

Answer to Motion for Default Divorce Judgment

Instructions for Form OP3a: Answer and Counterclaim (*With Children*)

(Form OP3a: Answer and Counterclaim (*With Children*) is part of the Answer to Motion for Default Divorce Judgment. [Review the instructions for the packet of forms.](#))

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An Answer and Counterclaim (*With Children*) is one of a set of required documents that make up a written Answer to Motion for Default Judgment.

Important! If you already served an answer, or answer and counterclaim, to the summons and complaint, don't fill out, copy, or serve this form.

Skip this form and go to the next form – Form OP4a: Confidential Information Form (*With Children*).

Form OP3a: Answer and Counterclaim (*With Children*) is your, the Defendant's, proposed answer and counterclaim to the Plaintiff's summons and complaint.

Form OP3a: Answer and Counterclaim (*With Children*) is your, the Defendant's, written response to the Plaintiff's Complaint. The Answer must also state defenses to each of the claims in short, plain statements. The Counterclaim is your written demand to the court for judgment granting the relief you're seeking in the divorce.

You, the Defendant, arrange to serve the Answer and Counterclaim with all of the other documents listed on **Page 6**.

You, the Defendant, Complete and Sign This Form.

- ☐ **Top of Form (Caption):** Fill in the caption exactly as the caption on your Form OP1: Answer Brief is filled in.
- ☐ **First Sentence:** Fill in your name.

- ☐ **Paragraph 1:** Read carefully. This paragraph states you disagree with every paragraph of the Plaintiff's Complaint, except as specifically stated in Paragraphs 2 through 4 of the Answer.
- ☐ **Paragraph 2:** If you agree completely with a paragraph of the Plaintiff's Complaint, type or print the paragraph number from the Complaint.
- ☐ **Paragraph 3:** If you both agree and disagree with a paragraph of the Plaintiff's Complaint, use Paragraph 3 to respond. For each paragraph of the Plaintiff's Complaint that falls into this category, explain what part of the paragraph is admitted and what part is denied.
- ☐ **Paragraph 4:** If you don't have enough information to agree or disagree with a paragraph of the Plaintiff's Complaint, type or print the paragraph number of the Paragraph.

Affirmative Defenses:

An affirmative defense is a legal reason the Plaintiff should lose, even if the Plaintiff's claims are true. Some common affirmative defenses are listed in Paragraph 5. You may have other defenses that aren't listed. You may not have any affirmative defenses.

- ☐ **Paragraph 5:** Put a checkmark ☒ in the box indicating if you **don't** or **do** have an affirmative case. **Don't** check both.
 - If you put a checkmark ☒ in the **second box** indicating you have an affirmative defense, check any or all boxes that apply. You're required to prove all affirmative defenses you select later during the case. (*Fill in all information required in the blanks.*)
- ☐ **Paragraph 6:**
 - Fill in all information regarding your spouse, the Plaintiff.
 - Fill in all of your information.
- ☐ **Paragraph 7:** Fill in your marriage information.
- ☐ **Paragraph 8:** Put a checkmark ☒ in the box next to the statement that's true.

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

- In the case of a servicemember who is 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.

- In the case of a member 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 a period of 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.
- In the case of a servicemember who is a commissioned officer 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.

Deploying or Deployed Parent – 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.

- ☐ **Paragraph 9:** Review carefully. *(If paragraph 9 doesn't fit your situation, you can't use this form).*

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 only needs to find that irreconcilable differences exist.

- ☐ **Paragraph 10:** For **each** minor child of your marriage, fill in the following *(a minor child is less than 18 years old)*:
- Minor child's **initials** and year of birth;
 - **Last** four digits of minor child's social security number *(If the minor child doesn't have a social security number, type or write "N/A")*; and
 - Minor child's full address.

If you have more than three minor children together, attach a sheet that lists the information for each child.

- Put a checkmark ☒ in the box at the end of Paragraph 10.
- Type or write "Answer & Counterclaim Paragraph 10" on the top of the additional sheet(s).

- ☐ **Paragraph 11:** Put a checkmark ☒ in the box next to the residential responsibility option you're requesting from the Court. **Don't** put a checkmark in more than one box.

Parenting Time – (also called *visitation*) the time when the child is to be in the care of a parent.

Residential Responsibility – (also called *custody*) a parent's responsibility to provide a home for the child.

