

Instructions to Answer a Divorce When the Spouses Don't Agree (Divorce Without Children)

Important! Read Before Using this Packet of Forms.

ND Legal Self Help staff and court employees **can't** help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, 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.**

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer for information about finding a lawyer to represent you.

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; and
 - Any local court rules.

Links to the state laws, case law, and court rules can be found at ndcourts.gov.

A glossary with definitions of legal terms is available at ndcourts.gov/legal-self-help.

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

*These instructions and forms **aren't** a complete statement of the law. They cover the basic procedure for asking a North Dakota state district court to start a divorce that **doesn't** include children when the parties **don't agree** to all issues related to the divorce. There's no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided. **Use these forms and instructions at your own risk.***

Warning!

Don't Ignore the Summons and Complaint for Divorce!

You have only 21 days to respond. If you don't answer the Summons and Complaint in **writing, the court is allowed to grant a default divorce judgment **without** your input!**

See Step 1a of these instructions to calculate the date your Answer & Counterclaim are due.

If you have any doubts about whether it's proper for the Plaintiff to serve you divorce papers in North Dakota, consult a lawyer immediately and before you serve or file any written response, answer, counterclaim or any other court paper.

What Does a "Contested Divorce" Mean?

Contested divorce is when the two spouses, the Plaintiff and Defendant, aren't able to agree on the terms of the divorce, such as dividing property and debts.

Why doesn't the Summons and Complaint Have a Case Number?

In North Dakota, service of the Summons and Complaint on you, the Defendant, starts the divorce case. Filing with the Clerk of Court **doesn't** start a divorce case and **isn't** required to start a divorce case. A case number is only assigned by the Clerk of Court **after** the divorce case is filed.

How Do I Know the Summons and Complaint are Real (Valid)?

If the Summons is signed and dated by a lawyer, the lawyer **must** be currently licensed to practice in North Dakota to be valid. You can check if that lawyer is allowed to sign the Summons by going to the [lawyer search](#) on the North Dakota Court System website. Enter the Bar ID number or their name.

If the Plaintiff isn't represented by a lawyer, the Summons **must** be signed by a clerk of court or deputy clerk of court. If it's signed by just the Plaintiff, the Summons isn't valid.

The Clerk of Court Told Me Nothing is Filed. Why?

Again, in North Dakota, service starts the divorce case. Filing doesn't start the divorce case. If the Summons and Complaint haven't been filed yet, the Clerk of Court won't have a copy or record of the documents.

What If I Want to File My Answer & Counterclaim even though the Summons and Complaint aren't filed?

There are two ways you can do this:

Option 1: You can file your copy of the Summons and Complaint which were served on you and your original written Answer & Counterclaim and proof of service. You'll be required to pay the \$80 filing fee for the Plaintiff and the \$50 filing fee for you, the Defendant.

- You must serve a Notice of Filing on the Plaintiff (or Plaintiff's lawyer.)
- After the court makes a final judgment in the divorce case, you may ask the court to award you the cost of the \$80 filing fee.

See **Step 7** for instructions on how to prepare and file the Notice of Filing.

Option 2: You can serve a Demand for Filing demanding the Plaintiff file their Summons and Complaint within 20 calendar days of being served the Demand for Filing. If the Plaintiff doesn't file the Summons and Complaint within the deadline, service of the Summons on you is void, meaning the current divorce case is over.

See more information in **Step 6b**.

What Are the Residency Requirements?

Your spouse, the Plaintiff, must be a resident of the state of North Dakota for six (6) consecutive months in order to start a divorce.

Who Are the Parties in a Divorce?

Plaintiff – The spouse who starts the divorce case.

Defendant – You, the spouse who didn't start the divorce case.

Documents to Answer a Divorce when the Spouses Don't Agree (Without Children)

2 Forms You **Must** Complete **Before** Filing With the Court:

Form Title	Description
Answer & Counterclaim (<i>Defendant completes</i>)	The answer is your written response to the Complaint. The Counterclaim is a written demand to the court for judgment granting the relief you're seeking.
Confidential Information Form (<i>Defendant completes</i>)	Lists the full confidential information that isn't allowed to appear in other documents filed with the court. This form is a part of the court record that isn't seen by the public.

All of the Forms Must be Filled out Completely!! Don't leave any of the paragraphs within the forms unanswered.

