

DO-IT-YOURSELF DIVORCE

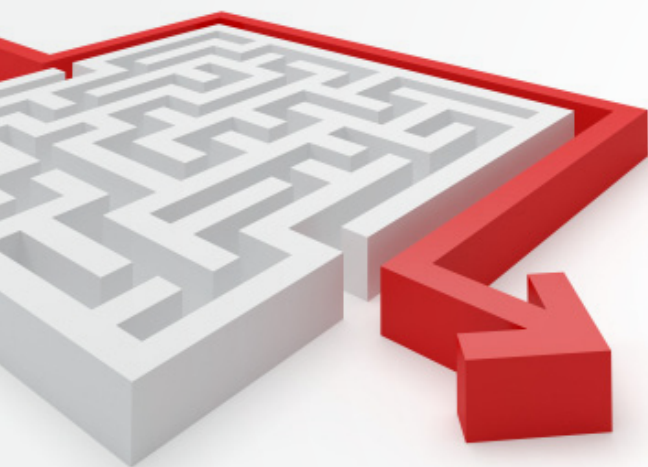
Step-by-step guide to obtain an absolute divorce in North Carolina

**ROSEN
LAW FIRM**

Divorce is Different Here

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OVERVIEW OF PROCESS



Obtaining an absolute divorce, as distinguished from child custody, child support, alimony or property distribution, is not a complex process in North Carolina. Either you or your spouse must live in the state for at least six months prior to filing the action for divorce. You or your lawyer must file a divorce complaint with the clerk of court in the county of your residence. The complaint, along with a civil summons, must then be delivered to your spouse, either by the sheriff or by certified mail. After waiting a specified period of time, either you or your attorney can appear in court and obtain a divorce. Once the order is signed by the judge, your divorce is final, and you may remarry if you so desire.

Here's a typical example: Jane and Jack were married for seven years and had two children together. Jane decided that it was time to separate and start the process of getting a divorce. On January 1, 2010, she moved out of the parties' marital residence. Jane and Jack were able to resolve all of the issues related to dividing their property, alimony, child custody and child support by way of a separation agreement, so the only step left is to finalize the actual divorce.

Jane knows that she needs to wait at least a year and a day before filing the paperwork with the court; however, she decides to start preparing her paperwork in December so that she can be ready to file for a divorce as soon as possible. Since she wants her last name to be the same as her children's last name, she decides not to request the court to resume her maiden name. Jane files her Complaint, Verification, Summons and Civil Action Cover sheet on January 2, 2011, and serves all of the paperwork on her husband by certified mail. She receives a return receipt from the post office that shows that her husband was served on January 4, 2011. Jane prepares and files an Affidavit of Service with the clerk and waits 30 days before she moves forward with the divorce. Jack knows that he does not need to file an Answer so he does not file a response to the Complaint. On February 7, 2011, when more than 30 days have passed since her husband was served, she files a Notice of Hearing with the court and schedules the divorce hearing for February 18, 2011.

On February 18, 2011, she appears at the courthouse with three copies of the Absolute Divorce Judgment and one Certificate of Absolute Divorce. On the day of the divorce hearing, Jane sits in the courtroom and waits for the judge to call her name and her case. When her name is called, she is sworn in by the clerk so that she can testify under oath. She states that she is the plaintiff in the action and that she was married to Jack Doe, the defendant. She tells the court that she and Jack had two children together while they were married, that she is a resident of North Carolina and that she separated from Jack on January 1, 2010. She further states that she has since remained separate since January 1, 2010 and that she wants a divorce. After ensuring that she served the defendant on January 4, 2011 by certified mail and that he was sent a copy of the notice of hearing on February 7, 2011, the judge grants the divorce and signs three copies of the judgment. Jane submits the Certificate of Absolute Divorce to the clerk and mails a copy of the judgment to Jack. Jane's divorce is official, so she can remarry any time.

INTRODUCTION

There are only two ways to get a divorce in North Carolina. The first (and most common) way is to prove that you have been separated for more than one year, which the state defines as an absolute divorce. The second way is to prove incurable insanity. Divorce by incurable insanity requires a minimum three-year separation and also requires that evidence be given by specified experts as to the spouse's insanity. The insanity basis for divorce is seldom used. Most divorces are obtained after proving a separation of one year or more. This book will provide you with information for obtaining an absolute divorce, not a divorce by incurable insanity.

The absolute divorce is merely the judicial proclamation that ends your marriage; it is only one part of the process. The complexity of a domestic case arises from other issues such as child custody, child support, division of property, and alimony. These issues are resolved either through negotiation or through court. The information that you find in this book will only assist you in obtaining a divorce from your spouse and will only grant you a change in your current status from married to single; it will not instruct you on how to resolve any other outstanding issues related to your domestic case such as custody, child support, spousal support or a division of your property.

Remember when filing any claim for absolute divorce in North Carolina, you must have been separated for at least one year before you verify your divorce complaint. The absolute divorce statute provides that "marriages may be dissolved and the parties divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for one year, and the plaintiff or defendant in the suit for divorce has resided in the State for a period of six months." The courts will not inquire about the fault of either party when determining whether or not to grant someone an absolute divorce. If you have been separated for more than one year and you meet the jurisdictional requirements, you are entitled to an absolute divorce.



IMPORTANT WARNING

IMPORTANT

Divorce cuts off certain rights unless they are preserved. Specifically, if you do not preserve your claims for alimony and/or equitable distribution, those claims will be lost forever. Once you obtain an absolute divorce, you forever waive your right to have a court divide your property or award you alimony. These rights are permanently and irrevocably forfeited when you obtain a divorce without having previously filed claims for property distribution and/or alimony. ***Therefore, if you have not yet completely resolved all issues related to your alimony claim or property distribution claims, you should not attempt to handle your own absolute divorce.***

The information provided in this book should only be used to obtain a divorce; it will not help you resolve or protect your alimony and/or property distribution claims nor resolve your child support and/or child custody issue(s). Be sure you understand the rights you may lose if you complete your divorce without preserving your claims for alimony and/or division of property.

ALIMONY

PROPERTY

CLAIMS

LOCAL RULES

Many counties have procedures that differ slightly from those presented here. You should check with your local Clerk of Court in the county where you will file your divorce to determine any procedural variations in that county.

To find the phone number for the Clerk of Court in your county, visit the Administrative Office of the Courts directory at <http://www.nccourts.org/>.

Some clerks will provide a Do-it-Yourself (self-help) Divorce Kit with information specific to their county. You should use the forms found in your county's divorce kit if they differ from the forms we have provided, as the clerks and judges in your county will be more familiar with the forms provided in your clerk's Do-it-Yourself Divorce Kit.

The Clerk of Court's office CANNOT and WILL NOT instruct you on filling out these forms. If you have a question that the information provided here does not answer, please contact an attorney. When filling out your forms, please understand that it is illegal to falsify any information on any of the documents; you could be criminally prosecuted if you do so.



REQUIREMENTS FOR OBTAINING AN ABSOLUTE DIVORCE IN NORTH CAROLINA

There are two requirements for filing for divorce in North Carolina:

- 1 You or your spouse must have been a resident of North Carolina for at least six months prior to the date of filing your complaint.
- 2 You must have been living separately from your spouse for at least one year and one day on the day that you file. If you meet both of these requirements, you may proceed with your claim for an absolute divorce.



WHAT FORMS DO I NEED TO PREPARE?

All of the forms that you need in order to finalize your divorce are included in this book. The directions for filling out the form will either be in **red** font on the sample of the document or the directions will appear on the page adjacent to the sample of the document.

If you are the person getting the forms and filling them out, you will be referred to as the PLAINTIFF. Your spouse will be referred to as the DEFENDANT.

You will need to prepare the following documents before visiting the courthouse for filing your initial paperwork:

SAMPLE COMPLAINT A (WITHOUT CHILDREN)

STATE OF NORTH CAROLINA
COUNTY OF **INSERT NAME OF COUNTY**

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____
[Leave the file number blank. A file number will be stamped on the Complaint and the Summons when it is filed with the Clerk]

INSERT YOUR NAME HERE
Plaintiff,
v.
INSERT YOUR SPOUSE'S NAME HERE
Defendant.

