



Judicial District 1

(Counties of Camden, Chowan, Currituck, Dare, Gates, Pasquotank and Perquimans)
YOU OR YOUR SPOUSE MUST BE A RESIDENT OF ONE OF THE COUNTIES IN THE FIRST DISTRICT TO FILE THIS DIVORCE

DIVORCE



IMPORTANT-PLEASE READ CAREFULLY

This sample divorce package does NOT cover child support, custody, distribution of property, or spousal support. Valuable legal rights may be LOST FOREVER if you fail to consult an Attorney!

Use these forms at your own risk! These are educational forms designed to assist you, but you are representing yourself. Please review and follow the directions to improve your performance in your case. Failure to read and follow the instructions may adversely impact your case.

This information packet is designed to assist individuals who are not represented by an attorney ("Pro Se") to file a complaint for an Absolute Divorce and to represent themselves in a hearing before a Judge for an Absolute Divorce. Recognizing that the legal system can be very complicated and confusing, this Absolute Divorce Packet (hereinafter "divorce packet") is provided to assist pro se individuals by providing information and sample forms to be used to obtain an Absolute Divorce.

These forms may or may not be appropriate in your particular case. Any desired outcome from the use of these forms cannot be predicted or guaranteed. It is strongly recommended that you seek legal advice if you have any questions about these forms. As a pro se litigant, you are responsible to make certain that the information and instructions in this divorce packet are appropriate for your situation. Due to the changing nature of the law, the forms and instructions contained in this packet may become outdated. Therefore, you should review and research applicable laws, rules and civil procedure, and cases that apply to your type of situation. If you are not able to do this, **YOU SHOULD TALK TO AN ATTORNEY.**

BEWARE if you obtain an absolute divorce without first properly filing for, or obtaining any legal rights you may have for SPOUSAL SUPPORT (*post-separation support and alimony*), or for the DIVISION OF MARITAL PROPERTY including MARITAL DEBT (*equitable distribution*), YOU WILL LOSE THESE RIGHTS. Therefore it is very important that if you have any questions about whether you are entitled to property, division of marital debt and/or spousal support, YOU MUST TALK TO AN ATTORNEY.

You can find the name of an attorney by consulting your local telephone directory or the **North Carolina Lawyer Referral Service at 800-662-7660.** If you cannot afford an attorney, you may be eligible for assistance from **Legal Aid of North Carolina** at (919) 688-6396 or 1-800-331-7594.

The District Court Staff, Clerk of Court, or anyone else contributing to the production or dissemination of these forms, instructions or guidelines **WILL NOT BE LIABLE** for any indirect or consequential damages resulting from your use of the forms or information provide in this pro se packet.

**NO ONE EXCEPT AN ATTORNEY
CAN ADVISE YOU OF YOUR LEGAL RIGHTS**

**NO ONE AT THE JUDICIAL CENTER, CLERK OF COURT'S OFFICE
OR JUDGE'S OFFICE, MAY GIVE LEGAL ADVICE OR TELL YOU
HOW TO FILL OUT FORMS!**

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THINGS TO KNOW BEFORE YOU BEGIN

- Your case is called a Pro Se or self-represented case, because you are representing yourself, not a lawyer. Therefore, it is up to YOU to make sure that the forms and information provided in this packet are correct and up-to-date. Since you are representing yourself, you should research the laws, rules of court (called Rules of Civil Procedure) and cases that apply to your case. Contact the Clerk of Court for your county to obtain a copy of the Local Rules of Court.
- Fill out all the forms by completing them on line, typing on a typewriter or using a blue or black ink pen. Write neatly if you use a pen.
- KEEP COPIES OF EVERYTHING! Keep at least one copy of all the forms you file for your own records.
- You must file ALL forms at the Clerk's office in the county in which you or your spouse lives.
- If you are or have been the victim of domestic violence, or otherwise have concerns about your safety or the safety of your children, you may request that your address or the address of the children not be disclosed to the opposing party. If this is the case, do not put your address or the address of the child(ren) on court documents. Contact the Clerk of Court to provide the court with your address and leave your address off all official documents. Inform the clerk of your request not to disclose your address. You must still send copies of all papers you file with the court to the opposing side, but they will not have your address on them.
- Please consult with an attorney if your spouse is in the military because there may be military benefits you will be waiving by pursuing an Absolute Divorce.
- **IMPORTANT:** Some of the legal terms in this packet are written in *italics* followed by the definitions. The definitions and explanations given in this packet are intended to help you understand legal terminology sometimes used in court. It is not, however, intended as legal advice for your situation.

OVERVIEW

What is an Absolute Divorce?

An Absolute Divorce is a complete divorce that allows the parties to marry again after their divorce has become final. State law **REQUIRES** that the **parties be separated for one (1) year prior to filing for divorce**. An Absolute Divorce begins when a document called a *Complaint* is filed. The laws (or statutes) that control divorce proceedings in North Carolina are found in Chapter 50 of the North Carolina General Statutes (N.C.G.S.) You cannot file your Complaint until one (1) year and one (1) day of being separated.

Can or Should I file for an Absolute Divorce?

Please note that neither the District Court Staff nor anyone in the office of the Clerk of Court are allowed to provide legal advice. **Therefore, we cannot tell you if you should file or what you should file, but we can tell you that you must meet certain criteria to be eligible.** The *Plaintiff* is the person beginning the divorce proceeding against the *Defendant*, who is the spouse (husband/wife) of the Plaintiff. The Plaintiff may file a Complaint for divorce in North Carolina **IF** the Plaintiff of his/her spouse has been a resident of North Carolina for at least six (6) months prior to the filing. The couple also must have lived continuously separate and apart for at least one (1) year before the divorce can be filed.