If a section of the form doesn't apply to you, type or write "N/A" or "Not Applicable".

If a form isn't completely filled out, it could result in the clerk not accepting your forms for filing, or the court may send the form back to you to complete.

Follow and Carefully Read All Instructions! There are boxes (☐) before each step. Check each box as you finish the step. Don't go on to the next step **until** the previous step is completed.

Warnings!

Forms are available **only** for divorces involving common and uncomplicated circumstances. If these forms don't work for your situation, you need to create your own documents, or [retain a lawyer](#) to create the documents for you.

Caution Regarding Domestic Violence

Domestic violence protection orders and disorderly conduct restraining orders generally don't allow communication between the spouse protected by the order and the spouse the order is against.

If there is a domestic violence protection order or disorderly conduct restraining order in effect, review the order to see if you're allowed to contact or serve your spouse! **Be careful not to violate the order!** Violating the order could have legal consequences for you and/or your spouse.

Before using these forms, consult a lawyer or a domestic violence intervention center in your area to help you navigate your situation.

Contact North Dakota Domestic & Sexual Violence Coalition for information about domestic violence/sexual assault (DA/SA) victim advocacy centers across North Dakota staffed with professionals who can help you with safety planning, findings shelter, obtaining a protection order, and more.

North Dakota Domestic & Sexual Violence Coalition
521 E Main Ave, Suite 320
Bismarck, ND 58501
(701) 255-6240, Ext. 1016
(888) 255-6240
nddsvc.org/FIND-HELP

Step 1a:

Calculate the Deadline for Serving Your Answer & Counterclaim

You, the Defendant, must serve a copy of your Answer and Counterclaim on the Plaintiff within twenty-one (21) days of service of the Summons and Complaint. If you don't, the Plaintiff may ask the court for a default divorce judgment against you.

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

Copies of documents filed with the court must be given to the other parties in the divorce case. This is called service.

Proof of service is an important step in the legal process. A Declaration of Service completed by the individual who served the copies of documents on the Plaintiff is proof that service occurred. The court won't act on papers filed with the court until proof of service is filed.

How to Calculate Your Deadline to Serve Your Answer & Counterclaim:

- Don't include the day you were served the Summons and Complaint.
- Count every day, including Saturdays, Sundays, and North Dakota state holidays.
- Include the last day of the deadline, but if the last day falls on a Saturday, Sunday, or North Dakota state holiday, the deadline continues to run until the end of the next day that isn't a Saturday, Sunday, or North Dakota state holiday.
 - For example, if the last day of the 21 day deadline lands on a Sunday, the deadline extends until the end of the next day, which is Monday.

Step 1b:

Calculate the Deadline for Completing the Rule 8.3 N.D.R.Ct. Informational Statement

Important: Before you began working on the Rule 8.3 N.D.R.Ct. Informational Statement, it's very important that you complete the Answer and Counterclaim and serve your spouse, the Plaintiff. Missing the deadline to serve your Answer and Counterclaim could cause the divorce case to be decided by the judge in a default action.

The spouses, Plaintiff and Defendant, must meet after the Plaintiff has served the Complaint. You and your spouse have **37 calendar** days after the date of service of the Complaint to complete **and** file the Rule 8.3 N.D.R.Ct. Informational Statement.

***Why 37 days?** Within 30 days after service of the complaint, the parties must meet to prepare the joint informational statement and preliminary property and debt listing. The complaint and joint information statement must be filed no later than 7 days after the compulsory meeting.

See the instructions in Step 1a to assist you in calculating the deadline.

You and the Plaintiff will meet in Step 8.

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Step 2:

Fill Out the “Answer & Counterclaim” Form

***You, the Defendant, complete, date, and sign this form.**

An “Answer and Counterclaim” is a written response by the Defendant to the Complaint. The Answer must also state defenses to each of the claims in short, plain statements.

☐ Fill in the Top Part of the Form (Caption):

Note: the top part of each form is known as the “caption,” and the information will be the same on every form you fill out.

