

Do-It-Yourself Divorce Packet

Provided by:
Legal Aid of North Carolina
Centralized Intake Unit
313 Chapanoke Road
Suite 010
Raleigh, NC 27603
1-866-219-5262

Frequently Asked Questions about Separation and Divorce

My spouse and I have just split up. Do I have to do something to get a “legal separation?”

No. In NC as long as the two of you are living in separate residences and at least one of you intends the separation to be permanent, you are considered separated.

My spouse left and I am stuck with all of the bills. Is there anything I can do to get him/her to pay them now?

Maybe. In a case like this where you need immediate money from your spouse and he/she is not cooperating, you should speak with an attorney. You may be able to file an action for post-separation support, however you have to meet certain criteria and that type of case generally requires an attorney's assistance. Additionally, most things that go through the Court are not “immediate;” in other words, you would not get an order and get money from your spouse that day or maybe even that week or month. If you need money immediately, you may check with local social services offices or charitable organizations to see if there is any temporary assistance available. If you have children in your care, you can seek child support through your local child support enforcement agency.

When can I get a divorce?

After one year of separation. In NC you must be separated for at least one full year before you obtain a divorce.

During the one year waiting period to get a divorce, am I responsible for bills my spouse incurs or am I entitled to any property he/she may obtain during that time?

Probably yes, to some extent. However, property acquired and debts incurred during the separation are treated differently than the property and debt accumulated while together during a marriage. If you know your spouse is likely to run up significant debt and try to leave you with it, you should speak with an attorney for additional advice on how to limit your liability.

My spouse and I are separated but not divorced yet. Can I date other people?

This is a difficult question to answer. Generally, if you have children together or have significant property and/or debts to divide and you anticipate your spouse being uncooperative or even difficult, you may want to be careful about dating during separation, as your doing so may be brought up in a later custody, equitable distribution (property division), or spouse support case in Court. You cannot marry until the final divorce.

We have separated and I know I can't get a divorce until it's been a year, but we can't agree on the kids now. Do I have to wait a year to file for custody?

No. If you are living apart and cannot agree on custody and/or visitation, you can file a custody action with the Court if you meet the requirements for filing custody. You should consult with an attorney or see if there are any free custody clinics in your area.

My spouse is telling me that all of the property we got during our marriage is his/hers. Most of our things are in his/her name. Is what he/she is telling me true?

Generally, property acquired during the marriage is considered “marital” property, regardless of whose name is on the title. The same is true with debt. The law presumes that marital property and debt is to be divided equally. Whether the police would help get the property back for one spouse, however, is another story. Police tend to shy away from property disputes, leaving that for the Courts. If you have specific issues with property and need advice, you should speak with an attorney.

What do I do if I do not know where my spouse is?

If you cannot find where your spouse is located you may need a lawyer because this will complicate your case.

If you cannot find out where your spouse is, you can try to mail the papers to your spouse at the most recent address you have. You should send the divorce papers by certified mail, return receipt requested. Your spouse must sign the post office receipt and return the form to you. Certified mail is not enough.

If you cannot find your spouse you can publish a notice in the newspaper. The notice must comply with specific rules. You should contact a lawyer if you need to publish a notice in a newspaper.

How much does it cost to get a divorce?

Call the clerk of court in the county where you will file to confirm the cost of filing a divorce.

You can also file without paying court cost if you are unable to. The court has a specific form that you can complete if you think you meet the requirements of filing without paying court costs.

How long does it take to get divorce?

Once your spouse is served, a 30 days waiting period begins. If there are issues in dispute the case may take longer.

What if there is domestic abuse?

You should talk to a lawyer if your spouse has abused you. Call the local DV shelter for advice and supportive services if you are a victim of domestic abuse.

What if my spouse and I disagree about bills or custody of the children?

If there are children of the marriage or property that needs to be divided you should consult with a lawyer. The court can enter temporary orders for support or custody but you must file the correct papers.

Can we resolve problems about bills, property and custody among ourselves?

You should make a list of all things you need to decide. This can include payment of bills, distribution of property and even custody of the children. If you can agree you should prepare a written agreement signed by both spouses. If you cannot agree on how to solve the problems, you need to talk to a lawyer.

What does it mean that the divorce is final?

A divorce is final when the judge has entered an order about the divorce. The order is called a decree. The order will state that the marriage is ended. The judgment is effective and the marriage ends from the time the judge decrees the divorce in open court.

A divorce decree may also include the resumption by wife of maiden name, matters dealing with equitable distribution and alimony claims and custody of children.

What if I do not agree with the divorce order?

Unless the court changes the divorce order, you must follow it. If you do not follow the order, the Court can penalize you for disobeying the order. You can appeal but strict rules apply to an appeal. You will need to talk to a lawyer.

Summary of North Carolina No-Fault Divorce Law

In North Carolina you can obtain a divorce without proving that you or your spouse caused your marriage to fail.

The law in NC permits a divorce based upon one year of separation without regard to fault.

To obtain a divorce because of one year of separation or no-fault divorce, you must establish the following requirements:

1. You or your spouse must have **lived in NC for at least 6 months** before the divorce is filed;
2. You must have been **married** to the person you are trying to divorce;
3. You and your spouse must have **lived separate and apart for one year** preceding the filing of the divorce; and
 - a. You must show that at least one of the spouses has **intent not to resume the marriage**.