**COMPLAINT FOR
ABSOLUTE DIVORCE**

Plaintiff, complaining of Defendant, alleges as follows:

1. Plaintiff is a citizen and resident of **INSERT NAME OF COUNTY HERE**, North Carolina.
2. Defendant is a citizen and resident of **INSERT NAME OF COUNTY HERE**, North Carolina.
3. Plaintiff has been a resident of the State of North Carolina for six months next preceding the commencement of this action.
4. Plaintiff and Defendant were married to each other on **INSERT DATE OF MARRIAGE**, and lived together as husband and wife until **INSERT DATE OF SEPARATION**, when they separated with the intent to remain permanently separated.
5. Since **INSERT DATE OF SEPARATION HERE**, Plaintiff and Defendant have continued to live separate and apart from the other, and at no time have they resumed the marital relationship which formerly existed between them.

1/2

SAMPLE AFFIDAVIT OF SERVICE

STATE OF NORTH CAROLINA
COUNTY OF **TYPE COUNTY HERE**

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____
TYPE FILE NO. HERE – THE FILE NUMBER WAS STAMPED ON THE SUMMONS AND COMPLAINT WHEN YOU FILED IT WITH THE COURT

INSERT PLAINTIFF'S NAME HERE
Plaintiff,
v.
INSERT DEFENDANT'S NAME HERE
Defendant.

_____ were deposited in _____

This is _____

INSERT PLAINTIFF'S NAME HERE,
Plaintiff,
v.
INSERT DEFENDANT'S NAME HERE,
Defendant.

The section below _____

Sworn to and subscribed _____
this the _____ day of _____

Official Signature of Notary _____
_____, Notary _____

My Commission Expires: _____

WHAT FORMS DO I NEED TO PREPARE?

COMPLAINT A - WITHOUT CHILDREN

SAMPLE WITH DIRECTIONS

SAMPLE COMPLAINT A (WITHOUT CHILDREN)

<p>STATE OF NORTH CAROLINA COUNTY OF <u>INSERT NAME OF COUNTY</u></p> <p><u>INSERT YOUR NAME HERE</u>, Plaintiff, v. <u>INSERT YOUR SPOUSE'S NAME HERE</u>, Defendant.</p> <p>Plaintiff, complaining of Defendant, alleges as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff is a citizen and resident of <u>INSERT NAME OF COUNTY HERE</u>, North Carolina. 2. Defendant is a citizen and resident of <u>INSERT NAME OF COUNTY HERE</u>, North Carolina. 3. Plaintiff has been a resident of the State of North Carolina for six months next preceding the commencement of this action. 4. Plaintiff and Defendant were married to each other on <u>INSERT DATE OF MARRIAGE</u>, and lived together as husband and wife until <u>INSERT DATE OF SEPARATION</u>, when they separated with the intent to remain permanently separated. 5. Since <u>INSERT DATE OF SEPARATION HERE</u>, Plaintiff and Defendant have continued to live separate and apart from the other, and at no time have they resumed the marital relationship which formerly existed between them. 6. Defendant is not an infant, an incompetent, or a member of the armed services. 7. Plaintiff's social security number is XXX-XX-_____<u> [INSERT LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER HERE]</u>. 8. Defendant's social security number is XXX-XX-_____<u> [INSERT LAST FOUR DIGITS OF YOUR SPOUSES' SOCIAL SECURITY NUMBERS HERE]</u>. 9. This is an action for absolute divorce based upon the separation of the parties for more than one (1) year. 10. Pursuant to N.C.G.S §50-12, Plaintiff request to resume her maiden name, _____<u> [INSERT YOUR MAIDEN NAME HERE]</u>. <i>If you do not wish to resume your maiden name, you may delete this provision from the Complaint.</i> <p>WHEREFORE, Plaintiff respectfully requests that the Court:</p> <ol style="list-style-type: none"> 1. Dissolve the bonds of matrimony heretofore existing between Plaintiff and Defendant and grant Plaintiff an absolute divorce from Defendant; 2. Tax the costs of this action against Plaintiff; 3. Grant Plaintiff her request to resume her maiden name <u>[Delete this section if you are not requesting to resume your maiden name]</u>; and 4. Grant such other and further relief as the Court deems just and proper. <p>This is the ____ day of _____, 2012.</p> <p>[Hand write the date here when you sign and file your Complaint]</p> <p>_____ TYPE YOUR NAME HERE AND SIGN ABOVE TYPE YOUR ADDRESS HERE</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ [Leave the file number blank. A file number will be stamped on the Complaint and the Summons when it is filed with the Clerk]</p> <p style="text-align: center;">COMPLAINT FOR ABSOLUTE DIVORCE</p>
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Once you have been separated for more than one full year, either spouse may file an action for absolute divorce. The Complaint cannot be filed on the anniversary date of your separation, but must be filed the day after. The reason you must wait the additional day is that the statute requires that you be separated for more than one year; i.e., a year and a day will suffice. Neither one of you is required to file for a divorce, but neither one of you can prevent the other party from seeking a divorce. The statutes require that the plaintiff provide in his or her Complaint that either the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the Complaint, and that the parties have lived separate and apart for one year. Additionally, the plaintiff must provide the name and age of any minor child or children from the marriage, and in the event there are no such minor children, the Complaint shall so state.

The Complaint for Absolute Divorce is filed in district court in the county where either the plaintiff or defendant lives. If the plaintiff is a nonresident, then the action shall be brought in the county of defendant's residence. If the parties are both residents of North Carolina and the action is filed where the plaintiff lives, and the plaintiff ceases to be a resident of North Carolina, then the action may be removed to the county in which the defendant resides.

i. **Complaint A - Without Children** - The first form you will fill out is the Complaint. You will need to use a different sample Complaint if you have children, because there are specific allegations that you need to include in your Complaint that are not included in Sample Complaint A. Therefore, only use Sample Complaint A if you do not have children.

DOWNLOAD FORM

WHAT FORMS DO I NEED TO PREPARE

COMPLAINT B - WITH CHILDREN

SAMPLE WITH DIRECTIONS

SAMPLE COMPLAINT B (WITH CHILDREN)

<p>STATE OF NORTH CAROLINA COUNTY OF <u>INSERT NAME OF COUNTY</u></p> <p><u>INSERT YOUR NAME HERE</u>, Plaintiff, v. <u>INSERT YOUR SPOUSE'S NAME HERE</u>, Defendant.</p> <p>Plaintiff, complaining of Defendant, alleges as follows:</p> <ol style="list-style-type: none"> 1. Plaintiff is a citizen and resident of <u>INSERT NAME OF COUNTY HERE</u>, North Carolina. 2. Defendant is a citizen and resident of <u>INSERT NAME OF COUNTY HERE</u>, North Carolina. 3. Plaintiff has been a resident of the State of North Carolina for six months next preceding the commencement of this action. 4. Plaintiff and Defendant were married to each other on <u>INSERT DATE OF MARRIAGE</u>, and lived together as husband and wife until <u>INSERT DATE OF SEPARATION</u>, when they separated with the intent to remain permanently separated. 5. Since <u>INSERT DATE OF SEPARATION HERE</u>, Plaintiff and Defendant have continued to live separate and apart from the other, and at no time have they resumed the marital relationship which formerly existed between them. 6. Defendant is not an infant, an incompetent, or a member of the armed services. 7. There was one child born of the marriage, to wit: <u>INSERT CHILD'S NAME</u>, born <u>INSERT CHILD'S BIRTHDATE HERE</u>. 8. Plaintiff's social security number is XXX-XX-_____<u>INSERT LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER HERE</u>. 9. Defendant's social security number is XXX-XX-_____<u>INSERT LAST FOUR DIGITS OF YOUR SPOUSES' SOCIAL SECURITY NUMBERS HERE</u>. 10. This is an action for absolute divorce based upon the separation of the parties for more than one (1) year. 11. Pursuant to N.C.G.S §50-12, Plaintiff request to resume her maiden name, _____ <u>INSERT YOUR MAIDEN NAME HERE</u>. <i>If you do not wish to resume your maiden name, you may delete this provision from the Complaint.</i> <p>WHEREFORE, Plaintiff respectfully requests that the Court:</p> <ol style="list-style-type: none"> 1. Dissolve the bonds of matrimony heretofore existing between Plaintiff and Defendant and grant Plaintiff an absolute divorce from Defendant; 2. Tax the costs of this action against Plaintiff; 3. Grant Plaintiff her request to resume her maiden name to _____ <u>INSERT YOUR MAIDEN NAME HERE</u>; and <i>If you do not wish to resume your maiden name, you should delete this provision from this section.</i> 4. Grant such other and further relief as the Court deems just and proper. <p>This is the ____ day of _____, 2012. <i>[Hand write the date here when you sign and file your Complaint]</i></p> <p>_____ TYPE YOUR NAME HERE AND SIGN ABOVE TYPE YOUR ADDRESS HERE</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ <i>[Leave the file number blank. A file number will be stamped on the Complaint and the Summons when it is filed with the Clerk]</i></p> <p>COMPLAINT FOR ABSOLUTE DIVORCE</p>
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ii. **Complaint B - With Children** - If you have children who are born of the union or marriage with the person from whom you are seeking a divorce, use Sample Complaint B. The instructions for filling out the Complaint are in red font on each of the Sample Complaints. When you are finished filling out the Complaint, you will need one signed original and two copies of the signed original.

