

Answer to Motion for Default Judgment (*Debt Collection*)

When you're served a motion for a default judgment by a Plaintiff who is trying to collect a debt, if you disagree, you must answer the motion in **writing**.

Review [Rule 55 of the North Dakota Rules of Civil Procedure](#) before you complete any of the forms.

Instructions for Form OP1: Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*)

(Form OP1: Answer Brief in Opposition to Motion is part of the Answer to Motion for Default Judgment (*Debt Collection*) form set).

Don't delay! You have only **14 or 17 calendar days** to serve and file your written Answer to the motion. If you **don't answer the motion in writing**, the judge is allowed to grant the Plaintiff a default judgment without your input.

ND Legal Self Help Center Staff and Court employees **can't** help you fill out forms. If you're unsure how to proceed, consult a lawyer.

ND Legal Self Help Center forms **aren't** official court forms. Judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

To Answer a Motion for Default Judgment in a debt collection action, the following forms are required:

- ➔ **OP1: Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*);**
- ◆ **OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*);**
- ◆ **Answer – Debt Collection** (*if you already served an Answer to the Summons and Complaint, you don't fill out, copy, or serve this form*);
- ◆ **OP3: Confidential Information Form (*Debt Collection*);**
- ◆ **OP4: Declaration of Service by Mail (*Debt Collection*).**

An Answer Brief in Opposition to Motion document is one of a set of required documents that make up a written Answer to Motion for Default Judgment (*Debt Collection*).

Form OP1: Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*) is your, the Defendant's, written legal argument about how and why the Plaintiff doesn't meet the requirements for a default judgment.

Form OP1: Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*) takes the specific rules that support your response and explains how they apply to the facts of your debt collection case.

Facts referred to in the Answer Brief must also appear in your OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*) form.

You, the Defendant, arrange to serve the Answer Brief with all of the other documents listed on Page 1.

You, the Defendant, Complete and Sign This Form.

☐ **Top of Form (Caption):** Fill in the caption exactly as the caption on the Summons is filled in.

- Look at the top (Caption) of the Summons. If you don't have a copy of the Summons, contact the [Clerk of District Court](#). Give the clerk the case number from the top (Caption) of the Notice of Motion. Ask the clerk for copies of the Summons, Complaint, and Proof of Service of the Summons and Complaint.
- The clerk may charge you a fee for copies. Ask the clerk if they email the copies to you without charging a fee.

☐ **First Sentence:** Fill in your full name. You must be listed as a Defendant in the Caption of the Summons to use this form.

☐ **Paragraph 1:** Read carefully. If this statement isn't true, you can't use this form.

☐ **Paragraph 2:**

When you're served a Summons and Complaint, the Plaintiff **must** serve you correctly, as required by [Rule 4 of the North Dakota Rules of Civil Procedure](#).

Review [Rule 4](#) carefully to decide if the Plaintiff served you as required. See also the [Information and Instructions for Service to Start a District Court Civil Action](#).

- **If you were served** the Summons and Complaint for debt collection, check (✓) the first box and fill in the service date.
- **If you dispute** the Summons and Complaint were served correctly or served at all, check (✓) the second box.

☐ **Paragraph 3:**

- **If you served** an Answer to the Summons and Complaint within the 21 day deadline to answer, check (✓) the first box.
 - You must file your original answer and original proof of service with your answer to motion documents. Make sure you **keep copies** for your records.
- **If you didn't serve** an Answer to the Summons and Complaint within the 21 day deadline to answer, check (✓) the second box.
 - You must complete the [Answer – Debt Collection](#) form.

☐ **Paragraph 4:**

- **If you tried to contact** the Plaintiff or the Plaintiff's lawyer once you knew the Plaintiff was starting a debt collection action, check (✓) the first box.
- **If you didn't try to contact** the Plaintiff or the Plaintiff's lawyer once you knew the Plaintiff was starting a debt collection action, check (✓) the second box.

- ☐ **Paragraph 5:** Under the federal Servicemembers Civil Relief Act (SCRA), active duty service members have protections against default judgments.

Active Military Service – Under the Federal Servicemembers Civil Relief Act:

- For servicemembers who are a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, active military service is full-time duty in the active military service of the United States. This includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. This doesn't include full-time National Guard duty.
- For members of the National Guard, active military service includes service under a call to active service authorized by the President or the Secretary of Defense for more than 30 consecutive days under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds.
- For servicemembers who are commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration, active military service is active service.
- Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

Before the Plaintiff can ask the judge for a default debt collection judgment, they're required to try to find out if you're in active service with the military.

If the judge can't tell whether you're in active military service from the forms the Plaintiff files, before granting a default debt collection judgment, the judge may require the Plaintiff to file a bond. The judge decides the dollar amount of the bond. If you're later found to be in active military service, the bond is used to compensate you against loss or damage resulting from the default debt collection judgment.

