



## CONTESTED DIVORCE (For Plaintiff & Defendant)

### An Informational Guide to 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 state courts. The information provided in this informational guide isn't intended for legal advice but only as a general guide to a civil court process.

**If you decide to represent yourself, you'll need to do additional research to prepare.**

**When you represent yourself, you're expected to know and follow the law, including:**

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
  - North Dakota Rules of Civil Procedure;
  - North Dakota Rules of Court;
  - North Dakota Rules of Evidence;
  - North Dakota Administrative Rules and Orders;
  - Any local court rules.

Links to the laws, case law, and court rules can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the "Self Help" link.

**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.** If you are unsure if this information suits your circumstances, consult a lawyer.

- "If you would like to learn more about finding a lawyer to represent you, go to [www.ndcourts.gov/legal-self-help/finding-a-lawyer](http://www.ndcourts.gov/legal-self-help/finding-a-lawyer).

***This information isn't a complete statement of the law. This covers basic information about the process of contested divorce in a North Dakota state district court. 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 of North Dakota. Use at your own risk.***

**This informational guide is made up of three sections:**

**First Section: General information about contested divorce. (Pages 5-13)**

**Second Section: The basic contested divorce process from beginning to end. (Pages 14-30)**

**Third Section: Formatting examples of many divorce documents. (Pages 31-60)**

***WARNING – Divorce can have serious long-term legal and financial consequences. It’s strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a divorce action.***

***When you represent yourself, you’re held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.***

***This informational guide gives only the basics of the process. If you decide to represent yourself, you’ll need to do additional research to prepare.***

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## INFORMATION ABOUT CONTESTED DIVORCE IN NORTH DAKOTA

### **WHAT IS A CONTESTED DIVORCE?**

If you and your spouse **aren't** in agreement on every issue in your divorce, **or** you don't know where to find your spouse, you have a contested divorce.

### **DOES THE ND LEGAL SELF HELP CENTER HAVE CONTESTED DIVORCE FORMS?**

**No, the ND Legal Self Help Center doesn't have a packet of forms for contested divorce.** If you decide to represent yourself, you'll need to create your own contested divorce documents. **The names and descriptions of the documents you'll need to create are found throughout this guide. Formatting examples of common contested divorce documents are found at the end of this guide.**

You may find the General-Use template forms of interest as a starting point for creating your own divorce documents.

The General-Use template forms are available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by clicking on the "General Use Checklists and Forms" link under "District Court Civil".

- The direct link to the General-Use template forms is [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

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. The Legal Services of North Dakota website is [www.legalassist.org](http://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 doesn't 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.)*

### **IS THERE HELP AVAILABLE FOR CREATING DIVORCE DOCUMENTS?**

If you'd like assistance creating your documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your divorce, such as preparing legal documents, while you handle the rest of the divorce. You and the lawyer must agree in writing to Limited Legal Representation.

## **WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A DIVORCE ACTION?**

**\*\*\*The following definitions are intended to be helpful, BUT they aren't intended to constitute legal advice OR address every possible meaning of the terms in this section.\*\*\***

**Assets** – everything owned by either spouse, whether owned jointly or individually. Assets include, but aren't limited to, real property, cars, furniture, bank accounts, jewelry, life insurance policies, businesses, and retirement plans.

**Decision making responsibility** – the responsibility to make decisions concerning the minor child. The term may refer to decisions on all issues or on specific issues, but not child support issues.

**Debts** – (also called Liabilities) everything owed by either spouse, whether owed jointly or individually. Debts include, but are not limited to, mortgages, credit cards, student loans and car loans.

**Deploying or deployed parent** – a deploying or deployed parent is a uniformed service member who has been notified of orders of movement or mobilization for more than ninety days but less than eighteen months AND the orders are designated as unaccompanied, not authorized for dependent travel, or don't permit family members to move to the deployment location.

**Equitable distribution** – (also called Equitable Division) marital property is distributed equitably (fairly) in a divorce. A court would make an equitable distribution based on the following factors:

- Respective ages of the spouses;
- Earning ability;
- Duration of the marriage and conduct of the spouses during the marriage;
- Station in life;
- Circumstances and necessities of the spouses;
- Health and physical condition;
- Financial circumstances as shown by the property owned at the time;
- Value of the property owned at the time;
- Income-producing capacity of the property owned at the time, if any;
- Whether the property was accumulated before or after the marriage; and
- Any other matters that may be material.

Generally, the factors above are applied when spouses don't agree. However, a court has the authority to decide whether a settlement agreement between the spouses was entered into as a result of mistake, duress, menace, fraud, or undue influence.

**Home state** – the state in which a minor child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, home state means the state in which the child lived from birth with a parent. A period of temporary absence of any of the mentioned persons is part of the period.

**Irreconcilable differences** – (also called No Fault) substantial reasons for not continuing the marriage and which make it appear the marriage should be dissolved. The court need only find that irreconcilable differences exist.

**Marital property** – all of the assets and debts owned by either spouse, whether owned jointly or individually.

**Obligor** – the person ordered by the court to pay child support or spousal support.

**Obligee** – the person receiving child support or spousal support ordered by the court.

**Parental rights and responsibilities** – all the rights and responsibilities a parent has concerning the parent's minor child.

**Parenting plan** – a written plan describing each parent's rights and responsibilities.

**Parenting schedule** – the schedule of when the minor child is in the care of each parent.

**Parenting time** – the time when the minor child is to be in the care of a parent. (Also known as visitation.)

**Personal property** – every kind of property that is not real property. (See real property definition below.) Personal property includes, but is not limited to, cars, furniture, bank accounts, jewelry, life insurance policies, businesses, and retirement plans.

**Primary residential responsibility** – a parent with more than fifty percent of the residential responsibility.

**Qualified Domestic Relations Order (QDRO)** – an order of the court that directs the administrator of a retirement plan to divide retirement assets as granted in a divorce judgment. There are many different QDRO's that are specific to the type of retirement plan. For more information about QDRO's, go to [www.dol.gov/agencies/ebsa/workers-and-families/separation-and-divorce](http://www.dol.gov/agencies/ebsa/workers-and-families/separation-and-divorce).

\*\*\*If you divide a retirement asset between spouses, a QDRO is required. The spouses MUST present a proposed QDRO to the court to consider and sign. The court WON'T draft a QDRO for you. The ND Legal Self Help Center DOESN'T have QDRO forms or instructions. Consulting a lawyer is strongly recommended when dividing a retirement asset!\*\*\*

**Real property** – land either with or without buildings on it. For example, a home is real property.

**Residency requirement** – the amount of time a spouse must live in North Dakota before they can ask a North Dakota district court to grant a divorce. The residency requirement for North Dakota is 6 months.

**Residential responsibility** – a parent's responsibility to provide a home for the child. (Also known as custody.)

### **WHO ARE THE PARTIES IN A DIVORCE?**

**Plaintiff (or Petitioner)** – The spouse who starts the contested divorce proceeding by serving a summons and complaint for divorce on the other spouse.