Text DOWNLOAD FORM

WHAT FORMS DO I NEED TO PREPARE?

VERIFICATION - SAMPLE WITH DIRECTIONS

SAMPLE VERIFICATION WITH DIRECTIONS

NORTH CAROLINA

TYPE IN THE NAME OF THE COUNTY HERE COUNTY

VERIFICATION

TYPE YOUR NAME HERE (PLAINTIFF), being first duly sworn, deposes and says that he/she **[Delete the term "he" or "she" depending on your gender]** is the Plaintiff in the above-entitled action, that he/she **[Delete the term "he" or "she" depending on your gender]** has read the foregoing Complaint and knows the contents thereof; that the same are true of his/her **[Delete the term "his" or "her" depending on your gender]** own knowledge except as to those matters and things stated upon information and belief, and as to those things, he/she **[Delete the term "he" or "she" depending on your gender]** believes them to be true.

TYPE IN YOUR NAME HERE
(Warning - Do not sign until you are actually in front of a NOTARY)

Section Below To Be Filled Out by Notary

SWORN TO AND SUBSCRIBED BEFORE
ME, A NOTARY PUBLIC, THIS IS
THE _____ DAY OF _____, 20____

NOTARY PUBLIC (print notary public's name)

MY COMMISSION EXPIRES:

The next form you will fill out is the Verification.

The complaint for a claim for absolute divorce must be verified; that means the document is akin to an affidavit, and you swear to the truth of the allegations and facts contained therein. Where a Verification is not made or is improperly made, the court lacks jurisdiction to grant a divorce. For a complaint for divorce to be valid, it must be properly verified at the time it is filed. The Verification must be signed before a notary public. Notaries can be found at banks and other financial institutions. You will need to present a photo ID to the notary, and the notary may require you to pay a nominal fee, which is usually \$3 to \$5. Notary publics are also listed in the Yellow Pages of the phone book under "Notary Public." The Clerk of Court cannot and will not notarize this form for you. The Verification must be notarized before filing the forms at the courthouse.

The instructions on filling out the Verification are in red font on the Sample Verification. When you are finished filling out the Verification, you will need one original copy that was signed in front of a notary public and two copies of the signed Verification. The original Verification should then be stapled to the back of the original Complaint, and a copy of the Verification should be attached to each copy of your Complaint.

[DOWNLOAD FORM](#)

WHAT FORMS DO I NEED TO PREPARE?

CIVIL SUMMONS

Next you will fill out the Civil Summons. Directions for filling out the Civil Summons are displayed on the page adjacent to the Sample Civil Summons. When printing the Civil Summons, print on the front and back of one page. You will need three copies of the Civil Summons. The original copy should be printed on white paper, and the two copies should be printed on yellow paper.

Remember, each Civil Summons has a front and a back. You should only write in the sections that are included in the instructions.

WHAT FORMS DO I NEED TO PREPARE?

CIVIL SUMMONS - DIRECTIONS

DOWNLOAD FORM

SAMPLE CIVIL SUMMONS WITH DIRECTIONS

STATE OF NORTH CAROLINA
[TYPE IN THE NAME OF THE COUNTY HERE] COUNTY

[INSERT YOUR NAME AND ADDRESS HERE],
Plaintiff,
v.
[INSERT YOUR SPOUSE'S NAME AND ADDRESS HERE],
Defendant.

To Each Of The Defendant(s) Named Below:
[TYPE NAME AND ADDRESS OF DEFENDANT 1] | [TYPE 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.

[INSERT NAME AND ADDRESS OF PLAINTIFF'S ATTORNEY HERE] (If None, Address Of Plaintiff)

[DATE ISSUED] [TIME] [SIGNATURE]

Deputy CSC Assistant CSC Clerk of Superior Court

ENDORSEMENT
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] [SIGNATURE]

Deputy CSC Assistant CSC Clerk of Superior Court

IN THE GENERAL COURT OF JUSTICE
 DISTRICT SUPERIOR COURT DIVISION
FILE NO. _____
[Leave the file number blank. A file number will be stamped on the Complaint and the Summons when it is filed with the Clerk]

CIVIL SUMMONS
 ALIAS AND PLURIES SUMMONS

(..contd)

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] [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] [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] [DATE RECEIVED] [DATE OF RETURN]
[SIGNATURE OF DEPUTY SHERIFF MAKING RETURN] NAME OF SHERIFF (TYPE OR PRINT) [COUNTY OF SHERIFF]

Directions for Filling out Civil Summons

1. Fill in the county by writing the name of the county you are filing in before the term "County" at the top of the page.
2. On the upper right side of the page, under the section "In the General Court of Justice," place an X in the box in front of "District."
3. You should leave the section marked "File No." blank. The civil clerk will stamp the file number on the Summons when you take it to the courthouse to be filed.
4. In the next section on the left side of the page, just below where you wrote the name of the county, write the plaintiff's name (you, the person filing the Complaint and Civil Summons, are the plaintiff). Make sure the name looks exactly the same as the name of the plaintiff on the Complaint. Below that, write the plaintiff's (your) correct address.
5. In the left column, below the lowercase letter "v," write the defendant's (your spouse's) name as it appears on the Complaint.
6. In the left column, in the section marked "To Each of the Defendant(s) Named Below," write the full name and address of the defendant (your spouse; the person who will receive the Civil Summons). This information must be correct in order for your spouse to be served with the Civil Summons and Complaint.
7. Below the section marked "A Civil Action Has Been Commenced Against You," in the section marked "Name and Address of Plaintiff's Attorney (If None, Address of Plaintiff)" write in your name and address, since you are the plaintiff and you are the person filing the Civil Summons.
8. All of the other information on the front and back of the Civil Summons will be filled out by the Clerk of Court agent when you file the forms.
9. You need three copies of the Civil Summons. The original copy should be printed on white paper, and the two copies on yellow paper.

WHAT FORMS DO I NEED TO PREPARE?

DOMESTIC CIVIL ACTION COVER SHEET

The next form you will fill out is the Domestic Civil Action Cover Sheet. Directions for filling out the Domestic Civil Action Cover Sheet are adjacent to the Sample Domestic Civil Action Cover Sheet. You will only need one copy of the Cover Sheet printed on the front and back of one sheet of paper. When you file your divorce Complaint and Summons, the clerk will retain the Domestic Civil Action Cover Sheet. You will not receive a copy back from the court, because it is solely for the court's records.

WHAT FORMS DO I NEED TO PREPARE?

