

# RESOURCES AVAILABLE

## **For Mediation Services:**

A list of court-approved mediators is maintained on the UJS website at <http://uj.s.sd.gov>.

## **For Parenting Coordinator Services:**

A list of approved parenting coordinators is maintained on the UJS website at <http://uj.s.sd.gov>.

## **For Assistance with UJS-Approved Legal Forms found at <http://uj.s.sd.gov>:**

Contact the UJS Legal Form Help Line at 1-855-784-0004 or email Legal Research at [UJSSRLHelp@uj.s.state.sd.us](mailto:UJSSRLHelp@uj.s.state.sd.us).

## **Legal Aid Services of South Dakota:**

Residents who meet financial eligibility guidelines can get free legal aid services in SD.

To determine if you are eligible, contact one of the following:

### **Dakota Plains Legal Services, Inc.**

160 Second St.  
P.O. Box 727  
Mission, SD 57555

Phone: (605) 856-4444  
Toll Free: 1-800-658-2297

### **Dakota Plains Legal Services**

528 Kansas City St.  
P.O. Box 1500  
Rapid City, SD 57708

Phone: (605) 342-7171

### **East River Legal Services**

335 North Main Ave., Suite 300  
Sioux Falls, SD 57102  
Phone: (605) 336-9230  
Toll Free: 1-800-952-3015

## **Access to Justice, Inc.**

This is a statewide program designed to supplement the legal aid programs in SD. Residents must be income eligible to qualify for legal services at a reduced rate or at no cost to you. Clients are responsible for paying case costs. Access to Justice Inc. also offers clinics periodically to assist self-represented litigants in filling out UJS approved legal forms.

Access to Justice Inc  
State Bar of South Dakota  
222 E Capitol Ave #3  
Pierre, SD 57501

Phone: 1-855-287-3510 Or Visit: [www.statebarofsouthdakota.com/page/access-to-justice](http://www.statebarofsouthdakota.com/page/access-to-justice)

# RESOURCES AVAILABLE

## (Continued)

### **For Assistance with Complaints Regarding Businesses:**

Office of the Attorney General  
Division of Consumer Protection  
1302 E. Hwy 14, Suite 3  
Pierre, SD 57501

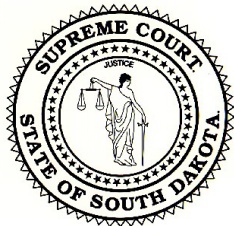
Phone: (605) 773-4400  
Toll Free: 1-800-300-1986 (in state only)  
Or Visit: <http://atg.sd.gov/Consumers.aspx>

### **For Assistance in Finding a Lawyer:**

The State Bar of South Dakota offers a listing of lawyers and firms in South Dakota and can be found at the following: <http://www.sdbar.org/new/public/resources.html>. These are private practitioners who will charge for their services.

State Bar of South Dakota  
Toll Free: 1-800-952-2333

**For further information regarding the court system in South Dakota or to obtain legal forms, please visit the South Dakota Unified Judicial System website at <http://ujls.sd.gov>.**



The South Dakota  
Unified Judicial System  
(605) 773-3474  
Rev. 02/2022

## **GENERAL DEFINITIONS (WITH MINOR CHILDREN)**

### **Affidavit:**

An affidavit is a written document signed under oath and made without prior notice to the opposing party. SDCL 19-3-2

### **Alimony (also known as spousal support):**

**SDCL 25-4-41. Allowance for support when divorce granted.** Where a divorce is granted, the court may compel one party to make such suitable allowance to the other party for support during the life of that other party or for a shorter period, as the court may deem just, having regard to the circumstances of the parties; and the court may, from time to time, modify its orders in these respects.

There are different types of alimony, including:

- **General** – an allowance for support and maintenance; the sole object is the provision of food, clothing, habitation and other necessities for support of the spouse.
- **Rehabilitative** – awarded to enable a former spouse to refresh or enhance his/her job skills he/she needs to make a living; purpose is to put the former spouse in a position to upgrade his/her economic marketability
- **Restitutive** – awarded to reimburse one spouse’s contributions during marriage to the advanced training or education of the other spouse.

There are different factors considered when evaluating each type of alimony. You should consult an attorney when determining whether you qualify for alimony.

### **Grounds for divorce:**

“Grounds for Divorce” means the reason you are seeking a divorce. The reasons that are legally acceptable are set forth in SDCL 25-4-2 as follows:

1. Adultery – the voluntary sexual intercourse of a married person with someone other than the person they are married to. *See also* SDCL 25-4-3.
2. Extreme Cruelty – the infliction of grievous bodily injury or grievous mental suffering upon one party to the marriage by the other. *See also* SDCL 25-4-4.
3. Willful Desertion – the voluntary separation of one of the married parties from the other with intent to desert. SDCL 25-4-5. *See also* SDCL 25-4-8 to 25-4-14, -17 for special conditions or circumstances applicable to willful desertion.
4. Willful Neglect – the neglect of a person to provide the common necessities of life for his or her spouse, when having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation. *See also* SDCL 25-4-15, -17.
5. Habitual Intemperance – that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. *See also* SDCL 25-4-16, -17.
6. Your spouse has been convicted of felony.

7. Irreconcilable Differences – this is the “no fault” reason for divorce. Irreconcilable Differences is where the parties agree that there are substantial reasons for not continuing the marriage and the marriage should be dissolved. SDCL 25-4-17.7. Generally, both parties must agree to use
8. irreconcilable differences as the reason for the divorce. SDCL 25-4-17.2

**Minor children:**

**SDCL 25-5-18.1. Parental duty to support child.** The parents of any child are under a legal duty to support their child in accordance with the provisions of § 25-7-6.1, until the child attains the age of eighteen, or until the child attains the age of nineteen if the child is a full-time student in a secondary school. If it is determined by the court that the child support obligation survives the death of the parent, the amount due may be modified, revoked, or commuted to a lump sum payment by the court, taking into consideration all factors deemed relevant, including the financial resources of the child and the other parent and the needs of the decedent's family.

**SDCL 25-4-45: Child custody provisions – Modification – Preference of child.** In an action for divorce, the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same. In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child’s temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. As between parents adversely claiming the custody, neither parent may be given preference over the other in determining custody.

**SDCL 25-5-7.1: Order for joint legal custody – Factors for court’s consideration.** In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those aspects between the parties based on the best interest of the child. If it appears to the court to be in the best interest of the child, the court may order, or the parties may agree, how any such responsibility shall be divided. Such areas of responsibility may include the child’s primary physical residence, child care, education, extracurricular activities, medical and dental care, religious instruction, the child’s use of motor vehicles, and any other responsibilities which the court finds unique to a particular family or in the best interests of the child. If the court awards joint legal custody, it may also order joint physical custody in such proportions as are in the best interests of the child, notwithstanding the objection of either parent. (effective July 1, 2012).

**SDCL 25-8-64: Disestablishment of Paternity.** If a father discovers that he is not the biological father of his child, he must get a genetic test to exclude himself as the father or establish that another man is the biological father by the standards set forth in SDCL 25-8-58 (which refers to the genetic testing). The Court may set aside the presumption of paternity or prior determination of paternity after considering 9 factors. *See also* SDCL 25-7-7.7 (once paternity is disestablished, the child support order is automatically terminated on the date the disestablishment order is entered).

**Property:**

SDCL 25-4-45.1: Fault is not considered in awarding property.

SDCL 25-4-44: When a divorce is granted, the courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of one spouse or the other. In making such division of the property, the court shall have regard for equity and the circumstances of the parties.

When determining whether property is marital or non-marital, there are specific factors utilized by the court. You should consult an attorney if you have questions about property.

**Order Regarding Filing Fee and Service of Process Fee:**

This document is a court order signed by a Judge ordering that either the filing fees or sheriff's service fees (or both) are not charged to the plaintiff. To receive this Order, a Motion and Affidavit to Waive Fees must be filed to prove to the court the plaintiff is unable to pay the fees.

## INSTRUCTIONS AND CHECKLIST FOR DIVORCE (WITH MINOR CHILDREN)

PLEASE READ ALL INSTRUCTIONS BEFORE BEGINNING TO FILL OUT ANY DOCUMENTS. IT IS IMPORTANT TO FOLLOW ALL INSTRUCTIONS CAREFULLY.

**Please use black ink when filling out all forms!**

### PLAINTIFF COMMENCING THE CASE

- \_\_\_\_\_ Complete Case Filing Statement (UJS-232) available in this packet.
- \_\_\_\_\_ Complete the Summons (with Minor Children) (UJS-311). Attach a copy of the South Dakota Parenting Guidelines (UJS-302).
- \_\_\_\_\_ Complete the Complaint (with Minor Children) Form (UJS-312).
- \_\_\_\_\_ Complete the Financial Affidavit (UJS-023). You will complete one and your spouse will complete one. Attach the child support calculation form to the affidavit.
- \_\_\_\_\_ Make at least two photocopies of all documents, one for you and one to serve on your spouse.
- \_\_\_\_\_ Take the original completed Case Filing Statement, Summons (With Minor Children), Complaint (With Minor Children), and Financial Affidavit referenced above, and a copy of the SD Parenting Guidelines (UJS-302), to the Clerk of Court and tell the Clerk you are filing for divorce.
- \_\_\_\_\_ Pay the \$95.00 filing fee; **OR**
- \_\_\_\_\_ If you cannot afford the filing fee, you must also complete the Motion to Waive Filing Fee & Service of Process Fee (UJS-022), and the caption (only) on the Order Waiving Filing Fee and Service of Process Fee (UJS-028). Visit our website at <https://ujslawhelp.sd.gov/onlineforms.aspx> and follow the “Waiver of Fees” link to find these forms. If the Motion is granted (or granted in part), you will not be charged the filing fee, and (or) the Sheriff will not charge you for service of process. If the Motion is denied, you must pay the filing fee and service of process fee in order to proceed with your case. If the filing fee isn’t paid within 30 days, your case will be dismissed.
- \_\_\_\_\_ Arrange for service on the defendant. The different ways to serve the defendant are set forth in the “Instructions for Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children” (Form UJS-314B).
- \_\_\_\_\_ Copies of the following documents **MUST** be served on the defendant:

- \_\_\_\_\_ Summons (with Minor Children) (UJS-311);
- \_\_\_\_\_ Complaint (with Minor Children) (UJS-312); and
- \_\_\_\_\_ South Dakota Parenting Guidelines (UJS-302).

Copies of the following documents should be provided to the defendant to make the case flow smoothly:

- \_\_\_\_\_ a copy of the Financial Affidavit (UJS-023) you completed;
- \_\_\_\_\_ **blank** copies of the Motion to Waive Filing Fee & Service of Process Fee (UJS-022) and Order to Waive Filing Fee & Service of Process Fee (UJS-028) to allow the Defendant to seek a waiver of the Answer filing fee;
- \_\_\_\_\_ a **blank** copy of the Financial Affidavit form (UJS-023) for the Defendant's completion;
- \_\_\_\_\_ a **blank** copy of the Answer & Affidavit of Mailing With Children (UJS-318); and
- \_\_\_\_\_ a copy of the Instructions in Self-Represented Divorce with Children (UJS-307B).

\_\_\_\_\_ Upon receipt of the proof of service (either the date the Admission of Service is signed or the date the Summons and Complaint are delivered to the Defendant by the Sheriff or process server), make a copy of the proof of service for you and file the original proof of service with the Clerk of Court. Service of the Summons and Complaint starts the lawsuit and starts the 30 days in which the Answer must be filed and the 60-day waiting period before the divorce can be finalized.

\_\_\_\_\_ **Within sixty days of the date of service of the Summons and Complaint**, you must complete a Court-approved parenting course per SDCL 25-4A-32. This requirement is met if you and the Defendant have completed a Court-approved course within the last five years. The Judge can also waive the requirement, but only for good cause shown. You must file an Affidavit on Court-Approved Parenting Course (UJS-364) with the Clerk to either provide proof of meeting the requirement or to seek waiver of the requirement. **If you seek a waiver, file the Affidavit well in advance of the deadline.**

**DEFENDANT ACKNOWLEDGING THE COMPLAINT**

\_\_\_\_\_ Complete the Admission of Service of Summons, SD Parenting Guidelines, and Complaint (UJS-317B if served by hand delivery) **or** (UJS-315B if served by mail).

\_\_\_\_\_ Complete the Financial Affidavit (UJS-023).

\_\_\_\_\_ Make at least two photocopies of all documents, one for you and one to serve on your spouse.

\_\_\_\_\_ Take the original completed Admission of Service of Summons, SD Parenting Guidelines, and Complaint and Financial Affidavit to the Clerk of Court and tell the Clerk you are responding to a divorce complaint.

**Note: Failure to answer or respond to the Plaintiff’s complaint could result in the judge granting a Default Judgment of Decree and Divorce!**

**DEFENDANT RESPONDING TO COMPLAINT BY FILING AN ANSWER**

If the Defendant chooses to file an Answer, they must file it and serve it on the Plaintiff within 30 days after being served the Summons and Complaint and must:

\_\_\_\_\_ Complete Case Filing Statement (UJS-232) available in this packet.

\_\_\_\_\_ Complete the Answer and Affidavit of Mailing Answer (UJS-318).

\_\_\_\_\_ Make at least two photocopies of all documents, one for you and one to serve on your spouse.

\_\_\_\_\_ **Within 30 days after service of the Summons and Complaint**, take the original completed Case Filing Statement (UJS-232) and Answer and Affidavit of Mailing Answer (UJS-318) to the Clerk of Court and tell the clerk you are answering a divorce complaint.

\_\_\_\_\_ Pay the \$25 Answer/Response Fee; **OR**

\_\_\_\_\_ If you cannot afford the filing fee, you must complete the Motion To Waive Filing Fee and Service of Process Fee (UJS-022) and the caption (only) on the Order Waiving Filing Fee and Service of Process Fee (UJS-028). Visit our website at <https://ujslawhelp.sd.gov/onlineforms.aspx> and follow the “Waiver of Fees” link to find these forms. If the Motion is granted, you will not be charged the answer/response fee. If the Motion is denied, you must pay the answer/response fee in order to have your Answer filed.

\_\_\_\_\_ **Within sixty days of the date of service of the Summons and Complaint**, you must complete a Court-approved parenting course per SDCL 25-4A-32. This requirement is met if you and the Plaintiff have completed a Court-approved course within the last five years. The Judge can also waive the requirement, but only for good cause shown. You must file an Affidavit on Court-Approved Parenting Course (UJS-364) with the Clerk of Court to either provide proof of meeting the requirement or to seek waiver of the requirement. **If you seek a waiver, file the Affidavit well in advance of the deadline.**

**Note: The Case Filing Statement and Answer & Affidavit forms can also be found with the other Divorce with Minor Children forms at <https://ujslawhelp.sd.gov/onlineforms.aspx>.**



## STIPULATED DIVORCE

Parties may reach an agreement regarding the terms and conditions of their divorce instead of a Judge determining everything for them. If an agreement can be reached, the parties should review the Instructions for Stipulation and Settlement Agreement and Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-323A) and need to complete and file the following documents:

\_\_\_\_\_ Stipulation & Settlement Agreement (with Minor Children) (UJS-325);

\_\_\_\_\_ Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-319B);

\_\_\_\_\_ Child Support Filing Data Form (UJS-089).

\_\_\_\_\_ **After sixty days from the date of service (either the date the Admission of Service is signed or the date the Summons and Complaint are delivered to the Defendant by the Sheriff or process server), the parties are responsible for presenting the Judgment and Decree of Divorce (UJS- 326B) to the Judge for consideration.**

\_\_\_\_\_ If the parties cannot reach an agreement, the Judge can order them both to mediation. A Court-approved mediator will help the parties mutually agree on the various issues in your divorce. Mediation is not binding, and the issues discussed in mediation are confidential. A list of Court-approved mediators can be found at [www.uj.s.sd.gov](http://www.uj.s.sd.gov).