What is the difference between a legal separation and an absolute divorce?

A **legal separation** frees the parties of legal responsibility for their spouse; however, it does not entitle the spouse to remarry. A legal separation may be obtained even though the parties are still living together. To become legally separated, the parties may execute a separation agreement, which is simply a contract between the parties that resolves various marital issues such as personal property, real property, child custody, alimony, post-separation support, and equitable distribution. Another method which may be used to accomplish a legal separation is to file an action for divorce from bed and board. See N.C.S.G. §50-7 for more information on a divorce from bed and board.

THREE REASONS TO CONSIDER NOT REPRESENTING YOURSELF

1. **Presence of Domestic Violence in the Marital Relationship.** If you have been the victim of physical or emotional abuse during your marriage, you may not want to represent yourself in an Absolute Divorce case. In abusive relationships, sometimes the act of filing the Complaint for an Absolute Divorce will anger and enrage the abusive spouse. Most abusive spouses are very controlling. Your spouse may think you are trying to challenge his or her authority. If your spouse has hurt you in the past and you are afraid of your spouse now, you may want to reconsider handling your case yourself and seek representation by a private attorney.

Ultimately, the choice to represent yourself is your own decision. Some factors you may want to consider when making your decision include:

- *Do I think my spouse will become very angry when I file this and try to do something to get back at me?*
- *Will I feel safe knowing my spouse has my address since it appears on the Summons?*
- *Do I have a safe place to stay after I file for divorce and while I am waiting for the Sheriff to serve my spouse with the absolute divorce papers?*
- *Have I had to get a restraining order against my spouse in the past?*
- *Has my spouse followed the terms of any restraining order?*

2. **Equitable Distribution of Marital Property.** Once an Absolute Divorce Judgment has been granted, neither you nor your ex-spouse can ask the court for a division of marital property. To preserve a claim to marital property, you must file with the Clerk of Court a claim of *Equitable Distribution* of Marital Property prior to receiving your Absolute Divorce Judgment.

Marital property consists of any real or personal property acquired by either spouse during the course of the marriage, and before the spouses' separation. Examples of marital property include the marital home, land, vehicles,

furniture, retirement plans (401k), and marital debt (e.g., credit cards and medical bills if incurred for the joint benefit of both spouses).

If you have marital property you wish to retain ownership of, you will need to file for Equitable Distribution of the marital property – either at the time you file for Absolute Divorce or before the divorce judgment is entered.

You should seek the assistance of a private attorney in filing for your Absolute Divorce and equitable distribution of marital property.

3. **Alimony and Post Separation Support.** *Alimony and post separation support* are forms of spousal support. Alimony is money paid to a spouse or ex-spouse. Post separation support is money paid to a spouse for a specific period of time, generally temporary, until the court orders or denies an award of alimony. You may be eligible for alimony or post separation support if:

- You are substantially dependent upon your spouse for your maintenance and support **OR**
- You are substantially in need of maintenance and support from your spouse.

The court will consider many factors to determine whether or not you are eligible for alimony or post separation support. Some of these factors include: marital misconduct, earnings, and earning capacity of each spouse, how long you have been married, contributions each of you have made to the marriage and your standard of living, your ages and physical and mental conditions, property that you own and the needs of each spouse. There are many other factors that the court may consider.

Once an Absolute Divorce Judgment has been granted, neither you nor your ex-spouse can ask the court for spousal support. To preserve a claim to spousal support, you must file with the Clerk of Court a claim of spousal support prior to receiving your Absolute Divorce Judgment.

You should seek the advice of a private attorney in filing for your Absolute Divorce and alimony or post separation support.

GETTING STARTED

An **Absolute Divorce** is a complete divorce that allows the parties to marry again after their divorce becomes final. State law requires that the parties be separated for at least one (1) year prior to filing for divorce. There does not have to be an agreement between the parties in order to file for an Absolute Divorce. However, in order for a party to be eligible for an Absolute Divorce in North Carolina, the husband or wife must have been a resident of North Carolina for at least six (6) months prior to the filing. The parties must also have lived continuously separate and apart for at least **one (1) year** before the divorce can be filed. See N.C.G.S. §50-8.

An action for Absolute Divorce begins when a Complaint is filed with the Court. The ***Complaint*** must contain a statement of facts to give a person fair notice of the basis for the lawsuit. An ***affidavit*** (sworn written statement) showing where the party lives and has lived must also be submitted in order for the Court to make a finding of jurisdiction. The Complaint must be signed by the party or by a licensed attorney acting on his/her behalf.

In order for the court to decide a matter, a variety of ***jurisdictional*** requirements must be met. The court acquires jurisdiction, or the power to bind a party to its decrees, by ***service of process***. In order for a civil lawsuit to be binding, the court must issue a ***summons*** and the summons must be served on the defendant in accordance with the rule. The easiest way to serve is to submit the summons, together with a copy of the Complaint, to the sheriff of the county where the defendant lives for delivery. Service can also be had by certified or registered mail.

COMPLETING THE FORMS

To **begin** an action for Absolute Divorce, you will need the following forms:

1. Complaint of Absolute Divorce
2. Domestic Civil Action Cover Sheet (AOC-CV-750)
3. Civil Summons (AOC-CV-100)
4. Petition to Sue/Appeal as an Indigent (if you cannot afford the court fees, you will need to complete this form.) (AOC-G-106) **(optional)**
5. Judgment of Absolute Divorce
6. Notice of Hearing
7. Waiver and Answer **(optional)**
8. Affidavit of Service of Process by Registered or Certified Mail **(optional)**
9. Certificate of Absolute Divorce (DHHS 2089/Vital Records) **(you will get this form from the courtroom clerk on the day you come to court for your divorce hearing.)**

1. **Complaint of Absolute Divorce.** This Complaint has been designed to be self-explanatory. Do not leave any space blank unless you are sure that it does not apply to your case.