- ☐ Complete the top of the Answer & Counterclaim exactly as it appears in the Plaintiff’s Summons.
- ☐ **Don’t** fill in the “Case No.” The Clerk of Court assigns a case number after the Plaintiff files the Summons and Complaint.
- ☐ _____: Fill in your name.
- ☐ **Paragraph 1: Review.** This paragraph states you, the Defendant, 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.
- ☐ **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 action. **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 information regarding you, the Defendant.
- ☐ **Paragraph 7:** Fill in your marriage information.
- ☐ **Paragraph 8:** Put a checkmark ☒ in the box next to the statement that's true. (*You can't use this form if neither statement is true.*)
- ☐ **Paragraphs 9 through 10:** Review carefully. (*If any of paragraphs 9 through 10 don't fit your situation, you can't use this form.*)
- ☐ **Paragraph 11:** Put a checkmark ☒ in the box indicating whether you want to restore your name.
- ☐ **Paragraphs 12 through 16:** Review carefully. (*If any of paragraphs 12 through 16 don't fit your situation, **Stop!** You can't use this form.*)
- ☐ **Date and Signature:**
- Fill in the date you signed this document.
 - Sign the signature line.
 - Type or print your name.
 - Fill in the address lines. (*If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.*)
 - Fill in your phone number.
 - Fill in your email address.

You'll make copies of the completed Answer and Counterclaim in Step 4.

Step 3:

Fill Out the “Confidential Information Form”

Court records are generally available to the public, and anyone can request to look in almost any court file. However, certain information is required to remain confidential, even if it’s part of a public court record.

Only you are responsible for making sure confidential information doesn’t appear in the documents you prepare.

Confidential information includes:

- Social security numbers
- Taxpayer identification numbers
- Birthdates
- Financial-account numbers.

Documents filed with the Court with references to confidential information must include only:

- The last four (4) digits of the social security number and taxpayer identification number
- The year of birth
- The last four (4) digits of the financial-account number

Since the forms in this packet include references to confidential information, you must prepare a Confidential Information form. The form must contain the full confidential information that’s referenced in the documents.

☐ Fill in the Top Part of the Form:

***You, the Defendant, complete this form.**

The information to fill out the top part of the form (“the caption”) is the same as on the Summons form.

☐ Fill in the Plaintiff and Defendant Information:

This gives the court the confidential information that can’t be included in any other forms filed in the divorce. This form remains confidential and isn’t a public record.

- ☐ Fill in the full information for your spouse, the Plaintiff, and the full information for you, the Defendant.

- ☐ Fill in the year of birth and last 4 digits of the social security number for you and Defendant.

☐ **Fill in the Financial Account Information:**

- ☐ Fill in this information for **all** financial accounts.
 - ☐ Fill in the name of the account;
 - ☐ Fill in the full account number; and
 - ☐ Fill in the last 4 digits of the financial account.

Attach another sheet of paper if you need more space.

- ☐ **You, the Defendant, must sign and date the Confidential Information Form.**

Step 4:

Sign and Make Copies of Completed Forms

Signing of Documents

- ☐ **You, the Defendant, must sign and complete the following forms:**
 1. Answer & Counterclaim; and
 2. Confidential Information Form.

Making Copies

- ☐ **After obtaining all signatures as indicated above, make 2 copies of the following:**
 1. Answer & Counterclaim.

One copy is for your records, one copy is for the Plaintiff. The original is filed with the Court in Step 6a.

- ☐ **Make one copy of the following:**

1. Confidential Information Form.

One copy is for your records. You don't need to serve the Confidential Information Form on the Defendant. The original is filed with the Court in Step 6a.

Step 5: Serve Copies of Completed Forms on the Defendant

Service is providing copies of your completed Answer & Counterclaim on your spouse, the Plaintiff. The court won't file your Answer & Counterclaim until you file proof of service with the court. A Declaration of Service by Mail gives the court proof of service.

Caution Regarding Domestic Violence

If there is a domestic violence protection order or disorderly conduct restraining order in effect, review the order to see if you are allowed to contact or serve your spouse! **Be careful not to violate the order!** Violating the order could have legal consequences for you and/or your spouse.