- ☐ **Paragraph 12:** Put a checkmark ☒ in the box next to the statement that's true for your situation. (If neither statement is true, you can't use this form.)
- ☐ **Paragraph 13:** This paragraph is regarding jurisdiction.
- **If you believe the court has jurisdiction**, put a checkmark ☒ in the box next to that statement.
 - Checkmark ☒ **one of the two** options and fill in the blank(s).
 - **If you don't believe the court has jurisdiction**, put a checkmark ☒ in the box next to that statement.
 - Checkmark ☒ **one of the two** options.

Home State – the state in which a minor child lived with a parent for at least six consecutive months immediately before the start 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.

- ☐ **Paragraph 14:** Complete all 5 parts of Paragraph 14 (a-e).
- **Paragraph 14(a):** Fill in the information for each minor child listed in Paragraph 10. (Initials **only**)
 - **Paragraph 14(b):** Fill in the information for each minor child listed in Paragraph 10. (Initials **only**)
 - **Paragraph 14(c):** Put a checkmark ☒ in the box next to the statement that's true for your situation. **If you select the second option, fill in the additional information.**
 - **Paragraph 14(d):** Put a checkmark ☒ in the box next to the statement that's true for your situation. **If you select the second option, fill in the additional information.**

- **Paragraph 14(e):** Put a checkmark ☒ in the box next to the statement that's true for your situation. **If you select the second option, fill in the additional information.**

If you need more space to answer any of Paragraph 14, attach a sheet or sheets with the additional information.

- Put a checkmark ☒ in the box at the end of Paragraph 14.
- Type or write "Answer & Counterclaim Paragraph 14" on top of the additional sheet(s).

- ☐ **Paragraph 15:** Put a checkmark ☒ in the box next to the statement that's true for your situation. **If you select the second option, fill in the case number of the child support order.**

- If you already have a child support order, make sure you have a copy so you can write or type the correct case number in Paragraph 15.

- ☐ **Paragraphs 16 & 17:** Review carefully. *(If any statements in Paragraphs 16 and 17 aren't true, you **can't** use this form.)*

Equitable Distribution (also called *Equitable Division*) – Marital property and debt is divided equitably (*fairly*) in a divorce. Equitable distribution doesn't mean equal distribution.

- ☐ **Paragraph 18:** Put a checkmark ☒ in the box indicating whether you want to restore your name.

- ☐ **Paragraphs 19 through 24:** Review carefully. *(If any of paragraphs 19 through 24 don't fit your situation, **Stop!** You can't use this form.)*

- ☐ **Date and Signature:** You, the Defendant, must sign and date this Form OP3a: Answer and Counterclaim (*With Children*).

What do I do next?

- ☐ Set aside your completed Form OP3a: Answer and Counterclaim. (You make copies later.)
- ☐ Complete the next form in the set. (Form OP4a: Confidential Information Form (*With Children*) is the next form.)
- ☐ Once you've completed all of the forms listed on Page 3, you serve this Form OP3a: Answer and Counterclaim (*With Children*).
- ☐ The originals are filed with the court in **Step 5**. Make sure to also file the Declaration of Service by Mail.

For divorces **(With Children), the following forms are required:**

- OP1: Answer Brief in Opposition to Motion for Default Divorce Judgment;
- OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Divorce Judgment;
- **OP3a: Answer and Counterclaim (*With Children*);**
 - If you already served an answer or answer and counterclaim to the summons and complaint, you don't fill out, copy, or serve this form.
- OP4a: Confidential Information Form (*With Children*);
- OP5a: Declaration of Service by Mail (*With Children*).

For divorces **(No Children), the following forms are required:**

- OP1: Answer Brief in Opposition to Motion for Default Divorce Judgment;
- OP2: Declaration in Support of Answer Brief in Opposition to Motion for Default Divorce Judgment;
- OP3b: Answer and Counterclaim (*No Children*);
 - If you already served an answer or answer and counterclaim to the summons and complaint, you don't fill out, copy, or serve this form.
- OP4b: Confidential Information Form (*No Children*);
- OP5b: Declaration of Service by Mail (*No Children*).

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. _____

Answer and Counterclaim
(Divorce With Children)

Answer

_____ (*Defendant's name*), Defendant in
this divorce action, submits this Answer to the allegations in Plaintiff's Complaint:

1. Defendant denies each and every allegation in Plaintiff's Complaint unless specifically
admitted to in Paragraphs 2 through 3 below.