**Defendant (or Respondent)** – The spouse who is served the summons and complaint for divorce by the other spouse.

**Real Party in Interest** – The State of North Dakota is added as a real party in interest to parenting rights and responsibilities actions only when:

- Child support will be established or modified and a minor child receives assistance through programs administered by the North Dakota Department of Human Services, such as temporary assistance to needy families, Medicaid, and foster care; or
- Child support will be established or modified and an application was made and accepted for services provided by the Child Support Division of the North Dakota Department of Human Services; or
- Child support or spousal support will be established or modified and North Dakota or the Child Support Division of the North Dakota Department of Human Services is required to be involved in proceedings related to support orders of other states or countries under the Uniform Interstate Family Support Act.

(Also known as the Statutory Real Party in Interest.)

### **WHAT IS THE NORTH DAKOTA RESIDENCY REQUIREMENT FOR DIVORCE?**

The Plaintiff must be a North Dakota resident for six consecutive months before the divorce.



## **WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO DIVORCE?**

**Chapter 14-05 of the North Dakota Century Code** governs divorce. Review the entire Chapter.

<http://www.legis.nd.gov/cencode/t14c05.html>

**Chapter 14-09 of the North Dakota Century Code** governs parenting rights and responsibilities, such as custody, visitation, and child support. Review the entire Chapter.

<http://www.legis.nd.gov/cencode/t14c09.html>

**Chapter 14-12.2 of the North Dakota Century Code** governs enforcement and modification of child support and spousal support orders issued by other states or countries.

<http://www.legis.nd.gov/cencode/t14c12-2.html>

**Chapter 14-14.1 of the North Dakota Century Code** governs which state can make decisions about child custody issues and enforce child custody orders. You'll need to determine if a North Dakota District Court can make decisions about child custody in your divorce.

<http://www.legis.nd.gov/cencode/t14c14-1.html>

Chapter 14-05, 14-09, 14-12.2 and 14-14.1 are Chapters within Title 14 of the North Dakota Century Code. There are many other laws related to families in Title 14. You may find them of interest. <http://www.legis.nd.gov/cencode/t14.html>

**The North Dakota Rules of Civil Procedure** apply to civil matters in North Dakota district courts.

The rules are found at [www.ndcourts.gov/legal-resources/rules/ndrcivp](http://www.ndcourts.gov/legal-resources/rules/ndrcivp).

**The North Dakota Rules of Court** apply to civil matters in North Dakota district courts. The

rules are found at [www.ndcourts.gov/legal-resources/rules/ndrct](http://www.ndcourts.gov/legal-resources/rules/ndrct).

See particularly:

- Rule 8.2 (Interim Orders),
- Rule 8.3 (Case Management),
- Rule 8.4 (Divorce Summons), and
- Rule 8.5 (Summary Divorce).

**The North Dakota Rules of Evidence** apply to civil matters in North Dakota district courts. The

rules are found at [www.ndcourts.gov/legal-resources/rules/ndrev](http://www.ndcourts.gov/legal-resources/rules/ndrev).

**North Dakota case law** is useful for interpreting what the law means for your individual circumstances.

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 divorce, 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](http://www.ndcourts.gov), click on the “Opinions” link under “Supreme Court” and enter the case name or case citation.

**Laws constantly change through legislation, administrative rulings and case law (court decisions).** To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and case law (court decisions). Notes of case law (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 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.

### **WHAT ARE LEGAL REASONS (GROUNDS) FOR DIVORCE?**

- Adultery
- Extreme cruelty
- Willful desertion
- Willful neglect
- Abuse of alcohol or controlled substance
- Conviction of a felony
- Irreconcilable differences (no fault)

Irreconcilable differences is also called a no fault divorce. Neither spouse is required to prove the other spouse is at fault for the divorce and the court doesn't decide which spouse is at fault. Irreconcilable differences only require the court to decide there are substantial reasons for not continuing the marriage, which make it appear the marriage should be dissolved.

## **WHAT ARE COMMON DIVORCE ISSUES RELATED TO SPOUSES?**

- Spousal support, including alimony
- Dividing property between spouses
- Dividing debts between spouses
- Name change back to the pre-marriage last name

In North Dakota, property and debt are divided equitably (fairly), not equally, in a divorce. The court may redistribute property and debts after the divorce is granted if a spouse failed to disclose property and debts, or if a spouse fails to follow the terms of the court order distributing property and debts.

The court will consider the following when deciding whether to award spousal support and when deciding how to equitably divide property and debt:

- Age of each spouse,
- Earning ability,
- Length of the marriage,
- Conduct of each spouse during the marriage,
- Station in life,
- Circumstances and necessities of each spouse,
- Health and physical condition of each spouse,
- Financial circumstances as shown by property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and
- Other matters that may be material.

### **A note about dividing pension or retirement plans:**

Dividing pension plans and retirement accounts is extremely complicated. The spouses are responsible for making sure these assets are divided, which will require a separate court order to divide these assets. The separate court order is called a qualified domestic relations order (QDRO) and the parties are responsible for obtaining a proposed QDRO and presenting the proposed QDRO to the court. The court won't draft a QDRO document or an order including a QDRO.

**\*\*\*The ND Legal Self Help Center doesn't have QDRO forms or instructions and can't assist with drafting or obtaining QDRO's. Consulting a lawyer is strongly recommended when dividing a retirement asset!\*\*\***

(If neither spouse has pension nor retirement plans, OR if the spouses will keep their own pension or retirement plans, a QDRO isn't necessary.)

## **WHAT ARE COMMON DIVORCE ISSUES RELATED TO CHILDREN?**

- Residential responsibility of children, also known as custody
- Parenting time, also known as visitation
- Decision making responsibilities
- Child support
- Medical coverage, including health insurance premiums, copays, deductibles, etc.
- Tax deductions

When spouses can't agree on custody and visitation, the court will decide based on the best interests of the children. The best interest factors are found in [§ 14-09-06.2 of the North Dakota Century Code](#).

### **Child Support:**

Child support is based on guidelines set by the North Dakota Department of Human Services. If a parent can show a different ability to earn income than the guidelines show, the court may order a higher or lower child support payment.

The Child Support Division of the North Dakota Department of Human Services created and provides support for the Child Support Guidelines Calculator. The Calculator can be found at [childsupport.dhs.nd.gov/lawyers/child-support-guidelines](http://childsupport.dhs.nd.gov/lawyers/child-support-guidelines).

The Child Support Division may be able to provide some assistance with your child support calculations. (701-328-5440; 800-231-4255)

Court personnel and staff of the ND Legal Self Help Center can't assist with child support calculations.

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## **LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION**

You're not required to hire a lawyer to bring an action for divorce in North Dakota District Court. 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**

If you decide to find a lawyer 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](http://www.legalassist.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 [www.sband.org](http://www.sband.org). The cost is \$30.00 for a 30 minute consultation with a lawyer.
- 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](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.

### **Limited Legal Representation**

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. 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 legal documents, 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.

# THE CONTESTED DIVORCE PROCESS IN NORTH DAKOTA FROM BEGINNING TO END

## **PART ONE: THE PLAINTIFF STARTS THE CONTESTED DIVORCE ACTION BY SERVING THE SUMMONS AND COMPLAINT ON THE DEFENDANT**

Service of a copy of the summons and complaint on the other spouse starts a divorce action in North Dakota. When the summons and complaint are served, both spouses must obey the restraining provisions contained in the summons.

### **Determine Whether North Dakota is a Real Party in Interest:**

Review Section 14-09-09.26 of the North Dakota Century Code ([www.legis.nd.gov/cencode/t14c09.pdf#nameddest=14-09-09p26](http://www.legis.nd.gov/cencode/t14c09.pdf#nameddest=14-09-09p26)) to determine if the State of North Dakota must be listed on your court documents as a Real Party in Interest.