\_\_\_\_\_ If the Judge signs the Judgment and Decree of Divorce, the Clerk of Court will complete the Notice of Entry of Judgment and Decree of Divorce and send both parties a copy of it along with certified copies of the Judgment and Decree of Divorce and the Stipulation and Settlement Agreement (with Minor Children).

\_\_\_\_\_ Provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents to each party. Make sure there is enough postage for all three documents—the Judgment and Decree of Divorce, the Notice of Entry of Judgment and Decree of Divorce, and the Stipulation and Settlement Agreement (with Minor Children).

If you do not receive these documents, it is your responsibility to call the Clerk of Courts office and inquire as to the status. **These documents are important for finalization of your divorce.**

**DO NOT ASSUME YOU ARE DIVORCED! Unless you see the Judgment & Decree of Divorce signed by the Judge & filed, you should follow-up with the Clerk of Court!**

**CONTESTED DIVORCE (parties cannot agree on some or all of the terms):**

\_\_\_\_\_ If the parties cannot agree on the terms and conditions of the divorce, one party will have to request that a hearing, or trial, be scheduled.

\_\_\_\_\_ If the parties cannot reach an agreement, the Judge can order them both to mediation. A Court-approved mediator will help the parties mutually agree on the various issues in your divorce. Mediation is not binding, and the issues discussed in mediation are confidential.  
**Forms are not provided in this packet for contested issues / divorces!**

\_\_\_\_\_ Contact the Clerk of Court or Court Administrator to obtain a court date.

\_\_\_\_\_ Complete a Notice of Hearing (UJS-336), available in the General Motions link on the UJS forms webpage, <https://ujslawhelp.sd.gov/onlineforms.aspx>, and make two copies. File the original. Send one copy to the other party and keep a copy for yourself.

\_\_\_\_\_ Complete the Affidavit of Mailing (UJS-340), available at the General Motions link given immediately above. Make one copy for yourself and file the original.

**FINALIZING DIVORCE:**

\_\_\_\_\_ Prior to finalizing the divorce, the Court may require a hearing. The Judge determines whether stipulation or default forms must be filed prior to the hearing. At the hearing, the parties answer any questions the Judge has, and the parties can present the Judge with the Order and Decree they want the Judge to sign.

**DEFAULT DIVORCE:**

In the event the Defendant does not file an Answer or any responsive pleading and within 30 days of service and does not cooperate in signing a Stipulation and Settlement Agreement, complete the following forms upon the expiration of the 60-day waiting period:

\_\_\_\_\_ Affidavit of Default; Application for Judgment & Decree of Divorce (Default) & Notice of Hearing; and Affidavit of Mailing (UJS-321B); and

\_\_\_\_\_ Affidavit of Military Status (UJS-306).

\_\_\_\_\_ Make at least two photocopies of these documents, one for you and one to be sent to the Defendant. File the original documents with the Clerk of Court. Send a copy of to the Defendant via certified mail.

\_\_\_\_\_ Complete the Child Support Filing Data Form (UJS-089) and take with you to the hearing for filing.

\_\_\_\_\_ Take the Judgment and Decree of Divorce (Default) Form (UJS-322B) to the hearing with you for consideration by the Judge or Circuit Court Administrator.

\_\_\_\_\_ If the Judge signs the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and send a copy of each to both parties. **You must provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents. Make sure there is adequate postage on them.**

\_\_\_\_\_ If you do not receive either of these documents, it is your responsibility to call the Clerk of Court's office and inquire as to the status. **Both documents are important for finalization of your divorce.**

### **DISMISSING THE DIVORCE:**

If at any time prior to the Judge granting the divorce the parties reconcile their differences and wish to dismiss the divorce action, they must complete and file the Stipulation and Order for Dismissal Form (UJS-328). If one party would like to dismiss the action but cannot get the signature of the other party, he/she can file the Motion and Order for Dismissal. (Form UJS-329).

### **SOUTH DAKOTA PARENTING CLASS**

\_\_\_\_\_ Effective September 1<sup>st</sup> Supreme Court Rule 22-09 requires that the parties to any action involving issues of child custody or parenting time are required to complete a court-approved course to educate the parents on the impact these proceedings can have on the involved children. More information on this can be found here: [Parenting Education \(sd.gov\)](https://sd.gov/parenting-education)

CASE FILING STATEMENT – Information Only; Not Retained in Case Records

Provide the Case File No. for the record you are filing into or the Case Type if initiating a new action: \_\_\_\_\_

\*A list of case types and party roles can be found here: <https://ujis.sd.gov/Attorneys/FormsDocumentation.aspx>

**Social Security Numbers (not Driver’s License Numbers) must be provided for divorce, child support, & paternity cases, 42 USC 666(a)(13)(B).** All filers are **required** to provide the SSN **or** DL# for each of **their** participants regardless of the case type. Business entities must provide the EIN number in lieu of SSN or DL#.

**INFORMATION FOR PLAINTIFF/PETITIONER/APPLICANT:**

_____	_____	_____	_____
Last/Business Name	First Name	Middle	Suffix
_____	_____	_____	_____
Physical Address <input type="checkbox"/> Check if Same as Mailing	City	State	Zip
_____	_____	_____	_____
Mailing Address	City	State	Zip
_____	_____	_____	_____
Home	Work	Cell	
_____	_____	_____	_____
Social Security No.	Date of Birth	Driver’s License No.	State Employer ID (Business)
<b>Attorney:</b>			
_____	_____	_____	
Last Name	First Name	State Bar ID No.	
_____	_____	_____	_____
Mailing Address	City	State	Zip
_____			
Phone			

**INFORMATION FOR DEFENDANT/RESPONDENT/MINOR/DECEDENT/PERSON IN NEED OF PROTECTION:**

_____	_____	_____	_____
Last/Business Name	First Name	Middle	Suffix
_____	_____	_____	_____
Physical Address <input type="checkbox"/> Check if Same as Mailing	City	State	Zip
_____	_____	_____	_____
Mailing Address	City	State	Zip
_____	_____	_____	_____
Home	Work	Cell	
_____	_____	_____	_____
Social Security No.	Date of Birth	Date of Death	Driver’s License No. State Employer ID (Business)
<b>Attorney:</b>			
_____	_____	_____	
Last Name	First Name	State Bar ID No.	
_____	_____	_____	_____
Mailing Address	City	State	Zip
_____			
Phone			

## INSTRUCTIONS FOR SUMMONS (WITH MINOR CHILDREN) & FORM

- **Complete this form in black ink only!**
- This is a 2-page form. Complete the caption. **Note:** The “caption” is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the Clerk of Court if you don’t know), name of Plaintiff, name of Defendant, and case file number (also ask the clerk if you don’t know). The caption is the same on every form. **If you are using the Spanish version, the form must be completed in English. The clerk will only accept forms completed in English.**
  - Fill in the name of the county in which you are filing for divorce. This must be the county in which either you or your spouse live.
  - Fill in the name of the Judicial Circuit that the county in which you are filing for divorce (ex. First, Second, Third, etc.). Ask the clerk if you do not know. This information can be found out our website at <https://ujs.sd.gov/>.
  - Fill in your full legal name where it says “Plaintiff” and your spouse’s full legal name where it says “Defendant.”
  - When you file your papers, the clerk will assign a file number which you will insert in the space provided. This file number must appear on all papers that you file with the clerk.
- You must read and fully understand the entire form. If you have questions, you can call the Legal Form Help Line at 1-855-784-0004.
- You must date and sign the Summons (With Minor Children) at the bottom. You must also print your name and include your mailing address and telephone number below the signature line.
- Make at least 2 photocopies of the signed Summons (With Minor Children); one for you and one for serving your spouse a copy of the Complaint. You must file the original with the clerk.
- **You must also attach a copy of the South Dakota Parenting Guidelines (UJS-302) to each copy of the Summons (With Minor Children).** Refer to the Instructions in Self-Represented Divorces with Children (UJS-307B) to ensure you have all the documents collected for service.
- **It is very important that you read and follow the Temporary Restraining Order that becomes automatic when you file for divorce. Both parties are required to obey the Temporary Restraining Order. Violation of any of these terms could subject you to penalties and delay your divorce. Read it carefully.**
- **Within sixty days of the date of service of the Summons and Complaint, you must complete a Court-approved parenting course per SDCL 25-4A-32. This requirement is met if you and the Defendant have completed a Court-approved course within the last five years. The Judge can also waive the requirement, but only for good cause shown. You must file an Affidavit on Court-Approved Parenting Course (UJS-364) with the Clerk of Court to either provide proof of meeting the requirement or to seek waiver of the requirement. **If you seek a waiver, file the Affidavit well in advance of the deadline.****

<p>_____</p> <p style="text-align: right;">Plaintiff</p> <p>vs</p> <p>_____</p> <p style="text-align: right;">Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>SUMMONS (WITH MINOR CHILDREN)</b></p>
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**TO THE ABOVE-NAMED DEFENDANT:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint with Minor Children of the Plaintiff, a copy of which is herewith served upon you, and to serve the Plaintiff with a copy of your Answer or other proper response within thirty (30) days from the date of the service of the Summons upon you, not counting the day of service.

IF YOU FAIL TO DO SO, judgment by default may be taken against you for the relief demanded in the Complaint sixty (60) days from the date of the service of this Summons and Complaint with Minor Children, not counting the day of service.

**NOTICE**

South Dakota law provides that upon the filing and service of the Summons and Complaint with Minor Children on the Defendant, a Temporary Restraining Order shall be in effect against both parties until the final decree is entered, the Complaint with Minor Children is dismissed or until further order of the court. Either party may apply to the Court for further temporary orders or modification or revocation of this Order.

**TEMPORARY RESTRAINING ORDER**

**PER SDCL 25-4-33.1, BY ORDER OF COURT, YOU AND YOUR SPOUSE ARE:**

- (1) Restrained from transferring, encumbering, concealing or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the Court, except as may be necessary in the usual course of business or for the necessities of life. You are to notify the other party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the Temporary Restraining Order is in effect;
- (2) Restrained from molesting or disturbing the peace of the other party;
- (3) Restrained from removing any minor child of the parties from the state without the written consent of the other party or an order of the court; and
- (4) Restrained from making any changes to any insurance coverage for the parties or any child of the parties without the written consent of the other party or an order of the court unless the change under the applicable insurance coverage increases the benefits, adds additional property, persons, or perils to be covered, or is required by the insurer.

## INITIAL CUSTODY ORDER

Pursuant to SDCL 25-4A-11 et seq., upon service of this Summons the attached South Dakota Parenting Guidelines (Form UJS-302) become an order of this court. Except as provided in SDCL § 33-6-10, any minor children of this marriage shall remain in the custody of the parent who has been the primary caregiver for the minor children for the majority of time in the twelve months preceding the filing of the Summons and Complaint with Minor Children, unless the parties otherwise agree. The guidelines are subject to any provision established by a South Dakota state court in the following: a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and an order in any other proceeding affecting child custody or support. SDCL 25-4A-14.

The attached guidelines apply and shall continue in effect unless the parties agree or the court otherwise orders. Imposition of these standard guidelines creates no presumption as to who may be awarded custody at any hearing. Per SDCL 25-4A-12, any agreement by the parties for visitation other than the standard guidelines must be in writing, signed by both parties, and filed with the court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan previously filed.

Per SDCL 25-4A-13, if either party objects to the implementation of the South Dakota Parenting Guidelines (Form UJS-302) as the initial custody arrangement, the objecting party shall file an objection with the Clerk of Court. The court shall order a hearing which shall be held not later than 30 days after the date of the objection. The court shall then issue its temporary custody and visitation order after considering the best interest of the child(ren) consistent with the provisions of SDCL 25-4-45.

**IF EITHER SPOUSE VIOLATES ANY OF THESE PROVISIONS, THAT SPOUSE MAY BE FOUND TO BE IN CONTEMPT OF COURT AND MAY BE ORDERED TO PAY COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO THE ATTORNEY FEES OF THE OTHER SPOUSE.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone No.

- **Forms and additional instructions are available at <https://ujs.sd.gov/> or the Clerk of Court Office.**

## INSTRUCTIONS & FORM FOR COMPLAINT (WITH CHILDREN)

**CAUTION: This form is designed for divorces with minor children where the physical custody (where the children live) is not in dispute. Disputed child custody cases are very complicated and very expensive. You are strongly advised to meet with and hire an attorney to protect your rights and interests in a disputed child custody case.**

**A Complaint is required to begin a divorce action. It tells your spouse (and the court) what you are asking for and why. This is merely the start of your divorce action. Please note that you are not divorced until a Judgment and Decree of Divorce has been signed by the Judge and filed with the clerk of court.**

- **Complete this form in black ink only!**
- This is a 4 page form. Complete the caption. **NOTE:** The “caption” is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case file number (ask the clerk of court if you don’t know). The caption is the same on every form.
- Answer or complete the paragraphs within the Complaint.
- Paragraphs 1 – 6: Self-Explanatory.
- Paragraph 7: The primary reason for a divorce, in uncontested situations, is irreconcilable differences (no fault by either party). You may wish to select an alternative reason in addition to irreconcilable differences. You are not, however, required to do so.

**Please understand that seeking a divorce primarily on the grounds other than irreconcilable differences is likely to result in a contested divorce which is both costly and complex. In those circumstances, you are strongly advised to meet with and hire an attorney to fully protect your interests.**

- Paragraph 8: Indicate the present number of minor children born to or adopted by the parties during your relationship / marriage. Indicate whether the Wife is pregnant and if so, what her due date is.
- Paragraph 9: Fill in the minor children’s names and dates of birth.
- Paragraph 10-12: For the Court to have the power to make custodial / parenting time (visitation) orders, certain information must be provided:
  10. For the past five years, indicate who the minor children have lived with, the county and state of residence and time periods at each residence. If the children have not lived with anyone but the parents, please write out in the lines provided: “With the parents only” and then simply provide



the county/state information for the past five years.

11. Indicate whether there have been any previous court hearings concerning the custody of the minor children. If so, indicate in which county, state and year those proceedings happened.
  12. Indicate whether anyone other than the parents have ever had legal custody (court-ordered) of any of the children.
- Paragraph 13: Choose between the 3 custody / parenting time (visitation) scenarios or fill in your own.
  - Paragraph 14: If you have minor children, a child support order is required. If you already have an order of support for the children, please attach a copy of the order to this Complaint.
  - Paragraph 15: Check whether you are requesting that one of the parties be ordered to provide health insurance for the minor children and if so, circle which party.
  - Paragraph 16: Check whether you would like daycare expenses of the minor children divided between the parties.
  - Paragraph 17: Check “yes” if you have marital property and debts that need to be divided between you. Check “no” if you did not acquire any marital property or debt during your marriage.
  - Paragraph 18: Check whether you are seeking alimony.

**In the “Prayer for Relief” (the Section starting with “Wherefore”):**

Review the paragraphs in this section. This is the section where you are telling the Court what you want. You do not need to do anything unless one of the parties is seeking a former name restored, which is in Paragraph 3.

Paragraph 1: You do not need to write anything. This paragraph tells the court that you are asking for a divorce from your spouse.

Paragraph 2: You do not need to write anything. This paragraph tells the court that you are asking the court to equitably divide your property and debts.

Paragraph 3: Indicate if either party wishes to have his/her former last name restored. Circle which party wants their former name restored. Enter the first, middle and last name (former name) of that party. Insert that party’s date of birth.

