

Motion for Default Divorce Judgment

Instructions for Form 3: Brief in Support of Motion

(Form MP3: Brief in Support of Motion is part of the Motion for Default Divorce Judgment.

[Review the instructions for the packet of forms.](#))

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A Brief in Support of Motion document is one of a set of required documents that make up a written Motion for Default Divorce Judgment.

The **MP3: Brief in Support of Motion** form is a written explanation of why you, the Plaintiff, should have your Motion granted.

The **MP3: Brief in Support of Motion** form takes the rules and laws listed in your Motion that support your request and explains how they apply to the specific facts of your divorce.

Facts referred to in the Brief must also appear in your MP4: Declaration of Default, Identification and Active Military Service **and** your MP5a or MP5b: Declaration of Proof for Default Divorce.

You, the Plaintiff, arrange to serve the Brief with all of the other documents listed on page 4.

You, the Plaintiff, Complete and Sign This Form.

- ☐ **Top of Form (Caption):** Fill in the caption exactly as you filled in the caption on the *Summons*.
- ☐ **Paragraph 1:** Read carefully. If this statement isn't true, you can't use this form.
- ☐ **Paragraph 2:** Fill in the date you were married to the Defendant, and the city and state where you were married.
- ☐ **Paragraph 3:**
 - a. Read carefully. If this statement isn't true, you can't use this form.

- b. Check (✓) and complete the first box if **you know** the county and state where Defendant lives.

Check (✓) and complete the second box if **you don't know** the county and state where Defendant lives. You **must** fill in Defendant's last known address that **you** were able to find out when you were attempting to locate Defendant for service.

- c. Check (✓) the first box if you and Defendant **don't have minor children**.

Check (✓) and complete the second box if you and Defendant **have minor children**.

- ☐ **Paragraph 4:** Fill in the date Defendant was served with the Summons and Complaint. This date **must match** the date on your proof of service filed with the Summons and Complaint.
- ☐ **Paragraph 5:** Check (✓) the box showing how the Defendant was served. This **must match** your proof of service filed with the Summons and Complaint.
- ☐ **Paragraph 6:** Under the federal Servicemembers Civil Relief Act (SCRA), active duty service members have protections against default judgments, including default divorce judgments.

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.

You must attempt to find out if Defendant is on active duty with the military. Keep track of the steps you take to find out.

The [Servicemembers Civil Relief Act \(SCRA\) Website](#) may be of interest. It's affiliated with the United States Department of Defense.

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

Check (✓) the box showing the active military service status of the Defendant.

If you check (✓) the second, third, or fourth box, the **entire** statement must be true, or you can't use this form.

- ☐ **Paragraph 7: You must wait at least 21 days** from the day after Defendant was served before using this form set.

Check (✓) the first box if Defendant **hasn't** answered the Summons and Complaint in writing **and hasn't contacted you in any other way** since they were served the Summons and Complaint.

Check (✓) the second box if Defendant **hasn't** answered the Summons and Complaint in writing, **but Defendant contacted you in some other way** since they were served the Summons and Complaint.

- ☐ **Paragraphs 8 through 10:** Read carefully. This is the required law and argument section of your brief. This takes your facts and applies them to the default judgments rule.
- ☐ **Paragraph 11a – 11c:** Read carefully. If these statements aren't true, you can't use this form.
- ☐ **Paragraph 11d – 11e:** Check (✓) the box showing whether these statements do or don't apply to your divorce.
- ☐ **Paragraph 12:** Read carefully.
- ☐ **Paragraph 13:** Read carefully. If this statement isn't true, you can't use this form.
- ☐ **Date and Signature:** You must sign and date the Brief.

What do I do next?

- ☐ Set aside the completed Brief form. (You make copies later.)

- ☐ Complete the next form in the set. (The Declaration of Default, Identification and Active Military Service is the next form.)
- ☐ Once you've completed all of the forms listed on page 4, you serve the Brief with those forms.
- ☐ The originals are filed with the court in **Step 7**. Make sure to also file the Declaration of Service by Mail.

(This space left intentionally blank.)

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

- MP1: Notice of Motion for Default Divorce Judgment;
- MP2: Motion for Default Divorce Judgment;
- **MP3: Brief in Support of Default Divorce Judgment;**
- MP4: Declaration of Default, Identification and Active Military Status;
- MP5a: Declaration of Proof for Default Divorce Judgment (*With Children*);
- MP6a: Proposed Findings of fact, Conclusions of Law, and Order for Default Divorce Judgment (*With Children*);
- MP7a: Proposed Judgment (*With Children*);
- MP8: Exhibit A: Confidential Division of Property & Debts & Values
 - Summary Real Estate Disposition Judgment (*if needed*);
- MP9: Exhibit B: Parenting Plan;
- MP10a: Confidential Information Form (*With Children*); and
- MP11a: Declaration of Service by Mail.