The Complaint is the paperwork you file with the Clerk of Court which asks the court for an absolute divorce. The Complaint consists of statements and facts about the parties' marriage and separation and a request that the Judge grant an absolute divorce based on the statements and facts.

Make two (2) copies of the Complaint after you have completed it. You will present all three copies to the Clerk who will stamp the papers with the date you filed, and assign it a file number. The Clerk will keep the original on file at the Clerk's office. Two copies will be returned to you, one copy for you and the other copy to serve on the defendant. In some counties, the Clerk will deliver the copy for service of process along with the sheriff's service fee for you. In other counties, you will have to deliver the third copy to the sheriff's office with the fee yourself.

2. **Domestic Civil Action Cover Sheet (Form AOC-CV-750)**

Again, makes two copies. Keep one for your records. The Domestic Civil Action Cover Sheet allows the courts to properly file the case and determine if service has been requested and if either party is being represented by an attorney. Fill out the appropriate blanks and check the correct boxes for your case.

- A. Fill in the name of the county where you will be filing the action.
- B. Fill in your name and address in the box labeled "Plaintiff 1."
- C. Fill in the name of the defendant in the box labeled "Defendant 1" and check the box labeled "Defendant 1" and check yes for the box that asks, "**Summons Submitted**" beneath that box.
- D. Check the box which says: "INITIAL FILING" below the title of the cover sheet.
- E. Fill in your mailing address in the box marked "Name and Address of Attorney or Party". Include your telephone number, if you have one.
- F. In the box where it says "Jury Demanded in Pleading," check "No".
- G. Check the box for type of pleading: "Complaint"
- H. Check the box for claim of relief: "Divorce" (Claim for relief refers to what you are asking the court to grant you).
- I. Sign and date the bottom of the form.

3. **Civil Summons (Form AOC-CV-100)**

Civil Summons in the form which notifies the Defendant that a lawsuit has been made against him/her. The Clerk of Court must issue the Civil Summons. This form lets the Defendant know that he/she has 30 days to respond to the Complaint by filing an Answer with the Clerk of Court.

- A. Fill in the name of the county where you will be filing the papers. Check the box marked "District" for Court Division.

- B. Fill in your name and address, and the name of the defendant in the top left-hand part of the form.
- C. You should fill in the Defendant's address in the box marked "Name and address of Defendant 1." Use the street address unless you are making service by registered mail.
- D. Fill in your mailing address in the box marked "Name and Address of Plaintiff's Attorney (if none, Address of Plaintiff). Include your telephone number if you have one.

Leave the rest of the form blank and make three (3) copies on YELLOW paper and one on white paper. This is done to differentiate the original Summons from the copies. If you do not have yellow paper, use white paper instead and mark the copies "COPY".

4. **Petition to Sue/Appeal as an Indigent (Form AOC-G-106)**

If you cannot afford the fees for filing your Complaint for Divorce, you can request the Court to let you file for free. In order to make that request, you must file a "Petition to Sue/Appeal as an Indigent." If approved, you will not have to pay the filing fee or the service of process fee to the sheriff.

- A. Fill in the name of the county where you will be filing the papers. Check the box marked "District" for court division.
- B. Fill in your name (as Plaintiff) and the name of the person you want to sue (as Defendant) in the appropriate places.
- C. Check the box marked "Petition to Sue." If you are a recipient of a public benefits such as Work First, food stamps, or SSI, then check the appropriate box(es). If you receive none of these, but still wish to request a determination of indigence, check the last box, "Although I am not a recipient . . ." The Clerk of Court may require you to furnish a wage stub or other evidence to show that you cannot afford the fee, but is supposed to waive a fee upon a reasonable showing.

- D. **Make sure you sign the Petition to Sue in the presence of a Notary Public.**

IF YOU CANNOT AFFORD THE FILING FEE:

You may be eligible to file the papers for FREE. You MUST be aware that you could be in **CONTEMPT OF COURT** for giving false information on this form. After completing the form, file it with the Clerk at the **SAME** time that you file the Complaint, Domestic Civil Action Cover Sheet, and Civil Summons. The Clerk will then decide if you will need to pay the filing 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.

5. **Judgment of Absolute Divorce**

At your court hearing, you must present the Judge with your proposed Judgment of Absolute Divorce. This form is for the Judge to use to make his/her final order (decision) in your case. You should insert the names of the parties, and the case number, **but do not fill in the body of the form.**

After the hearing and if the Judge is satisfied with the evidence presented, he/she will sign the judgment. This Judgment of Absolute Divorce would then become a court order. The judgment is then filed with the Clerk of Court. One copy is given to the Defendant and one copy is for you to keep for your records. If the defendant is not present at the time of the hearing, you must complete the Certificate of Service on the judgment indicating the address and date you mailed the judgment to the defendant.

6. **Certificate of Absolute Divorce**

The certificate of absolute divorce states the relevant information regarding the parties' marriage and separation. The Clerk of Court signs this form after the presiding Judge signs the absolute divorce judgment at the court hearing. The Clerk of Court retains this information in the court file until sent by the Court to the North Carolina Center for Health statistics, NC Vital Records.