In NC living separate and apart means living in separate residences

Do-It-Yourself Divorce Packet
Provided by Legal Aid of North Carolina

Do-It-Yourself Divorce Packet Table of Contents:

About this Packet
Things to Know Before You Start
The Divorce Process
 Step 1: Tell The Court
 Step 2: Tell Your Spouse
 Step 3: Tell the World
Flow Chart for Divorce
Requirements Check List
Glossary: Definitions of Legal Terms

Enclosed Documents:

If You Need Help / Clerk of Court Information
Complaint for Absolute Divorce
Domestic Civil Action Cover Sheet
Civil Summons
Petition To Proceed As An Indigent
Notice of Hearing
Testimony Form
Certificate of Absolute Divorce or Annulment
Judgment: Absolute Divorce
Servicemembers Civil Relief Act Affidavit

Please make sure all the above pages and documents are included in your Do-It-Yourself Divorce Packet. If for some reason you are missing any piece of this packet, please call our office and we will gladly send you the necessary forms:

Legal Aid of North Carolina
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313 Chapanoke Road
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About This Packet

This packet is for people who have been separated from their spouse for at least one year and one day, and who **ONLY** want to get a divorce without the help of a lawyer. If you only want a simple divorce, this packet gives you certain forms and information that you will need. It is important that you read through this entire packet **BEFORE** beginning the Divorce Process.

IMPORTANT:

This packet **CANNOT** help you with:

1. Child Custody
2. Visitation
3. Legal Separation
4. Support (Child Support or Alimony)
5. Division of Pensions, Joint Savings Accounts, and Retirement Plans
6. Equitable Distribution or Division of Marital Property (dividing things which both you and your spouse own together such as vehicles, homes, or home items; **AND ALSO** dividing debts which you and your spouse owe)

If you want these rights: Child Custody, Visitation, Legal Separation, Support, and/or Equitable Distribution; **YOU NEED TO TALK WITH A LAWYER. THIS PACKET IS NOT FOR YOU!**

**If you get a divorce WITHOUT settling these matters,
you may LOSE YOUR RIGHTS!**

NOTE: This Divorce Packet does **NOT** cover everything that may affect your rights. If you get confused during the Divorce Process, contact an attorney. You can contact the North Carolina Bar Association's Lawyer Referral Service at 1-800-662-7660 to receive a referral to a family law attorney in your area. The Case Managers, Clerk of Court, and Trial Court Administrator's Office **CANNOT** and **WILL NOT** give you legal advice.

Use this packet at your own risk. These forms may or may not be right for your particular case. There is no way to predict or guarantee the success of your case. In no event will Legal Aid of North Carolina, or anyone contributing to the production of these forms and instructions be held responsible for any indirect or consequential damages resulting from the use of the forms or information provided in this packet.

YOU ALONE ARE RESPONSIBLE FOR YOUR CASE.

Things To Know Before You Start

- Your case is called a Pro Se or Self-Represented case, because you are acting as your own lawyer. Therefore it is up to YOU to make sure that the forms in this packet are the right forms for you and that they are up-to-date. Because you are acting as your own lawyer, you should review and research the laws, rules of procedure, and cases that apply to your type of case.
- Some forms have to be verified or notarized, which means sworn to and signed in front of a Notary Public. The following forms MUST be signed and dated in front of a Notary Public:
 1. Complaint for Divorce
 2. Petition to Sue/Appeal as an Indigent

This means that you CANNOT sign and date these forms UNLESS you are in front of a Notary Public! Notaries can sometimes be found at banks, insurance agencies, and law firms. They may charge a fee to notarize your papers. Also, the Clerk of Court can notarize your papers for \$5. If you do not have access to a Notary Public, the local Legal Aid office can notarize your papers for free. You will need a picture ID with you when you sign these papers.

- Fill out all the forms by typing on a typewriter, or using a pen. Write neatly.
- You need to fill out the papers at home.
- The **Plaintiff** is the person requesting the divorce. In other words, YOU are the Plaintiff, because YOU are requesting the divorce.
- The **Defendant** is your spouse.
- It is VERY IMPORTANT that you keep copies of EVERYTHING! You should keep at least one copy of all the forms you file for your own records.
- You must file ALL the forms at the Clerk's Office. Information on your local Clerk's Office can be found in your packet on the back of the **If You Need Help** list.
- The Case Managers, Clerk of Court, and Trial Court Administrator's Office CANNOT and WILL NOT give you legal advice!
- Located in your packet is a list entitled **If You Need Help**. This lists different places to go for help if you get lost in the Divorce Process or if you just have a question.
- Contact the Clerk of Court in the county where you live and get copies of the summons.

You also need to determine the filing fee and sheriff's fee. Ask the Clerk if they will give the papers directly to the sheriff or if you have to do it.

The Divorce Process

A Brief Description of The Divorce Process

The Game

The Divorce Process is like a basketball game. In a basketball game there is an offense and defense. The team with the ball is the offense, and the team defending the basket is the defense. In the Divorce Process, you are the offense because you have the ball, or the **Complaint**. You are the one filing for a divorce from your spouse. Therefore, your spouse is the defense. Your spouse can only react to your request for divorce. If your spouse does NOT react to your request, your spouse forfeits the game, and you may be entitled to an "**Uncontested Divorce**" (legal term for an automatic win). These positions do not change throughout the Divorce Process. So throughout the process, you will be known as the "Plaintiff" (legal term for the offense), and your spouse will be known as the "**Defendant**" (legal term for the defense). The goal is the divorce. This does not mean that your spouse is trying to keep you from getting a divorce, it just means that you must first go through your spouse in order to get the goal. Therefore, you and your spouse are the "**Parties**" (legal term for the players) in this "**Case**" (legal term for the game).