If the State of North Dakota is a Real Party in Interest, list “State of North Dakota” in the caption of all of the documents you create. See the complaint with children in the examples of documents found at the end of this Informational Guide.

### **The Plaintiff Creates the Following Documents:**

- Summons
  - Review [Rule 8.4](#) of the North Dakota Rules of Court. Notifies the Defendant that the Plaintiff started the divorce process and the Defendant must file a written answer in order to participate in the case.
  - See the fillable “Summons form – Divorce or Separation Actions” in the “General Use Checklists and Forms” link in the “District Court Civil” section.
  - An example of a divorce summons is also found at the end of this Informational Guide.
- Complaint
  - Gives the court information about the Plaintiff and Defendant, their property and children. Tells the court what the Plaintiff is asking for from the court.
  - At minimum, the divorce complaint must include the following:
    - How the Plaintiff meets the residency requirement for divorce.
    - How this action is the only divorce-related proceeding.
    - Identifying information for the Plaintiff and Defendant.
    - When and where the Plaintiff and Defendant married.

- Whether the Plaintiff or Defendant are currently in the Armed Forces and if so, whether currently deployed or deploying.
  - The ground (reason) for the divorce action.
  - Identifying information for each of the children of the marriage, if any.
  - Whether the Plaintiff or Defendant is currently pregnant.
  - Statement of how the court has jurisdiction over custody decisions for the minor children of the marriage, if any.
    - If the information is included in a separate affidavit (see next bullet), refer to the affidavit.
    - If the required information from [§ 14-14.1-20](#) of the North Dakota Century Code is included in the complaint, the complaint must be verified. (See the “Verification form at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).)
  - Statements related to child support and/or spousal support.
  - Statements related to division of property and debt.
  - Whether the Plaintiff wishes to restore his or her name.
  - Requests for relief, also called demands for relief.
    - Tells the court what the Plaintiff wants the court to do.
  - The Plaintiff will need to create and prepare their own Complaint document. The ND Legal Self Help Center doesn't have a Complaint form.
    - (See the “Caption and Signature form” at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms). The form may be of use as a starting point.)
  - Two examples of divorce complaints are found at the end of this Informational Guide.
  - Two examples of divorce complaints are found in the Legal Services of North Dakota Family Law Manual.
- Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
    - Plaintiff’s sworn, written statement required by [§ 14-14.1-20](#) of the North Dakota Century Code. The Affidavit must include:
      - Each child's present address or whereabouts;
      - The places where each child has lived during the last five years;
      - The names and present addresses of the persons with whom each child lived during the last five years;
      - Whether the Plaintiff has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with each child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

- Whether the Plaintiff knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
    - Whether the Plaintiff knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
  - **NOTE:** rather than creating a separate affidavit, the affidavit information may be added to the divorce complaint. If the affidavit information is added to the divorce complaint, the complaint must be verified. (See the “Verification form at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).)
    - For an example of a verified divorce complaint that includes the affidavit information, see the example at the end of this Informational Guide.
- Confidential Information Form
  - Review [Rule 3.4](#) of the North Dakota Rules of Court. Lists the full confidential information that isn’t allowed to appear in documents filed with the court. This form isn’t a part of the public court record.
  - See the form in [Appendix H](#) of the North Dakota Rules of Court.
  - An example of a confidential information form is also found at the end of this Informational Guide.

Make TWO copies of the completed Summons, TWO copies of the completed Complaint and TWO copies of the completed Affidavit of Custody Jurisdiction. Keep one copy of each for your records. The other copy of each document is for service on the Defendant.

A copy of the completed Confidential Information form isn’t served on the Defendant. You file the Confidential Information form with the Clerk of District Court later in the process.

**The Plaintiff Arranges for Service of Copies of the Following Documents on the Defendant:**

- Summons
- Complaint
- Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
  - **NOTE:** You don’t need a separate affidavit if you included the affidavit information in the verified complaint.



Service of the summons and complaint on the Defendant starts the contested divorce action. Filing with the Clerk of District Court doesn't start a divorce action and isn't required to start a divorce action.

Information about service to start a civil action and blank affidavit of service forms are available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action). Use the information, instructions and forms in the "Information and Instructions for Service to Start a District Court Civil Action" section of the webpage.

The completed affidavit of service document is your proof of service. Make a copy of the completed affidavit of service document for your records.

You file the original, completed affidavit of service document with the Clerk of District Court later in the process. The District Court won't act on your divorce action until you file proof of service.

**If the Plaintiff is Unable to Locate the Defendant for Service:**

If the Plaintiff, after making a diligent effort to locate the Defendant for service of the summons and complaint, is unable to locate the Defendant, service by publication may be available.

Information about service by publication to start a civil action and a blank affidavit for publication form is available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action).

**PART TWO: THE DEFENDANT SERVES A WRITTEN ANSWER TO THE SUMMONS AND COMPLAINT ON THE PLAINTIFF**

Service of the summons and complaint on the Defendant starts the contested divorce action. Filing with the Clerk of District Court doesn't start a divorce action and isn't required to start a divorce action.

The Defendant has twenty-one (21) days, not including the date of service, to serve a written answer on the Plaintiff. If the Plaintiff is represented by a lawyer, serve the written answer on the lawyer. If the Defendant doesn't respond within twenty-one (21) days, not including the date of service, the Plaintiff can ask the court for a default judgment.

If the Defendant was served by publication, service by publication is complete fifteen (15) days after the first publication of the summons in the newspaper.

## The Defendant Creates the Following Documents:

- Answer and Counterclaim
  - Defendant's written response to the Plaintiff's complaint. If the Defendant has counterclaims related to the divorce, counterclaims are included in the answer.
  - See the two divorce Answer and Counterclaim formatting examples at the end of this Informational Guide.
    - An "Answer and Counterclaim form" General-Use form is also available at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).
    - An example of a divorce answer and counterclaim is found in the Legal Services of North Dakota Family Law Manual.
- Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
  - Defendant's sworn, written statement required by [§ 14-14.1-20](#) of the North Dakota Century Code. The Affidavit must include:
    - Each child's present address or whereabouts;
    - The places where each child has lived during the last five years;
    - The names and present addresses of the persons with whom each child lived during the last five years;
    - Whether the Defendant has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with each child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
    - Whether the Defendant knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
    - Whether the Defendant knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
  - **NOTE:** rather than creating a separate affidavit, the affidavit information may be added to the answer to the Plaintiff's complaint. If the affidavit information is added to the answer to the Plaintiff's complaint, the answer must be verified. (See the "Verification form at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).)
    - The formatting example of a verified divorce answer and counterclaim at the end of this Informational Guide includes the affidavit information.

- Confidential Information Form
  - Review [Rule 3.4](#) of the North Dakota Rules of Court. Lists the full confidential information that is not allowed to appear in documents filed with the court. This form is not a part of the public court record. See the form in [Appendix H](#) of the North Dakota Rules of Court.
  - An example of a confidential information form is also found at the end of this Informational Guide.

Make TWO copies of the completed Answer and Counterclaim and TWO copies of the completed Affidavit of Custody Jurisdiction. Keep one copy of each for your records. The other copy of each document is for service on the Plaintiff, or the Plaintiff's lawyer.