DOMESTIC CIVIL ACTION COVER SHEET - DIRECTIONS

DOWNLOAD FORM

SAMPLE DOMESTIC CIVIL ACTION COVER SHEET WITH DIRECTIONS

<p>STATE OF NORTH CAROLINA [TYPE IN THE NAME OF THE COUNTY HERE] COUNTY</p> <p>[INSERT YOUR NAME AND ADDRESS HERE], Plaintiff, v. [INSERT YOUR SPOUSE'S NAME AND ADDRESS HERE], Defendant. Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Counsel for <input type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only (List party(ies) represented)</p> <p>Jury Demanded In Pleading? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Type of Pleading <input type="checkbox"/> Amended Answer/Reply (AMND-Response) <input type="checkbox"/> Amended Complaint (AMND) <input type="checkbox"/> Answer/Reply (ANSW-Response) <input type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNFJ) <input type="checkbox"/> Counterclaim vs. (CTCL) <input type="checkbox"/> All Plaintiffs <input type="checkbox"/> Only (List on back) <input type="checkbox"/> Crossclaim vs. (List on back) (CRSS) <input type="checkbox"/> Extend Time For An Answer (MEOT-Response) <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) <input type="checkbox"/> Other: (specify) [DATE] [SIGNATURE OF ATTORNEY/PARTY]</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ [Leave the file number blank. A file number will be stamped on the Complaint and the Summons when it is filed with the Clerk]</p> <p>CIVIL ACTION COVER SHEET <input type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING</p> <p>Rule 5(b), Rules of Practice For Superior and District Courts</p> <p>[Name And Address Of Attorney Or Party, If Not Represented (complete for initial)] [Attorney Bar No.]</p> <p><input type="checkbox"/> Initial Appearance in Case <input type="checkbox"/> Change of Address</p> <p>[Name Of Firm] [Tax ID No.] [Telephone No.] [FAX No.]</p> <p>Claims for Relief for: <input type="checkbox"/> Alimony (ALIM) <input type="checkbox"/> Annulment (ANUL) <input type="checkbox"/> Child Support (CSUP) <input type="checkbox"/> Custody (CUST) <input type="checkbox"/> Divorce (DIVR) <input type="checkbox"/> Divorce From Bed And Board (DIVB) <input type="checkbox"/> Domestic Violence (DOME) <input type="checkbox"/> Equitable Distribution (EQUD) <input type="checkbox"/> Medical Coverage (MEDC) <input type="checkbox"/> Paternity (PATR) <input type="checkbox"/> Possession Of Personal Property (POPP) <input type="checkbox"/> Post Separation Support (PSSU) <input type="checkbox"/> Reimbursement For Public Assistance (RPPA) <input type="checkbox"/> Visitation (VIST) <input type="checkbox"/> Other: (specify)</p>
<p>(..contd)</p> <p>Additional Plaintiffs _____ _____</p> <p>Additional Defendant(s) _____ _____ Summons Submitted <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Plaintiff(s) Against Whom Counterclaim Asserted _____ _____ <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	

Directions for Filling out Civil Action Cover Sheet

1. This is a fillable form. You only need to click in the areas mentioned in the directions to fill out this form. Print the form on the front and back of one sheet of paper when you are finished filling in the sections. You will only need one copy of this form.
2. In the first section, under "STATE OF NORTH CAROLINA," in the blank before "County," fill in the name of the county in which you are filing.
3. Below where you have filled in the name of the county, on the left side, is a section marked "Name And Address of Plaintiff 1." Fill in your name and address here.
4. You will not type anything in the section marked "Name and Address of Plaintiff 2."
5. Below the lowercase letter "v," in the section marked "Name of Defendant 1," fill in your spouse's name and address.
6. You will not type anything in the section marked "Name Of Defendant 2."
7. You will not type anything in the section marked "Counsel for."
8. Find the section marked "Jury Demanded In Pleading?" and place an "X" in the box to the left of the word "No" because your case will not require a jury. Just click on the box to do this.
9. In the following section on the left, marked "Type of Pleading," place an "X" in the box to the left of "Complaint (COMP)."
10. In the right column, below the words "Civil Action Cover Sheet," place an "X" to the left of the phrase "Initial Filing."
11. Near the middle of the right column, in the section marked "Claims for Relief for," place an "X" in the box to the left of the word "Divorce (DIVR)." (This is the only location in which you will place an "X." If you have claims for child custody, child support, or any of the other claims listed in this section consult an attorney about the procedure for seeking those claims.)
12. After you have filled in all of these blanks, place the date in the section marked "Date." Sign the form in the section marked "Signature Of Attorney/Party."
13. Attach the Domestic Civil Action Cover Sheet to the front of the original of the Complaint using a paper clip.

HOW DO I PROVE MY DATE OF SEPARATION?

Clients frequently ask how they need to prove the one-year separation. Generally, the only proof offered is the testimony of the plaintiff, whether by verified pleading or by live testimony. Simply state that you've lived separate and apart for at least a year. You don't need a piece of paper to prove that. People tend to fear that they will not be believed in court. In divorce actions in North Carolina, one person's testimony about the year's separation will be sufficient if the other party doesn't have contradictory testimony.

You do not have to prove that the separation occurred on the specific date alleged in the complaint; you only need to prove that you and your spouse have lived separate and apart for a period of at least one year prior to the institution of the suit. However, if you and your spouse have not lived separate and apart for at least a year, you are not eligible for an absolute divorce. Furthermore, it is not enough for you and your spouse to have moved into separate bedrooms in your residence, with a discontinuation of sexual relations. You and your spouse must, in fact, live in different places for the year.

The physical separation of the parties must be accompanied by an intention on the part of one of the spouses to remain permanently apart. The intent of the other spouse is immaterial. You do not need to show that a marital separation for the statutory period was by mutual agreement or under a decree of court.

Even if you were the spouse who left the marriage, your wife or husband cannot contest the divorce if the year has run and all other technical requirements have been satisfied. Either party may secure an absolute divorce based upon one year's separation even though he or she has committed a matrimonial offense or has wrongfully caused the separation.

The statutes define the resumption of a marital relationship as the voluntary renewal of the husband and wife relationship, as shown by the totality of the circumstances. Isolated incidents of sexual intercourse between the parties do not constitute a resumption of marital relations. Isolated incidents of sexual intercourse do not stop the statutory one-year period from running, provided such incidents do not amount to a "resumption of marital relations." Whether or not such resumption of marital relations occurs is to be determined by "the totality of the circumstances." That means that one incident of sex is unlikely to stop the year's running, but no one knows for sure how much sex is "too much" for purposes of calculating the consecutive one-year separation period required for divorce.



THE FORMS ARE FILLED OUT, NOW WHAT?

Once all of the required forms are filled out and put together in the correct order, take them to your county's courthouse and file them with the Clerk of Superior Court. The clerk will walk you through the filing process.

The cost of filing a divorce in North Carolina is \$245.00 (\$225 filing fee plus a \$20 motion fee). The courts DO NOT accept personal checks. You may pay the filing fee with cash, a money order, or a certified check made out to the Clerk of Court's office in the county in which you are filing.

When you file your forms at the Clerk of Court's office, the Clerk will assign a case number to your case. The Clerk will stamp this number on the Cover Sheet, the Complaint, the Summons, the Judgment, and the copies of these documents. The file number will include the year you are filing in ("12" if you are filing in 2012); the type of case it is, "CVD" for civil docket; and the number assigned to your case. Example: 12-CVD-567. This process may vary slightly depending on the county you are filing in, but the case numbers will be assigned in the same way.

At the time you file your papers with the Clerk of Court, many counties will give you directions detailing the process you need to follow to finish your divorce. Follow those directions exactly and you will not have any difficulties in completing your divorce.

WHAT IS SERVICE?

Service is the delivery of the Summons and the Complaint to the defendant in the case to provide notification of the proceeding. You may “serve” the Defendant using any one of the following methods.

1. Service by Certified Mail

The most commonly used form of service is certified mail. Unless you know your spouse is going to refuse to sign for certified mail, try certified mail first. Service by certified mail costs whatever the post office charges you for that service. Using certified mail is cheaper and faster than using the sheriff. It is also less hassle for you, since you don’t have to deal with the sheriff’s department. When you use certified mail, the post office sends a green card back to you after the defendant has signed for the piece of mail. Once you receive the green card from the post office, you need to ensure that the card has been signed. Then you need to create an Affidavit of Service by Certified Mail to file in the court file. A sample Affidavit of Service is included in this book with directions for filling out the form in red font. You need to attach the green card to your notarized affidavit when you file the affidavit. If the defendant is willing to sign an acceptance of service, you may simply file the Acceptance of Service instead of filing an Affidavit of Service.



2. Service by Sheriff

The sheriff in the locality where the defendant (your spouse) lives can also serve your documents. For instance, if your spouse lives in Johnston County and you live in Wake County, you may file in Wake County; however, you should have the Johnston County Sheriff’s Department serve your spouse since he or she lives in Johnston County. Many people prefer to serve their spouse by certified mail for this very reason. There is a \$30.00 fee for the sheriff to serve the Summons and Complaint in North Carolina. You will need to contact the Sheriff’s Office in the county your spouse is living in if they are living outside of North Carolina to determine the fee for service of a Summons.

WHAT IS SERVICE?



3. Service by Publication

A final, alternative method for service can be used if these other methods have been tried and failed. That method is service by publication. In service by publication, a notice regarding the action is placed in the newspaper in the county where defendant last resided. This alternative method for service is more complicated than the other methods, so you should only use this method when all else fails.

