Rules of Civil Procedure. A link to the Rules of Civil Procedure is found in the North Dakota Court Rules section below.)

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 North Dakota Legislature. The NDCC is found online at www.legis.nd.gov/general-information/north-dakota-century-code. **These are not the full chapters and sections contained in the NDCC, please follow the links to view the laws in full.**)*

Chapter 27-05 **District Courts** www.legis.nd.gov/cencode/t27c05.html

See Section 27-05-26. Change of venue. A change of venue may be taken from one judge to another in the same district or in another district, or from one county to another, or from one district to another in the manner provided by law.

Chapter 28-04 **Venue** www.legis.nd.gov/cencode/t28c04.html

Review the entire chapter to determine the proper venue and why the court should change venue.

Review the NDCC Sections related to the subject matter of the civil action. The NDCC Sections related to the subject matter may have their own venue requirements.

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 change of venue, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries are located directly following 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 under "Supreme Court" and enter the case name or case citation.

Another way to research case law related to change of venue, is to search by topic at www.ndcourts.gov. Click on the “Opinions” link under “Supreme Court”, then click on the drop down box under “Topic” link, and then on the links that apply to the topic.

NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to court and how the dispute is conducted. All of the North Dakota court rules are found online at www.ndcourts.gov/legal-resources/rules.

***These are not the full rules contained in the North Dakota court rules, please follow the links to view the rules in full.**)*

Rule 12 of the North Dakota Rules of Civil Procedure: Defenses and Objections.

www.ndcourts.gov/legal-resources/rules/ndrcivp/12

- See Rule 12(b)(3) for asserting the defense of improper venue in an answer to a summons and complaint (or petition) OR motioning for a change of venue.

Rule 39.1 of the North Dakota Rules of Civil Procedure: Change in Location of a Hearing,

Proceeding, or Trial; Change of Venue. www.ndcourts.gov/legal-resources/rules/ndrcivp/39-1

LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULINGS AND COURT DECISIONS.

To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code and North Dakota court rules are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed 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. (www.aallnet.org)

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. (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:

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

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

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

PROCESS FOR INCLUDING CHANGE OF VENUE IN AN ANSWER:

All information and resources available through the ND Legal Self Help Center for answering a summons and complaint in a civil action are online at www.ndcourts.gov/legal-self-help.

Scroll to the “District Court Civil” section and carefully review the resources at the “Answering the Summons and Complaint” link.

If you were served a summons and complaint (or petition) and are still within the 21 day deadline for answering the summons and complaint, you can include your objection to venue and request to change venue in your written answer.

A checklist and forms for answering a summons and complaint (or petition) are found at the “Answering the Summons and Complaint” link.

PROCESS FOR A MOTION FOR CHANGE OF VENUE:

The ND Legal Self Help Center does not have forms or instructions available for making a motion for change of venue.

For information about the motion process in North Dakota civil court actions, go to www.ndcourts.gov/legal-self-help. Scroll to the “District Court Civil” section.

Carefully review the information and resources at the “Making a Motion” link and at the “Answering a Motion” link!

When asking the court for an order in an existing case, it is done in writing in the form of a motion.

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

DOCUMENTS IN A MOTION FOR CHANGE OF VENUE:

The Moving Party's Motion Documents:

The party making the motion is called the Moving Party.

Generally, the Moving Party in the motion for change of venue must create and prepare the following motion documents:

- Notice of motion
 - A required written notice that tells all parties that a request for an order will be made to the court.
- Motion
 - A required short, written request to the Court in an existing case for an order for a specific purpose.
- Brief in support of motion
 - A required written explanation of why the court should grant the Moving Party's request. A brief takes the specific rules and laws that support the request and explains how they apply to the facts of the Moving Party's particular situation. Facts referred to in the brief should also appear in the affidavit.
- Affidavit in support of motion
 - A written statement made under oath in front of an authorized officer. Facts referred to in the brief should also appear in the affidavit. The affidavit must be signed in the presence of a notary public by the individual making the statement.
- Other supporting documents (other affidavits, exhibits, etc.)
- Proof of service of the motion documents on the other parties.
 - If a sheriff or other law enforcement officer serves the motion documents, a Certificate of Service is proof of service.
 - If a person other than a sheriff or other law enforcement officer serves the motion documents, an Affidavit of Service is proof of service.

The Opposing Party's Motion Documents:

The party answering the motion is called the Opposing Party. The Opposing Party may also be called the Non-Moving Party.

Generally, the Opposing Party in the motion for change of venue must create and prepare the following answer to motion documents:

- Answer brief to motion
 - A required written document that takes the rules and laws that support the Opposing Party's response to the Moving Party's request and explains how the Opposing Party's version of the facts applies to the situation that led to the motion. Facts referred to in the answer brief should also appear in the Opposing Party's affidavit in support of the answer brief.
- affidavit in support of answer brief
 - A written statement made under oath in front of an authorized officer. Facts referred to in the answer brief should also appear in the affidavit. The affidavit must be signed in the presence of a notary public or clerk of court by the individual making the statement.
- Other supporting documents (other affidavits, exhibits, etc.)
- Proof of service of the answer to motion documents on the other parties.
 - If a sheriff or other law enforcement officer serves the answer to motion documents, a Certificate of Service is proof of service.
 - If a person other than a sheriff or other law enforcement officer serves the answer to motion documents, an Affidavit of Service is proof of service.

General-Use Motion Forms:

The ND Legal Self Help Center has the following General-Use motion template forms for making and answering a motion. You may find the General-Use forms of interest as a starting point for creating your own motion documents:

- Notice of Motion form
- Notice of Hearing on Motion form
- Motion form
- Brief in Support of Motion form
- Answer Brief to Motion form
- Affidavit form
- Caption and Signature form

The General-Use motion template forms are available on the “Making a Motion” and “Answering a Motion” webpages. (See link above.)

You may find the forms in the Legal Services of North Dakota Family Law Manual of interest. The Legal Services of North Dakota Family Law Manual contains a variety of divorce forms that were created for lawyers to use as examples in family law cases. Even if your case is not related to a family law issue, you may find the examples useful for formatting your own motion documents. The Legal Services of North Dakota website is www.legalassist.org.

(References to the Legal Services of North Dakota Family Law Manual are for your convenience only. The ND Legal Self Help Center does not endorse, warrant, or accept responsibility for the content or uses of the Family Law Manual. You must independently determine the legal sufficiency of the forms in the Family Law Manual. Use at your own risk.)

ATTORNEY RESOURCES AND LIMITED LEGAL REPRESENTATION:

You are not required to hire an attorney to access the 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.

This North Dakota Legal Self Help Center resource was created by Mallory Block, as part of the University of North Dakota School of Law Externship Program, Summer 2017.