Before serving your spouse, consult a lawyer or a domestic violence intervention center in your area to help you navigate your situation. **Only follow the steps below once you know you can serve your spouse.**

- ☐ **Make at least two copies of the following completed, dated, and signed Answer & Counterclaim** (The Answer and Counterclaim is signed by you, the Defendant.):

Keep one copy for your records. You'll arrange to serve the other copy on your spouse, the Plaintiff. You'll file the original with the Clerk of Court in **Step 6a.**

- ☐ **Serve your spouse, the Plaintiff, the Answer & Counterclaim by mail:**

- The person serving by mail must be at least 18 years old.
- Put the copy in an envelope.
- Address the envelope with the Plaintiff's last known address.
- **If you know your spouse is currently represented by a lawyer, address the envelope with the lawyer's address, not the Plaintiff's.**
- List your address as the return address on the envelope.
- Put the correct first class postage on the envelope.
 - Postage must be prepaid.
 - **It's very important to put the correct postage on the envelope.** If you don't, the envelope may be returned to you causing you to miss the service deadline.
- Put the envelope in the U.S. mail.
- Service by mail is complete upon mailing.

☐ **The person who mailed the envelope completes the following form:**

- Form 3: Declaration of Service by Mail.

The person who mailed the envelope **must** complete the Declaration of Service by Mail form. (If the envelope is mailed at a United States Post Office, the United States Post Office employee **doesn't** complete Declaration of Service by Mail form.)

Service by mail is a common way to serve answer documents. However, there are other ways to serve your documents. To review other service options, go to ndcourts.gov/legal-self-help/service-in-a-civil-action. Scroll to the "Service After a District Court Civil Action Has Started" section of the webpage.

☐ **Prepare the Declaration of Service by Mail**

- ☐ **Fill in the Top Part of the Form:** The information to fill out the top part of the form ("the caption") is the same as on the Summons form.
- ☐ **Paragraph 1:** Fill in your name.
- ☐ **Paragraph 2:** Review to make sure you the Answer & Counterclaim listed as the document served.
- ☐ **Paragraph 3:** Review.
- ☐ **Paragraph 4:** Fill in the date you served the documents by mail.
- ☐ **Paragraph 5:** List the name of the person served (your spouse) and the mailing address.
- ☐ **Paragraph 6:** Review carefully.
- ☐ **Date and Signature:**
 - ☐ Fill in the date, city, county, state, and country where you signed this document.
 - ☐ Sign the signature line.
 - ☐ Type or print your name.
 - ☐ Fill in the address lines. *(If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.)*
 - ☐ Fill in your phone number.
 - ☐ Fill in your email address.

Step 6a:

When a Notice of Filing is Received From the Plaintiff, You File Your Original, Completed, Answer & Counterclaim With the Clerk of Court

- ☐ Take the completed **original** of the Answer & Counterclaim to the Clerk of Court's Office in the North Dakota county where the divorce case was filed:
 - ☐ **If You Had the Documents Served by Mail, you file the following:**
 1. Answer & Counterclaim;
 2. Confidential Information Form; and
 3. Declaration of Service by Mail.
- ☐ Pay the filing fee. The filing fee for answering a divorce is currently **\$50**.
 - ☐ If you can't afford to pay the filing fee, the judge may waive it under certain circumstances. The fee waiver forms are found at ndcourts.gov/legal-self-help/fee-waiver.
 - ☐ Follow the instructions to complete the form set.
 - ☐ The application is reviewed by a judge who decides whether you must pay the filing fee. If the judge doesn't sign the order to waive the filing fee, you must be prepared to pay the filing fee or the Clerk of Court can't accept your divorce documents.

The original documents are kept in the court file.

Step 6b:

If You Haven't Received a Notice of Filing From The Plaintiff and The Clerk of Court Told You That The Plaintiff Hasn't Filed the Summons and Complaint

If the Summons and Complaint haven't been filed, you, the Defendant, have two options:

Option 1: You can file your copy of the Summons and Complaint which were served on you and your original written Answer & Counterclaim and proof of service. You're required to pay the \$80 filing fee for the Plaintiff and the \$50 filing fee for your Answer & Counterclaim.

- You must serve a Notice of Filing on the Plaintiff (or Plaintiff's lawyer.)
- After the court makes a judgment in the divorce case, you may ask the court to award you the cost of the \$80 filing fee.

See Step 7 for instructions on how to prepare and file the Notice of Filing.

Option 2: You can serve a Demand for Filing demanding the Plaintiff file their Summons and Complaint within 20 calendar days of being served the Demand for Filing. If the Plaintiff doesn't file the Summons and Complaint within the deadline, service of the Summons on you is void, meaning the divorce case is over.