2. Defendant admits to the allegations in the following paragraphs in 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
Plaintiff's Complaint (*list the paragraph number and explain the part of the paragraph with
which you agree and the part with which you disagree*):

a. Paragraph #____: _____

b. Paragraph #____: _____

c. Paragraph #____: _____

d. Paragraph #____: _____

e. Paragraph #____: _____

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

Affirmative Defenses (N.D.R.C.P. Rule 8)

5. (*Choose one.*)

- ☐ Defendant does not have any affirmative defenses.
- ☐ Defendant has the following affirmative defenses (*select all that apply. You'll 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.
- ☐ A divorce case, dissolution of marriage case, or legal separation case has already started in (*name of court*) _____ of (*name of State or tribe*) _____, Case Number _____.
- ☐ Other _____.

Counterclaim for Divorce

6. The identifying information of Plaintiff and Defendant is as follows (*Paragraph 6 continues on next page*):

- 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 social security number: _____.

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 of social security number: _____.

7. Plaintiff and Defendant were married on _____ (date), at _____ (city), _____ (state) and ever since have been married.

8. (Choose one)

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

☐ (Choose all that apply) ☐ Plaintiff/☐ Defendant is/are currently in the Armed Services of the United States of America or its allies but is not/are not currently deployed or notified of deployment.

☐ (Choose all that apply) ☐ Plaintiff/☐ Defendant is/are currently in active military service.

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

10. Plaintiff and Defendant have minor children together, namely (Paragraph 10 continues on next page):

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: _____

☐ (Choose if applicable) Additional sheets are attached for Paragraph 10.

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

☐ Shared equally between the Plaintiff and the Defendant.

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

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

12. (*Choose one.*)

☐ Neither Plaintiff nor Defendant is pregnant.

☐ (*Choose one*) ☐Plaintiff/ ☐Defendant is pregnant. However, ☐Plaintiff/ ☐Defendant is not the father, and the child is not at issue in this proceeding.

13. (*Choose one; Paragraph 13 continues on next page*)

☐ This Court **has** jurisdiction to determine parenting rights and responsibilities and decision making of the minor child(ren) under North Dakota Century Code Section 14-14.1-12 because (*choose and complete only one of the two options below*):

☐ 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 divorce 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): _____

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

Name of parent residing in North Dakota: _____

- ☐ This Court **does not have** jurisdiction to determine parenting rights and responsibilities and decision making of the minor child(ren) pursuant to North Dakota Century Code Section 14-14.1-12 because (*choose and complete only one of the two options below*):

- ☐ 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 divorce 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.

- ☐ North Dakota **was not** the home state of the child(ren) within six months of the start of this divorce 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 (*Paragraph 14 continues on next pages*):

- 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

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).
- ☐ 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 this current divorce proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, adoptions, neglect, abuse, deprivation, guardianship, or paternity.
- ☐ Defendant knows of the following proceeding(s) that could affect this current divorce 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; Paragraph 14.e. continues on next page)

- ☐ Defendant does not know of any person who is not a party to this divorce 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).
- ☐ Defendant knows of the following person(s) who is/are not a party to this divorce 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)

☐ (Choose if applicable) Additional sheets are attached for Paragraph 14(e).

15. (Choose one)

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

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

_____.

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

17. 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.

18. (Choose one)

☐ Defendant wants to restore their name.

☐ Defendant does not want to restore their name.

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

19. The bonds of matrimony presently existing between Defendant and Plaintiff be wholly dissolved and that Defendant be granted an absolute decree of divorce from Plaintiff.

20. For residential responsibility and parenting time that serve the minor child(ren)'s best interests.

21. For child support obligations, if requested in Paragraph 15 above, 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.

22. For a fair and equitable division of the assets and liabilities accumulated and incurred by the parties.

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

24. I verify, under penalty of perjury under the law of North Dakota, that I am the Defendant in the above-entitled divorce action; that I have read the Complaint for Divorce 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 _____ (date) in _____ (city),
_____ (county), _____ (state), _____ (country).

_____, Defendant
Signature of Defendant

Typed or Printed Name of Defendant

Address *City* *State* *Zip Code*

Telephone Number *Email Address*