You should publish the notice in a newspaper that is qualified for legal advertising and circulated in the area where you believe the defendant to be located. If you do not have any information about the defendant's whereabouts, then the notice of service of process by publication may be circulated in the county where the action is pending. Regardless, the notice must be published in the appropriate newspaper once a week for three consecutive weeks. The notice should also be mailed to the defendant's last known address.

The notice of service of process by publication must contain the following elements:

- The court and the title of the action;
- The name of the person to be served;
- Must state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice;
- Must state the nature of the relief being sought;
- Must provide notice that the defendant being served shall file a responsive pleading within 40 days after the date of the first publication of notice, and notify the defendant that upon his failure to do so, the party seeking service of process by publication will apply to the court for the relief sought; and
- Must be signed by the serving party and give the contact information of the serving party.

As provided in the notice, service by publication increases the standard waiting period from 30 to 40 days (measured from the date of the first newspaper notice). Upon completion of the service, you must file an affidavit showing the publication and mailing, the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served. A sample Notice of Service by Process of Publication and Affidavit is included and directions for filling out the same are on the page adjacent to the sample document.

WHAT IS SERVICE?

SAMPLE WITH DIRECTIONS FOR FILING OUT AFFIDAVIT OF SERVICE

SAMPLE AFFIDAVIT OF SERVICE

STATE OF NORTH CAROLINA COUNTY OF <u>[TYPE COUNTY HERE]</u>	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ [TYPE FILE NO. HERE – THE FILE NUMBER WAS STAMPED ON THE SUMMONS AND COMPLAINT WHEN YOU FILED IT WITH THE COURT]
<u>[INSERT PLAINTIFF'S NAME HERE],</u> Plaintiff, v. <u>[INSERT DEFENDANT'S NAME HERE],</u> Defendant.	 AFFIDAVIT OF SERVICE
<p>Pursuant to North Carolina Rules of Civil Procedure Rule 4(j), I hereby certify that a copy of the Civil Summons and Complaint were deposited in the post office for mailing to the Defendant, by certified mail, return receipt requested, and that said copy was in fact received by or on behalf of the Defendant on the corresponding date as evidenced by the attached return receipt.</p> <p>This is the <u>[Insert the numerical day of the month here]</u> day <u>[Insert the name of the month here]</u>, 2012.</p> <p style="text-align: center;">_____ <u>[Insert Plaintiff's Name Here - Plaintiff will need to sign on the line above in front of a notary public]</u></p> <p>The section below should be filled out by the notary public once he / she witnesses Plaintiff execute this document.</p> <p>Sworn to and subscribed before me, this the ____ day of _____, 20____.</p> <p>_____ <i>Official Signature of Notary Public</i></p> <p style="text-align: center;">(SEAL)</p> <p>_____, Notary Public My Commission Expires: _____</p>	

Directions for Filing out Affidavit of Service

1. In the top left hand corner, enter the county where you are filing
2. In the top right hand corner, enter the file number (stamped on the Summons and Complaint when filed)
3. Enter the names of the Plaintiff and Defendant
4. enter the date
5. Plaintiff must sign the form in front of a Notary Public
6. The bottom half of the form will be filled out by the Notary Public once the Plaintiff has signed

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WHAT IS SERVICE?

SAMPLE WITH DIRECTIONS FOR FILING OUT ACCEPTANCE OF SERVICE

SAMPLE ACCEPTANCE OF SERVICE

<p>STATE OF NORTH CAROLINA COUNTY OF <u>[TYPE COUNTY HERE]</u></p> <p><u>[INSERT PLAINTIFF'S NAME HERE]</u>, Plaintiff, v. <u>[INSERT DEFENDANT'S NAME HERE]</u>, Defendant.</p> <p>Now comes Defendant, <u>[Insert Defendant's name here]</u>, and accepts service of this process and acknowledges receipt of a copy of the Complaint and Summons in this action pending in the General Court of Justice, District Court Division, <u>[Insert the name of the County here]</u> County, North Carolina, and service by an officer or otherwise is hereby expressly waived. It is his / her <u>[delete the word "his" or "her" depending on the gender of the Defendant]</u> understanding this Acceptance of Service is executed in accordance with Rule 4(j)(5) of the Rules of Civil Procedure and that this Acceptance shall have the same force and effect as would exist had the process been served upon by personal delivery of a copy of the Complaint and Summons.</p> <p>This is the <u>[Insert the numerical day of the month here]</u> day <u>[Insert the name of the month here]</u>, 2012.</p> <p style="text-align: center;"><u>[Type in Defendant's Name Here – The Defendant needs to sign in front of a notary public]</u></p> <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> <p>The section below should be filled out by the notary public once he / she witnesses the Defendant execute the document</p> <p>Sworn to and subscribed before me, this the ____ day of _____, 20 ____.</p> <p>_____ <i>Official Signature of Notary Public</i></p> <p>_____, Notary Public My Commission Expires: _____</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ <u>[INSERT FILE NO. HERE – THE FILE NUMBER IS STAMPED ON THE SUMMONS AND COMPLAINT]</u></p> <p style="font-size: 2em;">}</p> <p>ACCEPTANCE OF SERVICE</p>
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Directions for Filing out Acceptance of Service

1. In the top left hand corner, enter the county where you are filing
2. In the top left hand corner, enter the file number (stamped on the Summons and Complaint when filed)
3. Enter the names of the Plaintiff and Defendant
4. Enter the name of the Defendant
5. Enter the name of the County
6. Select "his" or "her"
7. Enter the date
8. Defendant must sign form in front of a Notary Public
9. The bottom half of the form will be filled out by the Notary Public once the Plaintiff has signed.

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WHAT IS SERVICE?

SAMPLE AFFIDAVIT OF SERVICE BY PUBLICATION

SAMPLE AFFIDAVIT OF SERVICE BY PUBLICATION

<p>STATE OF NORTH CAROLINA COUNTY OF [TYPE COUNTY HERE]</p> <p>[INSERT PLAINTIFF'S NAME HERE], Plaintiff, v. [INSERT DEFENDANT'S NAME HERE], Defendant.</p> <p>NOW COMES the affiant, [ATTORNEY NAME], duly sworn deposes and says: Service of process by publication has been completed on the Defendant, [NAME]. This affidavit is filed pursuant to the requirements of Rule 4(j1) and Rule 4(j2)(3) of the North Carolina Rules of Civil Procedure.</p> <ol style="list-style-type: none"> 1. Publication of Notice of Service of Process was done pursuant to the requirements of N.C.G.S. 1-75.10(2) as shown by the attached publisher's affidavit marked Exhibit A. 2. The Wake Weekly is the newspaper most likely to give actual notice to the party served, and is qualified for legal advertising in accordance with N.C.G.S. 1-597 and N.C.G.S. 1-598. 3. A copy of the Notice of Service of Process was mailed to the party to be served at the last known post office addresses namely, 8930 Half Moon Court Apt. 103 Raleigh, North Carolina 27613. 4. The use of service by publication was warranted because the Defendant was with due diligence attempted to be served by certified mail at the last known address of the Defendant and was "attempted but not signed" in Plaintiff's first attempt to serve Defendant, return receipt attached hereto as Exhibit B. 5. The information regarding the location of the person served used in determining the area in which service by publication was printed is as follows: [Street Address] [City State Zip] <p>And further the affiant sayeth not.</p> <p>_____ [Attorney Name]</p> <p>Sworn to and subscribed before me this 27th day of November, 2006.</p> <p>_____ Notary Public My Commission Expires: _____</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ [INSERT FILE NO. HERE – THE FILE NUMBER IS STAMPED ON THE SUMMONS AND COMPLAINT]</p> <p>AFFIDAVIT OF SERVICE BY PUBLICATION</p>
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Directions for Filling out Affidavit of Service by Publication

1. In the top left hand corner of document, insert the name of the county.
2. In the top right hand corner of document, insert the file number.
3. Fill in plaintiff's and defendant's names in the case caption.
4. In #2, explain all efforts you have made to find the defendant. For instance, if you mailed the documents by certified mail to his or her last known address, include the address you mailed the Complaint and Summons to and the last date that you were aware that he or she lived at that residence. If you originally conducted online research to determine the defendant's whereabouts, include any and all information that you discovered. For example, if you found out that the defendant's vehicle is registered in Wake County and his or her property tax bill is in Wake County, include that information in this section.
5. In #3, check the box if you know what county and state that you think he or she is in and type in the name of the county and the state where you believe he or she resides.
6. In #3, if you do not have any information about where he or she is living after doing your due diligence to locate that information, you should check the box "Unknown."
7. In #5, fill in the name of the newspaper, the name of the county and the name of the state where you published the notice.
8. The newspaper will provide you with an Affidavit of Publication that you need to attach to your Affidavit of Service by Publication.
9. Fill out the Verification on Page 2 of the Affidavit of Publication. You should not sign the Verification until you are in front of a notary. By signing the Verification, you are certifying that everything you wrote in the Affidavit of Service by Publication is true and accurate. Please note that it is illegal to falsify information to the court.
10. Fill out the Certificate of Service on page #2 of the Affidavit of Publication by simply dating, signing and filing the Certificate of Service.
11. You will need one original and one copy of this document. The clerk will keep one for the court file and give you one to keep for your records.