Just like in any game, there are rules you must follow. In the Divorce Process, these rules are called laws or "**Statutes**." Also, in every game, there is a referee. When getting a divorce, the **Judge** acts as the referee, and it is the judge who makes sure that both parties follow the law. In your case, these are two important laws that you must follow in order to get a divorce:

Law #1: You OR your spouse must have been a resident of North Carolina for at least six months before filing for divorce

Law #2: You and your spouse must have lived *separate and apart* * for at least one year and one day before the divorce can be filed.

The Goal: What is an Absolute Divorce?

An Absolute Divorce is a divorce that ends a marriage and lets the parties get remarried if they want. An Absolute Divorce does NOT establish custody or visitation, settle money or debt, or divide property. You can only get an Absolute Divorce by following the law.

* This means that you and your spouse have NOT lived together or had a marital relationship at any time during that period. A marital relationship includes, but is not limited to, sexual relations between you and your spouse. If you have any questions as to what "marital relationship" means, please call our office.

The Divorce Process: A Brief Description

The Divorce Process can be broken up into three main steps in which you tell different parts of society that you want a divorce:

1. Tell The Court
2. Tell Your Spouse
3. Tell The World

In each step you don't really "tell" people anything. You GIVE them papers telling them that you want a divorce. Therefore there is a lot of paperwork involved. During each step, you must always keep a record of your paperwork for yourself and also for the court. Keeping a record for the court means that you must file, or turn in, ALL forms to the Clerk of Court.

Step 1: Tell The Court

This is the first step in the Divorce Process. When you tell the court that you want a divorce, you must fill out and give the following forms to the Clerk's Office:

1. Complaint
2. Domestic Civil Action Cover Sheet
3. Civil Summons (not included, contact the Clerk of Court and get a copy)

The Clerk's Office is where you will file these forms. When turning these forms in to the Clerk's Office you must also pay the filing fee of \$225* for Absolute Divorce. However, if you cannot afford to pay this fee, you may be able to pay nothing by filling out the Petition to Sue/Appeal as an Indigent form included in this packet.

* Fees may change. You should contact the Clerk of Court to make sure this amount is correct.

Step 2: Tell Your Spouse or Service of the Complaint

This is the second step in the Divorce Process, and the easiest because you do not do it! You are not allowed to “tell,” or give the forms saying you want a divorce to your spouse. A person you do not know must give (or SERVE) the papers to your spouse. In this Divorce Packet, we recommend that you use the sheriff to serve the papers.

Remember: Serving papers is the same thing as giving papers.

The papers that the sheriff serves on your spouse are the forms that you have already turned into the Clerk’s Office in Step One (“Tell The Court”). For a small service fee the sheriff will serve the papers. All you need to do is pay the extra fee to the clerk and they will deliver the papers to the sheriff. However, if you fill out the Petition to Sue/Appeal as an Indigent in Step One and the clerk decides you do not have to pay the Absolute Divorce fees, you will not have to pay any of the sheriff’s service fees.

In some counties you must deliver the papers to the sheriff’s office. The Clerk will not do it. Ask the Clerk for instructions.

Now you must request a court date. Thirty (30) days after the sheriff serves the papers on your spouse, you can set a court date by calling the Clerk’s Office.

NOTE: It is NOT 30 days after FILING the divorce papers with the clerk, it is 30 days after the sheriff SERVES the papers to your spouse that you can get a court date. Keep in mind that the sheriff might not have given the papers to your spouse the same day that you filed the papers with the clerk. You may want to contact the Clerk’s Office a week after filing the divorce papers to find out what day the sheriff gave your spouse the papers. Thirty days after this date you can set a court date.

Once you have a date, you must fill out a Notice of Hearing form. This form says when your court date is scheduled and tells your spouse that she/he has at least 10 days notice to attend the hearing. **Now you have to tell the court and your spouse when the court date is.**

Remember: You CANNOT “tell” your spouse anything. You must have someone you do not know (the sheriff) tell your spouse for you! Send the Notice of Hearing to your spouse by first class mail. If you want a record that the notice was sent, you must do it by certified mail or ask the sheriff to deliver it. If the sheriff serves it you must pay another sheriff fee. If you use certified mail you must file an affidavit of service. The affidavit of service is included.

Step 3: Tell The World

Now you, your spouse, and the court know the court date. Now you must fill out the Judgment for Absolute Divorce form, the Certificate of Absolute Divorce form, and the "Testimony" form to take with you to court on your court date. Your divorce hearing is when you tell the world that you want a divorce.

At the hearing you must inform the judge that you have met the requirements and followed the rules in getting a divorce; the "Testimony" form will help you do this. The Judgment for Absolute Divorce form is for the judge to sign after the hearing if you meet the requirements for getting a divorce. If the judge signs this form, the Judgment will tell the world that you are divorced and can remarry! Your official status will be changed to say that you are divorced; therefore, you can prove that you are no longer married.

Before you start the process

1. Contact the Clerk of Court and obtain a copy of the summons.
2. Find out the filing fee and if the clerk delivers the divorce papers to the sheriff, or you have to do it. You should have two different fees, the filing fee and the sheriff's fee.

NOTE: This is just a brief description of what happens when you get a divorce. The complete instructions can be found on the following pages.

* Fees may change. You should contact the Clerk of Court to make sure this amount is correct.

Step 1: Tell The Court

To begin the Divorce Process you must fill out three forms that are included in this packet:

1. Complaint for Absolute Divorce
2. Domestic Civil Action Cover Sheet
3. Civil Summons (3 copies)

1. Complaint for Absolute Divorce

Make two copies of the Complaint after you have filled in the blanks. You will present all three copies to the clerk who will stamp the papers with the date you filed, and the file number. The clerk will keep the original on file at the Clerk's Office, and have one copy given to your spouse by the sheriff. Keep the other copy for your records.