- **If you're not** in active military service based on the definition on Page 3, check (✓) the first box.
- **If you're in** active military service based on the definition on Page 3, **and** not currently represented by a lawyer in this case, check (✓) the second box.

- ☐ **Paragraph 6:** Read carefully. This is stating you have defenses to this debt collection action which are described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment. Review Paragraph 6 of Form OP2. Declaration in Support of Answer Brief. If you can't checkmark at least one box, you can't use this form set.

Important! Inability to pay the debt **isn't** a defense.

- ☐ **Paragraphs 7 and 8:** Read carefully. This is the required law and argument section of your brief. This takes your facts and applies them to the default judgment rule.
- ☐ **Paragraph 9:**
- **If you checkmarked the first box** in Paragraph 5, check (✓) the first box.
 - **If you checkmarked the second box** in Paragraph 5, check (✓) the second box.
- ☐ **Paragraph 10:** Read carefully
- ☐ **Paragraph 11a – 11b:** Read carefully. If these statements aren't true, you can't use this form.
- ☐ **Paragraph 11c:** Read carefully. Check (✓) the box if the statement applies.
- ☐ **Paragraph 11d:** Read carefully. This is a standard statement in an Answer.
- ☐ **Date and Signature:** You must sign and date the Answer Brief and complete the lines following the signature line.

What do I do next?

- ☐ Set aside the completed Form OP1: Answer Brief. (You make copies later.)
- ☐ Complete the next form in the set. (Form OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*)).
- ☐ Once you've completed all of the forms listed on Page 1, you serve the Answer Brief with those forms.
- ☐ The originals are filed with the court. Make sure to also file the Declaration of Service by Mail.

Don't include these instruction sheets when you serve or file the completed form

State of North Dakota

In District Court

County of _____

_____ Judicial District

vs

Plaintiff,
Defendant.

)
)
)
)
)

Case No. _____

**Answer Brief in Opposition to
Motion for Default Judgment
(Debt Collection)**

Defendant, _____ (name), submits this

Answer Brief in Opposition to Motion for Default Judgment.

Statement of Facts

1. The above-captioned civil case is an action to collect a debt.

2. **Service of Summons and Complaint** (choose one):

☐ Defendant was served on _____ (date) with the Summons and Complaint for this debt collection action.

☐ Defendant disputes service of the Summons and Complaint for this debt collection action as described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment, which is incorporated by reference.

3. (Choose one; Paragraph 3 continues on next page):

☐ Defendant served an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline based on the facts described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment, which is incorporated by reference. Defendant's

Answer to the Plaintiff's Summons and Complaint **and** proof of service of Defendant's Answer within the 21 day answer deadline is filed with the court.

☐ Defendant **did not** serve an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline as described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment, which is incorporated by reference. Defendant's Answer and Counterclaim to the Plaintiff's Summons and Complaint is served and filed with this Answer Brief in Opposition to Motion for Default Judgment.

4. (Choose one):

☐ After Defendant became aware of the debt collection action, Defendant contacted or attempted to contact Plaintiff as described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment, which is incorporated by reference.

☐ After Defendant became aware of the debt collection action, Defendant **did not** contact or attempt to contact Plaintiff as described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment, which is incorporated by reference.

5. (Choose one):

☐ Defendant **is not** in active military service.

☐ Defendant **is in** active military service, **but is not** represented by a lawyer in this action.

6. Defendant has defense(s) to this action, which are described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment and incorporated by reference.

Law and Argument

7. The motion for default judgment does not meet the requirements of Rule 55 of the North Dakota Rules of Civil Procedure.
8. “The policy behind Rule 55 is to afford litigants a fair opportunity to adjudicate their disputes on the merits, rather than by default.” (Wilson v. Wilson, 364 N.W.2d 113, 115 (N.D. 1985))
9. *(Choose one. If you checkmarked the 2nd box in Paragraph 5, checkmark the 2nd box):*
- ☐ Defendant **is not** in active military service. This Paragraph 8 does not apply.
- ☐ Defendant **is in** active military service, and under § 50 U.S.C. 3931(d)(1) has a defense, or defenses, that cannot be presented without Defendant’s presence.

Conclusion

10. Based on this Answer Brief and Declaration in Support of Answer Brief, it is improper to find Defendant in default under Rule 55 of the North Dakota Rules of Civil Procedure.
11. For the reasons stated above, Defendant respectfully requests the court:
- a. **Deny** the Plaintiff’s motion for a default judgment.
 - b. Allow Plaintiff and Defendant to litigate this action on the merits.
 - c. *(Check (✓) only if you checkmarked the 2nd box in Paragraphs 5 and 8.)*
 - ☐ Grant a stay of 90 days under § 50 U.S.C. 3931(d)(1) because Defendant is in active military service and has a defense, or defenses, to this action that cannot be presented without the Defendant’s presence.

d. For such further and additional relief that the court may deem just and proper.

Dated _____.

(Signature of Opposing Party)

(Opposing Party Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

(Email Address)