

Motion for Relief from Default Judgment (*Debt Collection*)

Instructions for Form MP3: Brief in Support of Motion

(Form MP3: Brief in Support of Motion is part of the Motion for Relief from Default Judgment (*Debt Collection*). [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.

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

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

Form MP3: Brief in Support of Motion form is your, the Defendant's, written legal argument about how and why you should be granted relief from the Debt Collection Default Judgment.

Form MP3: Brief in Support of Motion form takes the rule and laws listed in your Motion that support your request and explains how they apply to the specific facts of your debt collection case.

Facts referred to in the Brief must also appear in your MP4: Declaration in Support of Motion for Relief from Default Judgment (*Debt Collection*) form.

You arrange to serve a copy of the Brief with all 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 you filled in the Notice of Motion form.
- Paragraph 1:** Fill in your full name. You must be listed as a Defendant in the Caption of the Motion to use this form.
- Paragraph 2:** Read carefully. If this statement isn't true, you can't use this form.
- Paragraph 3:** Fill in the date the default collection judgment was entered. (You find the **date** on the last page of the default collection judgment. This is the date of the Judge's or Clerk of Court's signature).
- Paragraph 4:** Under the federal Servicemembers Civil Relief Act (SCRA), active duty service members have protections against default judgments.

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

- For servicemembers who are 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.
- For members 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 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.
- For servicemembers who are commissioned officers 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 for a debt collection default judgment, they're required to try to find out if you're in active service with the military.

If the judge can't tell whether you're in active military service from the documents the Plaintiff files, before granting a debt collection default judgment, the judge may require the Plaintiff to file a bond. The judge 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 judgment.

- **If you're not** in active military service based on the definition above, check (✓) the first box.
- **If you're in** active military service based on the definition above, **and** not currently represented by a lawyer in this case, check (✓) the second box.

Paragraph 5:

- **If you were served** the Summons and Complaint for this debt collection case, check (✓) the first box **and** fill in the date you were served.
- **If you're disputing service** of the Summons and Complaint, check (✓) the second box

Paragraph 6:

- **If you served an Answer** to the Summons and Complaint within the 21 day answer deadline, check (✓) the first box.
- **If you didn't serve an Answer** to the Summons and Complaint within the 21 day answer deadline, check (✓) the second box.

Paragraph 7:

[Rule 55 of the North Dakota Rules of Civil Procedure](#) requires the Plaintiff to serve you a copy of their Motion for Default Judgment if you “appeared” in the debt collection case.

Appearance – the North Dakota Supreme Court defines “appearance as ‘any response sufficient to give the plaintiff or his or her attorney notice of an intent to contest the claim.’” ([AE2S Construction v. Hellervik Oilfield Technologies, et al.](#), 2021 ND 35.)

If you contacted the Plaintiff or Plaintiff’s lawyer once you knew the Plaintiff was bringing the debt collection case, check (✓) the first box. You describe and explain the contact(s) in Paragraph 4 of your Declaration in Support of Motion form.

The judge decides from your Declaration whether you made an appearance in the case.

- **If you tried to contact** the Plaintiff or the Plaintiff’s lawyer once you knew the Plaintiff was starting a debt collection action, check (✓) the first box.
- **If you didn't try to contact** the Plaintiff or the Plaintiff’s lawyer once you knew the Plaintiff was starting a debt collection action, check (✓) the second box.

Paragraphs 8 and 9: Read carefully.

Paragraphs 9 through 11: Read carefully. This is the required law and argument section of your Brief. This takes your facts and applies them to [Rule 60\(b\) of the North Dakota Rules of Civil Procedure](#).

Paragraph 12: Check (✓) all boxes that are the reason(s) you are bringing this motion. You **must** select at least one reason, but may select more than one reason. For each reason you select, you **must** explain why in your Declaration in Support of Motion form.

- **You must do research legal research before you select a reason or reasons.** Review Pages 7-10 of the instructions for this packet of forms for legal research starting points.