1. Fill in your county name on the top left line.
2. Fill in your name as the "Plaintiff"
3. Fill in your spouse's name as the "Defendant"
4. Fill in our county in #1
5. Fill in your county and state in #2
6. Fill in your date of marriage and date of separation in #3
7. Check the appropriate bubble in #6, and indicate how many children, their names, and dates of birth
8. Check the bubble in #7 if any of the children of you and your spouse are minors (under the age of 18), and fill in the appropriate information
9. Check the bubble in #9 if you would like to go back to your maiden name
10. Fill in your name and address as the "Plaintiff"
11. **STOP HERE! DO NOT FILL ANYTHING OUT UNDER "VERIFICATION."**
Take this form to a Notary Public or Clerk of Court BEFORE signing and dating this form!

2. Domestic Civil Action Cover Sheet

1. Fill in your county name on the top left line
2. Fill in your name and address as the "Plaintiff"
3. Fill in your spouse's name and address as the "Defendant"
4. Fill in your name and address on the right hand side of the paper under "**Name And Address of Attorney Or Party, If Not Represented**"
5. Sign your name and write the date at the bottom.

3. Civil Summons

Fill out all three copies (one white and two yellow). The clerk will keep the white copy on file at the Clerk's Office, and have a yellow copy delivered to your spouse by the sheriff. Keep the other yellow copy for your records.

1. Fill in your county name on the top left line
2. Check the box for "District" in the upper right-hand corner
3. Fill in your name and address as the "Plaintiff"
4. Fill in your spouse's name as the "Defendant" under "**VERSUS**"
5. Fill in your spouse's name and address as the "Defendant" under "**To Each Of The Defendant(s) Below:**" It is important that you give detailed information about where your spouse can be found so that the sheriff will know when and where to find your spouse to deliver the papers. If there are several places where your spouse might be found, enclose a letter to the sheriff with all of the addresses and any other information that may help the sheriff find your spouse.
6. Fill in your name and address in the box for "**Name and Address Of Plaintiff's Attorney (If None, Address of Plaintiff)**"

4. Filing At the Clerk of Court's Office

When The Complaint, Domestic Civil Action Cover Sheet, and Civil Summons are completed in full and properly signed and notarized, take the forms to your local Clerk's Office.

You must also bring your money for the filing fee. **PLEASE NOTE: The Clerk's Office WILL NOT accept personal checks!** All payments must be cash, money order, or certified check! If you use a money order or certified check, you should make the check payable to: Clerk of Superior Court. The clerk will file your papers and assign a civil number for your case; this is called your file number (example: 01 CVD 123).

NOTE: If you CANNOT afford to pay the filing fee and other costs associated with the divorce, you may be eligible to file the papers for FREE. In order to file for free, you must fill out the "Petition To Sue/Appeal As An Indigent" form included in this packet. You should be aware that you could be help in contempt of court for giving false information on this form. After completing the form, you should take it to the Clerk's Office when you file your Divorce Complaint and Civil Summons. The clerk will decide whether or not you will need to pay the Absolute Divorce fee(s). If you do not receive food stamps, TANF, or SSI, the clerk may ask you to complete an Affidavit of Indigency form to further explain your financial situation.

Completing the PETITION TO SUE/APPEAL AS AN INDIGENT:

1. Fill in the name of your county on the top left line
2. Check the box indicating "District" Court in the upper right-hand corner
3. Fill in your name as the "Plaintiff"
4. Fill in your spouse's name as the "Defendant"
5. Check the box indicating "Petition To Sue" under AFFIDAVIT
6. Check the appropriate box to indicate whether or not you receive benefits

NOTE: Receiving this Divorce Packet from Legal Aid of North Carolina does NOT mean that you are REPRESENTED by LANC. Therefore, you CANNOT check the box indicating that you are "represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons" unless you are so represented in *another* legal matter.

7. STOP HERE! Do not fill anything out under "SWORN AND SUBSCRIBED TO BEFORE ME"

8. Take this form to a Notary Public BEFORE signing and dating this form! You MUST sign and date this form in front of a Notary Public!

Step 2: Tell Your Spouse

You will then need to have the Summons and Complaint delivered to your spouse. You CANNOT deliver the forms yourself. A person you do NOT know must serve these papers on your spouse. You can serve the Summons and Complaint using the Sheriff's Office, certified mail, or other means. However, we recommend you serve the Summons and Complaint using the Sheriff's Office.

5. Serving The Complaint and Summons

Service by the Sheriff: This is the easiest method for you. If you have the sheriff serve the papers, the sheriff's deputy keeps a copy of the summons and fills out the back, indicating how the complaint and summons were delivered to the Defendant. The deputy will then file this information with the Clerk of Court. *The case cannot be heard in court if your spouse has not been notified of the divorce.*

The Sheriff's Office charges a service fee to deliver the papers to your spouse. * This fee is paid at the Clerk's Office, and can be combined with the Absolute Divorce fee, if the clerk delivers the papers directly to the sheriff. Again, personal checks will NOT be accepted. You may pay using cash, money order, or certified check. If you use a money order or certified check and can combine the fees, make the check payable to: Clerk of Superior Court. The Clerk's Office will take your papers and the sheriff fee over to the Sheriff's Office. However, if you fill out the Petition to Sue/Appeal as an Indigent and the clerk decides you do not have to pay the Absolute Divorce fees, you will not have to pay any of the sheriff's service fees. Keep a copy of the stamped complaint and summons for your records.

NOTE: If the clerk does not deliver the papers to the sheriff, you must take the papers to be delivered to your spouse and pay the service fee **at the Sheriff's Office**. Money orders and certified checks should be made out to: Sheriff's Office.