HOW TO FILE

Make two (2) copies of the completed Complaint and attach one to each of the yellow copies of the Summons you made. Attach the original Complaint to the white original Summons.

1. Take all three (3) copies of the Domestic Civil Action Cover Sheet, the Complaint and the Summons to the office of the Clerk of Court in the county where you will be filing.

*The fee for filing an action for divorce is currently **\$225.00**. If you are including a claim for **RESUMPTION OF MAIDEN NAME**, there is an additional **\$10.00 fee**. These fees are subject to change.*

If you seek to waive the filing fee, also take the Petition to Sue and ask to speak with a Clerk. Tell them that you need to have the Petition approved. Show the Clerk the Complaint and the Petition to Sue, and answer any questions he/she may have for you about your finances.

2. Once you have paid the fee or had it waived, submit the *original* Complaint and Summons to the Court, where it will be assigned a file number and placed in the public records. Ask for all three (3) of the copies of the Summons to be issued or signed by the Clerk. Also ask for the Clerk to “file-stamp” the two copies of the Complaint, and the yellow copies of the Summons.

The original packet will be placed in the Court file, one copy is for you, and the third copy will be served on the defendant.

<p>NOTE: The Clerk’s office DOES accept credit cards and debit cards, cash, money order, or cashier’s check. Make the money order or cashier’s check payable to “Clerk of Superior Court.” NO PERSONAL CHECKS.</p>
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SERVING THE DEFENDANT

You will then be ready to have the Summons and Complaint for Absolute Divorce delivered to the Defendant. **You CANNOT deliver the lawsuit yourself.** You must use one of the following methods of personal service where disinterested proof of service would be available: (1) service by Sheriff; or (2) service by certified mail, return receipt requested.

1. **Service by Sheriff.** This is the easiest method of service. The cost is \$30.00 (fees may be subject to change). If the Clerk will accept the Summons and Complaint for delivery to the Sheriff's office, the \$30.00 fee is paid at the Clerk's office. You may deliver the defendant's copy of the Summons and Complaint, along with the original Summons to the Sheriff's office yourself in which case, the \$30.00 fee will be paid at the Sheriff's office.

The Sheriff will deliver the Summons and Complaint to the defendant (or to someone of suitable age and discretion) who is found at his/her residence, and will make a notation on the return of service on back of the original Summons and return the original Summons to the Clerk for placement in the court file.

You can also instruct the Sheriff's office to serve the defendant at their place of employment.

If the defendant does NOT live in your county, you must have the Sheriff in the county in which the defendant lives deliver the Summons and Complaint. You can either hand deliver the papers to the Sheriff's office or mail the papers to them. If you mail the papers, you CANNOT pay the service fee by cash or personal check. You must make the money order or certified check payable to that county's Sheriff's office. In addition, you must send a cover letter to the Sheriff in the county where the defendant lives and ask that the service packet be delivered to the defendant.

If you have filed and been approved to sue as an indigent, you must include a certified copy of the Petition to Sue as an Indigent in your packet to the Sheriff in order to waive the service fee.

2. **Service by Certified Mail, Return Receipt Requested.** You may also serve the papers by certified mail, return receipt requested. When you receive your “green card” (return receipt which verifies that the party received the package) back from the Post Office, you must notify the Court with an Affidavit of Service.

When you have received the “green card,” fill out the Affidavit of Service of Process by Certified Mail. Attach the green card to the Affidavit and SIGN THE AFFIDAVIT IN THE PRESENCE OF A NOTARY PUBLIC. Make a copy for yourself and file the original with the Clerk of Court for placement in your court file.

HOW TO PREPARE FOR COURT

After you have served the defendant, several things will happen:

1. **Defendant has thirty (30) days to file an Answer** or a motion for extension of time to file an Answer. If the defendant files an answer, he/she or his/her attorney will send you a copy of it. If it raises any counterclaims or issues other than divorce, you should definitely consult an attorney to get legal advice. After the defendant files his/her Answer, or after thirty (30) days, no Answer is filed, the case can be scheduled for hearing.
2. **If the defendant does not contest the divorce** (he/she agrees to the divorce and is cooperative), the 30-day period for the defendant to answer can be waived using the Waiver and Answer form included with this packet. The defendant would have to complete this form and file it with the Clerk of Court, serving a copy on you, the plaintiff.
3. **Setting a hearing date.** If your spouse does NOT send you a copy of his/her Answer and more than thirty (30) days has gone by after he/she has been served, you should contact the Clerk's office to set your court date. If a Waiver and Answer is filed, the court date can be set when the Waiver and Answer is filed with the Clerk of Court.

<p>NOTE: The thirty (30) day counting period begins on the date your spouse was SERVED with the papers, not when the papers were FILED with the Clerk of Court.</p>
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4. **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 send your spouse the date of your divorce hearing. The Notice of Hearing form must be delivered to your spouse at least ten (10) days before the court date.

Complete the Notice of Hearing form and make two (2) copies. Give the original and one (1) copy to the Clerk to file. The Clerk will stamp the original and the copy "filed" and return the copy to you so you can serve it on the defendant. You can serve the Notice of Hearing on the defendant by First Class Mail.

GOING TO COURT

If you are appearing *pro se*, you will have to present your own case to the Judge. On the day of the court hearing, you must go to the County Courthouse and take a seat on one of the benches in the courtroom. At the beginning of the Court session, the presiding Judge will announce the cases on the calendar. When the Judge calls your name, he/she will ask if the defendant is present. If so, both parties will be instructed to take a seat in front of the Judge. If the defendant does not make an appearance, the Judge will proceed without him/her.