Paragraph 4-9: You do not need to write anything. These paragraphs tell the court that you are requesting the additional relief requested in your Complaint as well as any other relief that is equitable and just.

- **You must sign and date the Complaint in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**

**Verification Section:**

- **Although this section needs to be completed, do not fill out the verification until you are in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**

**WARNING: By signing your name, you are telling the court that you are telling the truth and that**

**you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be charged with a crime for not telling the truth.**

- Make at least two photocopies of the signed Complaint with Minor Children; one for you and one to be served on your spouse. The original copy must be filed with the Clerk of Courts.

### **South Dakota Parenting Classes**

Effective September 1<sup>st</sup> Supreme Court Rule 22-09 requires that the parties to any action involving issues of child custody or parenting time are required to complete a court-approved course to educate the parents on the impact these proceedings can have on the involved children. More information on this can be found here: [Parenting Education \(sd.gov\)](http://sd.gov)

<p style="text-align: right;">_____ Plaintiff</p> <p style="text-align: center;">vs</p> <p style="text-align: left;">_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>COMPLAINT (WITH MINOR CHILDREN)</b></p>
--	---

1. Plaintiff's full legal name is \_\_\_\_\_ and his/her date of birth is \_\_\_\_\_.
2. Plaintiff is a resident of \_\_\_\_\_ County, State of \_\_\_\_\_.
3. Defendant's full legal name is \_\_\_\_\_ and his/her date of birth is \_\_\_\_\_.
4. Defendant is a resident of \_\_\_\_\_ County, State of \_\_\_\_\_.
5. Plaintiff and Defendant were married on \_\_\_\_\_ (date) in \_\_\_\_\_ (city and state). If the parties are living apart, the date upon which they began to do so is \_\_\_\_\_.
6. Is Plaintiff an active duty member of the armed forces? Yes \_\_\_\_\_  
No \_\_\_\_\_

Is Defendant an active duty member of the armed forces? Yes \_\_\_\_\_  
No \_\_\_\_\_

7. Irreconcilable differences have arisen between the Plaintiff and Defendant which necessitates the dissolution of the marriage. Alternatively, further grounds for dissolution of marriage exist under SDCL 25-4-2, subsection (Unless both parties agree the grounds, checking one of these grounds will require a hearing and you will need to provide proof to support your grounds):
  - \_\_\_ (1) Adultery;
  - \_\_\_ (2) Extreme cruelty;
  - \_\_\_ (3) Willful desertion;
  - \_\_\_ (4) Willful neglect;
  - \_\_\_ (5) Habitual intemperance; or
  - \_\_\_ (6) Conviction of felony.

8. We have \_\_\_\_\_ minor child(ren) which have been born to or adopted by the parties. One party is / is not (*circle one*) pregnant. If one spouse is pregnant, her due date is \_\_\_\_\_.

9. Those minor children's names and dates of birth are:

_____	_____
_____	_____
_____	_____
_____	_____

10. During the past five years the children have lived with the following persons at the times and places indicated below:

<u>Name of Person Living With</u>	<u>County/State</u>	<u>Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. There have / have not (*circle one*) been prior court proceedings regarding the custody of the children. If so, that action took place in \_\_\_\_\_ County, \_\_\_\_\_ State in the year \_\_\_\_\_. **Attach all orders regarding custody of minor children.**

12. Other than the parties, no one has ever had legal custody of any of these children except \_\_\_\_\_ (*if not applicable, write "none"*). **Attach all orders regarding custody of minor children.**

13. Regarding custody, the Plaintiff alleges: (*Check one of the following*)

Both parties are fit and proper persons to share the joint legal custody of the child(ren) or children, with Plaintiff / Defendant (*circle one*) having primary physical custody, subject to reasonable visitation rights with Plaintiff / Defendant (*circle one*); or

Plaintiff / Defendant (*circle one*) is the fit and proper persons to have sole legal and physical custody of the minor child(ren), subject to visitation with the Plaintiff/ Defendant (*circle one*) as follows: \_\_\_\_\_

\_\_\_\_\_ ; or

Both parties are fit and proper persons to share the joint legal and physical custody of the minor child(ren), with the parents sharing the duties and responsibilities of parenting the child(ren), the child(ren) residing no less than 180 nights per calendar year in each parent's home and the parents dividing the expenses of the child(ren) in

proportion to their incomes; or

Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

14. Plaintiff acknowledges that in South Dakota an order for child support must be entered.

If a child support order already exists, please indicate the case number here and attach a copy of it to this Complaint: \_\_\_\_\_

(Even if the Plaintiff is the non-custodial parent, he/she can still request that a child support order be entered).

15. Plaintiff requests that the Plaintiff / Defendant (*circle one*) be ordered to provide health insurance for the minor child(ren) with the uncovered medical expenses, including the premium attributable to the minor child(ren), being allocated between the parties in proportion to their incomes. Yes \_\_\_\_\_ No \_\_\_\_\_

16. Plaintiff requests that the daycare expenses of the minor child(ren) be allocated between the parties. Yes \_\_\_\_\_ No \_\_\_\_\_

17. The parties have accumulated property and debts during the course of the marriage which must be equitably divided. Yes \_\_\_\_\_ No \_\_\_\_\_

18. Plaintiff seeks spousal support (alimony). Yes \_\_\_\_\_ No \_\_\_\_\_

**WHEREFORE,** Plaintiff prays for Judgment as follows:

1. For a Judgment and Decree of Divorce dissolving the marriage of the parties;
2. For an equitable division of the marital property and debts;
3. That Plaintiff's / Defendant's (*circle one*) last name be restored to: \_\_\_\_\_ . Date of birth: \_\_\_\_\_ ;
4. That custody and visitation of the minor child(ren) be established as set forth above;
5. That an order for child support be established if one does not already exist;
6. That health insurance for the minor child(ren) be addressed, if requested above;
7. That daycare expenses for the minor child(ren) be allocated between the parties, if requested above;

- 8. For alimony, if requested above; and
- 9. For such other and further relief as may be equitable and just.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Print Plaintiff's name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone Number

STATE OF SOUTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

**VERIFICATION**

Plaintiff, being first duly sworn, deposes and states that they verify the fact expressed within the Complaint (With Minor Children) are true.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature  
(Date and sign in front of Notary Public/Clerk.)

\_\_\_\_\_  
Notary Public/Clerk of Court  
If Notary, my commission expires:

\_\_\_\_\_  
(SEAL)

## INSTRUCTIONS FOR FINANCIAL AFFIDAVIT & FORM

The Financial Affidavit is a sworn statement about the financial situation of the party completing the form. It is meant to give the judge and the parties accurate information about the property and debts involved in your case. The values used should be as of the day the party completes the Financial Affidavit.

- **Complete this form in black or blue ink only!**
- Complete the caption (the top portion of the form). **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the Clerk if you do not know), name of plaintiff, name of defendant and case filing number (ask the Clerk if you do not know). The caption will be the same on every form you fill out.
- Fill in the personal information in paragraphs (1)-(25). Use the information from your last two tax returns and your most current pay check stub, if you have them, to help you. **If you do not know an answer, then place a question mark (“?”) in the blank.** If you **know for certain** that you don't have or receive the item listed, then enter a zero (0).
- Fill in the blanks for sections I, II, and III. Values should be an actual amount (if known) or an estimate of what the property is worth. If you do not have or receive the item listed, enter a zero (0).
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**

**WARNING: By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be charged with a crime for not telling the truth.**

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>FINANCIAL AFFIDAVIT</b></p>
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I, \_\_\_\_\_ (Name of party filling out this affidavit), hereby swear under oath and under penalty of law that the following is true.

- (1) My mailing address is \_\_\_\_\_
- (2) My telephone number is ( ) \_\_\_\_\_
- (3) I am (check one) \_\_\_\_\_ EMPLOYED \_\_\_\_\_ UNEMPLOYED \_\_\_\_\_ SELF-EMPLOYED
- (4) (If employed) my **monthly** gross pay is: \$ \_\_\_\_\_.
- (5) Monthly gain or profit from a business or profession (self-employment):  
\$ \_\_\_\_\_.
- (6) Pension, retirement, disability, veterans, social security or insurance payments received regularly: \$ \_\_\_\_\_ per \_\_\_\_\_.
- (7) Interest, dividends, rentals, royalties or other gains: \$ \_\_\_\_\_ per \_\_\_\_\_.
- (8) Gain from sale, trade or conversion of capital assets: \$ \_\_\_\_\_.
- (9) Unemployment insurance and workers compensation benefits: \$ \_\_\_\_\_ per \_\_\_\_\_.
- (10) Benefit in lieu of compensation including but not limited to military pay allowances:  
\_\_\_\_\_ per \_\_\_\_\_.
- (11) Other income (including spousal support received).  
Explain: \_\_\_\_\_.  
\$ \_\_\_\_\_ per \_\_\_\_\_.

**TOTAL GROSS MONTHLY INCOME (Add 4-11):**

**\$ \_\_\_\_\_**

- (12) Income tax based on one withholding allowance for a single taxpayer (not actual number of dependents): \$ \_\_\_\_\_.
- (13) Social Security and Medicare taxes withheld from wages or salary: \$ \_\_\_\_\_.
- (14) Contributions to an IRS qualified retirement plan not exceeding 10% of gross income:  
\$ \_\_\_\_\_.
- (15) Unreimbursed employee business expenses (Attach IRS form 2106):  
\$ \_\_\_\_\_.
- (16) Payments made on other support orders OTHER THAN FOR CHILDREN IN THIS PROCEEDING (Attach court order and evidence of payments.):  
\$ \_\_\_\_\_.
- (17) Payments made for spousal support: \$ \_\_\_\_\_.



**TOTAL DEDUCTIONS (Add 12-18): \$ \_\_\_\_\_**  
**NET MONTHLY INCOME (SUBTRACT TOTAL DEDUCTIONS FROM GROSS MONTHLY INCOME): \$ \_\_\_\_\_**

- (18) My total gross income before deductions for the previous year was:  
\$ \_\_\_\_\_.
- (19) My total gross income before deductions for two years ago was \$ \_\_\_\_\_.
- (20) Including myself, I have the following number of dependents: \_\_\_\_\_.
- (21) Do you have health insurance available for dependents through your employer?  
\_\_\_\_\_.

(22) If you provide medical or dental insurance for your child(ren), please complete the following:  
Name of the Health and/or Dental Insurance Company:  
\_\_\_\_\_.

Total monthly cost for the employee only:

\$ \_\_\_\_\_.

Total monthly cost for the employee and child(ren):

\$ \_\_\_\_\_.

Persons covered under the policy of insurance:  
\_\_\_\_\_  
\_\_\_\_\_.

(23) Do you incur child care costs as result of employment, job search or training or education necessary to obtain a job or enhance earning potential?  
\_\_\_\_\_.

**If so, please complete the following:**

Name and address of child care provider:  
\_\_\_\_\_  
\_\_\_\_\_.

The name(s) of the child(ren) for whom child care is provided:  
\_\_\_\_\_  
\_\_\_\_\_.

How many hours per week is child care being provided?  
\_\_\_\_\_.

Cost of Child Care: Monthly: \$ \_\_\_\_\_ Weekly: \$ \_\_\_\_\_ Hourly:

\$ \_\_\_\_\_.

List the costs, per month, of the child care expenses incurred for the past six months:  
\_\_\_\_\_  
\_\_\_\_\_.

Do you receive any state assistance for child care? \_\_\_\_\_ If so, how much?  
\_\_\_\_\_.

Do you claim the Federal Child Care Tax Credit? \_\_\_\_\_.

(24) Enter the amount of Social Security or Veteran's Benefits provided to a child(ren) of the parties due to your retirement, disability or other eligibility: \$ \_\_\_\_\_  
Which parent receives the payment for the child? \_\_\_\_\_

(25) The following amounts accurately represent my assets and liability:

**1. ASSETS (things you own or are buying)**

a. CASH (on hand or in banks):

\$ \_\_\_\_\_

b. ACCOUNTS and NOTES RECEIVABLE (IOU's and other money payable to me):

\$ \_\_\_\_\_

c. INVESTMENTS (stocks, bonds, savings bond, CD's, money market, stock options, etc.):

\$ \_\_\_\_\_

d. RETIREMENT ACCOUNT (account balance):

\$ \_\_\_\_\_

e. REAL ESTATE (house, land, tribal lease land, rental property, etc.):

\$ \_\_\_\_\_

f. AUTOMOBILE(S) make, model, year: \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

g. RECREATIONAL VEHICLES (boats, campers, ATV's, etc.):

\$ \_\_\_\_\_

h. HOUSEHOLD GOODS (furniture, appliances, TV, stereo, etc.):

\$ \_\_\_\_\_

i. SPORTING EQUIPMENT (hunting/fishing, camping, boating, etc.):

\$ \_\_\_\_\_

j. JEWELRY:

\$ \_\_\_\_\_

k. TOOLS, SHOP EQUIPMENT:

\$ \_\_\_\_\_

l. VALUE OF BUSINESS:

\$ \_\_\_\_\_

m. OTHER PERSONAL PROPERTY (tools, sports equipment, etc.):

\$ \_\_\_\_\_

n. ANY OTHER ASSETS (anything else I could sell or borrow money on):

\$ \_\_\_\_\_

**TOTAL VALUE OF ASSETS: \$ \_\_\_\_\_**

**2. LIABILITIES (money that you owe)**

a. Our regular monthly expenses are: (housing, utilities, food, insurance, etc.).....

\$ \_\_\_\_\_

b. DEBTS (vehicle loans, mortgages, credit cards, student loans, medical bills, personal loans, etc.):

I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_

I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_

I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_  
 I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_  
 I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_  
 I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_  
 I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_  
 I owe \_\_\_\_\_ this amount: \$ \_\_\_\_\_

**TOTAL LIABILITIES \$ \_\_\_\_\_**

**3. ANTICIPATED INCOME (money or property you are expecting)**

a. Total monies or income from sale of house or land, gifts, inheritance, allotments, trust funds, lease money,

etc.....\$ \_\_\_\_\_

When is the money/income expected? \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Signature of Person Filling out this Affidavit  
*(Sign in front of notary public or clerk of courts.)*

Sworn/affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public\Clerk of Courts

If notary, My Commission Expires \_\_\_\_\_

(SEAL)

**IF THIS IS A DIVORCE WITH MINOR CHILDREN**

- You must complete the child support calculation. The DSS calculator is found at <https://apps.sd.gov/SS17pc02cal/Calculator.aspx>; and
- **Attach your calculation of child support.**

# SOUTH DAKOTA PARENTING GUIDELINES



Prepared by the 2021 South Dakota  
Commission on Parenting Guidelines

**The South Dakota Parenting Guidelines are located on the  
South Dakota Legal Self-Help Center found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov)**

**For more information, contact:**

South Dakota Unified Judicial System  
State Court Administrator's Office  
500 E. Capitol Avenue  
Pierre, SD 57501  
605-773-3474

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# SOUTH DAKOTA PARENTING GUIDELINES

## **Enforcement.**

These Guidelines are required to be served with the Summons and Complaint in a divorce, paternity action or any other custody action or proceeding. See <https://ujslawhelp.sd.gov/onlineforms.aspx> under divorce or paternity actions for instructions on how to initiate an action (service of summons).

If the parents are able to agree to a schedule other than the guidelines, these Guidelines should be used as a *minimum* direction in creating the parenting time plan. Parents should agree to parenting times that they find reasonable and in the best interest of their children and the Parenting Guidelines are not intended to prevent such agreements.