If your spouse does NOT live in the same county in which you file for divorce, you must have the sheriff in your spouse's county deliver the Summons and Complaint. You must give the sheriff in that county the Summons and Complaint STAMPED by the Clerk along with the filing fee. You can either hand deliver the papers to the Sheriff's Office, or mail the papers. If you decide to mail the papers, you CANNOT pay the service fee by cash. You must make the money order or certified check payable to: Sheriff's Office.

NOTE: If your spouse does not have an address, you do not know the address of your spouse, or if the sheriff was not able to give the papers to your spouse because your spouse was not available, you must serve your spouse by certified mail or by publication (newspaper). Please call our office for further assistance. Legal Aid of North Carolina, Inc., Centralized Intake Unit – 1-866-219-5262

* You should contact the Clerk of Court to find out what the fee is.

After the sheriff has given the Complaint to your spouse, your spouse has up to 30 days to file a response to your Complaint if they so choose. If your spouse does not respond to your request for divorce, you may get an "Uncontested Divorce" without your spouse at the hearing.

NOTE: If your spouse answers in writing to your request for a divorce, you need to **seek** the advise of an attorney to assure you can still get a divorce.

SERVICE BY CERTIFIED MAIL

If you serve the complaint and summon by certified mail, you must mail the documents to the defendant's residence "certified mail return receipt requested addressee only." Once the mail is delivered, your spouse will sign a postal card (green card) indicating acceptance of delivery.

You must attach this card by pasting it on a blank piece of paper and attaching it to the Affidavit of Service that we have included.

Note: Although certified mail can accomplish service it may delay the process when the defendant is unable to retrieve the mail or refuses to retrieve the mail.

6. Setting a Calendar Date

If your spouse does NOT send you a reply AND more than 30 days has gone by after she/he got the papers, you should contact the Clerk's Office to set your court date.

NOTE: It is NOT 30 days after FILING the divorce papers with the clerk, it is 30 days after the sheriff SERVES the papers to your spouse that you can get a court date. Keep in mind that the sheriff might not have given the papers to your spouse the same day that you filed the papers with the clerk. You may want to contact the Clerk's Office a week after filing the divorce papers to find out what day the sheriff gave your spouse the papers. Thirty days after *this* date you can set a court date.

When you call the Clerk's Office you should have your File Number ready. This information can be found on your copy of the Divorce Complaint. In some counties you may have to get a Calendar Request to set a court date. You should ask the Clerk of Court what the procedure is for setting a court date.

7. Notice Of Hearing

After you have contacted the Clerk's Office and received a court date, you must fill out a Notice of hearing form to tell your spouse the date of your divorce hearing. The Notice of Hearing must be delivered to your spouse at least 10 days before the court hearing. A blank form is included with this packet. Fill out this form and make two copies. Give the original and one copy to the Clerk's Office. You can serve this notice by first class mail or can give it to the sheriff for service by sheriff. If you take it to the sheriff you must pay a fee.

Step 3: Tell The World

8. Judgment For Absolute Divorce

This form is for the judge to sign to make your divorce final and to tell the world that you are divorced. You will need to make two copies of the Divorce Judgment. One copy is for you and one copy is for your spouse. The original will remain in your court file. Bring the form and the two copies with you on your court date. The judge will not give you a divorce without the form.

1. Fill in your county name on the top left line
2. Fill in your name on the line above plaintiff and your spouse's name on the line above defendant
3. Include the file number (example: 01 CVD 123) on the line beside file number
4. Fill in the name of your county as the Judicial District in the first paragraph
5. Fill in the name of your county in #1
6. Fill in the name of your county and state in #2
7. Check the bubble indicating "Sheriff's Service" in #3
8. Fill in remaining blanks on the Order such as date of marriage, and number of children, if any

9. Certificate Of Absolute Divorce

A copy of this form is provided in this packet. You must fill out this form, and present it to the court on your court date, along with the Judgment for Absolute Divorce.

1. Fill in your file number and county on the appropriate lines in the top left (the file number can be found on your copy of the Complaint)
2. Fill in your name in box #1, and check the appropriate box indicating you are the husband or wife.
3. Fill in the state where you live in box #2a, and your county in box #2b
4. Fill in your spouse's name in box #3, and check the appropriate box indicating your spouse is the husband or wife.
5. Fill in the state where your spouse lives in box #4a, and your spouse's county in box #4b
6. Fill in the appropriate information in boxes #5-8
7. Do NOT fill in anything under "**Certification**"

10. A Brief Description Of The Hearing

At the hearing you will be required to be sworn in and will have to go to the witness stand to testify to the judge. All the judge wants to know is:

- ▶ You have followed the laws in getting a divorce:
 - 1) You or your spouse have been a resident of North Carolina for at least six months before filing for divorce
 - 2) You and your spouse have lived separate and apart for at least one year and one day before the divorce was filed

- ▶ You have followed the steps in the Divorce Process:
 - 1) The Complaint was delivered to your spouse
 - 2) Your spouse was notified of the court date

- ▶ You have settled all your legal and financial matters with your spouse:
 - 1) You and your spouse have made arrangements for child custody and support
 - 2) You and your spouse have divided all property and debts

In order to find out this information the judge may ask you a series of questions, OR you may be asked to present the facts of your case which is called giving "testimony."

Take all the forms (Judgment for Absolute Divorce and two copies, Certificate of Absolute Divorce, and your Testimony) with you to the witness stand. Once the judge hears the evidence in the case, the judge will sign the Judgment either in court or later in the day and it will be entered in the court file as the judge's decision in your case. You will receive two copies, one for you and one for your spouse. You can mail the copy to your spouse.

