

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

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Plaintiff,

Index No.:

-against-

**AFFIDAVIT OF DEFENDANT
IN ACTION FOR DIVORCE**

Defendant.

-----X

STATE OF _____ }

ss:

COUNTY OF _____ }

_____ being duly sworn, says:

I am the Defendant in the within action for divorce, and I am over the age of 18. I reside at _____.

1. I admit service of the *Summons with Notice* **OR** *Summons and Complaint* for divorce on __/__/20__ based upon the following grounds: Insert the grounds alleged in the *Summons with notice* or *Complaint*:

- DRL §170(1) cruel and inhuman treatment
- DRL §170(2) abandonment
- DRL §170(3) confinement in prison
- DRL §170(4) adultery
- DRL §170(5) living apart one year after separation decree or judgment of separation
- DRL §170(6) living apart one year after execution of a separation agreement
- DRL §170(7) irretrievable breakdown in relationship*(see Defendant’s Affidavit Notes)

_____.

I also admit service of the *Notice of Automatic Orders* and those of the following forms checked: *Notice Concerning Continuation of Health Care Coverage*: *other*_____

2. I appear in this action; however, I do not intend to respond to the summons or answer the complaint, and I waive the twenty (20) or thirty (30) day period provided by law to respond to the summons or answer the complaint. I waive the forty (40) day waiting period to place this matter on the calendar, and I hereby consent to this action being placed on the uncontested divorce calendar immediately.

TO THE DEFENDANT:

You should read the Defendant’s Affidavit Notes on the last page of this Affidavit before completing this form. For instructions on how to fill out this form, see p. 20 of the instructions for Uncontested Divorces with Children which may be found at any Supreme Court Clerk’s Office or online at <http://www.nycourts.gov/divorce/pdfs/divorce-packet-instructions.pdf>

10 3. I am not a member of the military service of this state, any other state or this nation

OR

If in the military: I am aware of my rights under the New York State Soldiers' and Sailors' Civil Relief Act; however, I consent that this matter be placed on the Uncontested Matrimonial calendar and waive any rights I may have under the Act.

11 4a. I waive the service of all further papers in this action except for a copy of the final Judgment of Divorce.

OR

b. I request service of the following documents: *Note of Issue, Request for Judicial Intervention, Barriers to Remarriage Affidavit, Proposed Judgment of Divorce, Proposed Findings of Facts and Conclusions of Law, Notice of Settlement, Qualified Medical Child Support Order, and any other proposed orders.*

12 5. I am not seeking equitable distribution *other than what was already agreed to in a written stipulation.* I understand that I may be prevented from further asserting my right to equitable distribution.

13 6a. *I will take or have taken all steps solely within my power to remove any barriers to the Plaintiff's remarriage.*

b. *I waive the requirements of DRL § 253 subdivisions (2),(3) and (4).*

14 7a. I am not the custodial parent of the unemancipated child(ren) of the marriage (see definition on page 7 of the Instructions).

OR

b. I am the custodial parent of the unemancipated child(ren) of the marriage (see definition on page 7 of the Instructions) entitled to receive child support pursuant to DRL §236(B)(7)(b),

AND

(1) I request child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement.

OR

(2) I am in receipt of such services through the Support Collection Unit.

OR

(3) I have applied for such services through the Support Collection Unit.

OR

(4) I am aware of but decline such services through the Support Collection Unit at this time. I am aware that an income deduction order (also known as an Income Withholding Order/Notice for Support) may be issued pursuant to CPLR §5242 (c) without other child support enforcement services and that payment of an administrative fee may be required.

If (1) is selected, a Support Collection Information Sheet (Form UD-8a) must be completed and submitted with your papers.

Pursuant to DRL § 240 1 (a-1) Records Checking Requirements:

An Order of Protection *has been* *has never been* issued against me, enjoining me or requiring my compliance.

An Order of Protection *has* *has never been* issued in favor of or protecting me or my child(ren) or a member of my household.

List all Family/Criminal Court Docket #'s and Counties, _____
Supreme Court Index #'s and Counties _____

I or my child(ren) or my spouse has been named in a Child Abuse/Neglect Proceeding (FCA Art.10)

List all Family Court Docket #'s _____
and Counties _____

I or my child(ren) or my spouse has never been named in a Child Abuse/Neglect Proceeding (FCA Art.10)

I am registered under New York State's Sex Offender Registration Act

List all names and any _____
related information _____

I am not registered under New York State's Sex Offender Registration Act

15 8. If DRL §170 subd. (7) is the ground alleged, then Defendant hereby affirms, by checking the Box A, B, or C or D below (**NOTE: BOX A, B, C or D below must be checked if DRL 170(7) is the ground alleged**), that the following statement is true:

All economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage:

A. have been resolved by the parties and are to be incorporated into the Judgment of Divorce.

by oral settlement/ stipulation on the record; or

by written Settlement/ Separation Agreement

B. will be determined by the Court and are to be Incorporated into the Judgment of Divorce.

C. were determined by Family Court order (custody and visitation or child support and/ or spousal support issues only) which will be continued.

D. are not to be incorporated into the Judgment of Divorce, since neither party to the divorce has contested any such issues.

16

Defendant's Signature

Subscribed and Sworn to
before me on

NOTARY PUBLIC

Defendant's Affidavit Notes

- If you have been served with a Summons with Notice or a Summons and Complaint in an action for Divorce, ask yourself these two questions:
Do I oppose the divorce itself?
Do I oppose anything else my spouse is asking for in the divorce papers?
- You may want to discuss your situation with a lawyer before deciding on your final answers to these questions. If you answered “Yes” to *either* of the two questions, do *not* sign this form. If you are opposing the divorce or anything else your spouse is asking for, you should talk with a lawyer *immediately, since there are time limits for you to respond to the divorce.* The Supreme Court Clerk's Office in the county where you live (if you live in New York State) may be able to help you with information about lawyer referral services, but cannot give you legal advice.
- If you have decided to agree to the divorce and to the other things your spouse is asking for, **or** if you and your spouse have worked out a written Settlement Agreement about everything involved in the divorce, you can sign the Affidavit of Defendant form and have it notarized before a notary public, and send it back to your spouse.
- *****If DRL §170 subd. (7) is the ground alleged in the summons with notice or complaint, then all economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage must have been resolved by the parties or determined by the court and incorporated into the judgment of divorce. If you have decided to agree to the divorce on the ground of irretrievable differences alleged by your spouse pursuant to DRL §170 subd. (7), and to all the relief requested by your spouse, and if you have no additional relief you wish to request, you should fill out Paragraph 8 at Field 15 of this Affidavit.