

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

## Instructions for Form MP4: Declaration in Support of Motion

(Form MP4: Declaration 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.

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 instructions sheets when you serve or file the completed form.

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

**Form MP4: Declaration in Support of Motion**, is your, the Defendant's, written statement of your facts that support what you wrote in your Brief in Support of Motion.

You arrange to serve a copy of the Declaration in Support of Motion with all other documents listed on Page 7.

### **You, The Defendant, Complete and Sign This Form.**

The Declaration in Support of Motion is your written evidence of the facts that apply to the arguments you make to the District Court judge. You need to prove your circumstances meet the requirements of Rule 60(b) of the North Dakota Rules of Civil Procedure.

If you have documents that support any of the facts you describe or explain in this Declaration, if you plan to serve and file the document with your motion, you **must** refer to the document as an exhibit in your written description.

#### **How to Refer to an Exhibit in your Declaration:**

"The [*name of document*] is attached as Exhibit [*letter you give the exhibit*]."

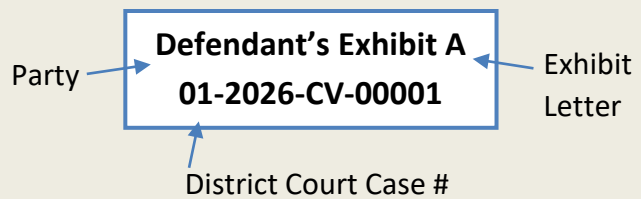
#### **Name Each Exhibit You Refer to in Your Declaration:**

Name the 1<sup>st</sup> document you reference in your declaration Exhibit A, name the 2<sup>nd</sup> document Exhibit B, name the 3<sup>rd</sup> document Exhibit C, and so on.

**Write or Type an Exhibit Identifier on the 1<sup>st</sup> Page of Each Exhibit:**

An exhibit identifier includes:

1. The party (*you, the Defendant*);
2. The exhibit letter; and
3. The District Court case number.



- Top of Form (Caption):** Fill in the Caption with **exactly** as you filled in the Notice of Motion.
- Fill in your full legal name.** This should match your name in the Caption.
- Paragraph 1:** Read carefully. If this information isn't correct, you can't use this form.
- Paragraph 2:** Review your Paragraph 5 of your Form MP3: Brief in Support of Motion.
  - **If you checked (✓) the first box** of Paragraph 5 of your Form MP3: Brief in Support of Motion, check (✓) the first box. Fill in the same date as Paragraph 5 of your Form MP3: Brief in Support of Motion.
  - **If you checked (✓) the second box** of Paragraph 5 of your Form MP3: Brief in Support of Motion, check (✓) the second box. Describe why you dispute the Summons and Complaint were served correctly, or not served at all.
- Paragraph 3:** Review your answer to Paragraph 6 of your Form MP3: Brief in Support of Motion.
  - **If you checked (✓) the first box** of Paragraph 6 of your Form MP3: Brief in Support of Motion, check (✓) the first box. Describe how and when you served your written Answer in response to the Plaintiff's Summons and Complaint.
  - **If you checked (✓) the second box** of Paragraph 6 of your Form MP3: Brief in Support of Motion, check (✓) the second box. Explain why you didn't serve a written Answer in response to the Plaintiff's Summons and Complaint.
- Paragraph 4:** Review your answer to Paragraph 7 of your Form MP3: Brief in Support of Motion.

[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 checked (✓) the first box in Paragraph 7 of your Brief in Support of Motion form, you describe and explain the contact(s) in this paragraph.

The judge decides from what you describe and explain whether you made an appearance in the case.

- **If you checked (✓) the first box** of Paragraph 7 of your Form MP3: Brief in Support of Motion, check (✓) the first box. Describe how and when you contacted or attempted to contact the Plaintiff or their lawyer.
- **If you checked (✓) the second box** of Paragraph 7 of your Form MP3: Brief in Support of Motion, check (✓) the second box. Describe why you didn't contact or attempt to contact the Plaintiff or their lawyer.

**Paragraph 5:** Review your answer to Paragraph 4 of your Form MP3: Brief in Support of Motion.

- **If you checked (✓) the first box** of Paragraph 4 of your Form MP3: Brief in Support of Motion, check (✓) the first box.
- **If you checked (✓) the second box** of Paragraph 4 of your Form MP3: Brief in Support of Motion, check (✓) the second box. Explain how you're in active military service. Use Paragraph 7 to list and describe your defenses

**Paragraph 6:** Explain the specific details of the grounds for relief you checked in Paragraph 12 of your Brief. This is very important, so be very thorough.

**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.

**Paragraph 7:** Check all of the defenses to this action that apply to you. **You need to show that you could prove each defense you check, if given the chance.**

**Defenses:** A valid (meritorious) defense is a legal reason the Plaintiff shouldn't win the debt collection case. If you had answered the summons and complaint, you would have included the defense, or defenses, in your answer.