**If the parents are unable to agree on a parenting plan, these Guidelines become mandatory as the parenting plan and are enforceable as a court order upon initiation of a divorce or court action involving custody.** SDCL 25-4A-11. If you disagree with the use of these Guidelines as your parenting time plan, either parent has the right to object. Your written objection shall be filed with the Clerk. After it is filed, a hearing will be held and the Judge will determine your parenting time schedule. Instructions and this objection form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>.

Instructions and forms regarding enforcement can be found at <https://ujslawhelp.sd.gov/enforcement.aspx>.

## **Guideline 1. For Parents Who Have Children Under Age 5.**

### **1.1. Children Under Age 5 Generally.**

- O Newborns (birth to 3 months) and infants (3 – 6 months) have a great need for continuous contact with their primary caregiver, but also frequent contact with both parents who provide a sense of security, nurturing and predictability.
- O Generally, overnights for very young children is not recommended unless the parents are both very closely attached to the children, are able to personally provide primary care, the children are adaptable, and the parents are cooperative.
- O Older children are able to tolerate more and longer separations from one parent or the other.

The following Guidelines for children under age 5 are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit the children's individual circumstances.

**1.2. Birth until 3 Months.** Three, 2-hour parenting time periods per week and one weekend parenting time period for 6 hours. In situations where both parents have been engaged in an ongoing caregiving

## SOUTH DAKOTA PARENTING GUIDELINES

routine with a nursing child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the child and maintain stability for the child. If applicable, breastfeeding shall be accommodated, but the parents must cooperate in working out alternatives. See 1.8 below.

**1.3. 3 – 6 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting plans are recommended:

- (1) Three, 3-hour custodial periods per week and one weekend day for 6 hours. If applicable, breast feeding shall be accommodated but the parents must cooperate in working out alternatives; or
- (2) Three, 3-hour custodial periods per week and one overnight on a weekend not to exceed 18 hours, if the parent is capable of personally providing primary care. See exceptions in Section 1.8 below; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.4. 6 – 12 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 4-hour parenting time periods per week and one weekend day for 6 hours; or
- (2) Three, 4-hour parenting time periods per week and one overnight on a weekend not to exceed 18 hours, if the child is not breastfeeding and the parent is capable of personally providing primary care; or
- (3) Children spend time in alternate homes, but spends significantly more time in one parent's home and no more than 1-2 overnights spaced regularly throughout the week at the other parent's home; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.5. 12 – 36 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 8-hour parenting time periods per week on a predictable schedule; or
- (2) Three, 8-hour parenting time periods per week on a predictable schedule and one overnight per week not to exceed 18 hours; or

## SOUTH DAKOTA PARENTING GUIDELINES

- (3) Children spends time in alternate homes, but with significantly more time in one parent's home with 1-2 overnights spaced regularly throughout the week. This arrangement requires adaptable children; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with the children (nursing or otherwise), overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.6. 3 Years – 5 Years.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) One overnight parenting time period not to exceed 24 hours and two additional 8-hour parenting time periods each week, separate from the overnight, with the children returning to the other parent's home at least 1 hour before bedtime; or
- (2) Two to three overnights at one home, spaced throughout the week, the remaining time at the other parent's home. This arrangement requires adaptable children; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with the children, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

If the parents cannot agree on which provision shall apply in sections 1.2 through 1.6, the parties shall use option 1 until further order of the court. Absent special circumstances as determined by the court, parenting time shall not decrease from one age category to the next.

**1.7. Children in Day Care.** In families where children are in day care before and/or after parental separation, the children may be able to tolerate more time with each parent earlier than their specific age group indicates above because the children are accustomed to separations from both parents.

**1.8. Breastfeeding Children.** – Parents must be sensitive to the special needs of breastfeeding children. Children's basic sleeping, feeding, and waking cycles should be maintained to limit disruption in the children's routine. Forcibly changing these routines due to the upheaval of parental disagreement is detrimental to the physical health and emotional well-being of the children. On the other hand, it is important that the children be able to bond with both parents.

- a. For children being exclusively breastfed, the nursing child can still have frequent parenting time with the other parent. The amount of time will be guided by/subject to the infant's feeding schedule, progressing to more time as the child grows older. Both parents should be mindful that a feeding may occur, and the child may return to time with the other parent after the feeding.

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- b. Where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain stability for the children.
- c. If the other parent has been caring for the children overnight or for twenty-four hour periods while the nursing mother sleeps or works, that arrangement should/shall continue.
- d. A mother may not use breastfeeding to deprive the other parent of time with the children. If, for example, a nursing mother uses day care or a babysitter for the children, the same accommodations (i.e., bottle feeding with breast milk or formula, or increased time between breast feeding sessions) used with the day care provider or babysitter will be used with the other parent, if the other parent is capable of personally providing the same caregiving.

**1.9. Holidays.** For children aged 0-5 years, when the parents live and/or celebrate the holiday in the same or a nearby community, the parents shall alternate the following holidays in the chart below. Prior to a child's 5th birthday, holiday parenting time shall not exceed the longest period of parenting time currently being exercised and shall be scheduled by the parent exercising holiday time. If the parents cannot otherwise agree, the holiday time shall be exercised within the time frames provided in the chart below not to exceed the longest period of parenting time currently being exercised. It is recommended that the parents communicate two weeks in advance about who is exercising what time period for the holidays set forth below. Parenting time, however, shall not be withheld solely for failure to abide by this two-week recommendation.

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Martin Luther King, Jr. Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
President's Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Easter weekend	8:00 a.m. Friday – 8:00 a.m. Monday	Parent 2	Parent 1
Mother's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 1
Memorial Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Juneteenth (6/19)	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 2
Father's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 2	Parent 2
4 <sup>th</sup> of July	5:00 p.m. July 3rd – 5:00 p.m. July 5th	Parent 1	Parent 2
Labor Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Native American Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Halloween	3:00 p.m. – 8:00 p.m.	Parent 1	Parent 2
Thanksgiving	8:00 a.m. Thursday – 5:00 p.m. Sunday	Parent 2	Parent 1



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Christmas Eve	8:00 a.m. Christmas Eve – 8:00 a.m. Christmas Day	Parent 2	Parent 1
Christmas Day	8:00 a.m. Christmas Day – 8:00 a.m. December 26th	Parent 1	Parent 2
Child’s Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 1
Parent 2’s Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 2
Parent 1’s Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 1	Parent 1

**1.10. Vacation With Children 3 – 5 Years Old.** Upon 30 days advance written notice (by mail, email or text message), each parent is entitled to two separate periods of uninterrupted time for up to 5 days each with their children each year, not to conflict with the other parent’s holiday parenting time. Parents are encouraged to coordinate vacation plans. The parents shall consider extending the 5 day time periods to 7 days if the children are adaptable and accustomed to spending time with both parents.

**1.11. Long-Distance Parenting.** When substantial distance between the parents exists, the ability to exercise these Guidelines is compromised. The parents will need to create a developmentally appropriate parenting plan for their unique situation. When parenting time is unable to be frequent, parents are encouraged to use video/audio contact to build and/or maintain the bond between the children and parent who lives afar.

### **Guideline 2. For Parents Who Have Children Age 5 and Older And Reside No More Than 200 Miles Apart.**

**2.1. Weekends.** In most cases, it is a positive experience for the children to have both parents involved in taking the children to and from school. Parenting time shall consist of alternate weekends starting Friday upon the release of school or 3:15 p.m., whichever is applicable, and continuing until the return to school Monday or 8:00 a.m., whichever is applicable. Parenting time shall be an equivalent period of time if a parent is unavailable on weekends and the children do not miss school.

## SOUTH DAKOTA PARENTING GUIDELINES

**2.2. Mid-Week.** If time and distance allow, parenting time shall include one mid-week overnight every week, in addition to the weekends in 2.1 above, with the children. If the parents cannot otherwise agree, this mid-week time shall be on Wednesdays and shall start when the children are released from school or at 3:15 p.m., whichever is applicable, and concludes when the children are returned to school the next day or at 8:00 a.m., whichever is applicable. All transportation for the midweek parenting time is the responsibility of the parent exercising the parenting time.

**2.3. Summer Break.** The children shall be with each parent for one-half of the school summer break. Summer break begins the day after school is released and ends the day before school commences. The parent with whom the children reside the majority of the time during the school year has priority to have the children the week before school resumes, which counts as part of that parent’s summer break. At the option of the other parent, his/her parenting time during summer break may be consecutive or it may be split into 2 or more blocks of time. This parent shall provide a minimum of 30 days advance notice of the dates selected.

If the children go to summer school and it is impossible for a parent to schedule time other than during summer school, the parent may elect to take the time when the children are in summer school and transport the children to the summer school sessions at the children’s school or an equivalent summer school session in that parent’s community.

The parent with whom the children reside for the majority of the school year shall have the weekend before the beginning and the weekend after the end of the other parent’s summer period, regardless of whose weekend it may be. This weekend time will not be made up.

During any summer vacation parenting times of three or more consecutive weeks, the parent exercising parenting time shall arrange for a mutually convenient 48-hour continuous period of time for the other parent to spend with the children.

**2.4. Holidays.** The following chart shows the allocation of the holidays between parents. School breaks and release times may be different from school to school and district to district. The school calendar is published on your children’s school’s website before each school year starts. It is important to know these dates / times as they pertain to your children.

Holiday / Special Event	Details / Times	Even-Numbered Years	Odd-Numbered Years
Martin Luther King Jr. Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
President’s Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2

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Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Mother's Day	Starts at 8:00 a.m. on Mother's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 1	Parent 1
Memorial Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Juneteenth	Starts at 8:00 a.m. on 6/19 and ends at 8:00 a.m. on 6/20	Parent 1	Parent 2
Father's Day	Starts at 8:00 a.m. on Father's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 2	Parent 2
4 <sup>th</sup> of July	Begins July 3 at 5:00 p.m. and ends July 5 at 5:00 p.m.	Parent 1	Parent 2
Labor Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Native American Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Halloween	Starts on 10/31 when school releases for the day or 3:15 p.m., whichever is applicable, and concludes on 11/01 when school resumes or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Thanksgiving weekend	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Christmas Eve	Starts on 12/23 at 8:00 a.m. and concludes on 12/25 at 8:00 a.m.	Parent 2	Parent 1
Christmas Day	Starts on 12/25 at 8:00 a.m. and concludes on 12/27 at 8:00 a.m.	Parent 1	Parent 2
1 <sup>st</sup> half of winter break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 1	Parent 2
2 <sup>nd</sup> half of winter break, including New Year's holiday	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 2	Parent 1

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Children’s Birthdays	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before); parenting time shall be with all of the children not just the one who has the birthday.	Parent 2	Parent 1
Parent 2’s Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 2	Parent 2
Parent 1’s Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 1	Parent 1

**2.5. Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regularly scheduled weekend time, the holiday takes precedence. Unless mutually agreed in writing, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. This may result in one parent having the children for three weekends in a row; however, neither parent shall have the children for more than 3 weekends in a row.

**2.6. Parent’s Vacation with Children Age 5 and Older.** Each parent is entitled to a vacation with the children totaling up to 14 days, with 7 days being the most that may be exercised at one time. When possible, each parent shall provide the other with 30 days advance notice of their intent to utilize their vacation time. Parents are encouraged to coordinate vacation plans. In the event there is a dispute, the mother gets priority in choosing her vacation periods first in even-numbered years and the father gets priority in choosing his vacation periods first in odd-numbered years.

**2.8. Precedence.** The allocation of holidays listed in the above chart shall take precedence over vacations. In other words, a parent cannot exercise their vacation with the children when it is the other parent’s holiday. But vacations shall take precedence over the regular parenting time schedule.

**2.9. Notice of Canceled Time With the Children.** Whenever possible, each parent shall give a minimum of three days’ notice of intent not to exercise all or part of the scheduled time with the children. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the explanation, shall be provided to the other parent.

**2.10. Pick Up and Return of Children.** When the parents live in the same area/community, the responsibility for picking up and returning the children shall be shared. The parent who receives the children for his/her parenting time will pick the children up from the other parent. Both parents have an obligation to be punctual and to arrive at the agreed upon time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

# SOUTH DAKOTA PARENTING GUIDELINES

## Guideline 3. For Parents Who Have Children Age 5 and Older and Reside More Than 200 Miles Apart.

**3.1. Holidays.** Parents who reside more than 200 miles apart shall exercise the following holidays as follows:

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Thanksgiving	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Winter Break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school.	Parent 1	Parent 2

**3.2. Summer Break.** The parent with whom the children do not reside during the school year shall have the children for the children's summer break as follows: summer break begins 3 days after school is released and ends 7 days before school recommences. This allows 10 days of parenting time during the summer with the parent with whom the children reside during the school year. Additionally, the parent with whom the children reside during the school year shall be entitled to exercise a 48 hour period of parenting time with the children every three weeks during the summer break; to be exercised at the sole expense of the parent with whom the children reside during the school year.

**3.3. Priority of Summer Time With Parent.** Parenting time in the summer with the parent who lives more than 200 miles away takes precedence over summer activities (such as sports) when the parent's time cannot be reasonably scheduled around such events. Even so, the conscientious parent will often be able to enroll the children in a similar activity in the parent's community. When each child reaches an age and maturity where activities are very important to them, the parents should reach an agreement that works best for the child.

**3.4. Notice.** At least sixty (60) days' notice (recommended to be by mail, email, or text message) shall be given by the parent who lives more than 200 miles away from the children of the date for commencing extended summer parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to

## SOUTH DAKOTA PARENTING GUIDELINES

give the precise number of days' notice does not entitle the parent with primary residence of the children the right to deny the other parent parenting time with the children.

**3.5. Additional Time With the Parent Who Lives More Than 200 Miles Away.** The parent who resides more than 200 miles away from the children shall have the following parenting time:

- o If the parent who lives more than 200 miles away wants to travel, at his/her sole expense, to visit with his/her children, this parenting time shall be accommodated for a reasonable time period of no less than 48 hours. However, this is not intended to be exercised more than every other weekend;
- o Where distance and finances permit, additional parenting time for the parent residing more than 200 miles away from the children, such as holiday weekends or special events, is encouraged. Parents are encouraged to reference the holiday schedules set forth in Section 2.4 when determining the allocation and duration of other holidays; and
- o When the parent who lives 200 miles away is in the area where the children reside, or the children are in the area where this parent resides, liberal time with the children based on the circumstances must be allowed. Circumstances will vary and may only allow for a quick visit or may allow for overnight parenting time.

The children may miss some school to spend time with the parent who lives 200 miles away, so long as it does not substantially impair the children's academic progress. However, additional time with the parent who lives more than 200 miles away from the child shall not interfere with the alternating holiday schedule set forth in Section 3.1 herein.

Parents are encouraged to communicate with each other and cooperate in creating additional parenting times for the children. If the additional parenting time exceeds 4 hours, the parent who lives more than 200 miles away shall provide as much advance notice as possible, preferably 30 days. Failure to provide notice shall not be the sole reason for denial of additional parenting time.

### **Guideline 4. General Rules Applicable to All Parents**

**4.1. Rules of Conduct.** A parent shall always avoid speaking negatively about the other parent and must firmly discourage such conduct by relatives or friends. Each parent should speak in positive terms about the other parent in the presence of the children. Each parent shall encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent.

**4.2. Relatives.** Children will usually benefit from continued contact with all relatives on both sides of the family. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit the paternal relatives

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during times when the children are with their father and the maternal relatives during times when they are with their mother. This may include allowing the children to spend time with these relatives even when the parent is not present.

**4.3. Relocation.** Relocation is governed by South Dakota state law. See SDCL 25-4A-17. Instructions and forms on how to comply with the requirements surrounding relocation, as well as how to object to a parent's notice of relocation, can be found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov).