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RESPONDING TO THE COMPLAINT

Unless your spouse (the defendant) moves for an extension of time, your spouse will have 30 days from the date of receiving service by certified mail or by sheriff of the Summons and Complaint to file an Answer or other responsive pleading. In cases where service has been by publication the defendant has 40 days to file an Answer or other responsive pleading. Usually, defendants in divorce actions file no Answer because an answer is not necessary if the defendant does not contest the divorce and does not wish to resume a maiden name. In such a case where no Answer is filed, you can just wait out the waiting period for calendaring the case for hearing. At the expiration of the applicable waiting period, you may calendar your divorce for hearing. Once 30 days have passed from the date the defendant was served, you may file a motion for Summary Judgment or schedule the hearing for a live testimony divorce.

Although the defendant is not required to file an Answer if they do not contest the divorce and they do not wish to file any counterclaims, they are certainly entitled to do so. When responding to a Complaint, the defendant needs to admit or deny all of the allegations that the plaintiff claimed in the Complaint. Simply number the Answer to match the plaintiff's Complaint; if you agree with all of the allegations in the plaintiff's Complaint, write "Admit" beside each corresponding allegation. If you deny the plaintiff's allegations, you need to write "Deny" and explain why you deny each allegation. For instance, if you deny the date of separation, you should write the following: "Deny. The date of separation is March 1, 2011, not February 1, 2011."

The Sample Answer in this book includes a Claim for Resumption of Maiden Name. If the defendant wants to resume her maiden name, a Claim for Resumption of Maiden Name must be filed (explained further in the Sample Answer). If the defendant does not wish to resume a maiden name, she may delete the claim. A Sample Answer is included; directions for completing the Answer are in red font.

YES
NO

If you are the defendant and you receive a Complaint with a claim for Absolute Divorce and you have not resolved all of the issues related to spousal support and property distribution, be aware that you must include a counterclaim(s) for alimony or equitable distribution, or you may forever waive your right to those claims. Therefore, be sure you understand the rights you may lose if you complete your divorce without preserving your claims for alimony and a division of property.

The defendant will need to take one original and two copies of the Answer to the clerk's office in your county. The clerk will keep the original for the court file and will give the defendant two copies. The defendant will need to mail one copy to the plaintiff and should keep one for his or her records. No other documents are required when filing the Answer; there is no fee for filing an Answer.

If you have included a request to resume your maiden name in your Answer, you should check with your spouse prior to the divorce hearing to make sure that he has included a provision in the Judgment to allow you to resume your maiden name.

RESPONDING TO THE COMPLAINT

SAMPLE AND DIRECTIONS FOR FILING OUT ANSWER

SAMPLE ANSWER

<p>STATE OF NORTH CAROLINA COUNTY OF <u>INSERT NAME OF COUNTY</u></p> <p><u>INSERT PLAINTIFF'S NAME HERE</u>, Plaintiff, v. <u>INSERT DEFENDANT'S NAME HERE</u>, Defendant.</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. _____ <u>[INSERT FILE # IN BLANK ABOVE]</u></p>
<p>ANSWER</p>	
<p>Defendant, responding to the correspondingly numbered allegations of Plaintiff's Complaint, alleges and says as follows:</p> <ol style="list-style-type: none"> 1. ADMIT. <i>Either admit or deny all allegations contained in Plaintiff's Complaint.</i> 2. ADMIT. 3. ADMIT. 4. ADMIT. 5. ADMIT. 6. ADMIT. 7. ADMIT. 8. ADMIT. 9. ADMIT. <p>DEFENDANT'S FIRST CLAIM FOR RELIEF RESUMPTION OF MAIDEN NAME</p> <ol style="list-style-type: none"> 10. Pursuant to N.C.G.S §50-12, Defendant request to resume her maiden name, <u>[INSERT YOUR MAIDEN NAME HERE]</u>. <p>WHEREFORE, Defendant respectfully requests that the Court:</p> <ol style="list-style-type: none"> 1. Dissolve the bonds of matrimony heretofore existing between Plaintiff and Defendant and grant Plaintiff's absolute divorce; 2. Tax the costs of this action against Plaintiff; 3. Grant Defendant her request to resume her maiden name to <u>[INSERT YOUR MAIDEN NAME HERE]</u>; and 4. Grant such other and further relief as the Court deems just and proper. <p>This is the _____ day of _____, 2012. <i>(HAND WRITE IN THE DATE HERE WHEN THE ANSWER IS FILED)</i></p> <p>_____ TYPE DEFENDANT'S NAME HERE AND DEFENDANT SHALL SIGN ABOVE TYPE DEFENDANT'S ADDRESS HERE</p> <p>CERTIFICATE OF SERVICE</p> <p>This is to certify that on this day, the _____ day of _____, 2011 the undersigned has served this Answer in the above entitled action upon all parties to this cause in the following manner: By depositing a copy thereof in United States mail, postage prepaid, addressed as follows:</p> <p><u>INSERT PLAINTIFF'S NAME</u> <u>INSERT PLAINTIFF'S ADDRESS</u></p> <p>_____ <u>INSERT DEFENDANT'S NAME HERE & SIGN</u> <u>INSERT DEFENDANT'S ADDRESS HERE</u></p>	

Directions for Filling out Answer

1. In the top left hand corner, enter the county where you are filing
2. In the top right hand corner, enter the file number (stamped on the Summons and Complaint when filed)
3. Enter the names of the Plaintiff and Defendant
4. Indicate whether you admit or deny all allegations contained in Plaintiff's complaint
5. If resuming maiden name, enter it in both spaces indicated
6. Enter the date by hand when the answer is filed
7. Enter the defendant's name below the line
8. Defendant will sign above the line

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NOTICE OF DIVORCE HEARING



Once the 30 days have passed from the day after the Summons and Complaint were properly served on the defendant by sheriff or certified mail, you may file a notice of hearing which will calendar the matter for hearing. You may schedule the hearing after the 30 days have expired; however, you need to make sure you provide your spouse with at least five days' notice before the hearing. If you are scheduling a Summary Judgment divorce, you must provide your spouse with at least ten days' notice.

Directions for filling out a Notice of Divorce Hearing with an attached Certificate of Service are adjacent to the sample Notice of Hearing. When you are finished, you will need one original and two copies. The clerk will keep one copy for the court's file. You should keep one for your own records, and you should mail one copy to your spouse on the same day that the document is filed with the court.

NOTICE OF DIVORCE HEARING

SAMPLE WITH DIRECTIONS

SAMPLE NOTICE OF DIVORCE HEARING

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 12-CVD-0001

JANE DOE,
Plaintiff,
v.
JACK DOE
Defendant.

NOTICE OF ABSOLUTE DIVORCE HEARING

Please take notice that on January 6, 2012, at the Wake County Courthouse, 316 Fayetteville St., Raleigh, North Carolina 27601 in Room 9B, at 9:00 a.m. or as soon thereafter as the Court is able, the undersigned will bring the following for hearing: Absolute Divorce

This is 10th day of December, 2011.

JANE DOE - Plaintiff
Jane Does' Address
Raleigh, NC 27607

CERTIFICATE OF SERVICE

This is to certify that on this day, the _____ day of _____, 2011 the undersigned has served this Notice of Hearing in the above entitled action upon all parties to this cause in the following manner: By depositing a copy thereof in United States mail, postage prepaid, addressed as follows:

JACK DOE
Address for Jack Doe
Raleigh, North Carolina 27601

JANE DOE – Plaintiff
Jane Does' Address
Raleigh, NC 27607

Directions for Filling out Notice of Hearing

1. Beside the word "County" in the upper left hand corner, fill in the county where you are filing your absolute divorce.
2. Beside the phrase "FILE NO." in the upper right corner, fill in the file number. The file number should have been stamped on your Summons and the Complaint when you filed the documents with the clerk.
3. In the body of the document, fill in your full name as the plaintiff and your spouse's name as the defendant in the case caption.
4. Fill in the date, county, court room number, and time for your absolute divorce.
5. Fill in the date that the Notice of Hearing will be filed.
6. Sign your name as the plaintiff.
7. On the Certificate of Service, fill in your spouse's address and your address.