You, the Defendant, must describe and explain your defenses in this Declaration.

**Important! Inability to pay the debt isn't a defense.**

**You must independently determine if any of the defenses listed apply to your case.** ND Legal Self Help Center staff and Court employees can't advise you.

- The North Dakota District Court does not have subject matter jurisdiction.**
  - Subject matter jurisdiction is the North Dakota laws and/or rules that say the court can hear and make decisions about the case. (See the [laws and/or rules](#) related to the subject matter and/or [North Dakota Century Code Chapter 28-04](#).)
  - Explain why you don't believe North Dakota has subject matter jurisdiction.
  
- I did not receive a copy of the Summons and Complaint as I explained in Paragraph 2 of this Declaration.**
  - If you chose and completed the second checkbox in Paragraph 2 because you weren't served at all, checkmark this defense.
  
- I received the Summons and Complaint, but it was not properly served as I explained in Paragraph 2 of this Declaration.**
  - If you chose and completed the second checkmark in Paragraph 2 because the Summons and Complaint you received weren't served correctly, checkmark this defense. Make sure Paragraph 2 explains how service was incorrect.
  
- The amount of debt the Plaintiff claims I owe is incorrect.**
  - If this applies, explain why the amount the Plaintiff claims you owe is incorrect.
  
- I paid this debt in full. Proof of payment is served and filed with my Brief in Support and this Declaration.**
  - If this applies, **include** proof of payment in full when you serve and file your Brief in Support of Motion and this Declaration.
  
- I paid an amount that the Plaintiff accepted as payment in full. Proof of payment is served and filed with my Brief in Support and this Declaration.**
  - If this applies, **include** proof of payment, and proof the Plaintiff accepted the payment as payment in full when you serve and file your Brief in Support of Motion and Declaration.
  
- I have a pending bankruptcy case. The bankruptcy case was filed \_\_\_\_\_ (date). The bankruptcy case number is \_\_\_\_\_.**
  - If you 1) filed for bankruptcy, 2) the bankruptcy case is not yet finished, and 3) this debt was included in the bankruptcy case, **fill in** the filing date and case number of your bankruptcy case.

- The debt was discharged in bankruptcy. The bankruptcy case was filed \_\_\_\_\_ (date). The bankruptcy case number is \_\_\_\_\_.**
  - If you filed for bankruptcy and this debt was discharged as part of your bankruptcy case, **fill in** the filing date and case number of your bankruptcy case.
  
- A court has already decided this claim in my favor. The certified or authenticated court order/judgment is served and filed with my Brief in Support of Motion and this Declaration.**
  - If this debt was already part of a different case, and the court reached a decision, get a certified or authenticated copy of the order or judgment and **include** when you serve and file your Brief in Support of Motion and this Declaration.
  
- The statute of limitation for collecting this debt is \_\_\_ years. The Plaintiff failed to sue within \_\_\_ years of \_\_\_\_\_ (date), the last activity on the alleged account.**
  - Statute of limitations is the amount of time by law that a Plaintiff may bring a claim in a civil action. If the time limit has passed, the Plaintiff can't bring the claim.
  - To determine if the statute of limitations has passed for the Plaintiff to bring a debt collection civil action against you, start your legal research with [Chapter 28-01](#) of the North Dakota Century Code. If the debt collection civil action doesn't relate to real estate, start your research with [Section 28-01-16](#).
  - **Fill in** the appropriate number of years, and date of last activity.
  
- I lacked capacity to enter into a contract because:**
  - I was under the age of 18 when the alleged contract was created.**
    - If you were under age 18 when the alleged contract was created, file a [Confidential Information Form](#) with your Brief in Support of Motion and this Declaration. **Don't** serve the Confidential Information Form with your Answer. **Fill in** your year of birth only.
  - I was not mentally competent when the alleged contract was made.**
    - If you had a guardian or conservator appointed for you by a court at the time the alleged contract was made, **fill in** the case number and **include** a copy of the letters of guardianship or conservatorship when you serve and file your Brief in Support of Motion and this Declaration.

**I am a victim of identity theft or mistaken identity. I am not responsible for this debt.**

- If this applies, describe the circumstances and refer to any proof you have. **Include** a copy of the proof you reference when you serve and file you Brief in Support of Motion and this Declaration.

**I am a member of the military on active duty as explained in Paragraph 5 of this Declaration.**

**The Plaintiff is not the original owner of the debt.**

- This paragraph may apply if:
  - The Plaintiff is a debt collector;
  - You asked for proof, in writing, that you owe the debt; and
  - You didn't receive adequate documentation that the Plaintiff now owns the debt.
- If this applies, describe your attempts to get documentation and why the documentation isn't adequate.
- A "debt collector" is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and try to collect them. **If the Plaintiff is the original creditor, this option doesn't apply.**

**Other:**

- The defenses listed **aren't all of the possible defenses you may have**. If you have a defense that isn't listed, use this option to write or type the defense(s).