A copy of the completed Confidential Information form isn't served on the Plaintiff. You file the Confidential Information form with the Clerk of District Court later in the process.

**The Defendant Arranges for Service of Copies of the Following Documents on the Plaintiff:**

- Answer and Counterclaim
- Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
  - **NOTE:** You don't need a separate affidavit if you included the affidavit information in the verified answer and counterclaim.

If the Plaintiff is represented by a lawyer, serve the copy of the answer and affidavit of custody jurisdiction on the lawyer.

Information about service after a civil action has started and blank affidavit of service forms are available at [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action). Use the information, instructions and forms in the "Information and Instructions for Service After a District Court Civil Action Has Started" section of the webpage.

The completed affidavit of service document is your proof of service. Make a copy of the completed affidavit of service document for your records.

You file the original, completed affidavit of service document with the Clerk of District Court later in the process. The District Court won't act on your divorce action until you file proof of service.

**If the Defendant Doesn't Answer the Summons and Complaint:**

If the Defendant doesn't serve a written answer to the summons and complaint on the Plaintiff within the required timeline, the Plaintiff may request a default divorce.

The Plaintiff may request a default divorce if the Plaintiff can prove to the court that the Defendant was served the summons and complaint correctly and did not answer. The request is made in a written motion to the court.

Informational guides for making a motion for a default divorce, and answering a motion for a default divorce are available at [www.ndcourts.gov/legal-self-help/divorce](http://www.ndcourts.gov/legal-self-help/divorce).

### **PART THREE: REQUIRED MEETING OF SPOUSES; FILING OF SUMMONS AND COMPLAINT; FILING OF ANSWER; DISCOVERY**

Review [Rule 8.3](#) of the North Dakota Rules of Court carefully! Both spouses are required to meet and prepare written information within 30 days after the Plaintiff serves the summons and complaint on the Defendant.

#### **Within 30 Days After Service of the Summons and Complaint, Both Spouses Must Meet with Each Other to Prepare the Following Documents:**

- Joint Informational Statement
  - See the example in [Appendix C](#) of the North Dakota Rules of Court.
  - An example of a joint informational statement form is also found at the end of this Informational Guide.
- Preliminary Property and Debt Listing
  - See the example in [Appendix E](#) of the North Dakota Rules of Court.
  - An example of a property and debt listing form is also found at the end of this Informational Guide.

The spouses may meet in person or by electronic means. If either spouse is represented, the lawyer is included in the meeting.

At minimum, the spouses must come to the meeting prepared to:

- Exchange information and documentary evidence relating to the existence and valuation of assets and liabilities;
- Exchange current paystubs, employment and income information, tax returns, preliminary pension information, and asset, debt and expense documentation;
- Determine what additional information is necessary in order to complete the divorce; and
- Decide whether alternative dispute resolution methods are appropriate.
  - Information about [Alternative Dispute Resolution](#) is available at [www.ndcourts.gov](http://www.ndcourts.gov).

**File the Summons and Complaint, the Joint Informational Statement, and the Preliminary Property and Debt Listing Within 7 Days After the Meeting:**

File the following original, completed documents with the Clerk of District Court and pay the \$80.00 filing fee:

- Summons
- Complaint
- Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
- Proof of Service of Summons, Complaint and Plaintiff's Affidavit of Custody Jurisdiction on Defendant
- Confidential Information Form
- Joint Informational Statement
- Preliminary Property and Debt Listing

Forms and instructions to ask the court to waive the \$80.00 filing fee are available at [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver). Fee waivers are based on inability to pay. The completed fee waiver request forms are filed at the same time as the summons and complaint.

If the Clerk of District Court accepts your documents for filing, a case number will be assigned.

The spouse who filed the above documents must serve notice of filing on the other spouse. See the "Notice of Filing form" at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

For more information about filing documents in a civil court action, including when the Defendant may file the summons and complaint, see the "Filing Documents with the District Court" Section in the "[Guide to a District Court Civil Action](#)."

**The Defendant Files the Answer:**

Within a reasonable time after receiving notice of filing of the summons and complaint, the Defendant must file the following original, completed documents with the Clerk of District Court and pay the \$50.00 filing fee:

- Answer and Counterclaim
- Defendant's Affidavit of Custody Jurisdiction (if children are part of the contested divorce action)
- Proof of Service of Answer and Defendant's Affidavit of Custody Jurisdiction on Plaintiff
- Defendant's Confidential Information Form

Forms and instructions to ask the court to waive the \$50.00 filing fee are available at [www.ndcourts.gov/legal-self-help/fee-waiver](http://www.ndcourts.gov/legal-self-help/fee-waiver). Fee waivers are based on inability to pay. The completed fee waiver request forms are filed at the same time as the answer.

The Defendant must serve notice of filing the answer on the other spouse. See the “Notice of Filing form” at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

### **Spouses May Begin the Discovery Process:**

Once the contested divorce starts, both spouses may begin the discovery process.

Discovery is a formal process where the Plaintiff and Defendant ask each other for information. The Plaintiff and Defendant may also ask non-parties for information.

For more information about discovery, see the “Discovery” Section in the “[Guide to a District Court Civil Action](#).”

## **PART FOUR: AFTER THE CONTESTED DIVORCE SUMMONS AND COMPLAINT ARE FILED WITH THE CLERK OF DISTRICT COURT**

### **You May Be Referred to Family Mediation:**

Review [Chapter 14-09.1](#) of the North Dakota Century Code. Review [Rule 8.1](#) of the North Dakota Rules of Court.

Within 10 days of filing the contested case, you may be referred to the Family Mediation Program for mediation of the disputed or unresolved parental rights and responsibilities issues. The Family Law Mediation Program will provide up to 6 hours of combined pre-mediation orientation and mediation at no cost to the spouses.

If your case is referred to the Family Mediation Program, you’ll receive an order and schedule for mediation. Read the order and schedule carefully, as you’ll need to follow the requirements and meet the deadlines.

For more information about the Family Mediation Program, go to [www.ndcourts.gov/state-court-administration/family-law-mediation-program](http://www.ndcourts.gov/state-court-administration/family-law-mediation-program).

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### **The Court Issues a Scheduling Order:**

Review [Rule 8.3](#) of the North Dakota Rules of Court.

Within 30 days after the summons and complaint and the joint informational statement are filed with the Clerk of District Court, the court must issue its scheduling order. The court may require a scheduling conference in-court or by telephone before issuing the scheduling order.

The scheduling order may establish any of the following deadlines for the contested divorce:

- Specific dates to complete discovery and other pretrial preparations;
- Specific dates for serving, filing, or hearing motions;
- Specific dates to complete mediation/alternative dispute resolution;
- A specific date for the parties to complete parent/divorce education;
- A specific date for filing the property and debt listing;
- Specific dates to complete parenting evaluations;
- A specific date by which the parties will be prepared for the pretrial conference;
- A specific date by which the parties will be prepared for the trial;
- A specific date for identification of witnesses and documents; and
- A specific date by which the parties will submit the parenting plans.

Read the order and schedule carefully, as you'll need to follow the requirements and meet the deadlines.

### **Either Spouse May Request an Interim or Temporary Order:**

Review [Rule 8.2](#) of the North Dakota Rules of Court.

Generally, either spouse can request an interim order after a contested divorce case is filed.