You will need one original and two copies of this form. Take all three copies to your local Clerk of Court's Office for filing. One of the copies will go in the clerk's basket. You will need to mail the second copy to your spouse on the date that you put on the Certificate of Service. Keep the third copy for your records. Take your copy to court with you on the date of the hearing.

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NOTICE OF DIVORCE HEARING

WHAT CAN I EXPECT WHEN I GET TO COURT?

To complete the divorce process, you will need to go to your county's courthouse on the date that you are assigned to appear according to your county's procedure. Remember, you are filing a non-jury divorce without attorneys, which will help determine the courtroom in which you are to appear. When you appear in court for your divorce, bring the documents required by your county. The documents required for your court appearance are three copies of the Judgment and one copy of the Certificate of Absolute Divorce. Instructions on completing the Judgment for Absolute Divorce are in red font on the sample Judgment.

The directions for filling out the Certificate of Absolute Divorce are adjacent to the Sample Certificate of Absolute Divorce. You will need to get the Certificate of Absolute Divorce from your Clerk of Court's office. The Certificate of Absolute Divorce is a form that is filled out for the State of North Carolina. It is used to keep statistics. You do not need a copy of the Certificate of Absolute Divorce for yourself, but you may want one for your own records. You may also want to bring a copy of all of the court documents that were previously filed in case the judge cannot find something in the court file, including but not limited to, the Complaint, Affidavit of Service, Acceptance of Service, Answer, and Notice of Hearing.

If you do not have a lawyer, you will need to go to court and testify. This is referred to as a testimonial divorce, as opposed to a Summary Judgment divorce, which is further explained later in this book. You will need to take an oath by either swearing or affirming to tell the truth before you testify. It is important for you to understand that after you have taken an oath, everything you say thereafter on the record in open court should be the truth and nothing but the truth. Your testimony may take place on a witness stand near or at the judge's bench; if so, the judge or clerk will instruct you on what to do once your case is called.



NOTICE OF DIVORCE HEARING

WHAT CAN I EXPECT WHEN I GET TO COURT?

(Cont'd)

The following questions are used in the standard direct examination of a person seeking a divorce.

- a. Are you Jane Doe, the plaintiff in this action?
- b. Are you married to Jack Doe, the defendant?
- c. How many children were born of the marriage between you and Jack Doe?
- d. Please tell the court the name and the birthdates of all children.
- e. Were you a resident of North Carolina for at least six months prior to the filing of this action?
- f. When did you separate from the defendant?
- g. When you separated, did you have the intention to remain separate and apart?
- h. Have you, in fact, remained apart since that time?
- i. Do you want the court to grant you a divorce today?

Generally, the judge will not have any additional questions and, assuming that the hearing is uncontested, will allow the witness to step down. If, however, your spouse contests the date of separation, you will need to have a hearing so the judge can determine your actual date of separation. In the event of a contested hearing, you will need to provide evidence to show that, based on a totality of the circumstances, you have remained separate and apart for at least one year and one day prior to the date of filing the complaint, and that it was your intent to live separate and apart for the purpose of obtaining an absolute divorce during that time. Ultimately, it is up to the judge to determine if the parties remained continuously separate and apart during that time; however, case law has made clear that an isolated sexual encounter between the spouses will not interrupt or restart the one year waiting period.

NOTICE OF DIVORCE HEARING

DIRECTIONS AND SAMPLE ABSOLUTE DIVORCE JUDGMENT

SAMPLE ABSOLUTE DIVORCE JUDGMENT

<p>STATE OF NORTH CAROLINA COUNTY OF <u>INSERT NAME OF COUNTY</u></p> <p><u>INSERT YOUR NAME HERE</u>, Plaintiff, v. <u>INSERT YOUR SPOUSE'S NAME HERE</u>, Defendant.</p>	<p>IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION FILE NO. <u>INSERT FILE NO. HERE</u></p>
<p>JUDGMENT FOR ABSOLUTE DIVORCE</p>	
<p>THIS CAUSE COMING ON before the undersigned Judge on motion of the Plaintiff for summary judgment and it appearing to the Court that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, the Court makes the following:</p> <p>FINDINGS OF FACT</p> <ol style="list-style-type: none"> 1. Plaintiff is a citizen and resident of <u>Insert Plaintiff's County Here</u> County, North Carolina. 2. Defendant is a citizen and resident of <u>Insert Defendant's County Here</u> County, <u>Insert Defendant's State Here</u>. 3. Plaintiff is a North Carolina resident and has been for six (6) months preceding the institution of this action. If Plaintiff has not been a resident for six months preceding the filing of the divorce complaint, but Defendant has been a resident for six (6) months or more, insert "Defendant" instead of "Plaintiff" in this provision. 4. Plaintiff and Defendant were lawfully married to each other on <u>Insert date of marriage here</u>. 5. Plaintiff and Defendant separated on <u>Insert date of separation here</u> and have lived continuously separate and apart from each other at all times for at least one year next preceding the commencement of this action. At the time of the separation it was the intention of at least one of the parties that the separation be permanent. 6. There was one child born of the marriage, to wit: <u>Insert child's name here</u>, born <u>Insert child's birth date here</u>. If you do not have children, delete this provision and insert the following provision, "no children were born of the marriage". 7. The minor child's social security number is XXX-XX-____ <u>Insert the last four digits of the child's social security number</u>. If there were no children born of the marriage, you should delete this provision. 8. Plaintiff's social security number is XXX-XX-____ <u>Insert the last four digits of Plaintiff's Social Security Number here</u>. 9. Defendant's social security number is XXX-XX-____ <u>Insert the last four digits of Defendant's Social Security Number here</u>. 10. Plaintiff desires to resume the use of her maiden name, <u>Insert maiden name here</u>, and therefore applies for a name change pursuant to N.C.G.S §50-12. If neither party has requested to resume their maiden name, delete this provision. 11. Defendant is not an infant, an incompetent, or a member of the armed services. <p>Based upon the foregoing Findings of Fact, the Court makes the following:</p> <p>CONCLUSIONS OF LAW</p> <ol style="list-style-type: none"> 1. The Court has jurisdiction over the parties and the subject matter herein. 2. There is no genuine issue of material fact existing in this matter, so that granting this divorce by Summary Judgment is appropriate. 3. Plaintiff is entitled to an absolute divorce from Defendant under the provisions of N.C.G.S. §50-6. <p>NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:</p> <ol style="list-style-type: none"> 1. The Plaintiff be and is hereby granted an absolute divorce from the Defendant, and that the bonds of matrimony heretofore existing between Plaintiff and Defendant be, and they are, hereby dissolved; 2. Plaintiff shall be entitled to resume the use of her maiden name, <u>Insert maiden name here</u>; and 3. The costs of this action shall be taxed against Plaintiff. <p>This the _____ day of December, 2011</p>	

Directions for Filling out Absolute Divorce Judgment

1. In the top left hand corner, enter the county where you are filing
2. In the top right hand corner, enter the file number (stamped on the Summons and Complaint when filed)
3. Enter the names of the Plaintiff and Defendant
4. Enter Plaintiff's county
5. Enter Defendant's County and State
6. For "Finding of Fact" #3, if Plaintiff has not been a resident for six months preceding the filing of the divorce complaint, but Defendant has been a resident for six (6) months or more, insert "Defendant" instead of "Plaintiff" in this provision
7. Enter date of marriage
8. Enter date of separation
9. Enter children's names and dates of birth. If there were no children born of the marriage, enter "no children were born of this marriage".
10. If Plaintiff desires to resume maiden name, enter it. If neither party has requested such, remove this provision