When your case is called, the Clerk will swear you in (ask you to swear that the testimony you are about to give is the truth) and you will go up and sit in the witness box. The Judge will then review the file. If all forms are correct and filed appropriately, the Judge will proceed with the hearing. If not, the Judge may dismiss the lawsuit.

If the Judge proceeds with the hearing, he/she may ask you questions relevant to your marriage and separation. The Judge may also tell you to go ahead and state your case, read the allegations of your complaint for divorce and tell him/her that you would like a divorce from your spouse. Bring a copy of your complaint with you to the witness stand so you can refer to it. If the defendant is present, the Judge will allow the defendant to ask any relevant questions. At that time, if the Judge is satisfied with the evidence, he/she will sign the Judgment of Absolute Divorce and dissolve the marriage. You should offer to the Judge the Judgment of Absolute Divorce that you prepared. Be prepared to hand up three (3) copies.

If at any time during the court proceeding you do not feel that you can handle the proceedings, you should CONSULT AN ATTORNEY. In the event you are unable to consult an attorney and do not feel that you can proceed on your own, you can file a Voluntary Dismissal (AOC-CV-405).

Filing a Voluntary Dismissal without prejudice stops the case. You can file this at any time before the Judge enters his decision. However, if you voluntarily dismiss your case and later decide you want to try again, you must start all over again. **YOU SHOULD ONLY USE THE VOLUNTARY DISMISSAL AS A LAST RESORT.**

COURTROOM BEHAVIOR

You will be expected to obey the proper rules of courtroom etiquette. Always remember to be respectful to the Judge and all court personnel. Specifically, you must adhere to the following rules:

- Be 10 to 15 minutes early.
- **Dress appropriately and conservatively.** Do not wear shorts, tank tops, strapless tops, skirts with high slits or dresses or other clothes that are tight, clingy, sheer or low-cut. Do not wear strongly-scented perfume, powder, or after-shave. Wear your hair in a style that allows your face and eyes to be seen. If you wear makeup, apply it conservatively. If you wear jewelry, avoid dangling items that clink as it will distract from your testimony.
- **DO NOT USE DRUGS OR DRINK ALCOHOL PRIOR TO YOUR HEARING.**
- Stand when the Judge enters the courtroom.
- Be quiet in the courtroom. When the Judge announces your case, stand and tell him/her that you are there for an absolute divorce hearing. After the Judge has announced all the cases, he/she will ask if anyone's case has not been announced. If your case had not been announced, you should stand and let the Judge call on you. At that time, let the Judge know your name and that you are there for an absolute divorce.
- You should always stand when speaking to the Judge from the gallery (or plaintiff's table).
- During your absolute divorce hearing, when the Judge is asking you questions, you must use clear and understandable words (i.e., "yes, your Honor" and "no, your Honor"). Do not whisper or speak too softly; the Judge must be able to hear and understand what you are saying.

- Points to remember:
 - ALWAYS TELL THE TRUTH. Answer any questions asked of you honestly, whether it is the Judge, the defendant, or the defendant's attorney asking you the questions.
 - Tell your story, but do not exaggerate any facts.
 - Maintain your temper; becoming angry will not help you.
 - Keep your answers short and to the point.
 - Try not to anticipate what you will be asked.
 - Do not interrupt the person who is asking the question.
 - Listen carefully to the question and think about your answer before beginning to answer your question.
 - If you do not understand or hear a question, ask that it be repeated.
 - If you do not know the answer to the question, you can say that you do not know or you cannot remember.
- If you do not understand something that the Judge has said or asked, say so. The Judge will usually explain what he/she can. Remember, the Judge cannot and will not give you legal advice. If you still have trouble understanding, the Judge will likely tell you to contact an attorney.

SUMMARY

To file for divorce in North Carolina:

1. You and your spouse must be separated (living separate and apart) for one (1) year.
2. One or both spouses reside in North Carolina for the six (6) months prior to filing the lawsuit.
3. Fill out the Complaint for Absolute Divorce, Civil Summons and Domestic Cover Sheet.
4. Take with you to the Clerk of Court for Filing:
 - Complaint for Absolute Divorce – original and two (2) copies
 - Civil Summons – original (white) and three (3) copies (yellow)
 - Domestic Cover Sheet – original and two (2) copies
 - \$225.00 (*fee subject to change*) filing fee in the form of cash, money order or cashier's check.
 - \$30.00 (*fee subject to change*) for the Sheriff's service fee (unless you are going to serve the papers by certified mail).
5. Serve the defendant with the documents.
6. Within about two (2) weeks after filing your documents with the Clerk, check back with the Clerk to determine if the defendant has been served. If you served your spouse by certified mail, the date of service will be on the return receipt card ("green card"). If served by certified mail, don't forget to complete and file your Affidavit of Service with the Clerk. This is the proof of service of the papers that must be in the court file.
7. Thirty (30) days after the defendant has been served, get a court date from the Clerk of Court's office. Or, if the defendant files a Waiver and Answer, you may get a court date from the Clerk upon the defendant filing the Waiver and Answer.

8. Complete a Notice of Hearing form, filing the original with the clerk and serving a copy of the defendant (which can be done by regular mail). Mail the Notice of Hearing at least ten (10) days before the hearing.
9. Prepare three (3) copies of a proposed Judgment of Absolute Divorce that you will hand to the judge at your hearing for entry if it is approved.
10. Keep a copy of everything you file with the Clerk of Court and send/serve on the defendant.