**4.4. Communication between Parents.** Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever possible and unless otherwise stated herein, all communication concerning the children must be conducted directly between the parents (i.e., in person, by telephone, email, text message, communication notebook, a designated third party or co-parenting tool). Absent an emergency, communication should not occur at a parent's place of employment.

**4.5. School and Medical Information.** Both parents shall keep the other parent informed with the name, address and telephone number of the school where each of their children attends and each parent is authorized to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the other parent. Each parent has an obligation to contact the school to ensure receipt of class schedules, school report cards, notices, etc. so that they can remain involved with their children's education. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Attendance at academic or disciplinary meetings pertaining to the minor children shall be limited to the parents and the respective school professional(s). Others may not attend such meetings without advance mutual parental agreement or court order.

Each parent shall immediately notify the other parent of any medical emergencies or serious illnesses of the children. Access to records and information pertaining to minor children, including, but not limited to, medical, dental, therapy, counseling, orthodontia and similar health care and school records must be made equally available to both parents. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If children are taking medications, both parents shall have access to a sufficient amount for their parenting time as well as the instructions.

The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card or copy thereof and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. Except in emergencies, the parent taking the children to a doctor, dentist or other provider not so approved or qualified may be required to pay the additional cost for that provider. However, when there is a change in insurance, which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration shall be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or the economic consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible for paying shall be promptly furnished with the bill, and where applicable, the explanation of benefits, by the other parent. The parents shall



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cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements unless previously paid by the other parent. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

**4.6. Extracurricular Activities.** Both parents shall consult the other parent prior to enrolling the children in any event that may affect the other parent's parenting time. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Both parents shall be provided access to the name of the coach, director, and organization providing the activity for each child along with their contact information. Both parents shall have the obligation to contact the activity director to ensure receipt of information such as practice schedules, games, parental participation, etc.

**4.7. Clothing.** In situations where the children reside primarily with one parent, that parent shall send an appropriate supply of children's clothing with the children for the other parent's parenting time. At the conclusion of his/her parenting time, this clothing shall be returned clean (when reasonably possible). Parents must advise, as far in advance as possible, of any special activities so that appropriate clothing for the children may be sent. It is recommended that both parents have some basic clothing available in their home to ensure that all of the children's basic needs are met.

**4.8. Withholding Support or Time with the Children.** Neither time with the children nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children generally have a right both to support and, time with both parents, neither of which is dependent upon the other. In other words, if the parent ordered to pay child support fails to do so, he/she is still entitled to their parenting time. Likewise, if one parent denies the other parent parenting time, child support payments must still be made.

**Forms and instructions on how to enforce your parenting time can be found on the South Dakota Legal Self-Help Center at <https://ujslawhelp.sd.gov/onlineforms.aspx>.**

**4.9. Adjustments in Parenting Plan.** Parents are expected to fairly modify the parenting plan as family necessities, illnesses, weather or commitments reasonably so require. The parents must work together in good faith to get any missed parenting time rescheduled to occur within a reasonable period of time, usually within 30 days. When possible, each parent must timely advise the other when scheduled parenting time with the children cannot be exercised.

**4.10. Children of Different Ages.** It usually makes sense for all the children to share the same schedule of parenting time. Having brothers or sisters along can be an important support for children. Because it is intended that parenting time with the children be a shared experience between siblings and, unless these Guidelines or a court order provides otherwise, all the children shall enjoy parenting time together. Parents shall consider the children's best interests when scheduling parenting time especially for newborns and infants who may have developmental needs that may prevent them from immediately experiencing the same schedule as their older siblings. Additionally, older teenagers' special needs for



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peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters.

**4.11. Communication with Children.** Unless prohibited by a court order, either parent may mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with the children at reasonable times and with reasonable frequency during those periods the children are with the other parent. The children may, of course, mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with either parent, at reasonable hours or with reasonable frequency.

- Parents are cautioned that communication between the parent and the children should not be so excessive as to interfere with the other parent's time, nor used to undermine the other parent's authority.
- During long vacations, the parent with whom the children are on vacation is required to make the children available for telephone calls with the other parent at least every three days.
- At all other times, the parent the children are with must not refuse to answer the other parents telephone calls or turn off their telephone in order to deny the other parent telephone contact.
- If a parent uses an answering machine or cell phone voicemail, messages left should be returned to that person as soon as possible.
- Parents should agree on a specified time for calls to the children so that the children will be made available no less than three days a week.
- Either parent may provide the children with a cell phone subject to each parent's ability to set restrictions in their home. A parent shall not prohibit contact between the children and the other parent; nor shall they impede the children's ability to contact the other parent during reasonable times and at a reasonable frequency.
- Communication between a parent and the children must not be censored, recorded, or monitored, absent a court order.
- Each parent shall have an unrestricted right to send cards, letters and/or packages to their children. The children shall also have the same right to receive and send items to their parents.

**4.12. Social Media.** Each parent shall have full access to monitor the social media accounts of the children, but neither shall open or read communications between the children and the other parent.

**4.13. Privacy of Residence.** A parent shall not enter the residence of the other parent except by express invitation, regardless of whether a parent retains a property interest in the residence. Unless otherwise indicated herein, the children shall be picked up and returned to the front entrance of the other parent's residence. The parent dropping off the children shall not leave until the children are safely inside the other parent's residence. Parents must refrain from surprise visits to the other parent's home.

**4.14. Refusal / Hesitation by Children.** Parents should always encourage the children to attend parenting time with the other parent absent circumstances outlined in the "Scope of Application" provision on page 3. Parents shall not deny parenting time with the other parent solely based on the refusal of the children.

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**4.15. Special Considerations for Adolescents.** While children never get to choose where they live, the parents should honestly and fairly consider their teenager’s wishes regarding time with a parent. Neither parent shall attempt to influence their teenager’s wishes on parenting time. Teenagers should explain the reason for their wishes directly to the affected parent, without intervention by the other parent.

**4.16. Daycare Providers.** When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

**4.17. Parents in the Armed Services.** When one or both parents are serving in the military, it is important to create a parenting time schedule that focuses on sharing the children when the parents live close to each other and allowing for temporary duty assignment (TDY) possibilities. Military families should also consider what parenting time would look like if TDY’s or overseas commitments were engaged requiring one parent to live more than 200 miles from the children. The residential parent shall support the children’s relationship with the other parent by having a consistent plan of communication with the military parent.

### **Legal Notice.**

These Guidelines do not provide legal opinions or legal advice and are not intended to serve as a substitute for the advice of licensed, legal professionals.

Laws and interpretations of laws change frequently, and the material contained in these Guidelines have important legal consequences. In using these Guidelines, parents are responsible for determining the applicability of any information contained in this document to their situation and are strongly encouraged to seek professional legal and other expert assistance in resolving their parenting time issues. Parents will often benefit from getting advice from mediators, counselors, therapists, parenting coordinators and lawyers to help them make a parenting time schedule.

### **Definitions.**

Any custody proceeding involving children is going to involve a determination of both legal and physical custody.

“Legal Custody” refers to the legal authority to make major decisions for your children. There are 2 options when it comes to legal custody:

Joint Legal Custody – “[B]oth parents retain full parental rights and responsibilities with respect to their child[ren] and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child[ren].” See SDCL 25-5-7.1.

Sole Legal Custody – one parent shall have the right and responsibility to make the decisions related to health, education and welfare of the children.

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“Physical Custody” refers to how parenting time is divided between 2 parties. Parents may agree on the amount of time the children spend with each parent. If parents do not agree, the parenting time schedule set forth herein shall remain in place until a court orders otherwise.

### **Shared Parenting.**

These Guidelines do not address shared parenting, which is defined as “a detailed shared parenting plan which provides that the children will reside no less than 180 nights per calendar year in each parent’s home and that the parents will share the duties and responsibilities of parenting the children and the expenses of the children in proportion to their incomes[.]” SDCL 25-7-6.27. If you are interested in this arrangement, you are strongly encouraged to consult with an attorney of your choosing. More information and sample schedules can be found at <https://ujslawhelp.sd.gov/>.

### **Scope of Application.**

**General.** These Guidelines are applicable to all custody situations, including divorces with minor children, paternity actions and cases involving joint legal custody where one parent has primary physical custody. These Guidelines are not applicable to situations where the court reasonably believes the children’s physical health or safety is in danger or the children’s emotional development could be significantly impaired. These situations may include, but are not limited to, the following:

- Family Violence (physical, verbal or otherwise);
- Substance Abuse;
- Mental Illness of Parent or Child;
- Risk of Flight with Children;
- Long Interruption of Contact Between Parent and Children;
- A Parent’s New Relationship;
- Religious & Cultural Holidays; or
- An Incarcerated Parent.

In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be used. The type of help that is needed in such cases is beyond the scope of these Guidelines.

A parent who believes one or more of the above situations exists should file an Objection to the Implementation of the South Dakota Parenting Guidelines (UJS Form 372). This form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>. The opposing parent should also file a response to this Objection and should appear at the hearing.

**Existing Parenting Time Orders.** Existing parenting time orders on the date of adoption of these revised Guidelines shall be enforced according to the parenting time guidelines that were in effect on the date the parenting time order was issued. Changes to the South Dakota Parenting Time Guidelines do not alone constitute good cause for modifying an existing parenting time order; however, a court or parties

## SOUTH DAKOTA PARENTING GUIDELINES

to a proceeding may refer to these Guidelines in requesting changes to their parenting time order after the effective date of the Guidelines.

**Protection Orders.** If a protection order has been established regarding the minor children, that order would prevail over these Guidelines, until a court specifically orders otherwise. If an active protection order prohibits contact between the parents or between one parent and the children, parents are cautioned that the parent who is the subject of the protection order will violate the order if he/she has contact with the other parent and makes agreements as suggested in these Guidelines without permission for contact from the court that issued the protection order.

### Additional Resources

There are several resources available to parents who need help in creating, enforcing or improving their parenting plan. Visit <https://ujslawhelp.sd.gov/> (under the “Parenting” tab) for additional information on mediators, parenting coordinators, co-parenting tools and counseling options.

Additional tips that parents should consider in order to keep the children the focus of the parenting time arrangements can be found in Appendix A.

## Tips to Stay Focused on the Children

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather continuing conflict between their parents before, during and after the divorce and/or separation. To minimize harm to the children, parents must agree on some basic rules to keep the children the focus of their parenting time arrangement.

Parents need to keep in mind that it is generally accepted that in most cases of divorce or separation:

1. Children of separated parents do best in both the short-term and the long-run when they feel loved and cared for by both parents;
2. Children generally do better when both parents have stable and meaningful involvement in their children's lives;
3. The strength of a parent's relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by time spent with the child (i.e. quality vs. quantity);
4. Each parent has different and valuable contributions to make to their children's development;
5. Children should have structured routine time (such as bedtime and doing homework) with each parent, as well as unstructured time (such as playing in the park);
6. Parents should help their children maintain positive existing relationships, routines and activities;
7. Children may find security in personal possessions, like a favorite stuffed animal or blanket. Children should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them; and
8. Parenting plans may need to be adjusted over time as the needs and circumstances of parents and children change.

Children are harmed by exposure to conflict between their parents. High conflict between parents increases children's anxiety and negatively impacts healthy child development. The following are guidelines to help you navigate your role in co-parenting your children:

1. Children shall not be put in a position to "choose" between the parents. Children must not be made to feel guilty about having a good time with the other parent;
2. Each parent should strive to show respect for the other parent;
3. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent;

4. Children shall not be expected to communicate messages between parents, regarding parenting time, financial matters or issues about which parents disagree;
5. Parents should exchange the children in a respectful manner;
6. A parent should consider allowing their children to attend important family celebrations and events with both sides of their family, even when the events occur on the other parent's parenting time;
7. Differences between the parent's homes may occur (i.e. daily routines, activities, and diet). Parents should remember these are merely "differences" and are not necessarily a "better" or "worse" practice;
8. Children need consistency in both homes (i.e. bed times, meal times, medications etc.);
9. If one parent has been significantly more involved with the care of the child before separation, that parent may need to help the other parent gain the skills and knowledge to care appropriately for the child and support the development of a positive relationship between the child and the other parent, unless there are legitimate concerns about the other parent's capacity to care for their child. Both parents will need to approach this transition in a cooperative manner.

Parenting plans made for infants and young children may need to change as children get older and start to attend school. Parenting plans designed to accommodate a parent's employment may need to be modified if parents change their employment or work schedule. It is important for parents to communicate effectively, discuss changes that they observe in their children with one another and be prepared to modify the plans consistent with the best interests of the children.

Each family needs to consider the age, temperament, previous caretaking arrangements and the child's relationship with each parent, as well as whether the child has special needs. It is important that parents are able to communicate about their children on a regular basis, whether that communication is written or verbal. Parents shall share information so that a child's experience, as he/she transitions between parents, is as smooth as possible.

## INSTRUCTIONS FOR SERVICE OF SUMMONS, COMPLAINT, & SOUTH DAKOTA PARENTING GUIDELINES (WITH MINOR CHILDREN),

To start the divorce, the Defendant must be served with copies the following documents (the originals are filed with the clerk of court:

1. Summons (With Minor Children). UJS-311;
2. South Dakota Parenting Guidelines, UJS-302; and
3. Complaint (With Minor Children), UJS-312.

**Note:** The General Instructions & Checklist for Divorce (With Minor Children), Form UJS-307B, should be served with these documents as well.

The most common ways to serve the Defendant are:

- In divorces where the parties are agreeable to the terms, the Defendant will often agree to accept service, avoiding the need to have a Sheriff or private process server serve them. This means the Plaintiff (you) may hand-deliver copies of the above itemized documents to the Defendant and the Defendant may sign the **Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (with Minor Children), UJS-317B**. The Defendant neither admits nor denies the contents of the documents; he/she merely admits that they received the documents on the specified date.
- The Plaintiff can also mail copies of the above itemized documents and a self-addressed, stamped envelope to the Defendant along with 2 copies of the **Notice and Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children), UJS-315B**. The Defendant then has 20 days in which to sign the Admission of Service and return it to the Plaintiff. Failure to do so may result in the Defendant having to reimburse you for the cost of service by the Sheriff or private process server.

Per SDCL 15-6-4(g)(5), the Plaintiff will also need to complete an **Affidavit of Mailing** when mailing copies to the Defendant. Keep a copy of the document for your file and file the original with the Clerk of Court.

- Finally, the Plaintiff can request that the sheriff's office or private process server serve the Defendant. Under this scenario, the Plaintiff delivers one full copy of the Summons, South Dakota Parenting Guidelines and Complaint (With Minor Children) to the sheriff's office along with the Defendant's current physical address, telephone number, place of employment and any other relevant information. Typically, the cost of service (the service fee and mileage reimbursement) is pre-paid. After service, the Sheriff or process server has their own form that he/she uses to prove service and that form is usually mailed to you. Make sure you make a copy of this form for yourself and **file the original with the clerk of court**.