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NOTICE OF DIVORCE HEARING

DIRECTIONS FOR FILING OUT CERTIFICATE OF ABSOLUTE DIVORCE

SAMPLE CERTIFICATE OF ABSOLUTE DIVORCE

STATE OF NORTH CAROLINA CERTIFICATE OF ABSOLUTE DIVORCE OR ANNULMENT			
File Number: _____ County: _____			
PLAINTIFF			
1.	<input type="checkbox"/> Husband <input type="checkbox"/> Wife	FIRST	MIDDLE LAST
RESIDENCE - STATE 2a.		COUNTY 2b.	
DEFENDANT			
3.	<input type="checkbox"/> Husband <input type="checkbox"/> Wife	FIRST	MIDDLE LAST
RESIDENCE - STATE 4a.		COUNTY 4b.	
MARRIAGE			
DATE OF THIS MARRIAGE 5.		PLACE OF THIS MARRIAGE 6.	
NUMBER MINOR CHILDREN 7.		DATE OF SEPARATION 8.	
CERTIFICATION			
I hereby certify that the above information as abstracted from court documents is true and correct. The <input type="checkbox"/> divorce <input type="checkbox"/> annulment was rendered in the above entitled matter on the _____ day of _____ .			
_____ DATE Signature _____			
<input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC			

Directions for Filing out a Certificate for Absolute Divorce

1. You may hand-write the information into this form; however, make sure you only use black ink. The clerk will not accept this form if it is not in black ink.
2. Fill in the file number in the top left corner of the document.
3. Fill in the name of the county in the top left corner of the document.
4. For the plaintiff, check the appropriate box certifying whether the plaintiff is the husband or wife.
5. Fill in the plaintiff's first, middle and last names.
6. Fill in the state where the plaintiff resides.
7. Fill in the county where the plaintiff lives.
8. For the defendant, check the appropriate box certifying whether the defendant is the husband or wife.
9. Fill in the defendant's first, middle and last names.
10. Fill in the state where the defendant lives.
11. Fill in the county where the defendant lives.
12. Fill in the date of marriage.
13. Fill in the city and state where the plaintiff and defendant were married.
14. Fill in the number of the children born of the marriage. If no children were born of the marriage, simply write in "0."
15. Fill in the date of separation.
16. You do not need to fill out any additional information on this form. The clerk will fill out the certification section of this form.

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SUMMARY JUDGMENT DIVORCES

The court may enter judgment either upon non-testimonial, verified evidence pursuant to Rule 56 (Summary Judgment) or upon a plaintiff's appearance and giving in-person testimony at court proving the allegations of the complaint. Even though the defendant may have filed an Answer admitting all of the allegations, the plaintiff must still prove to the court, by one of the two stated methods, that he or she is entitled to an absolute divorce. If your attorney uses Summary Judgment, you yourself do not have to go to court for the divorce hearing. Only your attorney appears, and your attorney gets the divorce for you.

The trial court procedure for obtaining an absolute divorce varies slightly from county to county. Many counties set a specific day of each week or month for the hearing of uncontested divorces. Different judges have their own rules for conducting these hearings. Check with local counsel to be certain that you understand the local customs of a summary judgment divorce.

In non-summary judgment divorces, the court will typically call the case for trial and the plaintiff (and counsel for the plaintiff, if the party is represented) will come forward. Usually the defendant and his or her attorney are not present. The plaintiff will be sworn in and asked to take the witness stand. Counsel for the plaintiff will request permission to approach the bench to hand up the divorce judgment and the appropriate number of copies. Counsel will then return to the counsel table and conducts direct examination. Direct examination usually consists of the questions found in Section I above. In North Carolina, lawyers are required to stay seated while asking questions that do not require the lawyer to show some document to the witness.

Remember you need to provide your spouse with at least ten days' notice if you are scheduling a divorce by Summary Judgment. Note that this is different than the five-day requirement for notice of a testimonial divorce hearing.

FINALIZING THE DIVORCE

At the end of the divorce process, you will have an Absolute Divorce Judgment executed by a judge in your county and filed with the court in your county. Most clerks will certify one Absolute Divorce Judgment for you, free of charge, on the date of your divorce hearing; however, they typically charge \$3 to \$5 for additional certified copies. This document certifies that your marital status has legally changed from “married” to “single.” A person can only legally remarry after an absolute divorce is granted by a North Carolina court. The court will keep one copy of the Judgment for their files. You need to mail one copy to your spouse and you should keep the certified copy for your own records.

If you have included a provision in the Judgment to resume your maiden name, you will need to present the Certified Absolute Divorce Judgment to the Social Security Administration to begin the process of changing your name on your Social Security card, your driver’s license and other legal documents.

10 COMMON MISTAKES TO AVOID

Here is a list of the most common mistakes that you should avoid when handling your own divorce:

- Do not file a claim for absolute divorce unless you have resolved all issues related to spousal support and property distribution claim or at a minimum preserved those claims.
- Do not sign the Verification or file your Complaint until at least one year and one day have passed since your date of separation. If you separated on January 1, 2011, you should not execute the Verification or file your Complaint until January 2, 2012, at the absolute earliest.
- Do not sign the Verification unless you are in front of a notary. The notary needs to see you sign the document and will need to see a photo ID when you sign.
- Do not go to the courthouse without having the Verification notarized and all of the appropriate copies of the required forms. The clerk will not notarize any documents for you, nor will they make copies for you.
- Remember, the court does not accept personal checks. You will need to bring cash, a money order or a certified check when you file your documents.
- Do not schedule the hearing until at least 30 days have passed since the Complaint was served on the defendant.
- Do not forget to include a Certificate of Service with your Notice of Hearing and to mail a copy of each to your spouse on the same day that they were dated and filed.
- Do not forget to include a request to resume your maiden name in your Complaint and to specifically state in the Complaint the exact name that you wish to resume. Your request can later be included in the Judgment.
- Do not forget to complete the Certificate of Absolute Divorce, because it is used to keep statistics in North Carolina regarding your marital status.
- If you know that you will need more than one certified copy of your Judgment, go ahead and get an extra copy on the day of the hearing because it will save you a lot of time and effort in the future. Many people think they will be able to easily request another certified copy in the future, only to find out that they cannot make that request unless they physically appear back in the clerk's office.

TIMELINE

1. **Waiting Period** – You must wait one year and one day before you can file your initial paperwork. If you want to file for a divorce as soon as possible, you should start preparing your documents about a week in advance so that you will be ready to file immediately after the waiting period has passed.
2. **Prepare Forms** –
 - a. *Complaint* – You need one signed original with two copies. If you want to resume your maiden name, make sure you put a claim in the Complaint. Also, if you have children, make sure you use Sample Complaint B when preparing your paperwork.
 - b. *Verification* – You need one signed original with two copies. Do not sign the Verification until you are in front of a notary public. Attach the original Verification to the original Complaint. The court will keep the original document and will give you the other two copies; serve your spouse with one copy and keep one copy for your own records.
 - c. *Civil Summons* – You need one original on white paper and two copies on yellow paper. Remember to print the document on the front and back of the paper.
 - d. *Civil Action Cover Sheet* – You only need one Cover Sheet. The clerk will take your Cover Sheet when you file your complaint and other documents with the court.
3. **File** – Once all of the paperwork is complete, take everything to the clerk’s office at your local courthouse. You need to bring a certified check, money order or cash with you when you file because the court will not accept a personal check. Remember, the clerk will not notarize your documents and most likely will not make copies for you, so you will need to have your Verification notarized and make copies prior to appearing at the courthouse.
4. **Serve** – You need to serve the Complaint, Verification and Civil Summons on your spouse by certified mail, sheriff or publication in the newspaper. Once your spouse is served, you need to wait 30 days (40 days if you serve your spouse by publication) before you schedule the divorce hearing.
5. **Appear** – Schedule the hearing, notify your spouse of the hearing and appear on the day of the hearing with three copies of the Absolute Divorce Judgment and one Certificate of Absolute Divorce. If you scheduled a testimonial hearing, you will need to be prepared to testify on the day of the hearing. If you scheduled a summary judgment hearing, you will not need to testify.
6. **Finalize** – Congratulations! Once the Judgment has been executed by a judge and the documents have been filed with the courthouse, you are officially divorced. Remember that you will need to take a copy of the certified Judgment to the Social Security Administration to begin the process to resume your maiden name if you have elected to do so.

IMPORTANT NORTH CAROLINA GENERAL STATUTES RELEVANT TO DIVORCE

You may want to reference the applicable statutes when you are preparing your court documents. The relevant statutes are listed below.

- o §50-5.1. Grounds for absolute divorce in cases of incurable insanity
- o §50-6. Divorce after separation of one year on application of either party
- o §50-7. Grounds for divorce from bed and board
- o §50-8. Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated
- o §50-9. Effect of answer of summons by defendant



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