

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

Instructions for Form OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*)

(Form OP2: Declaration in Support of Answer Brief is part of the Answer to Motion for Default Divorce Judgment (*Debt Collection*) form set).

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*).

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

Form OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*) is your, the Defendant's, written statement of your facts that support what you wrote in your Answer Brief.

You, the Defendant, arrange to serve your Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*) with all of the other documents listed above.

(This space left intentionally blank.)

You, The Defendant, Complete and Sign This Form.

- ☐ **Top of Form (Caption):** Fill in the Caption exactly as you filled in the Caption on your Form OP1: Answer Brief.

- ☐ **Fill in your full legal name.** This should match your name in the Caption.

- ☐ **Paragraph 1:** Read carefully. If this information isn't correct, you can't use this form.

- ☐ **Paragraph 2:** Review your answer to Paragraph 2 of your Form OP1: Answer Brief.

If you checked (✓) the first box of Paragraph 2 of your Form OP1: Answer Brief, check (✓) the first box. Fill in the same date as Paragraph 2 of your Form OP1: Answer Brief.

If you checked (✓) the second box of Paragraph 2 of your Form OP1: Answer Brief, check (✓) the second box. Describe why you dispute the Summons and Complaint were served correctly, or not served at all.

- ☐ **Paragraph 3:** Review your answer to Paragraph 3 of your Form OP1: Answer Brief.

If you checked (✓) the first box of Paragraph 3 of your Form OP1: Answer Brief, check (✓) the first box. Describe how and when you served your written Answer in response to the Plaintiff's Summons and Complaint.

If you checked (✓) the second box of Paragraph 3 of your Form OP1: Answer Brief, check (✓) the second box. Explain why you didn't serve a written Answer, in response to the Plaintiff's Summons and Complaint.

- ☐ **Paragraph 4:** Review your Answer to Paragraph 4 of your Form OP1: Answer Brief.

If you checked (✓) the first box of Paragraph 4 of your Form OP1: Answer Brief, check (✓) the first box. Describe how and when you contacted or attempted to contact the Plaintiff or their lawyer.

If you checked (✓) the second box of Paragraph 4 of your Form OP1: Answer Brief, check (✓) the second box. Describe why you didn't contact or attempt to contact the Plaintiff or their lawyer.

- ☐ **Paragraph 5:** Review your answer to Paragraph 5 of your Form OP1: Answer Brief.

If you checked (✓) the second box, describe the defenses you have that can't be presented without your presence.

Defenses: A defense is a legal reason the Plaintiff should lose, even if the Plaintiff's claims are true. For example, expiration of the time allowed by law to bring a civil action, or statute of limitations, is a defense. You may have more than one defense!

You, the Defendant, must state your defenses in this Declaration.

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

You must independently determine if any of the defenses listed apply to your case. ND Legal Self Help Center staff and Court employees can't advise you.

- ☐ **Paragraph 6:** Check all of the defenses to this action that apply. **You will need to prove all the defenses you check.**

☐ **The North Dakota District Court does not have subject matter jurisdiction.**

- Subject matter jurisdiction is the North Dakota laws and/or rules that say the court can hear and make decisions about the case. (See the [laws and/or rules](#) related to the subject matter and/or [North Dakota Century Code Chapter 28-04](#).)
- Explain why you don't believe North Dakota has subject matter jurisdiction.

☐ **I did not receive a copy of the Summons and Complaint as I explained in Paragraph 2 of this Declaration.**

- If you chose and completed the second checkbox in Paragraph 2 because you weren't served at all, checkmark this defense.

☐ **I received the Summons and Complaint, but it was not properly served as I explained in Paragraph 2 of this Declaration.**

- If you chose and completed the second checkmark in Paragraph 2 because the Summons and Complaint you received weren't served correctly, checkmark this defense.

☐ **I paid this debt in full. Proof of payment is served and filed with my Answer Brief and this Declaration.**

- If this applies, **include** proof of payment in full when you serve and file your Answer Brief and this Declaration.

☐ **I paid an amount that the Plaintiff accepted as payment in full. Proof of payment is served and filed with my Answer Brief and this Declaration.**

- If this applies, **include** proof of payment when you serve and file your Answer Brief and Declaration.

- ☐ **I have a pending bankruptcy case. The bankruptcy case was filed _____ (date). The bankruptcy case number is _____.**
- If you have 1) filed for bankruptcy, 2) the bankruptcy case is not yet finished, and 3) this debt was included, **fill in** the filing date and case number of your bankruptcy case.
- ☐ **The debt was discharged in bankruptcy. The bankruptcy case was filed _____ (date). The bankruptcy case number is _____.**
- If you have filed for bankruptcy and this debt was discharged as part of your bankruptcy case, **fill in** the filing date and case number of your bankruptcy case.
- ☐ **A court has already decided this claim in my favor. The certified or authenticated court order/judgment is served and filed with my Answer Brief and this Declaration.**
- If this debt was already part of a different case, and the court reached a decision, get a certified or authenticated copy of the order or judgment and **include** when you serve and file your Answer Brief and this Declaration.
- ☐ **The statute of limitation for collection this debt is ____ years. The Plaintiff failed to sue within ____ years of _____ (date), the last activity on the alleged account.**
- Statute of limitations is the amount of time by law that a Plaintiff may bring a claim in a civil action. If the time limit has passed, the Plaintiff can't bring the claim.
- To determine if the statute of limitations has passed for the Plaintiff to bring a debt collection civil action against you, start your legal research with [Chapter 28-01](#) of the North Dakota Century Code. If the debt collection civil action doesn't relate to real estate, start your research with [Section 28-01-16](#).
- **Fill in** the appropriate number of years, and date of last activity.
- ☐ **I lacked capacity to enter into a contract because:**
- ☐ **I was under the age of 18 when the alleged contract was created.**
- If you were under age 18 when the alleged contract was created, file a [Confidential Information Form](#) with your Answer Brief and this Declaration. **Don't** serve the Confidential Information Form with your Answer. **Fill in** your date of birth.