- However, if the Plaintiff misses the 20 day deadline, the Plaintiff can make a motion to the court within 60 calendar days after service of the Demand for Filing. If the court finds excusable neglect, the divorce case continues.
- If the Plaintiff **doesn't** file the Summons and Complaint within the deadline, service of the Summons on you is void, meaning the current divorce case is over,
- If you choose Option 2, see the [Informational Guide](#) which also includes a Demand for Filing form.

Step 7: Complete, Serve, and File the Notice of Filing

After you file your Answer & Counterclaim, a Notice of Filing form is required to be filed and served on your spouse (Plaintiff).

Complete the Notice of Filing

***You, the Defendant, complete this form.**

☐ Fill in the Top Part of the Form:

- The information to fill out the top part of the form ("the caption") is the same as on the Summons form.
- Include the case number.

☐ Paragraph 1:

- ☐ Fill in the name of the county where your divorce case was filed **and** the case number assigned by the Clerk of Court.

☐ **Paragraph 2:**

- ☒ The Answer & Counterclaim checkbox is already checked for you, because you always need to file the Answer & Counterclaim.
- ☐ If you have also filed the Summons and Complaint (see Step 6b), put a checkmark ☒ next to those **two** boxes.

☐ **Date and Signature:**

- ☐ Fill in the date you signed this document.
- ☐ Sign the signature line.
- ☐ Type or Print your name.
- ☐ Fill in the address lines. *(If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.)*
- ☐ Fill in your phone number
- ☐ Fill in your email address.

☐ **Make two copies of the Notice of Filing**

- One copy is for your records, one copy is for your spouse.

☐ **Serve the Notice of Filing**

- The Notice of Filing must be served upon your spouse or their lawyer, if represented. .
Caution: Review the warning regarding service and domestic violence under Step 5.
This can be done by U.S. mail, first-class, postage prepaid. **See the instructions for service by mail in Step 5.**

☐ **Prepare the Declaration of Service by Mail**

☐ **Fill in the Top Part of the Form:**

- ☐ The information to fill out the top part of the form (“the caption”) is the same as on the Summons form.
- ☐ Include the case number.

☐ **Paragraph 1:** Fill in your name.

☐ **Paragraph 2:** Review to make sure you have the Notice of Filing listed as the document served.

☐ **Paragraph 3:** Review.

- ☐ **Paragraph 4:** Fill in the date you served the documents by mail.
- ☐ **Paragraph 5:** List the name of the person served (your spouse or their lawyer) and the mailing address.
- ☐ **Paragraph 6:** Review carefully.
- ☐ **Date and Signature:**
 - ☐ Fill in the date, city, county, state, and country where you signed this document.
 - ☐ Sign the signature line.
 - ☐ Type or print your name.
 - ☐ Fill in the address lines. *(If you have a physical address **and** a mailing address, type or write both addresses using the lines provided, and the space next to the address lines.)*
 - ☐ Fill in your phone number.
 - ☐ Fill in your email address.
- ☐ **File the Following Documents With the Court**
 - Notice of Filing; and
 - Declaration of Service by Mail.

Step 8:
**You and the Plaintiff Must Meet to Complete and File the
Rule 8.3 N.D.R.Ct. Informational Statement Within 37 Days* After
Service of the Summons and Complaint**

See the instructions and forms for Rule 8.3 N.D.R.Ct., Informational Statement if you were served personally or by mail.

***Why 37 days?** Within 30 days after service of the complaint, the parties must meet to prepare the joint informational statement and preliminary property and debt listing. The complaint and joint information statement must be filed no later than 7 days after the compulsory meeting.

What if My Spouse and I Are Unable to Complete This Form Together?

N.D.R.Ct. Rule 8.3 requires the spouses to meet to prepare the Rule 8.3 N.D.R.Ct., Informational Statement together. Rule 8.3 doesn't say what to do if you're unable to meet with your spouse in person, by text, by email, or some other way.

If you decide to prepare, serve, and file this form on your own, Paragraph 1 includes space for you to explain why. The judge decides whether your Rule 8.3 N.D.R.Ct., Informational Statement meets the requirements of N.D.R.Ct. Rule 8.3.

What Are the Next Steps?

- If all steps above were followed and the Notice of Filing was received informing you the Summons and Complaint has been filed, you, the Defendant, and Plaintiff will start Set 3 of the divorce process which is the Case Management Forms.