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

- MP1: Notice of Motion for Default Divorce Judgment;
- MP2: Motion for Default Divorce Judgment;
- **MP3: Brief in Support of Default Divorce Judgment;**
- MP4: Declaration of Default, Identification and Active Military Status;
- MP5b: Declaration of Proof for Default Divorce Judgment (*No Children*);
- MP6b: Proposed Findings of Fact, Conclusions of Law, and Order for Default Divorce Judgment
- MP7b: Proposed Judgment (*No Children*);
- MP8: Exhibit A: Confidential Division of Property & Debts & Values;
 - Summary Real Estate Disposition Judgment (*if needed*);
- MP10b: Confidential Information Form (*No Children*); and
- MP11b: 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,)

Case No. _____

vs)

)

)

**Brief in Support of Motion For
Default Divorce Judgment**

_____))

Defendant.)

Statement of Facts

1. The above-captioned civil case is a domestic relations action for divorce.
2. Plaintiff and Defendant were married to each other on _____ (date)
in _____ (city, state) and have since that date
remained spouses.
3. At the time this divorce action was started with service of the Summons and Complaint:
 - a. Plaintiff was a resident of North Dakota, and had been a resident for the entire six
months before serving the Summons and Complaint.
 - b. (Choose one.)
☐ Defendant lives in _____ County, _____ (state).
☐ Plaintiff does not know where Defendant lives. Defendant's last reasonably
ascertainable address is: _____.
 - c. (Choose one; continued on page 2.)
☐ Plaintiff and Defendant **do not** have minor children and **are not** expecting any children to
be born of the marriage.

☐ Plaintiff and Defendant **have** minor children together. The child(ren) lived in _____ County, _____ (state), for the previous 6 months.

4. Service of Summons and Complaint:

Defendant was properly served on _____ (date) with the Summons and Complaint.

5. Type of Service (choose one):

Defendant was served the Summons and Complaint by:

☐ **Personal service in North Dakota by a sheriff or other law enforcement officer.** A

Certificate of Service is filed with the court.

☐ **Personal service in North Dakota by an individual 18 years of age or older and not a party or interested in the case.** An Affidavit or a Declaration of Personal Service is filed with the court.

☐ **Personal service outside of North Dakota.** A Certificate of Service or an Affidavit or a Declaration of Personal Service is filed with the court.

☐ **Mail by an individual 18 years of age or older.** An Affidavit or a Declaration of Service by Mail **and** the green card receipt showing actual delivery are filed with the court.

☐ **Publication.** Plaintiff's Affidavit of Publication provided by the newspaper is filed with the court.

6. Active Military Service (*choose one*):

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

☐ Defendant **is in** active military service, **but** Defendant is represented by a lawyer in this case, **and** the court has not granted a stay.

☐ Defendant **is in** active military service, **but is not** represented by a lawyer in this case, **and** the court has not granted a stay.

☐ Defendant **is in** active military service, **but** Plaintiff does **not know** if Defendant is represented by a lawyer in this case, **and** the court has not granted a stay.

☐ Plaintiff **does not know** whether Defendant is in active military service.

7. More than twenty-one days have passed since service was completed.

(*Choose one.*)

☐ Defendant has not answered Plaintiff's Summons and Complaint by serving an Answer on Plaintiff, or contacted Plaintiff by any other method after service of the Summons and Complaint.

☐ Defendant has not answered Plaintiff's Summons and Complaint by serving an Answer on Plaintiff, but has contacted Plaintiff about the divorce after service of the Summons and Complaint. The contact is described in the Declaration of Default, Identification and Active Military Service.

Law and Argument

8. Rule 55 of the North Dakota Rules of Civil Procedure allows the court to enter a default judgment when "...a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise appear and the failure is shown by declaration or otherwise... ."

9. This case meets the requirements of Rule 55 of the North Dakota Rules of Civil Procedure because the Summons and Complaint were served on Defendant as required by Rule 4 of the North Dakota Rules of Civil Procedure. The Defendant did not serve a written Answer on Plaintiff within 21 days after service of the Summons and Complaint.
10. Based on the Brief, Declaration of Default, Identification and Active Military Service, and Declaration of Proof for Default Divorce Judgment, it is proper to find Defendant in default and for the court to enter a divorce judgment.

Conclusion

11. For the reasons stated above, Plaintiff respectfully requests that the court find:
- a. That the court has jurisdiction over the parties and subject matter of this divorce action.
 - b. That irreconcilable differences exist between the parties and Plaintiff is granted a default judgment of divorce against Defendant.
 - c. An equitable division of the property and accumulated debts of Plaintiff and Defendant.
 - d. (Choose one.) ☐ Does **not** apply. ☐ **Applies**.

Plaintiff and Defendant have minor children or are expecting a child or children to be born. Plaintiff requests a judgment for residential responsibility and parenting time that serve the best interests of the minor child(ren).

- e. (Choose one.) ☐ Does **not** apply. ☐ **Applies**.

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.

- 12.** For such further and additional relief that the court may deem just and proper.
- 13.** Plaintiff **does not** request that the court grant a hearing on this motion.

Dated _____.

(Plaintiff's Signature)

(Plaintiff's Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

(Email Address)