☐ **I was not mentally competent when the alleged contract was made.**

- If you had a guardian or conservator appointed for you by a court at the time the alleged contract was made, **fill in** the case number and **include** a copy of the letters of guardianship or conservatorship when you serve and file your Answer Brief and this Declaration.

☐ **I am a victim of identity theft or mistaken identity. I am not responsible for this debt.**

- If this applies, describe the circumstances and refer to any proof you have. **Include** a copy of the proof you reference when you serve and file your Answer Brief and this Declaration.

☐ **I am a member of the military on active duty as explained in Paragraph 5 of this Declaration.**

☐ **The Plaintiff is not the original owner of the debt.**

- This paragraph may apply if:
 - The Plaintiff is a debt collector;
 - You asked for proof, in writing, that you owe the debt; and
 - You didn't receive adequate documentation that the Plaintiff now owns the debt.
- If this applies, describe your attempts to get documentation and why the documentation isn't adequate.
- A "debt collector" is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and try to collect them. **If the Plaintiff is the original creditor, this option doesn't apply.**

☐ **Other:**

- The defenses listed **aren't all of the possible defenses you may have**. If you have a defense that isn't listed, use this option to write or type the defense(s).

☐ **Paragraph 7:** Read carefully. You're stating that under penalty of perjury under the law of North Dakota, everything you stated in this Declaration is true and correct.

☐ **Date and Signature:** You, the Defendant, must sign, date, sign, and fill in all requested information on this Form OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*).

What do I do next?

- ☐ Set aside your completed Form OP2: Declaration in Support of Answer Brief. (You make copies later.)
- ☐ Complete the next form in the set. (Answer – Debt Collection is the next form.) *(If you already served an answer, you **don't** fill out, copy, or serve this form.)*
- ☐ Once you've completed all of the forms listed on Page 1, you serve this Form OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment (*Debt Collection*).
- ☐ 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

Plaintiff,

vs

Defendant.

)
)
)
)
)
)

Case No. _____

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

I, _____ (Defendant name), the

undersigned, state as follows:

1. I am the Defendant in the above-captioned civil case, which is a debt collection action.

2. **Service of Summons and Complaint** (choose and complete the same checkbox as

Paragraph 2 of your Answer Brief):

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

☐ I dispute service of the Summons and Complaint for this debt collection action because
(explain):

3. (Choose and complete the same checkbox as Paragraph 3 of your Answer Brief):

☐ I served an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline based on the following facts (*describe in detail*):

☐ I did not serve an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline because (*explain in detail*):

4. (Choose and complete the same checkbox as Paragraph 4 of your Answer Brief):

☐ After I became aware of the debt collection case, I contacted or attempted to contact the Plaintiff, or the Plaintiff's lawyer, as follows (*describe in detail*):

☐ After I became aware of the debt collection case, I **did not** contact or attempt to contact the Plaintiff, or the Plaintiff's lawyer, because (*describe in detail*):

5. (Choose and complete the same checkbox as Paragraph 5 of your Answer Brief):

☐ I am **not in** active military service.

☐ I **am in** active military service, I **am not** currently represented by a lawyer, and I have the following defenses in this debt collection action that cannot be presented without my presence
(Explain how you're in active military service and briefly describe your defenses):

6. I have the following defense(s) to this action (Check all that apply. You will need to prove all defenses you check. Paragraph 6 continues on the next page):

☐ The North Dakota District Court does not have subject matter jurisdiction because (explain):

☐ I did not receive a copy of the Summons and Complaint as I explained in Paragraph 2 of this Declaration.

☐ I received the Summons and Complaint, but it was not properly served as I explained in Paragraph 2 of this Declaration.

☐ I paid this debt in full. Proof of payment is served and filed with my Answer Brief and this Declaration.

☐ I paid an amount that the Plaintiff accepted as payment in full. Proof of payment is served and filed with my Answer Brief and this Declaration.

☐ I have a pending bankruptcy case. The bankruptcy case was filed _____ (date).
The bankruptcy case number is _____.

☐ This debt was discharged in bankruptcy. The bankruptcy case was filed _____ (date).
The bankruptcy case number is _____.

☐ A court has already decided this claim in my favor. The certified or authenticated court order/judgment is served and filed with my Answer Brief and this Declaration.

☐ The statute of limitations for collecting this debt is ____ years. The Plaintiff failed to sue within ____ years of _____ (date), the last activity on the alleged account.

☐ I lacked capacity to enter into a contract because:

☐ I was under the age of 18 when the alleged contract was created. My year of birth is _____. A confidential information form with my full birth date is filed with the court.

☐ I was not mentally competent when the alleged contract was made. The case number is _____.

☐ I am a victim of identity theft or mistaken identity. I am not responsible for this debt because:

☐ I am a member of the military on active duty as explained in Paragraph 5 of this Declaration.

☐ The Plaintiff is not the original owner of this debt. I have not received adequate documentation from the Plaintiff to show the Plaintiff rightfully owns this debt (explain):

☐ Other: _____

7. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment is true and correct.

Signed on _____ (Date) in _____ (County),
_____ (State), _____ (Country).

_____/_____
Defendant's Signature Printed Name

Address City, State, Zip Code

Telephone Number Email Address