**Paragraph 8:** Read carefully. You're stating that under penalty of perjury under the law of North Dakota, everything you stated in this Declaration is true and correct.

**Date and Signature:** You, the Defendant, must sign, date and fill in the lines following your signature.

### **What do I do next?**

Set aside your completed Form MP4: Declaration in Support of Motion. (You make copies later.)

Complete the next form in the set. (If you have additional Declarations in support of your motion, complete that now. Otherwise, the next form in the set is the Confidential Information Form.)

- Once you've completed all of the forms listed on Page 7, you serve a copy of this Form MP4: Declaration in Support of Motion for Relief from Default Judgment (*Debt Collection*).
- The originals are filed with the court in **Step 6** of the instructions of this form set.

**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. \_\_\_\_\_

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

I, \_\_\_\_\_ (*Defendant name*), the

undersigned, state as follows:

1. I am the Defendant in the above-captioned civil case, which is for collection of a debt.

2. **Service of Summons and Complaint** (*choose and complete the same checkbox as*

*Paragraph 5 of your Brief in Support of Motion*):

I was served on \_\_\_\_\_ (*date*) with the Summons and Complaint  
for this debt collection case.

I dispute service of the Summons and Complaint for this debt collection case because

(*explain*):

3. (Choose and complete the same checkbox as Paragraph 6 of your Brief in Support of Motion):

I served an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline based on the following facts (*describe in detail*):

I did not serve an Answer to the Summons and Complaint on the Plaintiff within the 21 day answer deadline because (*explain in detail*):

4. (Choose and complete the same checkbox as Paragraph 7 of your Brief in Support of Motion):

After I became aware of the debt collection case, I contacted or attempted to contact the Plaintiff, or the Plaintiff's lawyer, as follows (*describe in detail*):

After I became aware of the debt collection case, I **did not** contact or attempt to contact the Plaintiff, or the Plaintiff's lawyer, because (*describe in detail*):

5. (Choose and complete the same checkbox as Paragraph 4 of your Brief in Support of Motion):

I am **not in** active military service.

I **am in** active military service, I **am not** currently represented by a lawyer, and I have the defenses described in Paragraph 7 in this debt collection case that cannot be presented without my presence.

6. The specific details of my grounds for relief are as follows (*Describe the facts in detail that show why you chose each option in Paragraph 12 of your brief; continues on Page 5*):

*(Paragraph 6 continued)*

7. I have the following defense(s) to this case (*Check all that apply. You need to prove all defenses you check. Paragraph 7 continues on the next pages*):

The North Dakota District Court does not have subject matter jurisdiction because (*explain*):

I did not receive a copy of the Summons and Complaint as I explained in Paragraph 2 of this Declaration.

I received the Summons and Complaint, but it was not properly served as I explained in Paragraph 2 of this Declaration.

The amount of debt the Plaintiff claims I owe is incorrect because (*explain*):

I paid this debt in full. Proof of payment is served and filed with my Brief in Support of Motion and this Declaration.

I paid an amount that the Plaintiff accepted as payment in full. Proof of payment is served and filed with my Brief in Support of Motion and this Declaration.

I have a pending bankruptcy case. The bankruptcy case was filed \_\_\_\_\_ (*date*).  
The bankruptcy case number is \_\_\_\_\_.

This debt was discharged in bankruptcy. The bankruptcy case was filed \_\_\_\_\_ (*date*).

The bankruptcy case number is \_\_\_\_\_.

A court has already decided this claim in my favor. The certified or authenticated court order/judgment is served and filed with my Brief in Support of Motion and this Declaration.

The statute of limitations for collecting this debt is \_\_\_\_ years. The Plaintiff failed to sue within \_\_\_\_ years of \_\_\_\_\_ (*date*), the last activity on the alleged account.

I lacked capacity to enter into a contract because:

I was under the age of 18 when the alleged contract was created. My year of birth is \_\_\_\_\_. A confidential information form with my full birth date is filed with the court.

I was not mentally competent when the alleged contract was made. The case number is \_\_\_\_\_.

I am a victim of identity theft or mistaken identity. I am not responsible for this debt because (*explain*):

I am a member of the military on active duty as explained in Paragraph 5 of this Declaration.

The Plaintiff is not the original owner of this debt. I have not received adequate documentation from the Plaintiff to show the Plaintiff rightfully owns this debt (*explain*):

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.** I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration in Support of Answer Brief in Opposition to Motion for Default Judgment is true and correct.

Signed on \_\_\_\_\_ (Date) in \_\_\_\_\_ (County),  
\_\_\_\_\_ (State), \_\_\_\_\_ (Country).

\_\_\_\_\_/\_\_\_\_\_  
Defendant's Signature Printed Name

\_\_\_\_\_  
Address City, State, Zip Code

\_\_\_\_\_  
Telephone Number Email Address