Paragraphs 13 through 19: Read carefully. This is a continuation of the required law and argument section of your Brief.

- **Important!** This motion for relief from default judgment **must be brought within one year after the default judgment was entered** in this debt collection case. If it has been over a year, you **can't** use these forms.

- Paragraph 20:** Read carefully. This is part of your conclusion.
- Paragraph 21a:** Read carefully. This is your request to the District Court judge for relief from the default judgment.
- Paragraph 21b:** Read carefully. Check (✓) the box if the statement applies; otherwise, leave blank.
- Paragraph 21c:** Read carefully. This is a standard statement.
- Date and Signature:** You must sign and date the Brief and complete the lines following the signature line.

What do I do next?

- Set aside the completed Brief. (You make copies later.)
- Complete the next form in the set. (The Declaration in Support of Motion is the next form.)
- Once you've completed all of the forms listed on Page 4, you serve a copy of the Brief with those forms.
- The originals are filed with the court in **Step 6** of the instructions of this form set.

For Motion for Relief from Default Judgment, the following forms are required:

- MP1: Notice of Motion for Relief from Default Judgment (*Debt Collection*);
- MP2: Motion for Relief from Default Judgment (*Debt Collection*);
- **MP3: Brief in Support of Motion for Relief from Default Judgment (*Debt Collection*)**;
- MP4: Declaration in Support of Motion for Relief from Default Judgment (*Debt Collection*);
 - Additional Declarations in Support of Motion (*if any*);
 - Any other supporting documents, also called exhibits (*if any*).
- MP5: Confidential Information form (*Debt Collection*); and
- MP6: Declaration of Service by Mail (*Debt Collection*).

State of North Dakota

In District Court

County of _____

_____ Judicial District

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

Case No. _____

**Brief in Support of Motion for
 Relief from Default Judgment
 (Debt Collection)**

1. Defendant, _____ (*name*), submits this Brief in Support of Motion for Relief from Default Judgment. Defendant requests relief from default judgment under Rule 60(b)(1) of the North Dakota Rules of Civil Procedure.

Statement of Facts

2. The above-captioned civil case is for collection of a debt.
3. This court entered a default judgment on (*date judgment entered*) _____.
4. (*Choose one*):

- Defendant **is not** in active military service.
- Defendant **is in** active military service, **but is not** represented by a lawyer in this case, **and** under § 50 U.S.C. 3931(d)(1) has a defense, or defenses, that cannot be presented without Defendant's presence.

5. **Service of Summons and Complaint** (*choose one; Paragraph 5 continues on next page*):

- Defendant was served on _____ (*date*) with the Summons and Complaint for this debt collection case.

Defendant disputes service of the Summons and Complaint for this debt collection case as described in the Declaration in Support of Motion for Relief from Default Judgment, which is incorporated by reference.

6. (Choose one):

Defendant served an Answer to the Summons and Complaint on Plaintiff within the 21 day answer deadline based on the facts described in the Declaration in Support of Motion for Relief from Default Judgment, which is incorporated by reference. Defendant's Answer to Plaintiff's Summons and Complaint **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 Plaintiff within the 21 day answer deadline as described in the Declaration in Support of Motion for Relief from Default Judgment, which is incorporated by reference. Defendant's proposed Answer to Plaintiff's Summons and Complaint is served and filed with this Brief in Support of Motion for Relief from Default Judgment.

7. (Choose one):

After Defendant became aware of the debt collection case, Defendant contacted or attempted to contact Plaintiff as described in the Declaration in Support of Motion for Relief from Default Judgment, which is incorporated by reference.

After Defendant became aware of the debt collection case, Defendant **did not** contact or attempt to contact Plaintiff as described in the Declaration in Support of Motion for Relief from Default Judgment, which is incorporated by reference.

8. Defendant has defense(s) to this debt collection case, which are described in the Declaration in Support of Motion for Relief from Default Judgment and incorporated by reference.