11. Testimony

If you are asked to give testimony, or to present the facts of your case while you are on the witness stand, you must tell the judge that you have followed all the rules in the Divorce Process and that you and your spouse are ready for a divorce.

Included in this packet is a Testimony form. This form will help you give the facts of your case to the court at your hearing. All you must do is fill in the blanks with the appropriate information and read it to the judge if the judge asks for your testimony when you are on the witness stand. You CANNOT just hand the form to the judge.

12. Your Court Date

What To Bring

When you go to court do NOT take your children. Make sure to bring ALL your divorce documents with you on your court date. In order to grant your divorce, the judge will need to see the following information:

1. Judgment for Absolute Divorce: The original and two copies
2. Certificate of Absolute Divorce
3. Testimony

What to Wear

Dress professionally. This means wearing clothing that is clean and neat. Avoid hats, short, sweat pants, or other revealing or tight clothing. Present yourself as clean and well groomed.

When To Arrive

You **MUST** be on time for your court hearing or any other appointment related to your case. If you are late, your case may be cancelled. Many cases are set at the same time as your case. Expect to spend at least half a day waiting in court for your case.

How Best To Present Your Case

The court is a very traditional and polite place. How you act is very important. Be respectful of everyone in court, this includes the other party (your spouse), the witnesses, the judge and the court staff. Getting overly emotional, yelling, cursing, or using threatening language will not help you in presenting your case to the Court.

If you want to speak to the judge you should stand up, **UNLESS** you are on the witness stand. You should always call the judge "your honor," and if you have to hand anything to the judge, you must first ask permission to come near his/her bench: "Your honor, may I approach?"

If your spouse comes to the hearing, your spouse may also be allowed to ask you questions while you are on the witness stand. You should never turn to your spouse and talk to him or her unless they are on the witness stand and the judge allows you to question them. If your spouse says something to the judge that you disagree with, do not interrupt. If your spouse asks you a question, look at the judge and ask the judge if he or she would like you to respond.

Where To Seek Assistance

When you represent yourself in court it may be beneficial to get legal advice from a lawyer ahead of time to make sure that you are doing the right thing. Legal advice includes deciding what option(s) may be best for you.

The judge *cannot* speak to you about your case except when the case is being heard in Court and/or your spouse is present. The judge's staff will help you as much as possible with questions about scheduling or whether a judge has rendered a decision in your case. The staff *cannot* give you legal advice or recommend how to present your side of the case. Please remember always to be polite to the court staff and be prepared with any information that they may need. They are there to help you.

Flow Chart For Divorce

START

Fulfill state requirements:
Separated for one year
Resident of NC for six months

Complete "COMPLAINT FOR ABSOLUTE DIVORCE" (notarize),
"CIVIL SUMMONS" and "DOMESTIC CIVIL ACTION COVER SHEET"
File original and copies in Clerk of Court's Office
with filing fee or complete the
"PETITION TO SUE/APPEAL AS AN INDIGENT" (notarize) to waive the
fees

Have the sheriff serve your spouse
with documents

30 days after the Defendant has
been served get court date from
Clerk of Court's Office

Complete
"NOTICE OF HEARING"
Mail to Defendant 10 days before hearing

Appear in Court and Testify

Complete
"CERTIFICATE OF ABSOLUTE DIVORCE"
and "JUDGMENT: ABSOLUTE DIVORCE"
File with clerk

FINISH

Requirements Check List

	Notary Required	Copies Needed	Other Important Information	File with the Clerk's Office
Complaint for Divorce	√ Yes	2	Must file before serving the other party	√ Yes
Domestic Action Cover Sheet		2		√ Yes
Civil Summons		2	Obtain forms from Clerk's Office	√ Yes
The Petition to Sue/Appeal as an Indigent	√ Yes	2		√ Yes
Notice of Hearing		2	Get court date from clerk; write date on form; serve defendant at least ten (10) days before the hearing	√ Yes
Certificate of Absolute Divorce		2	Two (2) copies must be filed with the Clerk before hearing date may be set	√ Yes
Judgment of Divorce		2	File before the hearing; only fill in case number and names for the Judge	√ Yes

Glossary

Definitions of Legal Terms

Absolute Divorce: Type of divorce that allows the parties (you and your spouse) to remarry.

Affidavit: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation such as a Notary Public.

Alimony: Allowances which husband or wife by court order pays other spouse for maintenance while they are separated, or after they are divorced.

Annulment: Annulments erase the existence of a marriage, whereas divorces end marriages. An annulment is a legal decree that a marriage was invalid from the beginning.

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File No.

Plaintiff,)
vs.)

Defendant)
COMPLAINT FOR ABSOLUTE DIVORCE

The Plaintiff, complaining of the Defendant, alleges:

1. The Plaintiff is a citizen and resident of _____ County, North Carolina and has been a citizen and resident of North Carolina for at least six (6) months immediately preceding the institution of this action.
2. The Defendant is a citizen and resident of _____ County, North Carolina.
3. The Plaintiff and Defendant were married on or about _____ (*date of marriage*) and thereafter they lived together as husband and wife until on or about _____ (*date of separation*) at which time they separated.
4. That since the date of separation stated above, the Plaintiff and Defendant have lived continuously separate and apart from each other, and at no time have they resume the marital relation that formerly existed between them.
5. At the time of the separation, the Plaintiff intended the separation to be permanent.
6. That there were: (check one) No children born of the marriage.
 _____ children born to the marriage of the parties,
namely: _____

(names and birth dates of children)
7. Check here if the children born of the marriage are minors. The minor children reside with _____ (*name of party*) at _____, _____ (*address*).
8. That Plaintiff, whether husband or wife, acknowledged that he/she is not demanding of Defendant alimony or equitable distribution and he/she acknowledges that unless

such claims are asserted by one or the other or both parties before Judgment is entered on this complaint, he/she is forever waiving and discharging any claim against Defendant for alimony and/or equitable distribution by obtaining an absolute divorce.