REQUIREMENTS CHECKLIST

Document	Notary Required?	Copies Needed	Important Information	File with the Clerk of Court?
Complaint for Absolute Divorce	YES	Original + 2 copies	File <i>before</i> serving on other party	YES
Domestic Action Cover Sheet	NO	Original + 2 copies	To be filed with the Summons and Complaint	YES
Civil Summons	NO	Original + 3 copies	File with Cover Sheet and Complaint	YES
Judgment of Absolute Divorce	NO	Original + 2 copies	Prepare before your hearing to present to the Judge	YES (only after your hearing and Judge has signed it)
Petition to Sue/Appeal as an Indigent (this form is <i>optional</i> if you feel you cannot afford the filing fee)	YES	Original + 2 copies	Complete this form to apply for the fee to be waived. File at the same time as the Complaint, Cover Sheet, and Civil Summons	YES

GLOSSARY OF LEGAL TERMS

Absolute Divorce	A court ordered legal separation of husband and wife effectively dissolving their marriage relationship.
Affidavit	A written statement of facts, made voluntarily under oath before a person having authority to administer such oath or affirmation such as a Notary Public.
Alimony	Money paid to a spouse or ex-spouse for his or her support.
Answer	The written response to a Complaint, Petition or Motion.
Calendar Date	Date of court hearing.
Certified Mail	Form of mail similar to registered mail by which sender may require a return receipt when the recipient has received the document.
Child	The child of a parent, including biological children, adopted children, illegitimate children, and step-children.
Civil Summons	Document used to notify the defendant that (1) a case has been started against him/her; and (2) that he/she is to answer the lawsuit.
Clerk of Court	Files your court papers and keeps the official records of your case. The clerk cannot give you legal advice, but can help explain the system and the procedures to be followed. The clerk also has the power to accept or reject your papers.
Complaint for Absolute Divorce	A written request for the judge to grant you an absolute divorce and starts your case.
Court Date	The date that you receive from the Clerk's office. This is the day your case will be heard and your divorce either granted or denied.
Cross Examination	Questions you are entitled to ask of the defendant and his/her witnesses after he/she has finished his/her direct examination.
Default	A party's failure to answer a Complaint, Motion, or Petition.
Defendant	The person who receives the Complaint for Absolute Divorce.

Discovery	A way for getting information from the other side or from other people.
Divorce	The legal separation of husband and wife, effected by the judgment or order of a court, and totally dissolving the marriage relation.
Domestic Civil Action Cover Sheet	A form that tells the court what kind of case you are filing.
Domestic Violence	Any physical or emotional behavior that would qualify as grounds for a protective order.
Direct Examination	The testimony you give, or the questions which you ask of your witnesses in order to have them tell their story.
Equitable Distribution	The equal division of marital property acquired by husband and/or wife during the marriage. The marital property must have been acquired during the marriage and can be in the husband's name, the wife's name, or in both names.
Evidence	Testimony of witnesses and documents which are presented to the court and considered by the court in making a decision.
Fees	There are fees involved when you file a lawsuit with the court. These fees are payable to the Clerk of Superior Court and are subject to change from time to time. You should contact the Clerk of Court to determine the appropriate filing fees.
File Number	Identification number given to your case.
Filing	Providing the Clerk of Court with the papers for your court file.
Grounds	Your reasons for filing the complaint.
Hearing	Trial in front of the judge.
Judge	The judge has the power to decide whether you receive a divorce.
Judgment	The judge's decision.
Notarize	To acknowledge or make legally authentic by a Notary Public.
Notary Public	A person who is authorized by the state or federal government to administer oaths, and to attest to the authenticity of signatures.
Notice of Hearing	Notifies the defendant and the court of your hearing date.
Motion	A request to the court.

Parties	In any court case there are two opposing parties: the plaintiff (you) because you started the case, and the defendant.
Petition to Sue/Appeal as an Indigent	Form you must complete and file if you cannot afford to pay the filing fees and other costs associated with the divorce suit.
Post-Separation Support	Money paid to a spouse for a specific period of time, usually temporary, until the court orders or denies an award of alimony
Property	Personal: personal belongings (furniture, clothing, tools, cars, trailer) Real: Land or other real estate
Pro Se	Also called self-representation. Your case is a pro se case if you do not have an attorney representing you. You are representing yourself, acting as your own lawyer in court. You speak and act on your own behalf. A person who seeks an absolute divorce on his or her own and without legal assistance and representation of an attorney.
Separation of Spouses	The end of cohabitation (living together) of husband and wife by mutual agreement, or under the decree of court. Is a statutory requirement for a divorce in North Carolina.
Serve/Service	To notify someone of something, or providing a copy of the papers being filed to the other side. You can serve someone through the sheriff, certified mail, or by publication.
Statutes	Laws or rules created by the legislature in North Carolina.
Subpoena	A form issued by the court requiring someone to appear in court and/or bring documents.
Testimony	Facts given by a competent witness under oath or affirmation.
True Copy	A copy of a document that is signed and certified by the Clerk of Court as an official copy.
Verify	To confirm or substantiate by oath or affidavit.