**If you HAND-DELIVER the documents to the Defendant:**

Complete the Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (with Minor Children), UJS-317B:

- **Complete the form in black ink only!**
- Complete the caption. **Note:** The “caption” is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the clerk of court if you don’t know). The caption is the same on every form.
- The Defendant must fill in his/her full legal name in the body of the text.
- The Defendant must fill in the town, county and state of the place where he/she received the documents.
- The Defendant must fill in the date with the month, day and year he/she received the documents.
- The Defendant must complete the signature block with his/her signature, printed name, mailing address and telephone number.
- The Defendant should make a copy of the completed Admission for their own records and return the original document to the Plaintiff.
- Plaintiff should also make a copy their own records and must file the original Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint (With Minor Children) with the clerk of court.
- **The divorce may not be finalized until at least sixty (60) days have elapsed from the date the summons and complaint are served (not counting the day of service).**

**If you MAIL the documents to the Defendant:**

Complete the Notice and Admission of Service of Summons, South Dakota Parenting Guidelines and Complaint (With Minor Children), Form UJS-315B);

- **Complete the form in black or blue ink only!**
- Complete the “caption” on the first and last pages of UJS-315B. This information will be the same as on the Summons (with Minor Children) and Complaint with Minor Children.
- As the Plaintiff, sign and date the Notice and Admission of Admission of Service of Summons, SD Parenting Guidelines and Complaint with Minor Children (By Mail), including your address and telephone number.



- On the Affidavit of Mailing, fill in the date the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint (with Minor Children) were sent to the Defendant.
- Fill in the address of the Defendant where the copies of the documents were sent to the Defendant.
- Upon receipt, the Defendant must fill in their name on the Admission of Service of Summons, SD Parenting Guidelines and Complaint as well as the town, county and state of the place where they received the documents.
- The Defendant shall enter the date the copies of the Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children) were received and sign and date the Admission, including their mailing address and telephone number.
- The Defendant should make a copy of the completed Notice and Admission forms for their own records and return the original document to the Plaintiff in a self-addressed, stamped envelope.
- Upon receipt, Plaintiff should also make a copy of the document for their own records and then file the original forms - Notice and Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children) with the clerk of court.
- **The divorce may not be finalized until at least sixty (60) days have elapsed from the date the summons and complaint were served (not counting the day of service).**

STATE OF SOUTH DAKOTA  
COUNTY OF \_\_\_\_\_

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT AND ORDER ON COURT-APPROVED PARENTING COURSE</b></p> <p style="text-align: center;">(SDCL 25-4A-32)</p>
---	---

I, \_\_\_\_\_, Petitioner, hereby swear under oath and under penalty of law that  
*(Name of party filling out this affidavit)*

the following is true to the best of my knowledge and belief:

1. I am a party to the above-captioned action;
2. The above-captioned action involves (*check either or both*)  child custody /  parenting time issues, is not a protection order proceeding, and does not terminate parental rights.
3. I (*check a, b, or c*):

a. And the other party to the above-captioned action have completed a parenting course approved by the State Court Administrator's Office within the last five years, **with proof of completion (in a certificate or other official form) attached to this Affidavit.**

b. Seek to waive the course requirement for the following good cause (*check one*):

The other party has not responded within the required timeframe (is in default); OR

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

\_\_\_\_\_  
\_\_\_\_\_.

c. Seek to delay the course requirement until \_\_\_\_ days after the summons, petition,  
(Must be more than 60 days)  
or motion (*circle one*) is / was served for the following good cause: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

- 4. I understand that if the course requirement is waived or delayed by the Court, the Court may nevertheless order that I receive the course information in an alternative format.
- 5. I further understand that a final decree shall not be granted or a final order in this matter shall not be entered until both parties have complied with the parenting course requirement, unless the Court waives or delays participation in the course for good cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Petitioner's Printed Name

\_\_\_\_\_  
Petitioner's Mailing Address

\_\_\_\_\_  
City, State, & ZIP Code

\_\_\_\_\_  
Petitioner's Phone Number

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public: South Dakota

My commission expires:

(Seal)

**ORDER**

The Petitioner named above having moved the Court to enter its order to waive the parenting course requirement of the above captioned; the Court having reviewed and considered said affidavit; based upon the evidence presented, the Court determines that it is hereby

ORDERED that parenting course requirement by the Petitioner in the action herein is:

\_\_\_\_\_ Waived

\_\_\_\_\_ Not Waived

BY THE COURT:

\_\_\_\_\_  
Circuit Court Judge

ATTEST:

\_\_\_\_\_  
Clerk of Courts

BY: \_\_\_\_\_  
Deputy

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____</p> <p style="text-align: right;">Plaintiff</p> <p>vs</p> <p>_____</p> <p style="text-align: right;">Defendant</p>	<p>FILE NO: _____</p> <p><b>ADMISSION OF SERVICE OF SUMMONS, SD PARENTING GUIDELINES, AND COMPLAINT (WITH MINOR CHILDREN)</b></p> <p><b>(BY HAND DELIVERY)</b></p>
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I, \_\_\_\_\_, the above-named Defendant, admit receiving a copy of the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children in the above-captioned matter at:

\_\_\_\_\_ (city)  
 \_\_\_\_\_ (county)  
 \_\_\_\_\_ (state).

This Admission merely acknowledges receipt of the papers; I do not admit or deny any of the statements contained in those papers.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Notary Public/Clerk of Court  
 If Notary, my commission expires:

\_\_\_\_\_  
 (SEAL)

\_\_\_\_\_  
 Defendant's Signature  
*(Date and sign in front of Notary Public/Clerk.)*

Name (Print): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p><b>NOTICE AND ADMISSION OF SERVICE OF SUMMONS, SD PARENTING GUIDELINES, AND COMPLAINT (WITH MINOR CHILDREN)</b></p>
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**TO THE ABOVE NAMED DEFENDANT:** The enclosed Summons, Complaint, and South Dakota Parenting Guidelines (With Minor Children) are sent to you pursuant to SDCL § 15-6-4(i), as well as two (2) copies of this Notice and Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children) and a return envelope, postage prepaid, addressed to the Plaintiff.

You must complete the Admission of Service portion of this form and return the original to the sender within 20 days. In completing the form, you must fill in the town and state where you received the papers and sign and date the document. Failure to sign and return the original Admission of Service within 20 days after the date of mailing without good cause will result in the Court ordering you to pay the costs of personal service. SDCL 15-6-4(i).

After you complete and return this form, you must then respond to the complaint within 30 more days. If you fail to do so, judgment may be entered against you by default as requested in the complaint.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Plaintiff's Signature  
*(Date and sign in front of Notary Public/Clerk)*

\_\_\_\_\_  
 Print Plaintiff's Name

\_\_\_\_\_  
 Mailing Address

\_\_\_\_\_  
 City/State/Zip

\_\_\_\_\_  
 Phone No.

**AFFIDAVIT OF MAILING**

I, \_\_\_\_\_, being sworn, state that on  
*(Full legal name of Plaintiff)*

\_\_\_\_\_, 20\_\_\_\_, I sent the following documents:

- 1 copy of the Summons (With Minor Children);
- 1 copy of the South Dakota Parenting Guidelines;
- 1 copy of the Complaint (With Minor Children); and
- 2 copies of the Notice & Admission of Service of Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children)”;

by placing true and correct copies in an envelope addressed to:

\_\_\_\_\_ at \_\_\_\_\_  
Full legal name of Defendant Defendant’s mailing address

in the City of \_\_\_\_\_, State of \_\_\_\_\_,

Zip Code \_\_\_\_\_ and depositing the envelope, with sufficient postage, in the United States

Mail at \_\_\_\_\_.  
*(city and state mailed from)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff’s Signature  
*(Date and sign in front of Notary Public/Clerk)*

\_\_\_\_\_  
Print Plaintiff’s Name

Sworn/affirmed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Notary Public/Clerk of Court  
If Notary, my commission expires:

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
Phone No.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p><b>ADMISSION OF SERVICE OF SUMMONS, SD PARENTING GUIDELINES, AND COMPLAINT (WITH MINOR CHILDREN)</b></p>
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I, \_\_\_\_\_, admit receiving a copy of the Summons, South Dakota Parenting Guidelines, and Complaint (With Minor Children) in the above-captioned matter at \_\_\_\_\_ (city), \_\_\_\_\_ (county), \_\_\_\_\_ (state). This Admission merely acknowledges receipt of the papers on the date provided below; I do not admit or deny any of the statements contained in those papers.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Defendant's Signature  
*(Date and sign in front of Notary Public/Clerk)*

\_\_\_\_\_  
 Print Defendant's Name

Sworn/affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Mailing Address

\_\_\_\_\_  
 Notary Public/Clerk of Court  
 If Notary, my commission expires:

\_\_\_\_\_  
 City/State/Zip

\_\_\_\_\_  
 (SEAL)

\_\_\_\_\_  
 Phone No.



## Instructions for Answer & Forms

An Answer is a written response to the Complaint with Minor Children. This must be completed by the Defendant to protect the Defendant's rights. If the Defendant chooses to file an Answer, he/she must file the Answer with the Clerk of Courts and serve it on the Plaintiff within 30 days after Defendant is served with the Summons and Complaint (the date Defendant either signed the Admission of Service or the papers were delivered to the Defendant by the Sheriff or process server). There is a \$25 filing fee to file this responsive pleading. **If an Answer is not filed, the court may grant the Plaintiff everything requested in the Complaint and the judge may enter a Default Judgment & Decree of Divorce.**

- **Complete this form in black ink only!**
- Complete the top portion of the Answer (the "caption") just as it appears in the Summons and Complaint with Minor Children. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don't know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don't know). The caption is the same on every form.
- Answer or complete paragraphs 1-4. **You must respond to each and every paragraph of the Complaint with Minor Children. (You must Admit, Deny, Partially Admit or Deny, or state "I do not have enough information to respond to Paragraph number \_\_\_\_ of the Complaint.")**
- You must date and sign the Answer and provide your address and telephone number and complete the **Verification** portion. **But, do not sign the documents in either spot until you are in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**
- Make 2 photocopies of the Answer; one for your file and another to be served on the Plaintiff. The original must be filed with the Clerk of Court.

**WARNING: By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be prosecuted for not telling the truth.**

### Affidavit of Mailing

You must prove to the Court that you mailed the Answer to the Plaintiff. This is done by completing the Affidavit of Mailing, which is a statement sworn under oath that the Defendant actually mailed the Answer to the Plaintiff on the date indicated at the correct address with the correct postage.

- The Affidavit of Service by Mail may only be completed after the papers/documents listed are placed in the United States Mail.

- Complete the top portion of the Answer (the “caption”) just as it appears in the Summons and Complaint with Minor Children.
- Fill in the blanks as indicated on the Affidavit.
- Make a photocopy of the Affidavit for your file. The original will be filed with the Clerk of Courts.
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**

<p style="text-align: center;">_____ Plaintiff</p> <p style="text-align: center;">vs</p> <p style="text-align: center;">_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>ANSWER</b></p>
---	--

Defendant answers the Complaint as follows:

- I **AGREE** with the following paragraphs of the Complaint with Minor Children:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- I **DISAGREE** with the following paragraphs of the Complaint with Minor Children:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- I either **PARTIALLY Agree or Disagree** with the following paragraphs of the Complaint with Minor Children: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- I **DO NOT HAVE ENOUGH INFORMATION** to either agree or disagree with the following paragraphs of the Complaint with Minor Children: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*If you wish to explain your answers to the previous statements please use the space below. If you do not wish to explain your answers further, leave these spaces blank and sign the document; however make sure you sign before a notary.*

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Print Defendant's name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number



STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF MAILING ANSWER</b></p>
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I, \_\_\_\_\_, being sworn, state that on  
*(Full legal name of Defendant)*

\_\_\_\_\_, 20\_\_\_\_, I served the Answer on the Plaintiff by  
placing a true and correct copy of the document in an envelope addressed to:

\_\_\_\_\_ at \_\_\_\_\_  
*(Full legal name of Plaintiff)* *(Plaintiff's mailing address)*

in the City of \_\_\_\_\_, State of \_\_\_\_\_, Zip Code \_\_\_\_\_

and depositing the envelope, with sufficient postage, in the United States Mail at

\_\_\_\_\_.  
*(City and State mailed from)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Defendant  
**(Sign only in front of a Notary or Clerk of Courts)**

Printed name of Defendant: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Sworn/affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public/Clerk of Courts)

\_\_\_\_\_  
If Notary, my commission expires

(SEAL)

**Instructions for Stipulation and Settlement Agreement  
and Affidavit of Plaintiff and Defendant as to  
Jurisdiction and Grounds for Divorce**

\* \* \* These forms must be reviewed and signed by both  
the Plaintiff and the Defendant in the divorce action \* \* \*

The Stipulation and Settlement Agreement is the contract between the husband and wife relating to all matters in their divorce. There are two sets of forms - one with children and one without children. You will need to select the proper Agreement depending upon whether or not you have children with the spouse whom you are divorcing. The Affidavit is required for the court to grant the divorce without either of you appearing in court.

- Complete the top portion of the Stipulation and Settlement Agreement and the Affidavit as to Jurisdiction and Grounds for Divorce (the Caption) just as it appears in the Summons and Complaint.
- Insert in the document the parenting plan for your children. Be specific as to dates, times and places to avoid misunderstandings. Matters relating to the children are subject to the court's jurisdiction until the children are 18 years of age or 19 years of age if the children are full-time students in a secondary school.
- Divide all property. A property settlement is final.
- Allocate all debt. If debt is joint, the creditor can seek payment from either party even if you or your spouse agree to pay the debt. A debt division is final.
- If you or your spouse are dividing retirement plans, it is highly recommended that you consult with an attorney as there are specific legal documents that need to be completed to divide retirement plans.
- You must initial every page of the Stipulation verifying that you have read and agree to what is contained on the page.
- If there are children, you must attach a copy of the Report of the Child Support Referee, along with the Certificate of Parenting Education, if required in your circuit.
- The Stipulation and Affidavit must be signed by both parties in the presence of a Notary Public.

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____, Plaintiff</p> <p>vs.</p> <p>_____, Defendant</p>	<p>FILE NO: _____</p> <p><b>STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN)</b></p>
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**THIS STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN)**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_ (insert Plaintiff's name) and \_\_\_\_\_ (insert Defendant's name). Within this document we understand that we may be referred to individually as Plaintiff, Defendant, Spouse(s), Parent(s) or Party(ies).

**WHEREAS**, the parties were married in \_\_\_\_\_, State of \_\_\_\_\_, on the day of \_\_\_\_\_, \_\_\_\_\_, and ever since that time have been and now are spouses, and

**WHEREAS**, irreconcilable differences and disputes have arisen between the parties and they separated with the intent to live apart, and

**WHEREAS**, Defendant was served with a true and correct copy of the Summons (with Children), the South Dakota Parenting Guidelines and the Complaint with Minor Children on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, as reflected by the Proof of Service filed with the Court, and

**WHEREAS**, Plaintiff resided at \_\_\_\_\_, (city)

\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials



\_\_\_\_\_, County, \_\_\_\_\_ (state), at the time of the commencement of this divorce action and presently resides at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state). Defendant resided at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state), at the time of the commencement of this divorce action and presently resides at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state). Both parties agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue, and

**WHEREAS**, the parties are the parents of \_\_\_\_\_ (insert number of child(ren)) minor child(ren) born to or adopted by the parties during the course of their relationship / marriage. Spouse is / is not (circle one) pregnant at the time of this action. If pregnant, Spouse is due on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and

**WHEREAS**, the parties hereto now desire to enter into an Agreement settling all claims, custody, visitation, child support, property division and all other matters between the parties with regard to the divorce action,

**NOW THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, it is agreed and understood by and between the parties as follows:

- 1. Release.** Except as herein specified, each of the parties is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and each of the parties releases the other from any and all liabilities, debts and/or obligations of any kind or character incurred by the other from and after the date of this Agreement and from any and all claims and demands, it being expressly understood and agreed this Agreement is intended to settle the rights of the parties in all respects, except as hereinafter provided.
- 2. After-Acquired Property.** Any and all property, whether real or personal, acquired by either party from and after the date hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same, and each of said parties hereby respectfully grants to the other all such other and further acquisitions of property as the sole property of the one so acquiring the same.
- 3. Custody & Visitation.** The parties are the parents of the following minor child(ren) born to or adopted by them during their relationship or marriage:

Name

Date of Birth

Date of Adoption

Age

Sex

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A. Legal & Physical Custody: The parties agree that as to custody of the minor child(ren) (*check one*):

- The parties share joint legal custody of the minor child(ren) with Plaintiff / Defendant having primary physical custody (*circle one party*);
- The parties share joint legal and joint physical custody of the minor child(ren);
- Plaintiff / Defendant has sole legal custody and physical custody of the minor child(ren) (*circle one party*);
- The parties agree to joint legal and physical custody with a shared parenting plan, as set forth below, in which the child(ren) reside no less than 180 nights per calendar year in each parent's home. The parents further agree to share the duties and responsibilities of parenting the child(ren) and shall divide the expenses of the child(ren) in proportion to their incomes; i.e. Plaintiff paying \_\_\_\_% and Defendant paying \_\_\_\_% (*these percentages are obtained from the child support calculation form*).