This is a request for a temporary order for support, parental rights and responsibilities, attorney's fees and costs, and use of property. The interim order, if signed by the court, is in effect until there is a different order or a final decision in the case.

Informational guides for making a motion for an interim order, and answering a motion for an interim order are available at [www.ndcourts.gov/legal-self-help/temporary-orders](http://www.ndcourts.gov/legal-self-help/temporary-orders).

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### **Appointment of a Parenting Investigator or Guardian Ad Litem for the Child(ren):**

Review [§ 14-09-06.3](#) and [§ 14-09-06.4](#) of the North Dakota Century Code. Review [Rule 8.6](#) and [Rule 8.11](#) of the North Dakota Rules of Court.

When one of the contested issues in a divorce is parenting rights and responsibilities, either spouse may make a motion to the court to appoint a parenting investigator or a guardian ad litem to represent the child concerning parenting rights and responsibilities.

The court may require one or both spouses to pay the guardian ad litem or investigator fees.

If neither spouse is able to pay the fees, the court may require that the county pay the fees, in whole or in part. The court may then require one or both spouses to reimburse the county, in whole or in part, for payment of the fees.

### **Prepare Proposed Parenting Plans:**

If your contested divorce involves children, a parenting plan is required to be part of the final divorce judgment.

If you and your spouse don't agree to a parenting plan, you'll each likely need to prepare a proposed parenting plan as part of the contested divorce proceedings.

The State Bar Association of North Dakota created a Model North Dakota Parenting Plan that may be of interest to you. It's found in the Parenting Plan section of the Legal Services of North Dakota Family Law Manual. It's also found on the State Bar Association of North Dakota website of [www.sband.org](http://www.sband.org).

### **Spouses May Settle All or Part of the Issues in the Contested Divorce:**

At any point during the contested divorce, spouses may discuss settlement of all or part of the issues.

If you and your spouse reach an agreement on an issue, prepare a written settlement agreement. This may also be referred to as a stipulation or a stipulated agreement. Written settlement agreements must be signed by both spouses in the presence of a notary public.

Written settlement agreements are filed with the Clerk of District Court.

### **Prepare for and Attend All Scheduled Hearings:**

Various types of hearings may occur throughout your contested divorce. For example, you may have a hearing on a motion for an interim order, a scheduling conference, or a pre-trial conference.



You must attend all hearings that are scheduled unless you have received permission from the court not to attend.

You can ask the court for permission to attend a hearing by telephone or by some other reliable electronic means. The court isn't required to grant this type of request. Forms and instructions for this request can be found at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) in the "Miscellaneous" section. Click on the "Appear by Phone or Other Electronic Means Request" link.

## **PART FIVE: PRE-TRIAL PREPARATION**

If you and your spouse don't reach a settlement on all issues, your contested divorce will eventually go to trial. Issues on which you and your spouse don't agree will be decided by a District Court Judge.

**Caution!** Preparing for trial is often a complex and confusing process. You're held to same requirements and responsibilities as a lawyer, even if don't understand the rules or procedures. This informational guide gives only the basics of the process. You'll need to conduct additional research to prepare.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

### **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](http://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:

*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.

*The Legal Answer Book for Families*, Emily Duskow, Marcia Stewart, NOLO, 2014.

*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.

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

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

### **If You Need Special Assistance at the Hearings/Trial:**

If you have a disability, don't read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

### **Each Spouse Prepares and Serves a Pre-Trial Conference Statement:**

Review [Rule 8.3](#) of the North Dakota Rules of Court and your scheduling order carefully! Each spouse is required to prepare the following document:

- Pre-Trial Conference Statement
  - See the example in [Appendix D](#) of the North Dakota Rules of Court.
  - An example of a pre-trial conference statement form is also found at the end of this Informational Guide.

The Plaintiff arranges for service of a copy of the Plaintiff's pre-trial conference statement on the Defendant.

The Defendant arranges for service of a copy of the Defendant's pre-trial conference statement on the Plaintiff.

Information about service after a civil action has started and blank affidavit of service forms are available [www.ndcourts.gov/legal-self-help/service-in-a-civil-action](http://www.ndcourts.gov/legal-self-help/service-in-a-civil-action).

Use the information, instructions and forms in the "Information and Instructions for Service After a District Court Civil Action Has Started" section of the webpage.

### **At Least 14 Days Before the Date of the Pre-Trial Conference, Each Spouse Files Their Pre-Trial Conference Statement:**

Each spouse must file the following original, completed documents with the Clerk of District Court at least 14 days before the date of the pre-trial conference:

- Pre-Trial Conference Statement
- Proof of Service of the Pre-Trial Conference Statement on the other spouse

### **Prepare for and Attend the Pre-Trial Conference:**

Both spouses must attend the pre-trial conference, unless excused by the court.

The spouses must come to the pre-trial conference prepared to discuss settlement.

If a spouse isn't excused by the court and fails to attend the pre-trial conference, the court may proceed without further notice to that spouse.

### **At Least 14 Days before the Date of the Trial, the Spouses File A Joint Property and Debt Listing:**

Unless the court orders otherwise, the spouses are required to prepare and file the following document at least 14 days before the date of the trial:

- Joint Property and Debt Listing
  - See the example in [Appendix E](#) of the North Dakota Rules of Court.
  - An example of a property and debt listing form is also found at the end of this Informational Guide.

Each asset or liability must be numbered separately.

### **Finish Your Pre-Trial Preparations:**

Review the [North Dakota Rules of Evidence](#) carefully! The North Dakota Rules of Evidence govern whether your evidence is admitted at trial. The Rules also govern how you object to evidence your spouse wants to admit at trial.

- An Evidence Research Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) in the "District Court Civil" section. Click on the "Evidence" link.

Review [Rule 45](#) of the North Dakota Rules of Civil Procedure carefully! If you require a witness to appear at trial or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

- A Subpoena Informational Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) in the "District Court Civil" section. Click on the "Subpoenas" link.

Organize the information, documents, etc. that you think you'll need for the trial. At minimum, prepare an outline of your remarks and arguments.

## **PART SIX: TRIAL**

The trial is an examination of the facts and law, presided over by the judge. The trial is the final hearing in a contested divorce action. The decision of the judge is called a judgment.

**Caution!** Representing yourself at trial is often a complex and confusing process. You're held to same requirements and responsibilities as a lawyer, even if don't understand the rules or procedures. This informational guide gives only the basics of the process. You'll need to conduct additional research to prepare.

Review the Library Resources above in Part Five: Pre-Trial Preparation.

### **If You Need Special Assistance at the Trial:**

If you have a disability, don't read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

### **Arrive Early to the Courthouse on the Date of the Trial:**

Don't miss your trial date and time. If you have a serious, unavoidable reason you can't get to court on the date and time scheduled for trial, call the Clerk of District Court as soon as you can.

### **Bring the Information, Documents, Etc. you Prepared for the Trial:**

Bring all of the files, paperwork, etc. that you gathered and organized while preparing for the trial. Bring the outline of what you want to say.

### **Conduct of the Trial:**

The judge, in a contested divorce trial, hears both sides and then issues a final judgment. Sometimes, the final judgment is issued at the end of the trial. Often, the final judgment is issued at a later date.

Before the trial officially begins:

- Organize your files and paperwork on your assigned table in the courtroom so you can easily locate information as needed.