CLERK OF COURT CONTACT INFORMATION

CAMDEN

Paula J. Harrison
Clerk of Court
117 North Hwy 343
P.O. Box 219
Camden, NC 27921
252-336-4000

CHOWAN

Michael John McArthur
Chowan County Clerk of Court
101 South Broad St.
P.O. Box 588
Edenton, NC 27932
252-368-5000

CURRITUCK

Ray Matusko
Currituck County Clerk of Court
2801 Carotoke Hwy
Currituck Governmental Center, Suite. 500
P.O. Box 175
Currituck, NC 27929
252-232-6200

DARE

Dean Tolson
Dare County Clerk of Court
962 Marshall Collins Dr.
P.O. Box 1849
Manteo, NC 27954
252-475-5200

GATES

Nell F. Wiggins
Clerk of Court
202 Court Street
P.O. Box 31
Gatesville, NC 27938
252-357-1365

PASQUOTANK

Katherine S. Cartwright
Pasquotank County Clerk of Court
P.O. Box 449
Elizabeth City, NC 27907-0449
252-331-4600

PERQUIMANS

Todd W. Tilley
Perquimans County Clerk of Court
128 North Church Street
P.O. Box 33
Hertford, NC 27944
252-404-5000

FORMS

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

CIVIL DISTRICT DIVISION

FILE NO. _____ - CVD - ____

(Type or print your name here)

Plaintiff

Vs.

(Type or print your spouse's name here)

Defendant

**COMPLAINT FOR
ABSOLUTE DIVORCE**

The Plaintiff, complaining of the Defendant, alleges and says:

1. Plaintiff is a citizen and resident of _____.
(insert county and state here)
2. Plaintiff has been a resident at the above location since _____.
(list length of residency)
3. The Defendant is a citizen of _____.
(insert county and state here)
4. The Defendant has been a resident at the above location since _____.
(list length of residency)
5. The Plaintiff and Defendant were married on _____.
(insert date of marriage)
6. The parties separated on or about _____.
(insert day, month, and year of separation)
7. The parties have lived continuously separate and apart for at least one (1) year prior to the filing of this complaint.
8. The Plaintiff intended for the separation to be permanent.
9. That there were (check and complete appropriate information about any MINOR children (children who are now under the age of 18):
☐ There are no minor children who were born of the marriage of the parties.
☐ ____ (number of minor child(ren) who were born to the marriage/parties, namely:

COMPLETE THE FOLLOWING ONLY IF THERE ARE MINOR CHILDREN

Full Name of Child	Date of Birth	Full Name of Child	Date of Birth
Full Name of Child	Date of Birth	Full Name of Child	Date of Birth

10. The Plaintiff acknowledges that he/she is not asking the Defendant for alimony or equitable distribution, and that he/she acknowledges that unless such claims are asserted by one or the other party, or both parties (or settled outside of court) before the Judgment of Absolute Divorce is signed by the Judge and entered by the Court, he/she is forever waiving and discharging any claim against the defendant for alimony and/or equitable distribution by obtaining an absolute divorce.

11. ☐ (check if applicable) That the Plaintiff and Defendant executed an agreement settling property and other issues on _____. (attach a copy of the agreement)

12. ☐ (Check if applicable) The Plaintiff desires to resume the use of her: (choose one) ☐ maiden name; ☐ surname of a prior deceased husband; ☐ surname of a prior living husband if the Plaintiff has children by that prior living husband. The name of the Plaintiff desires to resume is _____.
(insert name Plaintiff desires to use after the divorce)

WHEREFORE, Plaintiff prays the Court:

A. That the bonds of matrimony heretofore existing between the Plaintiff and Defendant be dissolved and a judgment of absolute divorce be granted to Plaintiff from Defendant.

B. That this verified Complaint be treated as an affidavit for purposes of Summary Judgment.

C. ☐ (Check if applicable): That the Plaintiff be allowed to resume the use of her: choose one) ☐ maiden name; ☐ surname of a prior deceased husband; ☐ surname of a prior living husband if the Plaintiff has children by that prior living husband. The name of the Plaintiff desires to resume is _____.
(insert name Plaintiff desires to use after the divorce)

This the _____ day of _____ 20 ____.

(Signature)

STATE OF _____:

COUNTY OF _____:

VERIFICATION

I, _____ being duly sworn, deposes and says that s/he is the Plaintiff in the above entitled action, that s/he has read the foregoing Complaint and knows the contents thereof. That the same is true of his/her own knowledge except as to those matters and things stated upon information and belief, and as to those things, he/she believes them to be true.

(Sign in the presence of a Notary Public)

Sworn to and subscribed before me this the _____ day of _____, 20 ____.

Notary Public
My Commission Expires: _____

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

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

Jury Demanded In Pleading? ☐ No ☐ Yes

Name Of Defendant 1

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

Summons Submitted ☐ Yes ☐ No

Telephone No.

Cell Telephone No.

Name Of Defendant 2

NC Attorney Bar No.

Attorney E-Mail Address

☐ Initial Appearance in Case

☐ Change of Address

Summons Submitted ☐ Yes ☐ No

Name Of Firm

Counsel for

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

FAX No.

TYPE OF PLEADING

(check all that apply)

- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Answer/Reply (ANSW-Response)
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Contemp (CNTP) Assess Motions Fee
- ☐ Continue (CNTN) Assess Motions Fee
- ☐ Compel (CMPL) Assess Motions Fee
- ☐ Counterclaim vs. (CTCL) Assess Counterclaim Costs
- ☐ Extend Time For An Answer (MEOT-Response) Assess Motion Fee
- ☐ Modification Of Alimony (MALI) Assess Motions Fee
- ☐ Modification Of Custody (MCUS) Assess Motions Fee
- ☐ Modification Of Support in non-IV-D cases (MSUP) Assess Motions Fee
- ☐ Modification Of Visitation (MVIS) Assess Motions Fee
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA) Assess Motions Fee
- ☐ Sanctions (SANC) Assess Motions Fee
- ☐ Show Cause (SHOW) Assess Motions Fee
- ☐ Transfer (TRFR) Assess Motion Fee
- ☐ Vacate/Modify Judgment or Order (VCMD) Assess Motions Fee
- ☐ Other (OTHR): (Use codes from Motions Coversheet AOC-CV-752 or specify)

CLAIMS FOR RELIEF FOR:

(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

Name Of Defendant(s)

CIVIL SUMMONS☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

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

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

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 \$15,000 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.