9. (*check, if applicable*) The Plaintiff desires to resume the use of her maiden name, _____.

WHEREFORE, Plaintiff respectfully requests that the bonds of matrimony which have existed between the parties be dissolved and that he/she be granted an absolute divorce from the Defendant.

This the _____ day of _____, 20_____.

(Name of Plaintiff)

(Address of Plaintiff)

(City, State, Zip Code)

VERIFICATION

(Must be signed before a Notary Public)

I, _____ (*print Plaintiff's name*),
being first duly sworn, depose and say that I am the Plaintiff herein, that I have read the forgoing
Complaint for Absolute Divorce and know the statements therein to be true of my own
personal knowledge, except as to those matters alleged upon information and belief, and as to
those matters, I believe them to be true.

This the _____ day of _____ 20____

Plaintiff's full name – SIGNATURE

Sworn to and Subscribed before me this the _____ day of

_____.

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

_____ County

Name And Address Of Plaintiff 1

Name And Address Of Plaintiff 2

**DOMESTIC
CIVIL ACTION COVER SHEET**

INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

VERSUS

Name Of Defendant 1

Jury Demanded In Pleading? No Yes

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Summons Submitted Yes No

Name Of Defendant 2

Telephone No.

Cellular Telephone No.

NC Attorney Bar No.

Attorney E-Mail Address

Initial Appearance in Case

Change of Address

Summons Submitted Yes No

Counsel for

All Plaintiffs All Defendants Only (List party(ies) represented)

Name Of Firm

FAX No.

TYPE OF PLEADING

CLAIMS FOR RELIEF

(check all that apply)

- Amended Answer/Reply (AMND-Response)
- Amended Complaint (AMND)
- Answer/Reply (ANSW-Response)
- Complaint (COMP)
- Confession Of Judgment (CNFJ)
- Contempt (CNTP)
- Continue (CNTN)
- Compel (CMPL)
- Counterclaim vs. (CTCL) Assess Counterclaim Costs
- Extend Time For An Answer (MEOT-Response)
- Modification Of Alimony (MALI)
- Modification Of Custody (MCUS)
- Modification Of Support in non-IV-D cases (MSUP)
- Modification Of Visitation (MVIS)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Sanctions (SANC)
- Show Cause (SHOW)
- Transfer (TRFR)
- Vacate/Modify Judgment or Order (VCMD)
- Other (OTHR):

(check all that apply)

- Alimony (ALIM)
- Annulment (ANUL)
- Child Support (CSUP)
- Custody (CUST)
- Divorce (DIVR)
- Divorce From Bed And Board (DIVB)
- Domestic Violence (DOME)
- Equitable Distribution (EQU)
- Medical Coverage (MEDC)
- Paternity (PATR)
- Possession Of Personal Property (POPP)
- Post Separation Support (PSSU)
- Reimbursement For Public Assistance (RPPA)
- Visitation (VIST)
- Other: (specify and list separately)

Date

Signature Of Attorney/Party

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include a Domestic (AOC-CV-750), Motions (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

Address

City, State, Zip

VERSUS

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers! ¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Date Issued

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
-------------------------------	--

<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
----------------------	--

<i>Date Of Return</i>	<i>County Of Sheriff</i>
-----------------------	--------------------------

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

PETITION TO PROCEED AS AN INDIGENT

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the four boxes below)

Petition To Assert Claims - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted.

I am an inmate in the custody of the Division of Adult Correction and Juvenile Justice.

(NOTE TO CLERK: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)

Petition To File Motions - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion.

Petition To Appeal - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court.

Petition To File Expunction Petition - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition.

(check one or more of the boxes below as applicable)

I am presently a recipient of

Supplemental Nutrition Assistance Program (SNAP/food stamps). Temporary Assistance for Needy Families (TANF).

Supplemental Security Income (SSI).

I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization.

Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature

Signature Of Petitioner

Title Of Person Authorized To Administer Oaths

Name And Address Of Petitioner (type or print)

SEAL

Date Commission Expires

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date

Signature

Name And Address (type or print)

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

the petitioner is authorized to assert claims, to appeal, or file notices of hearing or petitions in this action as an indigent.

the petition is denied.

Date

Signature

Assistant CSC

Clerk Of Superior Court

Judge

Magistrate (for appeal only)

NOTE TO CLERK: If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

(Over)

ORDER - DACJJ INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Adult Correction and Juvenile Justice and that the complaint

- is not frivolous.
- is frivolous.

It is ORDERED that

- the petitioner is authorized to sue in this action as an indigent.
- the petitioner is not authorized to sue as an indigent.
- the action is dismissed.

Date	Name Of Superior Court Judge (type or print)	Signature Of Superior Court Judge
------	--	-----------------------------------

CERTIFICATION

I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	-----------	---

NOTE: G.S. 1-110(b) provides: "The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate."

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

IN THE MATTER OF:

NOTICE OF HEARING

Name And Address Of Petitioner

Name And Address Of Interested Party

Name And Address Of Attorney Who Represented The State In The Underlying Case,
Or The Attorney's Successor

**NOTICE OF HEARING TO PETITIONER AND ATTORNEY OR OTHER
INTERESTED PARTY NAMED ABOVE**

You are notified to appear before the Court on the date and at the time and place specified below for a hearing on the attached Petition.

