

**TITLE 32**  
**JUDICIAL REMEDIES**

**CHAPTER 32-01**  
**GENERAL PROVISIONS**

**32-01-01. Remedies - Classification.**

Remedies in the courts of justice are divided into:

1. Actions.
2. Special proceedings.

**32-01-02. Action defined.**

An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

**32-01-03. Actions - Classification.**

Actions are of two kinds:

1. Civil.
2. Criminal.

**32-01-04. Special proceeding defined.**

A special proceeding is any remedy other than an action.

**32-01-05. Criminal action defined.**

A criminal action is one prosecuted by the state as a party against a person charged with a public offense for the punishment thereof.

**32-01-06. Civil action defined.**

A civil action is any action other than a criminal action.

**32-01-07. Process in civil action.**

All process in civil actions shall run in the name of the state of North Dakota.

**32-01-08. Civil and criminal remedies not merged.**

When the violation of a right admits of both a civil and a criminal remedy, the right to prosecute the one is not merged in the other.

**32-01-09. Civil action - One form - Plaintiff and defendant defined.**

Superseded by N.D.R.Civ.P. 2.

**32-01-10. Provisional remedies classified.**

The provisional remedies in civil actions are:

1. Claim and delivery of personal property.
2. Attachment.
3. Garnishment.
4. Receivers.
5. Deposit in court.

**32-01-11. Compensation for violation of private rights - Other relief, when.**

As a general rule compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance. Specific and preventive relief may be given in no cases other than those specified in this title.

**32-01-12. Conditions of relief from forfeiture.**

Whenever by the terms of an obligation a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of the party's failure to comply with its provisions, the party may be relieved therefrom upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

**32-01-13. How special issues not made by pleadings are tried.**

Superseded by N.D.R.Civ.P. 39(b).



# STATE OF NORTH DAKOTA COURTS

## North Dakota Rules of Civil Procedure

### I. Scope and Purpose of Rules--One Form of Action

- Rule 1. Scope and Purpose of Rules.
- Rule 2. One Form of Action.

### II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

- Rule 3. Commencing an Action.
- Rule 4. Persons Subject to Jurisdiction; Process; Service.
- Rule 5. Service and Filing of Pleadings and Other Papers.
- Rule 6. Computing and Extending Time; Time for Motion Papers.

### III. Pleadings and Motions

- Rule 7. Pleadings Allowed -- Form of Motions and Other Papers.
- Rule 8. General Rules of Pleading.
- Rule 9. Pleading Special Matters.
- Rule 10. Form of Pleadings.
- Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions.
- Rule 12. Defenses and Objections; When and How; Motion for Judgment on the Pleadings; Consolidation and Waiving Defenses; Pretrial Hearing.
- Rule 13. Counterclaim and Crossclaim.
- Rule 14. Third-Party Practice.
- Rule 15. Amended and Supplemental Pleadings
- Rule 16. Pretrial Conferences; Scheduling; Management.

### IV. Parties

- Rule 17. Plaintiff and Defendant; Capacity.
- Rule 18. Joinder of Claims and Remedies.
- Rule 19. Required Joinder of Parties.
- Rule 20. Permissive Joinder of Parties.
- Rule 21. Misjoinder and Non-Joinder of Parties.
- Rule 22. Interpleader.
- Rule 23. Class Actions.
- Rule 24. Intervention.
- Rule 25. Substitution of Parties.

### V. Depositions and Discovery

- Rule 26. General Provisions Governing Discovery.
- Rule 27. Depositions Before Action or Pending Appeal.
- Rule 28. Persons Before Whom Depositions May Be Taken



# STATE OF NORTH DAKOTA COURTS

## RULE 17. PLAINTIFF AND DEFENDANT; CAPACITY

Effective Date: 3/1/2011

### (a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

- (A) a personal representative;
- (B) a conservator;
- (C) a guardian;
- (D) a bailee;
- (E) a trustee of an express trust;
- (F) a party with whom or in whose name a contract has been made for another's benefit; and
- (G) a party authorized by statute.

(2) Action in the Name of the State for Another's Use of Benefit. When a statute so provides, an action for another's use or benefit must be brought in the name of the State of North Dakota.

(3) Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

### (b) Minor or Incompetent Person.

(1) With a Representative. If a minor or incompetent person has a representative, such as a general guardian, or like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person.

(2) Without a Representative. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is self-represented in an action. The court may appoint a guardian ad litem to represent a minor or incompetent person, even though the minor or incompetent person may have a general guardian and may have appeared.

(c) **Capacity to Sue or Be Sued.** The capacity of all other persons to sue or be sued is determined by appropriate statutory provisions.

(d) **Public Officer's Title and Name.** A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

Explanatory Note ▼

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# STATE OF NORTH DAKOTA COURTS

## RULE 19. REQUIRED JOINDER OF PARTIES

Effective Date: 3/1/2011

### (a) Persons Required to Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

- (i) as a practical matter impair or impede the person's ability to protect the interest; or
- (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

**(b) When Joinder is not Feasible.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties, or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping of the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for non-joinder.

**(c) Pleading the Reasons for Non-Joinder.** When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

**(d) Exception for Class Actions.** This rule is subject to [Rule 23](#).

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# STATE OF NORTH DAKOTA COURTS

## RULE 20. PERMISSIVE JOINDER OF PARTIES

Effective Date: 3/1/2011

### (a) Persons Who May Join or Be Joined.

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) Defendants. Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) Extent of Relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

**(b) Protective Measures.** The court may issue orders, including an order for separate trials, to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

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# STATE OF NORTH DAKOTA COURTS

## RULE 21. MISJOINDER AND NON-JOINDER OF PARTIES

Effective Date: 3/1/2011

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

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# STATE OF NORTH DAKOTA COURTS

## RULE 24. INTERVENTION

Effective Date: 3/1/2011

**(a) Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

**(b) Permissive Intervention.**

(1) In General. On timely motion, the court may permit anyone to intervene who:

- (A) is given a conditional right to intervene by a statute; or
- (B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Office or Agency. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

- (A) a statute or executive order administered by the officer or agency; or
- (B) any regulation, order, requirement or agreement issued or made under the statute or executive order.

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

**(c) Notice and Pleading Required.**

(1) Procedure. A motion to intervene must be served on the parties as provided in [Rule 5](#). The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought. The same procedure must be followed when a statute gives a right to intervene.

(2) Constitutional Question. A party questioning the constitutionality of a legislative act affecting the public interest in an action in which neither the state nor any agency or officer is a party must notify the attorney general. On timely motion, the court must permit the attorney general to intervene on behalf of the state.

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