B. Parenting Time Schedules: The parties agree to the following parenting time schedules with the minor child(ren) (*you may review the South Dakota Parenting Guidelines (UJS-302) to assist you in designing these schedules*):

During the school week, Plaintiff shall have the minor child(ren) (including pick-up and return times and location):

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\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials

and Defendant, during the school week, shall have the minor child(ren) (including pick-up and return times and location): \_\_\_\_\_

\_\_\_\_\_

During the summer, Plaintiff shall have the child(ren) (including pick-up and return times and location):

\_\_\_\_\_

\_\_\_\_\_

and Defendant, during the summer, shall have the child(ren) (including pick-up and return times and location:

\_\_\_\_\_

\_\_\_\_\_

C. Holidays: In addition to the custodial arrangement designated above, and unless the parties otherwise agreed, major holidays shall be alternated as set forth in the South Dakota Parenting Guidelines (Form UJS-302).

When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence. Therefore, if Defendant misses a regular weekend because it is Plaintiff's holiday, the regular alternating parenting time schedule will resume following the holiday. If Defendant receives two consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with Plaintiff. Unless mutually agreed, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. Parenting time "missed" during the summer period is not made up.

The parties agree to arrange transportation for the child(ren) for holiday visits as follows (*examples: Defendant picks up at the start of the holiday period and Plaintiff picks up at the end of the holiday period; or parties agree to meet at a specific location at the start and end of the holiday period*):

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**The parties may, by mutual agreement, alter the parenting time schedule above which shall be in writing and signed by both parties. Text messages and emails are sufficient in amending this agreement as long as the text messages and emails are retained.**

D. Failure to Comply: Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and to parenting time, neither of which is dependent upon the other. In other words, if you do not receive child support, you still have to allow parenting time and if you are denied parenting time, you still have to pay child support. **If there is a violation of either a parenting time or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.**

E. Telephone Calls: Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent, if it is a long distance call. The parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. Messages or voice mails left for a child should be returned in a timely manner.

F. Clothing: If one parent has primary physical custody, that parent shall send an appropriate supply of the child(ren)'s clothing with them during the other parent's parenting time, which shall be returned clean (when reasonably possible), with the child(ren). The parent exercising parenting time shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the child(ren) may be sent.

If the parties are exercising shared parenting, it is expected that they will each maintain clothing at their individual homes for the child(ren). However, the parents agree to cooperate in returning clothing to the appropriate parent so each parent can maintain a supply of clothing.

G. Transportation: Unless otherwise agreed to herein, the transportation between the parents shall be handled equally. When the parents live in the same community, the parent commencing his/her parenting time will pick up the child(ren) from the other parent's home and upon conclusion of the parenting time, the other parent shall retrieve the child(ren) from the home of the parent who just had parenting time. The parents have an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

H. Parental Affection: Each of the parents shall take all measures deemed advisable to foster a feeling of affection between the minor child(ren) and the other parent and neither will do anything which may estrange the child(ren) from the other parent nor impair their high regard for the other parent. Both parties agree they will speak only favorably of the other when in the child(ren)'s presence. Each will promote and foster good parental relations between the child(ren) and the other parent, and avoid any communication of any kind

which would be detrimental to the child(ren)'s respect or admiration for the other parent.

I. Grade Reports and Medical Information: If the parties share joint legal custody, each parent shall provide the other parent with grade reports and notices from school as they are received and shall authorize the other parent to communicate concerning the child(ren) directly with the daycare, the school, and the child(ren)'s doctors and other professionals outside the presence of the other parent. Unless there are abuse, neglect, criminal or protection orders to the contrary, both parents shall also be listed as the child(ren)'s parent and as an emergency contact with the daycare, the school and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the child(ren). Each parent shall, as soon as reasonably possible, notify the other parent of all school or other events (for example, church or sports) involving parental participation. If a child is taking medications, both parents shall provide a sufficient amount and appropriate instructions to the other parent.

J. Future Disputes: If the parties develop disputes in the future, they agree to first review the South Dakota Parenting Time Guidelines to determine if a resolution can be reached.

K. Relocation: The parties acknowledge that if either of them desire to relocate, they must abide by specific provisions required by law. These provisions can be found at SDCL §§ 25-4A-17, -18, -19.

L. Parenting Course Requirement: Because this stipulation involves issues of custody and parenting time, the parties recognize that they must complete a Court-approved parenting course pursuant to SDCL 25-4A-32. The parties have therefore each filed an Affidavit on Court-Approved Parenting Course with the Clerk of Court within sixty days of the service of the Complaint (Paternity Action) on the other party.

**4. Child Support.**

A. The parties agree that \_\_\_\_\_ (*insert name of party*) shall pay child support to \_\_\_\_\_ (*insert name of party*) for the support and maintenance of the minor child(ren) in the amount of \$ \_\_\_\_\_ per month, which includes (*check all the boxes that apply*):

his/her pro rata share of the health insurance provided by the Plaintiff / Defendant (*circle one*) for the parties' minor child(ren);

his / her pro rata share of day care expenses for the minor child(ren);

an annualized abatement of \$ \_\_\_\_\_ per month in consideration for the months \_\_\_\_\_ (*insert name of parent paying support*) has the child(ren) six or more overnights per month. Pursuant to SDCL 25-7-6.14, it shall be presumed that the parenting time is exercised for the purposes of the abatement, although if the noncustodial parent does not exercise this extended parenting time, the noncustodial parent is required to repay the abated amount of child support to the custodial parent;

a cross-credit calculation for the shared parenting plan, as allowed in SDCL 25-7-6.27;

a deviation of \$ \_\_\_\_\_ per month pursuant to SDCL 25-7-6.10(\_\_\_\_), based on the following facts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

B. Any reasonable medical costs, including optometric, dental or orthodontic, counseling or other health care costs for the minor child(ren) which exceed \$250.00 in any year and are not covered by insurance shall be split between the parents with Plaintiff paying \_\_\_\_\_% and Defendant paying \_\_\_\_\_%. Pursuant to SDCL § 25-7-6.16, the parent with physical custody, which is \_\_\_\_\_, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year. *This last sentence would not be applicable in shared parenting arrangements.*

**The child support calculation is attached to this document and was prepared by \_\_\_\_\_.** (You may want an attorney to calculate child support or you can determine the support obligation by using the child support calculator provided by DSS and found at <http://dss.sd.gov/childsupport/services/obligationcalculator.asp>).

C. The child support obligation shall commence on the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_\_.

D. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.

E. The employer of the parent who is required to pay child support shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 25-7A-34.

F. Until otherwise notified by the Department of Social Services – Division of Child Support, all payments shall be made payable to “Division of Child Support” and mailed to:

Division of Child Support  
700 Governor’s Drive, Suite 84  
Pierre, SD 57501-2291

G. Regarding health insurance (*choose one*):

Plaintiff / Defendant (*circle one*) shall obtain and/or maintain health insurance coverage for the minor child(ren) if available through employment or other group carrier at a reasonable cost.

Plaintiff/ Defendant (*circle one*) shall notify the Department of Social Services of the insurance company name, address and policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce and shall also notify the Department of any changes in coverage. Plaintiff/ Defendant (*circle one*) shall also provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address and policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce;

**OR**

- Neither parent currently has medical insurance for the minor child(ren). Medical insurance shall be provided for the child(ren) by a parent if the insurance is accessible for the child(ren) and available to a parent at reasonable cost. SDCL § 25-7-6.16. The cost shall be apportioned between the parents. Id. The parent providing medical insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within 30 days and shall also notify the Department of any changes in coverage. The parent providing medical insurance shall also provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address and policy number and the names of persons covered within thirty days.

5. **Property Division:** The parties agree that the following marital property shall be divided as follows and such division is equitable:

A. Clothing, Personal Effects, Personal Property: Each of the parties shall receive his/her own clothing, personal effects, and all personal property in his/her possession, free and clear of any claim from the other, unless otherwise specified herein.

B. Photographs, Memorabilia: The parties agree to equally split the photographs and any special memorabilia acquired during the course of the marriage / relationship within 90 days of execution of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Plaintiff's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Plaintiff shall exclusively receive, as his/her sole and separate property, the following vehicle(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (provide year,



*make and model*), subject to any debts against the asset(s). Plaintiff shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

D. Defendant's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Defendant shall exclusively receive, as his/her sole and separate property, the following vehicle(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ *(provide year,*  
*make and model)*, subject to any debts against the asset(s). Defendant shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

E. As set forth above, the party receiving the assets listed above in 5(C) and 5(D) shall assume the debt associated with them and remove the other party's name therefrom within \_\_\_\_\_ days from entry of the Judgment and Decree of Divorce. The other party shall cooperate in transferring the titles to the party receiving the assets once his/her name is removed from the debt.

F. Property in Possession of the Other: If either party has property to be given to the other, then Plaintiff shall, within 30 days of execution of this Agreement, give to Defendant the following personal property items: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

and Defendant shall, within 30 days of execution of this Agreement, give to Plaintiff the following personal property items: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

G. Checking and Savings Accounts: The parties represent that they have separated their bank accounts including checking and/or savings, and each shall keep the cash balance in any bank accounts in his/her name, free and clear of any claim by the other. The parties shall immediately close any remaining joint accounts with the proceeds to be divided equally.

H. Tax Consequences: The parties agree that the foregoing transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on his or her tax returns filed after this Agreement is signed.

6. **Debt Division**: In addition to the allocation of the debts associated with the property distributed herein, the remaining marital debt of the parties shall be divided as follows (*list all debts incurred by one or both of the parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans, medical bills, etc.*):

A. Plaintiff shall be solely responsible for and take over the following debts: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

B. Defendant shall be solely responsible for and take over the following debts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

B. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts he/she has incurred since (*mark one*)  date of separation on \_\_\_\_\_ (*fill in date you starting living apart*); or  date of execution of this Agreement. Each of the parties agrees not to contract any debt, charge or liability whatsoever for which the other or his or her property or estate shall or may become liable or answerable in the future.

Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during the course of their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.

D. In respect to equalizing the property distribution, the parties agree (*check one*):

That Plaintiff / Defendant (*circle one*) shall pay to the other the amount of \$ \_\_\_\_\_ to equalize the property / debt distribution within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce;

**OR**

That the allocation of personal property and debt is equitable and no amount is necessary to equalize the distribution.

E. Unless otherwise provided herein, each of the parties promises at all times to keep the other party free, harmless and indemnified of and from any and all debts, charges or liabilities previously contracted or incurred by said party individually, and to be hereafter contracted or incurred by said party individually, and each shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors involved will approve a release from liability. If a creditor denies a release presently, the parties agree to renew their applications for formal transfer or assumption in the future at reasonable intervals.

**7. Real Property (house, land or buildings):**

The parties have no real property (*check if applicable and then proceed to #8*).

The parties have an interest in the following real property:

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Legal description (*obtained from a document such as a Warranty Deed, Mortgage or Title Insurance*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In regards to the property, the parties agree:

Plaintiff / Defendant (*circle one*) will receive the house / land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$ \_\_\_\_\_ (*Value – Debt(s)*). The party receiving the real estate shall pay \$ \_\_\_\_\_ to the other to equalize this division within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. If there is a mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and sign a quit claim deed releasing all interest in the property to the other party.

**OR**

The parties agree that the house / land and all the fixtures therein and/or the improvements thereon shall be listed for sale by \_\_\_\_\_, 20\_\_\_\_ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market value. During the pendency of sale of the home, Plaintiff / Defendant / Not Applicable (*Circle One*) shall have exclusive possession of the marital home as long as he/she does not commit waste thereto. Commencing \_\_\_\_\_, 20\_\_\_\_, the parties agree that Plaintiff / Defendant / Not Applicable (*Circle One*) shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agree that the net proceeds of the sale of the home shall be divided with Plaintiff receiving \_\_\_\_\_% and Defendant receiving \_\_\_\_\_%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Plaintiff receiving \_\_\_\_\_% and Defendant receiving \_\_\_\_\_%. The parties agree, if they are not able to file a joint return, Plaintiff / Defendant (*circle one*) shall claim the real estate taxes on his/her 20\_\_\_\_ income tax return and Plaintiff / Defendant (*circle one*) shall claim the mortgage interest on his/her 20\_\_\_\_ income tax return.

\_\_\_\_\_  
Plaintiff's Initials

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\_\_\_\_\_  
Defendant's Initials

**8. Investments and Retirement Funds and Pension Plans:** Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirements and investments and you are strongly advised to consult an attorney if you are dividing this type of property.

The parties agree (*check the appropriate box*):

Each party specifically waives any and all claims, if any, to the other's 401 K, IRA, stock options, retirement, pension, and profit sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or to become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including both present and future benefits; **OR**

Plaintiff shall receive the following investments and retirement accounts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

Defendant shall receive the following investments and retirement accounts:

\_\_\_\_\_  
\_\_\_\_\_

The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

**9. Life Insurance.** Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree (*check the appropriate box*):

The parties do not have any life insurance policies to distribute;

**OR**

\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials

The parties agree to the allocation of the life insurance policies as follows:

Plaintiff shall receive the following (term/whole life) life insurance policy(ies):

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Defendant shall receive the following (term/whole life) life insurance policy(ies):

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**10. Military Benefits (If one of the parties is a military member).**

Neither party was or currently is a member of the military. (*Mark if applicable and then move to section 11*).

**OR**

Plaintiff / Defendant (*circle one or both, if applicable*) was a member of the military (includes the National Guard and Reserves) during a time period of the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, the Survivor Benefit Plan. There are numerous and complicated laws and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Center to understand and protect all benefits you may be entitled to.

When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Center.

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that he/she were in service (ex. 1992 – 2004) and the specific years of service during marriage (ex. 1994-2004): \_\_\_\_\_



Commencing with the tax year that the Judgment and Decree of Divorce is signed, the parties shall file as single persons on their IRS returns and every year thereafter.

**12. Former Name.** If one party would like his/her maiden name or former name restored to them, complete this section:

Not applicable (*check if neither party wants their maiden or former name restored*);

**OR**

Plaintiff / Defendant (*circle one*), presently known as \_\_\_\_\_ DOB \_\_\_\_\_, will be restored to her / his former or maiden name of “\_\_\_\_\_” in any Judgment and Decree of Divorce issued herein and will be known hereafter as \_\_\_\_\_.

**13. Other Agreements Not Covered Above.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**14. Attorney’s Fees.** (*Check the appropriate box and fill in where necessary*):

Each party shall be solely responsible for his/her own attorney fees, costs and expenses incurred in this proceeding;

**OR**

Plaintiff / Defendant (*circle one*) will pay the sum of \$ \_\_\_\_\_ towards the attorney fees, costs and expenses of his / her spouse within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce.