9. The specific details of Defendant’s grounds for relief are described in the Declaration in Support of Motion for Relief from Default Judgment and incorporated by reference.

Law and Argument

10. Plaintiff was granted a default judgment under Rule 55 of the North Dakota Rules of Civil Procedure.

11. “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).)

12. Defendant makes this motion under Rule 60(b) of the North Dakota Rules of Civil Procedure, which allows the court to “relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:” (*select all that apply*)

“(1) [M]istake, inadvertence, surprise, or excusable neglect... .”

“(2) [N]ewly discovered evidence that with reasonable diligence, couldn’t have been discovered in time for a new trial under Rule 59(b)... .”

“(3) [F]raud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by opposing party... .”

13. A Rule 60(b)(1), (2), or (3) motion “must be made . . . no more than a year after notice of entry of the judgment or order in the action or proceeding if the opposing party appeared, but not more than one year after a default judgment has been entered.” (N.D. R. Civ. P. 60(c)(1).)

14. Defendant makes this Motion for Relief from Default Judgment within one year after the default judgment was entered in this debt collection case.

15. “A movant for relief under Rule 60(b) has a burden of establishing sufficient grounds for disturbing the finality of the judgment.” (Allery v. Whitebull, 2022 ND 140, ¶ 7, 977 N.W.2d 726, 730.)

16. [The North Dakota Supreme Court] has long encouraged trial courts to be more lenient when entertaining Rule 60(b) motions to vacate default judgments as distinguished from “litigated” judgments, that is, judgments entered after trial on the merits. While a trial court certainly has discretion to grant or deny a Rule 60(b) motion to vacate a default judgment, the range of that discretion is limited by three important considerations. First, Rule 60(b) is remedial in nature and should be liberally construed and applied. Second, decisions on the merits are preferable to those by default. Third, as a consequence of the first two considerations, where timely relief is sought from a default judgment and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits.

Id. at ¶ 8, at 730.

17. A movant for relief under Rule 60(b) must show they have a meritorious defense, or defenses. “The showing of a meritorious defense requires an assertion of ‘specific legal grounds’ substantiated by ‘credible facts.’” (Id. at ¶ 12, at 732.)

18. [A] “ ‘meritorious’ claim or defense ... does not mean that the moving party must show that he or she is likely to prevail,” 12 James Wm. Moore, Moore’s Federal Practice § 60.24[2] (3d ed. 2018) (footnote omitted), and “if there is any doubt that the defenses may prevail, the judgment should be vacated.” \$33,000.00 U.S. Currency, 2008 ND 96, ¶ 19, 748 N.W.2d 420. But the “moving party must state enough facts to give a court an opportunity to measure whether the claim or defense has any potential.”

Dockter v. Dockter, 2018 ND 219, ¶ 23, 918 N.W.2d 35, 42.

19. Defendant has a meritorious defense, or defenses, to Plaintiff’s Complaint as specifically detailed in their Declaration in Support of Motion for Relief from Default Judgment.

Conclusion

20. Based on this Brief in Support of Motion for Relief from Default Judgment, Defendant meets the requirements under Rule 60(b) of the North Dakota Rules of Civil Procedure for relief from default judgment in this debt collection case. Defendant’s motion is timely under Rule 60(c) and Defendant has a meritorious defense, or defenses, to Plaintiff’s Complaint that should be decided on their merits.

21. For the reasons stated above, Defendant respectfully requests the court:

a. **Set aside** the default judgment entered in this debt collection case to allow Plaintiff and Defendant to litigate this case on the merits.

b. *(Check (✓) only if you checkmarked the 2nd box in Paragraph 4.)*

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, or defenses, to this debt collection case that cannot be presented without the Defendant’s presence.

c. For such further and additional relief that the court may deem just and proper.

Dated _____.

(Signature of Moving Party)

(Moving Party Printed Name)

(Address) *(City, State, Zip Code)*

(Telephone Number) *(Email Address)*