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In general, a trial in a contested divorce action proceeds in the following order:

- Judge Begins the Trial
  - The trial officially begins when all are asked to rise when the judge comes into the courtroom.
- Opening Statements
  - Each spouse gives an opening statement. Usually, the Plaintiff goes first.
- Plaintiff Presents Witnesses and Evidence
  - The Plaintiff presents their case first. The Defendant may cross-examine witnesses and object to the Plaintiff's evidence.
- Defendant Presents Witnesses and Evidence
  - The Defendant presents their case after the Plaintiff. The Plaintiff may cross-examine witnesses and object to the Defendant's evidence.
- Closing Arguments
  - Each spouse gives a closing argument. Usually, the Plaintiff goes first.

#### **Before You Leave the Courthouse:**

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

### **PART SEVEN: FINAL JUDGMENT**

You're not divorced until a final judgment of divorce is signed by the judge and filed with the Clerk of District Court.

#### **Proposed Findings of Fact, Conclusions of Law and Order for Judgment:**

Review [Rule 52](#) of the North Dakota Rules of Civil Procedure and [Rule 7.1](#) of the North Dakota Rules of Court carefully!

Findings of fact are the judge's written determination of the facts made from the evidence presented. This explains what facts the judge found to be true.

Conclusions of law are the rulings of law made by the judge based on, or in connection with, the findings of fact. These are the legal consequences of the facts the judge found to be true.

If applicable, the parenting plan must be included in the conclusions of law, or incorporated by reference into the conclusions of law if the parenting plan is a separate document.

The judge may require one or both spouses to prepare and file proposed findings of fact, conclusions of law and an order for judgment. The proposed findings of fact, conclusions of law and an order for judgment must also be served on all parties, and proof of service filed with the Clerk of District Court.

The judge will decide whether the proposed findings of fact, conclusions of law and order for judgment are appropriate. If the judge decides they are appropriate, the judge will sign and date the findings of fact, conclusions of law and order for judgment. The findings of fact, conclusions of law and order for judgment are not official until signed and dated by the judge.

### **Proposed Judgment:**

Review [Rule 54](#) of the North Dakota Rules of Civil Procedure and [Rule 7.1](#) of the North Dakota Rules of Court carefully!

The judgment is the written order of the judge's final decision in your contested divorce.

If applicable, the parenting plan must be included in the judgment, or incorporated by reference into the judgment if the parenting plan is a separate document.

The judge may require one or both spouses to prepare and file a proposed judgment. The proposed judgment must also be served on all parties, and proof of service filed with the Clerk of District Court.

The judge will decide whether the proposed judgment is appropriate. If the judge decides it is appropriate, the judge will sign and date the judgment. You're not divorced until a final judgment of divorce is signed by the judge and filed with the Clerk of District Court.

### **Notice of Entry of Judgment**

Review [Rule 58](#) of the North Dakota Rules of Civil Procedure.

Within 14 days after the judgment is entered, the prevailing spouse must serve notice of entry of judgment on the other spouse. A copy of the judgment must be included with the notice of entry of judgment. See the "Notice of Entry of Judgment" form at [www.ndcourts.gov/legal-self-help/general-use-forms](http://www.ndcourts.gov/legal-self-help/general-use-forms).

After service is complete, the prevailing spouse must file the original, completed Notice of Entry of Judgment and proof of service on the other spouse with the Clerk of District Court.

**Examples of the divorce documents listed below are found on the following pages.**

- **Summons in Action for Divorce (Appendix A)**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Complaint With Children – Verified**
  - (This formatting example ISN'T a form. You'll need to create your own complaint yourself. See Pages 14-15 for the minimum information you MUST include.)
- **Answer and Counterclaim With Children – Verified**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Complaint No Children**
  - (This formatting example ISN'T a form. You'll need to create your own complaint yourself. See Pages 14-15 for the minimum information you MUST include.)
- **Answer and Counterclaim No Children**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Confidential Information Form (Appendix H)**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Informational Statement (Appendix C)**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Pretrial Conference Statement (Appendix D)**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)
- **Confidential Property and Debt Listing (Appendix E)**
  - (This document ISN'T fillable. You may hand write in blue or black ink. Or, you may copy and paste into word processing software, such as MS Word or Google Docs.)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
(Plaintiff) )

Case No. \_\_\_\_\_

PLAINTIFF, )

SUMMONS

Vs )

\_\_\_\_\_  
(Defendant) )

DEFENDANT, )

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear and defend against the Complaint in this action, which is served upon you, by serving upon the undersigned an Answer or other proper response within twenty-one (21) days after the service of this Summons and Complaint upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

**NOTICE OF TEMPORARY RESTRAINING PROVISIONS**

Under Rule 8.4 of the North Dakota Rules of Court, upon service of this Summons, you, and your spouse, are bound by the following restraints:

1. Neither spouse shall dispose of, sell, encumber, or otherwise dissipate any of the parties' assets, except:
  - a. For necessities of life or for the necessary generation of income or preservation of assets; or
  - b. For retaining counsel to carry on or to contest the proceeding.



If a spouse disposes of, sells, encumbers, or otherwise dissipates assets during the interim period, that spouse shall provide to the other spouse an accounting within thirty (30) days.

2. Neither spouse shall harass the other spouse.
3. All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.
4. Except for temporary periods, neither spouse may remove any of their minor children from North Dakota without the written consent of the other spouse or order of the court.

**IF EITHER SPOUSE VIOLATES ANY OF THESE PROVISIONS, THAT SPOUSE MAY BE IN CONTEMPT OF COURT.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Plaintiff  
(Signature of Plaintiff)

\_\_\_\_\_  
(Printed Name of Plaintiff)

\_\_\_\_\_ (Address),

City of \_\_\_\_\_, North Dakota \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Clerk of Court

**STATE OF NORTH DAKOTA**

**IN DISTRICT COURT**

**COUNTY OF ANYCOUNTY**

**CENTRAL JUDICIAL DISTRICT**

John Doe )  
 )  
 **PLAINTIFF,** )  
 vs ) **Case No. 00-2018-DM-00001**  
 )  
 Jane Doe ) **COMPLAINT**  
 )  
 **DEFENDANT,** )  
 and )  
 )  
 State of North Dakota )  
 **STATUTORY REAL PARTY IN INTEREST. )**

*Not required for every case.  
Review pages 8 & 14 of Guide.*

The Plaintiff for his cause of action, states as follows:

1. Plaintiff John Doe, is now, and for the entire 6 months immediately before the start of these divorce proceedings, a resident of North Dakota.
2. No separate proceeding for divorce or legal separation has been started or is pending in North Dakota or elsewhere.
3. The identifying information for Plaintiff and Defendant is as follows:

Plaintiff’s full legal name is John Doe.  
Address: 123 North 4<sup>th</sup> Street  
Anytown, North Dakota 58000  
Birth Year: 1980  
Last 4 Digits of Social Security Number: XXX-XX-1234  
Employer’s Name and Address: Any Employer, Inc.  
567 Industrial Avenue  
Anytown, North Dakota 58000

Defendant’s full legal name is Jane Doe.  
Address: 567 South 8<sup>th</sup> Street  
Othertown, North Dakota 58100  
Birth Year: 1980  
Last 4 Digits of Social Security Number: XXX-XX-5678  
Employer’s Name and Address: Other Employer, LLC  
890 Commerce Lane  
Othertown, North Dakota 58100

**FORMATTING EXAMPLE OF A COMPLAINT FOR DIVORCE WITH CHILDREN**

4. Plaintiff and Defendant were married on January 1, 2012 at Anytown, North Dakota and have been married ever since.

5. Neither Plaintiff nor Defendant is currently in the Armed Services of the United States of America or its allies.

6. Irreconcilable differences have arisen between Plaintiff and Defendant making continuation of the marriage impossible.

