

Answer to Motion for Default Parenting Responsibility Judgment

Instructions for Form OP1: Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment

(Form OP1: Answer Brief in Opposition to Motion is part of the Answer to Motion for Default Parenting Responsibility Judgment. [Review the instructions for the packet of forms.](#))

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.

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

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 Parenting Responsibility Judgment.

Form OP1: Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment is your, the Defendant's, written legal argument about how and why the Plaintiff doesn't meet the requirements for a Default Parenting Responsibility Judgment.

Form OP1: Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment takes the specific rules that support your response and explains how they apply to the facts of your Parenting Responsibility case.

Facts referred to in the Answer Brief must also appear in your OP2: Declaration in Opposition to Motion for Default Parenting Responsibility Judgment form.

You, the Defendant, arrange to serve the Answer Brief with all of the other documents listed on **Page 4**.

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.
- First Sentence:** Fill in your full name.
- Paragraph 1:** Read carefully. **If** this statement isn't true, you **can't** use this form.

Paragraph 2:

- Check (✓) and complete the first box if you were served the Summons and Complaint for Parenting Responsibility.
- Check (✓) the second box if you dispute the Summons and Complaint were served correctly.

Paragraph 3:

- Check (✓) the first box if you served an answer, or answer and counterclaim, to the summons and complaint within the 21 day deadline to answer.
 - You must file your original answer, or answer or counterclaim, and original proof of service with your answer to motion documents.
- Check (✓) the second box if you **didn't** serve an answer, or answer and counterclaim, to the summons and complaint within the 21 day deadline to answer.

Paragraph 4:

- Check (✓) the first box if you tried to contact the Plaintiff or the Plaintiff's lawyer once you knew the Plaintiff was starting the Parenting Responsibility case.
- Check (✓) the second box if you **didn't** try to contact the Plaintiff or the Plaintiff's lawyer once you knew the Plaintiff was starting the Parenting Responsibility case.

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

Before the Plaintiff can ask the judge or judicial referee for a Default Parenting Responsibility Judgment, they are required to try to find out if you're in active service with the military.

If the judge or judicial referee can't tell whether you're in active military service from the documents the Plaintiff's files, before granting a Default Parenting Responsibility Judgment, the judge or judicial referee may require the Plaintiff to file a bond. The judge or judicial referee 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 Parenting Responsibility Judgment.

- Check (✓) the first box if you're **not** in active military service.
 - Check (✓) the second box if you're in active military service **and** not currently represented by a lawyer in this Default Parenting Responsibility Judgment case.
- Paragraphs 6 and 7:** 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 8:**
- Check (✓) the first box if you checkmarked the first box in Paragraph 5.
 - Check (✓) the second box if you checkmarked the second box in Paragraph 5.
- Paragraph 9:** Read carefully
- Paragraph 10a – 10b:** Read carefully. **If** these statements aren't true, you **can't** use this form.

- Paragraph 10c:** Read carefully. Check (✓) the box if the statement applies.
- Paragraph 10d:** Read carefully. Check (✓) the box if the statement applies.
- Paragraph 10e:** Read carefully. This is a standard statement in an Answer.
- Date and Signature:** You must sign and date the Brief. Fill in the lines following your signature.

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 Opposition to Motion for Default Parenting Responsibility Judgment.)
- Once you've completed all of the forms listed below, you serve the Answer Brief with those forms.
- The originals are filed with the court in **Step 5**. Make sure to also file the Declaration of Service by Mail.

For Default Parenting Responsibility Judgment the following forms are required:

- **OP1: Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment;**
- OP2: Declaration in Opposition to Motion for Default Parenting Responsibility Judgment;
- OP3a: Answer and Counterclaim (Contested Parenting Responsibility);
 - **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.
- OP4: Confidential Information Form; and
- OP5: Declaration of Service by Mail.

State of North Dakota

In District Court

County of _____

_____ Judicial District

_____)
 Plaintiff,)
 vs)
 _____)
 Defendant.)

Case No. _____

Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment

Defendant, _____ (name), submits this Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment.

Statement of Facts

1. The above-captioned civil case is for Parenting Responsibility.

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

Defendant was served on _____ (date) with the Summons and Complaint for this Parenting Responsibility case.

Defendant disputes service of the Summons and Complaint for this Parenting Responsibility case described in the Declaration in Support of Answer Brief in Opposition to Motion for Default Parenting Responsibility 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 Parenting Responsibility Judgment, which is incorporated by reference. Defendant’s Answer to the Plaintiff’s Summons and Complaint for Parenting

Responsibility **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 Parenting Responsibility Judgment, which is incorporated by reference. Defendant's Answer and Counterclaim to the Plaintiff's Summons and Complaint for Parenting Responsibility is served and filed with this Answer Brief in Opposition to Motion for Default Parenting Responsibility Judgment.

4. (Choose one):

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

After Defendant became aware of the Parenting Responsibility case, 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 Parenting Responsibility 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 Parenting Responsibility case.

Law and Argument

6. The motion for Default Parenting Responsibility Judgment does not meet the requirements of Rule 55 of the North Dakota Rules of Civil Procedure.
7. “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))
8. (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 that cannot be presented without Defendant’s presence.

Conclusion

9. 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.
10. For the reasons stated above, Defendant respectfully requests the court (*Paragraph 10 continues on next page*):
- a. **Deny** the Plaintiff’s motion for a Default Parenting Responsibility Judgment.
 - b. Allow Plaintiff and Defendant to litigate this Parenting Responsibility case on the merits.
 - c. (Check (✓) only if the statement below applies.)
 - Refer Plaintiff and Defendant to the Family Mediation Program in hopes of reaching an agreement on residential responsibility and parenting time of the minor child(ren).

d. (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 to this Parenting Responsibility case that cannot be presented without the Defendant's presence.

e. 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)