RETURN OF SERVICE

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

DEFENDANT 1

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

- ☐ 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

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

- ☐ 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.

Service Fee Paid

\$

Signature Of Deputy Sheriff Making Return

Date Received

Name Of Sheriff (Type Or Print)

Date Of Return

County Of Sheriff

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

CIVIL DISTRICT DIVISION

FILE NO. _____ - CVD - ____

(Type or print your name here)
Plaintiff

Vs.

(Type or print your spouse's name here)
Defendant

**JUDGMENT OF
ABSOLUTE DIVORCE**

THIS CAUSE, coming on to be heard and being heard before the undersigned District Court Judge at the _____ 20 ____ Civil Session of District Court of _____ County, on Plaintiff's Complaint for an absolute divorce, and the Plaintiff, appearing *pro se*; the Defendant:

- ☐ Appearing in Court
☐ Not appearing in Court
☐ Represented by counsel, _____
☐ Not represented by counsel

The Court having heard the evidence now finds the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of _____.
2. Defendant is a citizen and resident of _____.
3. That the _____ (Plaintiff/Defendant) has been a resident of the State of North Carolina for more than six (6) months preceding the commencement of this action.
4. The Defendant was properly served with a copy of the Summons and Complaint on _____ (month/day/year) as required by Rule 4 of the North Carolina Rules of Civil Procedure via:

- ☐ Sheriff's Service
☐ Certified Mail, return receipt requested (affidavit in court file)
☐ Other: _____

5. That the Plaintiff and Defendant were married to each other on or about _____ and thereafter lived together as husband and wife until they separated on or about _____.

6. Since their separation on or about _____, Plaintiff and Defendant have lived continuously separate and apart from each other and at no time have they resumed marital relations.

7. There are ____ children born of the marriage.

8. There are no pending claims for alimony or equitable distribution of marital property by either party, and Plaintiff understands he/she is forever discharging any claim against Defendant for alimony or equitable distribution or marital property by obtaining the divorce prayed for herein.

9. (If applicable, check box) ☐ Plaintiff's maiden name is _____ and it is her desire to resume said name.

10. The parties hereto are properly before this Court.

Based on the foregoing Findings of Fact, the Court concludes as a matter of law:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties hereto and over the subject matter herein.

2. Proper and sufficient service and notice was had on Defendant.

3. The Plaintiff is entitled to an absolute divorce on the grounds of one year's continuous separation.

Now therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

A. Plaintiff, _____, is hereby granted an absolute divorce from Defendant, _____, based on one year's continuous separation and the bonds of matrimony heretofore existing between the Plaintiff and Defendant be and are hereby dissolved.

B. (Check if appropriate) ☐ Plaintiff shall resume the use of her maiden name,

_____.

Entered in open Court in _____ County, North Carolina. This the ____ day of _____, 20 ____.

DISTRICT COURT JUDGE PRESIDING

CERTIFICATE OF SERVICE

I certify that a copy of this Judgment for Absolute Divorce has been served on the defendant by forwarding a copy thereof by First Class Mail, Postage Prepaid, addressed as follows:

This the ____ day of _____, 20 ____.

(signature of plaintiff)

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

CIVIL DISTRICT DIVISION

FILE NO. -CVD-

_____,
Plaintiff

Vs.

_____,
Defendant

:
:
:
:
:
:
:
:

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the ____ day of _____, 20____
at 9:30 a.m., or as soon thereafter as the Court may hear it, the undersigned will bring on for
hearing the following:

The hearing will take place in Courtroom ____ of the _____ County
Courthouse located at _____.

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Hearing has been served on the defendant by
forwarding a copy thereof by First Class Mail, Postage Prepaid, addressed as follows:

This the ____ day of _____, 20 ____.

(signature of plaintiff)

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____

CIVIL DISTRICT DIVISION

FILE NO. _____-CVD-_____

_____,
Plaintiff

Vs.

_____,
Defendant

:
:
:
:
:
:
:
:
:
:

WAIVER AND ANSWER

NOW COMES the Defendant, waiving notice and answering the allegations contained in Plaintiff's Complaint and says as follows:

1. The Defendant admits the allegations contained in the Plaintiff's Complaint.
2. The Defendant waives any further notice in this matter, and waives the right to a hearing.

WHEREFORE, the Defendant requests that the Court grant the Plaintiff an absolute divorce.

This the _____ day of _____, 20 ____.

Defendant

I, _____, Notary Public or Assistant/Deputy Clerk of _____ County do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of _____, 20 ____.

Notary Public or Assistant/Deputy Clerk

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO ____-CVD-____

_____,
(Type or print Plaintiff's name)

Plaintiff

Vs.

_____,
(Type or print Defendant's name)

Defendant

**AFFIDAVIT OF SERVICE OF
PROCESS BY
REGISTERED OR CERTIFIED MAIL**

I, _____, did mail by ☐ registered ☐ certified mail, return receipt requested, a copy of _____ in this case to:

Name: _____

Address: _____

Further, that a copy of _____ was in fact received by the above-named individual as evidenced by the attached receipt.

IN WITNESS whereof, I have unto set my hand this the ____ day of _____, 20 ____.

(Signature of Movant - Sign in Presence of Notary)

Sworn and subscribed to me this the _____ day of _____, 20 ____.

Notary Public

Printed Name: _____

My Commission Expires: _____