7. Plaintiff and Defendant have minor children together, namely:

A.B.D. Year of Birth: 2014

Last 4 Digits of Social Security Number: XXX-XX-9012

Address: 567 South 8<sup>th</sup> Street, Othertown, North Dakota 58100

C.D.D. Year of Birth: 2016

Last 4 Digits of Social Security Number: XXX-XX-3456

Address: 567 South 8<sup>th</sup> Street, Othertown, North Dakota 58100

8. It is in the best interests of the minor child(ren) that primary residential responsibility is granted to Defendant, subject to Plaintiff's reasonable parenting time.

9. Defendant is not pregnant.

10. This Court has jurisdiction to determine parenting rights and responsibilities and decision making responsibility of the minor child(ren) pursuant to N.D.C.C. § 14-14.1-12 because the child(ren) have lived in North Dakota with Defendant for at least six consecutive months immediately before the start of this proceeding.

11. This proceeding will affect the custody of the minor children. The following information is required by N.D.C.C. § 14-14.1-20:

*The information in Paragraph 11(a)-(e) may be included in a verified complaint, or provided in a separate affidavit.*

a. Within the past five (5) years, the children have lived at the following addresses:

Child's Initials	Address (street, city, state, zip code)	Date From	Date To
A.B.D.	567 South 8 <sup>th</sup> Street, Othertown, North Dakota 58100	1/14	Present
C.D.D.	567 South 8 <sup>th</sup> Street, Othertown, North Dakota 58100	1/16	Present

**FORMATTING EXAMPLE OF A COMPLAINT FOR DIVORCE WITH CHILDREN**

- b. The names and current addresses of the persons with whom the children have lived in the past five (5) years are as follows:

Child's Initials	Name of Person(s)	Current Address (street, city, state, zip code)
A.B.D.	John Doe Jane Doe	123 North 4 <sup>th</sup> Street, Anytown, North Dakota 58000 567 South 8 <sup>th</sup> Street, Othertown, North Dakota 58100
C.D.D.	John Doe Jane Doe	123 North 4 <sup>th</sup> Street, Anytown, North Dakota 58000 567 South 8 <sup>th</sup> Street, Othertown, North Dakota 58100

- c. Plaintiff has not participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the children.
- d. Plaintiff does not know of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, adoptions, neglect, abuse, deprivation, guardianship, or paternity.
- e. Plaintiff does not know of any person who is not a party to this proceeding who has physical custody of the children or claims rights of legal custody or physical custody of, or visitation with, the children.
12. There is a North Dakota District Court child support order already in existence. The case number is 00-2017-DM-00111.
13. Plaintiff and Defendant are owners of property, which should be divided by the Court and an equitable portion awarded to each party.
14. Plaintiff and Defendant have accumulated a certain amount of debt throughout the marriage, which should be divided, and an equitable portion assessed to each party.

**WHEREFORE**, Plaintiff asks for judgment as follows:

15. The bonds of matrimony presently existing between Plaintiff and Defendant be wholly dissolved and that Plaintiff be granted an absolute decree of divorce from Defendant.
16. For a fair and equitable division of the property.
17. For a fair and equitable distribution of the accumulated debts of the Plaintiff and Defendant.
18. For residential responsibility and parenting time that serve the minor children's best interests.

19. For such further and additional relief as this Court may deem just and proper.

Dated this 31st day of March, 2018.

*John Doe*

John Doe  
123 North 4th Street  
Anytown, North Dakota 58000  
(701) 234-5678

**VERIFICATION**

*Required if Paragraph 11(a)-(e)  
information is included in the complaint.*

I, John Doe, verify, under penalty of perjury under the laws of North Dakota, that I am the Plaintiff in the above-entitled action; that I have read the Complaint for divorce and know the contents thereof and that the same is true, except as to matters stated therein upon information and belief as to those matters I state that I believe them to be true.

State of: North Dakota

County of: Anycounty

Country: USA

Signed on March 31, 2018.

*John Doe*

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_  
PLAINTIFF,

Case No. \_\_\_\_\_

Vs  
\_\_\_\_\_  
DEFENDANT.

ANSWER AND COUNTERCLAIM  
(With Children)

**ANSWER**

\_\_\_\_\_ (*Defendant's name*), the Defendant

in this divorce action, submits this Answer to the allegations in the Plaintiff's Complaint:

1. Defendant denies each and every allegation in the Plaintiff's Complaint unless specifically admitted to below.

2. Defendant admits to the allegations in the following paragraphs in the Plaintiff's Complaint (*list each paragraph number with which you completely agree*): \_\_\_\_\_  
\_\_\_\_\_.

3. Defendant admits part and denies part of the allegations in the following paragraphs in the Plaintiff's Complaint (*list the paragraph number and explain what part of the paragraph you agree and what part you disagree*):

a. Paragraph # \_\_\_\_: \_\_\_\_\_

b. Paragraph # \_\_\_\_: \_\_\_\_\_

c. Paragraph # \_\_\_\_: \_\_\_\_\_

d. Paragraph # \_\_\_\_: \_\_\_\_\_

4. Defendant does not have sufficient knowledge to either admit or deny the allegations in the following paragraphs in the Plaintiff's Complaint (*list each paragraph number you don't have enough information with which to agree or disagree*): \_\_\_\_\_

**AFFIRMATIVE DEFENSES Pursuant to Rule 8 of the North Dakota Rules of Civil Procedure**

5. (*Choose one.*)

- a.  Defendant does not have any affirmative defenses.
- b.  Defendant has the following affirmative defenses (*Select all that apply. You will be required to prove all affirmative defenses you select.*)
  - Defendant was not served a copy of the summons and complaint.
  - Defendant received a copy of the summons and complaint, but was not properly served because \_\_\_\_\_.
  - A divorce case has already started in \_\_\_\_\_  
(*State and name of Court*), Case Number: \_\_\_\_\_.
  - A legal separation case has already started in \_\_\_\_\_  
(*State and name of Court*), Case Number: \_\_\_\_\_.
  - Other \_\_\_\_\_

**COUNTERCLAIM**

\_\_\_\_\_ (*Defendant's name*), the Defendant  
in this divorce action, submits this Counterclaim to the Plaintiff's Complaint:

6. The identifying information of Plaintiff and Defendant is as follows:

- a. Plaintiff's full legal name is: \_\_\_\_\_  
Plaintiff's address is: \_\_\_\_\_  
\_\_\_\_\_

Plaintiff's employer's name and address: \_\_\_\_\_  
\_\_\_\_\_.

Plaintiff's birth year: \_\_\_\_\_

Last 4 digits of Plaintiff's social security number: XXX-XX-\_\_\_\_\_

b. Defendant's full legal name is: \_\_\_\_\_.

Defendant's address is: \_\_\_\_\_  
\_\_\_\_\_.