Date Of Hearing

Time Of Hearing

AM PM

Location Of Hearing

CERTIFICATE OF SERVICE

I certify that on this date, a copy of this Notice Of Hearing was served by:

- first class mail at the address(es) shown above on the
 - petitioner.
 - attorney who represented the State in underlying case, or that attorney's successor.
 - other interested party.

- personally delivering a copy to the
 - petitioner.
 - attorney who represented the State in underlying case, or that attorney's successor.
 - other interested party.

Other _____

Date

Signature

Deputy CSC

Assistant CSC

Clerk Of Superior Court

-----**TESTIMONY**-----

1) I, _____, have lived in _____
County, North Carolina for more than six (6) months before my request for a
Divorce.

OR

My spouse, _____, has lived in _____
County, North Carolina for six months or more before I requested the
divorce.

2) My spouse received a copy of the divorce papers from the Sheriff on
_____.

3) My spouse did not send a written response to my divorce papers.

4) My spouse and I got married on _____.

5) We separated on _____, and did not live together after
that date.

6) I (my spouse), wish(es) to have my (her) maiden name,
_____, back.

7) My spouse and I have _____ children together, and we have agreed in
writing with the approval of the court to child custody and support.

8) There are no remaining property, possessions, items or debts that still need
to be divided between my spouse and I.

STATE OF NORTH CAROLINA
CERTIFICATE OF ABSOLUTE DIVORCE OR ANNULMENT

File Number: _____

County: _____

PLAINTIFF

<input type="checkbox"/> Husband/Spouse				FIRST	MIDDLE	LAST
1.	<input type="checkbox"/> Wife/Spouse					
RESIDENCE - STATE				COUNTY		
2a.				2b.		

DEFENDANT

<input type="checkbox"/> Husband/Spouse				FIRST	MIDDLE	LAST
3.	<input type="checkbox"/> Wife/Spouse					
RESIDENCE - STATE				COUNTY		
4a.				4b.		

MARRIAGE

DATE OF THIS MARRIAGE			PLACE OF THIS MARRIAGE			
5.			6.			
NUMBER OF MINOR CHILDREN			DATE OF SEPARATION			
7.			8.			

CERTIFICATION

I hereby certify that the above information as abstracted from court documents is true and correct. The divorce annulment was rendered in the above matter on the _____ day of _____ Year _____.

Date Signature ► Clerk of Superior Court Assistant CSC Deputy CSC

Type or print in permanent black ink.

After printing form, please cut on dashed line
to create a form with the dimensions of 8.5 inches by 7 inches.

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: _____

_____,
Plaintiff
v.
_____,
Defendant

JUDGMENT: ABSOLUTE DIVORCE

THIS CAUSE coming on to be heard and being heard by the undersigned District Court Judge assigned to this case pursuant to the Local Rules of the _____ Judicial District upon Plaintiff's Complaint for Absolute Divorce based up one year's separation of the parties; and from the record in this cause and the evidence presented the Court finds the following facts:

1. That the Plaintiff is a citizen and resident of _____ County, North Carolina, and has been a citizen and resident of the State of North Carolina for more than six (6) months next preceding the commencement of this action.
2. That the Defendant is a citizen and resident of _____ (insert name of county and state)
3. That Defendant was properly served with a copy of the Complaint and Summons as required by Rule 4 of the Rules of Civil Procedure as follows:
 - () Sheriff's service;
 - () Certified Mail, return receipt requested (affidavit in court file);
 - () Publication
4. That the Plaintiff and Defendant were married on or about _____ (insert date of marriage).
5. That the Plaintiff and Defendant have lived separate and apart from each other for more than one year preceding the institution of this action for absolute divorce.
6. (If applicable, check box) () Plaintiff/Defendant desires to resume use of her maiden name:
_____ (insert name here).

7. There were: (Check one)

() no children born of the marriage of the parties

() _____ children born to the marriage of the parties, namely:

8. Based upon the foregoing finds of fact, the Court concludes as a matter of law that it has jurisdiction over the subject matter and the parties and that the parties are entitled to an absolute divorce based on one year's separation.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

1. That the bonds of matrimony which have existed between the parties be and hereby are dissolved and Plaintiff is granted an absolute divorce from the Defendant.

2. (Check here if applicable) () The Plaintiff/Defendant is entitled to resume the use of her maiden name: _____.

This, the _____ day of _____, 20_____.

DISTRICT COURT JUDGE PRESIDING

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing JUDGMENT OF ABSOLUTE DIVORCE was served upon the opposing party in this action by depositing a copy thereof in the United States mail in a properly addressed, postpaid envelope and mailing it to:

(Insert name and address of opposing party)

This, the _____ day of _____, 20_____.

(Name of Plaintiff)

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

50 U.S.C. 3901 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date: (check one of the following)

- a. I have personal knowledge that the defendant named above is in military service.*
b. I have personal knowledge that the defendant named above is not in military service.*
c. I am unable to determine whether the defendant named above is in military service.*

2. (check one of the following)

a. I used the Servicemembers Civil Relief Act Website (https://scra.dmdc.osd.mil/) to determine the defendant's military status.

The results from my use of that website are attached.

(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. DoD security certificates were automatically added to the computers of all Judicial Branch users, such that these users should not expect security alerts to appear with this website after July of 2015. As of June 22, 2016, the Servicemembers Civil Relief Act Website includes the following advice: "Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser.")

b. I have not used the Servicemembers Civil Relief Act Website and the following facts support my statement as to the defendant's military service: (State how you know the defendant is not in the military. Be specific.)

Blank lines for providing specific facts regarding the defendant's military service.

*NOTE: The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME. Includes fields for Date, Signature Of Affiant, Name Of Affiant, and Commission Expiration Date.

NOTE TO COURT: Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).