Defendant's employer's name and address: \_\_\_\_\_  
\_\_\_\_\_.

Defendant's birth year: \_\_\_\_\_

Last 4 digits Defendant's social security number: XXX-XX-\_\_\_\_\_

7. Plaintiff and Defendant were married on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, at \_\_\_\_\_ (city), \_\_\_\_\_ (state) and ever  
since have been married.

8. (Choose one)

a.  Neither Plaintiff nor Defendant is currently in the Armed Services of the United States of America or its allies.

**OR**

b.  Plaintiff/ Defendant is currently in the Armed Services of the United States of America or its allies but is not currently deployed or notified of deployment.

9. Irreconcilable differences have arisen between Plaintiff and Defendant making the continuation of the marriage impossible.

10. Plaintiff and Defendant have minor children together, namely:

a. Minor Child's Initials: \_\_\_\_\_ Year of Birth: \_\_\_\_\_

Last 4 Digits of Social Security Number: XXX-XX-\_\_\_\_\_

Address: \_\_\_\_\_



b. Minor Child's Initials: \_\_\_\_\_ Year of Birth: \_\_\_\_\_  
Last 4 Digits of Social Security Number: XXX-XX-\_\_\_\_\_  
Address: \_\_\_\_\_

c. Minor Child's Initials: \_\_\_\_\_ Year of Birth: \_\_\_\_\_  
Last 4 Digits of Social Security Number: XXX-XX-\_\_\_\_\_  
Address: \_\_\_\_\_

11. It is in the best interests of the minor child(ren) that residential responsibility is granted as follows (*choose one*):

a.  Shared equally between the Plaintiff and the Defendant.

**OR**

b.  Primary residential responsibility granted to the Plaintiff, subject to the Defendant's reasonable parenting time.

**OR**

c.  Primary residential responsibility granted to the Defendant, subject to the Plaintiff's reasonable parenting time.

12. (*Choose one.*)

a.  Neither Plaintiff nor Defendant is pregnant.

**OR**

b.  Plaintiff/  Defendant is pregnant. However, the  Plaintiff/  Defendant is not the father, and the child is not at issue in this proceeding.

13. (*Choose one.*)

a.  This Court **has** jurisdiction to determine parenting rights and responsibilities (*custody and visitation*) and decision making of the minor child(ren) pursuant to North Dakota Century Code Section 14-14.1-12 because (*choose one*):

The child(ren) has/have lived in North Dakota with a parent or person acting as a parent for at least six consecutive months immediately before the start of this

proceeding. If a child is less than six months old, the child has lived in North Dakota with a parent or person acting as a parent since their birth.

Name of parent or person acting as a parent: \_\_\_\_\_

Relationship to child(ren): \_\_\_\_\_

**OR**

North Dakota was the home state of the child(ren) within six months of the start of this proceeding, and one parent continues to reside in North Dakota.

Name of parent residing in North Dakota: \_\_\_\_\_

- b.  This Court **DOES NOT have** jurisdiction to determine parenting rights and responsibilities (*custody and visitation*) and decision making of the minor child(ren) pursuant to North Dakota Century Code Section 14-14.1-12 because (*choose one*):

The child(ren) **have not** lived in North Dakota with a parent or person acting as a parent for at least six consecutive months immediately before the start of this proceeding. If a child is less than six months old, the child has lived in North Dakota with a parent or person acting as a parent since their birth.

**OR**

North Dakota **was not** the home state of the child(ren) within six months of the start of this proceeding, and one parent **does not** continue to reside in North Dakota.

14. This proceeding will affect the custody of the minor child(ren) of the marriage. The following information is required by North Dakota Century Code Section 14-14.1-20:

- a. Within the past five (5) years, the child(ren) has/have lived at the following addresses:

Child's Initials	Address (street, city, state, zip code)	Date From	Date To

- b. The names and current addresses of the persons with whom the child(ren) has/have lived in the past five (5) years are as follows:

Child's Initials	Name of Person(s)	Current Address (street, city, state, zip code)

- c. (Choose one.)

Defendant has not participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child(ren).

**OR**

Defendant has participated in the following proceeding(s) concerning the child(ren) as a party or witness, or in another capacity concerning the custody of or visitation with the child(ren):

Name of Court	State	Case Number	Date of Determination

- d. (Choose one)

Defendant does not know of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, adoptions, neglect, abuse, deprivation, guardianship, or paternity.

**OR**

Defendant knows of the following proceeding(s) that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, adoptions, neglect, abuse, deprivation, guardianship, or paternity.

Name of Court	State	Case Number	Type of proceeding

e. *(Choose one)*

Defendant does not know of any person who is not a party to this proceeding who has physical custody of the child(ren) or claims rights of legal custody or physical custody of, or visitation with, the child(ren).

**OR**

Defendant knows of the following person(s) who is/are not a party to this proceeding who has physical custody of the child(ren) or claims rights of legal custody of physical custody of, or visitation with, the child(ren).

Name of Person(s)	Address (street, city, state, zip code)

15. *(Choose one)*

a.  Plaintiff/  Defendant (choose one) is an able-bodied person and is able to contribute toward the support of the minor child(ren).

**OR**

b.  There is a child support order already in existence. The case number is

\_\_\_\_\_.

16. The parties are owners of property, which should be divided by the Court and an equitable portion awarded to each party.

17. The parties have accumulated a certain amount of debt throughout the marriage, which should be divided, and an equitable portion assessed to each party.

18. Defendant wants to restore their name (*choose one*): Yes No

**WHEREFORE**, Defendant asks for the following relief on the Answer and Counterclaim:

19. (*Select all that apply.*)

- a. That Plaintiff's Complaint be dismissed because (*explain*) \_\_\_\_\_  
\_\_\_\_\_.
- b. The bonds of matrimony presently existing between Plaintiff and Defendant be wholly dissolved and that Plaintiff be granted an absolute decree of divorce from Defendant.
- c. For residential responsibility and parenting time that serve the minor child(ren)'s best interests.
- d. For child support obligations that serve the minor child(ren)'s best interests, including those related to traditional child support, dependent medical and dental insurance coverage, and contribution to the child(ren)'s uninsured dental and medical expenses.
- e. For a fair and equitable division of the assets and liabilities accumulated and incurred by the parties.
- f. That Plaintiff and Defendant pay their own attorney's fees and costs associated with bringing this action.
- g. Defendant's name be restored to \_\_\_\_\_.

h.  For such further and additional relief as this Court may deem just and proper.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature of Defendant*

\_\_\_\_\_  
*Typed or Printed Name of Defendant*

\_\_\_\_\_  
*Address*

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
*City State Zip Code*

(\_\_\_\_\_) \_\_\_\_\_  
*Telephone Number*

**VERIFICATION OF DEFENDANT**

**STATE OF \_\_\_\_\_)**

**COUNTY OF \_\_\_\_\_)SS**

**COUNTRY OF \_\_\_\_\_)**

*(State, County, and Country where Defendant signed)*

I, \_\_\_\_\_, verify, under penalty of perjury under the law of North Dakota, that I am the Defendant in the above-entitled action; that I have read the Answer and Counterclaim and know the contents thereof and that the same is true and correct, except as to matters stated therein upon information and belief as to those matters I state that I believe them to be true and correct.

Signed on \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
*(Defendant's Signature)*

\_\_\_\_\_  
*(Defendant's Printed Name)*