**15. Address.** Until the youngest minor child is of majority age and the parties’ names are removed from the other party’s debts, the parties agree that each will promptly notify the other of any change of address and/or telephone number. It is imperative that as long as a child support order exists, the parties **MUST** keep the Office of Child Support notified of any change of address.



16. **Other Documents.** The parties shall, at any and all times upon request by the other party or his or her legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.
17. **Grounds.** The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL 25-4-17.3. The parties have executed an Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.
18. **Interference.** The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.
19. **Enforcement.** The parties agree that this Agreement shall be binding upon them until otherwise mutually agreed or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or in the event that one party determines that modifications are necessary which are not consented to by the other party, each shall be free to petition the Court to have this Agreement modified or enforced in accordance with the law.
20. **Release of Inheritance Rights.** Unless otherwise specified herein, each party releases all right to share in the estate of the other or to share in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed subsequent to the date of this Agreement.
21. **Modification and Waiver.** Any modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement, and approved by the Court. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

22. **Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.
23. **Titles.** The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.
24. **Conflict of Laws.** This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.
25. **Waiver and Incorporation.** The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce.

It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

26. **Military Service.** Plaintiff confirms that he/she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

Defendant confirms that he/she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act.

27. **Written Memorandum.** This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

28. **Ratification.**

A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.

B. **The parties represent to the court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The parties acknowledge that it is a legal document and binding upon them.**

C. Each party covenants and warrants to the other: (a) he or she has fully disclosed the existence of and value of all assets and debts in which he or she has any interest whatsoever; and, (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them

individually, or in conjunction with a third party; and, (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Notary Public/Clerk of Court)

\_\_\_\_\_  
If notary, my commission expires

(SEAL)

\_\_\_\_\_  
Signature of Plaintiff  
**(Sign in front of Notary or Clerk of Court)**

\_\_\_\_\_  
Name of Plaintiff (Printed)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_

Sworn/affirmed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Notary Public/Clerk of Court)

\_\_\_\_\_  
If notary, my commission expires

(SEAL)

\_\_\_\_\_  
Signature of Defendant  
**(Sign in front of Notary or Clerk of Court)**

\_\_\_\_\_  
Name of Defendant (Printed)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_

## **Instructions for Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce & Form**

In South Dakota, both parties must typically agree to use irreconcilable differences as the reasons for divorce. Additionally, the Plaintiff must be a resident of the State of South Dakota when the divorce is started. This Affidavit confirms those facts for the Court. **If the parties sign the Stipulation and Settlement Agreement (With Minor Children) document, they must also sign this document.**

- **Complete this form in black or blue ink only!**
- Complete the “caption.” This information will be the same as on the Summons (With Minor Children) and Complaint With Children. The caption is the same on every form.
- Fill in the full legal names of the Plaintiff and Defendant.
- In Paragraph 3, insert the name of the city where the Plaintiff resided when the divorce action was started.
- The Plaintiff must fill in the date with the day, month and year that he/she signs the Affidavit.
- **The Plaintiff must sign the document in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**
- The Defendant must fill in the date with the day, month and year that he/she signs the Affidavit.
- **The Defendant must sign the document in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**
- **If the Defendant refuses to sign the form, the Plaintiff should still file the Affidavit with his/her single signature.**
- **Make a copy for each of you and file the original with the Clerk of Court.**

**WARNING: By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be prosecuted for not telling the truth.**

STATE OF SOUTH DAKOTA )  
 ):SS  
COUNTY OF \_\_\_\_\_)

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

_____, Plaintiff,  vs.  _____, Defendant	FILE NO: _____  <b>AFFIDAVIT OF PLAINTIFF AND DEFENDANT AS TO JURISDICTION AND REASON FOR DIVORCE</b>
--	---

\_\_\_\_\_, Plaintiff and \_\_\_\_\_,  
Defendant, being first duly sworn upon their oath, depose and state as follows:

**1.**

That they are the Plaintiff and the Defendant in the above-entitled divorce action.

**2.**

This Affidavit is made pursuant to the provisions of SDCL 25-4-17.3 so that the divorce may be granted without requiring the personal appearance in Court by either party.

**3.**

Pursuant to SDCL 25-4-30, the Plaintiff, at the time of the commencement of this divorce action was a bona fide resident of \_\_\_\_\_ of the State of South Dakota (or stationed in the State of South Dakota while a member of the armed services).

**4.**

Plaintiff and Defendant agree by signing this Affidavit that there are irreconcilable differences between the parties which the parties cannot repair to save the marriage. Both parties consent to the Court's entry of a Decree of Divorce to both parties on the grounds of irreconcilable differences.

**5.**

A written Stipulation and Settlement Agreement (With Minor Children) has been entered into between the Plaintiff and Defendant setting forth the terms and conditions of the division of property and other matters, which agreement is presented to the Court with this Affidavit.

6.

Both parties authorize the immediate presentation of the Stipulation and Settlement Agreement (With Minor Children) and of this Affidavit to Jurisdiction and Grounds for Divorce and of the proposed Judgment and Decree of Divorce to the Court and respectfully request the Court to consider the same without need for any noticed hearing or trial. The parties further waive the entry of formal Findings of Fact and Conclusions of Law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Notary Public/Clerk of Court)

\_\_\_\_\_  
If notary, my commission expires

(SEAL)

\_\_\_\_\_  
Signature of Plaintiff  
**(Sign in front of Notary or Clerk of Court)**

\_\_\_\_\_  
Name of Plaintiff (Printed)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone No: \_\_\_\_\_

## INSTRUCTIONS FOR CHILD SUPPORT ORDER FILING DATA FORM (UJS/DSS FORM 089)

**PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY. COMPLETE ALL SECTIONS OF THIS FORM AND FILE THE FORM WITH THE CLERK OF COURT'S OFFICE IN WHICH YOUR CASE IS BEING HANDLED.**

As a result of federal welfare reform, *effective October 1, 1998*, new procedures apply to child support cases in South Dakota. The most significant changes are:

- ➔ The Department of Social Services will be the central case registry for the state.
- ➔ The Department of Social Services will be the central payment center for the state and will handle all disbursements.
- ➔ Your failure to update certain information on file with the Department of Social Services and the court, by using this Child Support Order Filing Data Form, can have serious legal consequences regarding your legal right to be notified of enforcement actions regarding your child support obligations.

### INSTRUCTIONS

1. Upon entry of any new or modified court order for child support, the parties in the case must personally, or through their attorney, file a completed Child Support Order Filing Data Form with the clerk of court.
2. Whenever any information on the form changes (for example, you change jobs or place of residence), you must complete a new form and file it with the clerk of court's office.

**PLEASE NOTE:** You are responsible for ensuring that all information is accurate and current. If you fail to keep the information current, you may be served with future notices and orders of enforcement actions regarding your child support obligation at the last residential or employer address provided. Failure to appear in court when so notified may result in a default judgment being entered against you.

3. If a protection order for domestic violence against a spouse or abuse of a child is in effect (whether temporary or permanent), check the appropriate box on the form and attach a copy of the order to the form.
4. Keep the pink copy for your records and file the white and yellow copies with clerk of court.

**THIS FORM WILL BE TREATED AS A CONFIDENTIAL DOCUMENT BY THE COURT (This means the information will not be released to the public as defined by SDCL 15-15A-2(1)-(3)).**

To be completed by clerk of court:

(Docket Number)

Date \_\_\_\_\_ Clerk Initials \_\_\_\_\_

# CONFIDENTIAL FORM

- Original Court Order
- Modification Order
- Information Change
- Change of Venue

## Child Support Order Filing Data

Please type or print information on form.

PLAINTIFF/PETITIONER <i>(Circle one)</i>	DEFENDANT/RESPONDENT <i>(Circle one)</i>
Name: _____	Name: _____
SSN: _____ SEX: M F	SSN: _____ SEX: M F
Driver's License #: _____	Driver's License #: _____
Date of Birth: _____ Race: _____	Date of Birth: _____ Race: _____
Residential Address: _____ _____	Residential Address _____ _____
Mailing Address <i>(if different from above)</i> _____ _____	Mailing Address <i>(if different from above)</i> _____ _____
Phone No. _____	Phone No. _____
Attorney Name _____	Attorney Name _____
Attorney Phone No. _____	Attorney Phone No. _____
Employer _____	Employer _____
Employer Address _____ _____	Employer Address _____ _____
Employer Phone No. _____	Employer Phone No. _____
Second Employer _____	Second Employer _____
Second Employer Address _____ _____	Second Employer Address _____ _____
Second Employer Phone No. _____	Second Employer Phone No. _____

Full names, sex of child, dates of birth, and social security numbers of the children involved in this proceeding *(if more than six, write on back of form)*:

_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____

Is a protection order for domestic violence against a spouse or abuse of a child currently in effect?

- Yes     No     Unknown    ***If yes, please attach a copy of the order.***

I certify that the above information is true and accurate concerning  Plaintiff/Petitioner or  Defendant/Respondent and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because \_\_\_\_\_

I hereby certify that the information required by SDCL 25-7A-56.7 is not available.

\_\_\_\_\_  
Circuit Judge

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **Instructions for Judgment and Decree of Divorce (Stipulation and Agreement (With Minor Children)) & Form**

\*\*\* Use this form only if you and the Defendant have signed a Stipulation and Settlement Agreement (With Minor Children) and you want the court to incorporate that Agreement in your Judgment and Decree of Divorce.

The Judgment and Decree of Divorce is signed by the Judge. You must wait at least sixty (60) days after serving the Defendant before submitting your Judgment and Decree of Divorce to the Judge.

- Complete this form in black or blue ink only!
- Complete the top portion of the Judgment and Decree of Divorce (the “caption”) the same as on the other documents you have filed in this divorce. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- **YOU DO NOT COMPLETE THE JUDGMENT AND DECREE OF DIVORCE – THIS IS DONE BY THE JUDGE.**
- Submit the Judgment and Decree of Divorce to the court along with the signed Stipulation and Settlement Agreement (With Minor Children).
- If **no hearing** is required and the Judge signs the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and send both parties a certified copy of the signed Judgment and Decree of Divorce along with a copy of the Notice of Entry. Make sure the Clerk has current addresses for both parties.
- If a **hearing** was required and the Judge signed the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and provide a certified copy of the Judgment and Decree of Divorce along with a copy of the Notice of Entry to each party either by mail or hand-delivery.

STATE OF SOUTH DAKOTA )  
) :SS  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>JUDGMENT AND DECREE OF DIVORCE, (STIPULATION AND AGREEMENT WITH MINOR CHILDREN)</b></p>
---	---

The above-entitled matter came before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. It satisfactorily appearing to the Court from the records and files herein that the Defendant was duly served with the Summons, Parenting Time Guidelines and Complaint with Minor Children on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the parties thereafter entered into the Stipulation and Agreement (With Minor Children) on file herein. Parties were married on \_\_\_\_\_ (date) at \_\_\_\_\_ (city and state). After due consideration of the same and on the matters of record herein the Court finds and concludes that it has jurisdiction over the parties and the subject matter herein, that the parties have met their obligations for Court-approved parenting courses under SDCL 25-4A-32, and that the parties having expressly waived entering of Findings of Fact and Conclusions of Law. Now therefore,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The parties are both granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences and the parties hereto are restored to the status of single persons.
2. That the Stipulation and Agreement (With Minor Children) on file between the parties is hereby approved and by this reference made a part hereof merged and incorporated herein.
3. The parties are the parents of the following minor child(ren):

\_\_\_\_\_, DOB \_\_\_\_\_  
\_\_\_\_\_, DOB \_\_\_\_\_  
\_\_\_\_\_, DOB \_\_\_\_\_

4. Custody and parenting time with the minor child(ren) shall be as set forth in the Stipulation and Agreement (With Minor Children) on file herein, which is incorporated herein by reference.

5. \_\_\_\_\_ shall pay to \_\_\_\_\_ child support for the minor child(ren) in the amount of \$ \_\_\_\_\_ per month, commencing the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_\_, pursuant to the calculations and child support provisions set forth in the Stipulation and Agreement (with Minor Children), which are incorporated herein by reference as well as the child support calculation, which is filed herein and incorporated herein by reference.
6. Pursuant to SDCL 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.
7. The obligor's current or subsequent payor of income shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL 25-7A-23 and shall transmit said amount as provided in SDCL 25-7A-34.
8. Until otherwise notified by the Division of Child Support all payments shall be made payable to "Division of Child Support" and mailed to:
 

Division of Child Support  
700 Governor's Drive Suite 84  
Pierre, SD 57501-2291
9. Plaintiff / Defendant (*circle one*), currently known as \_\_\_\_\_, born \_\_\_\_\_ shall be restored to their former name of \_\_\_\_\_; therefore, they shall be known hereafter as \_\_\_\_\_.
10. That SDCL 25-4A-5 is attached as required by SDCL 25-4A-5.1 and shall become an Order of this Court.
11. All of the other terms and conditions specifically set forth in the Stipulation and Agreement (With Minor Children) are hereby approved and incorporated herein by reference as though fully set forth in extenso.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY THE COURT:

ATTEST:

\_\_\_\_\_  
CIRCUIT COURT JUDGE

Clerk of Courts

By \_\_\_\_\_  
Deputy Clerk

(SEAL)

South Dakota Codified Laws  
Title 25. Domestic Relations  
Chapter 25-4a. Custody and Visitation Rights (Refs & Annos)

SDCL § 25-4A-5

25-4A-5. Sanctions for violation of custody or visitation decree

Effective: July 1, 2018  
Currentness

If the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree.

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;
- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;
- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

The provisions of this section do not prohibit the court from imposing any other sanction appropriate to the facts and circumstances of the case.

**Credits**

**Source:** SL 1994, ch 195, § 5; SL 2008, ch 125, § 1; SL 2018, ch 155, § 3.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>NOTICE OF HEARING</b></p>
---	---

**Have the clerk of court, in the county where your case is, complete the section below. After they have completed it, mail a copy of this form to the other party at least twenty (20) days before the hearing. Next, complete the Affidavit of Service By Mail (FORM UJS338) and file it and the completed Motion For Hearing (FORM UJS335) with the clerk of court.**

**NOTICE IS HEREBY GIVEN THAT A HEARING** will be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the hour of \_\_\_\_:\_\_\_\_ am/pm before the Honorable \_\_\_\_\_, at the Court Room \_\_\_\_\_ located in the \_\_\_\_\_ County Court house, in the city of \_\_\_\_\_, South Dakota, or as soon thereafter as is convenient for the court. Both parties shall personally appear and bring any witness and evidence with them that they plan to present to the Court. **The Motion For Hearing (UJS335) form and this Notice of Hearing (UJS336) form must be mailed to the opposing party at least twenty (20) days before the stated hearing date.** The opposing party may appear at the time and date set to show reasons, if any, why the Court should not grant the above Motion as requested.

BY THE COURT:

\_\_\_\_\_  
Circuit Court Judge/Clerk of Court

ATTEST:

CLERK OF COURT

BY \_\_\_\_\_  
Clerk/Deputy Clerk

(SEAL)

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF MAILING</b></p>
---	--

I, \_\_\_\_\_, the above-named Plaintiff / Defendant (circle one), being duly sworn, state that on \_\_\_\_\_, 20\_\_\_\_, I served the following document, Responding Affidavit, by placing true and correct copies of the documents in an envelope addressed to: \_\_\_\_\_, the above-named Plaintiff / Defendant (circle one), at \_\_\_\_\_ (insert the other party's mailing address), in the City of \_\_\_\_\_, State of \_\_\_\_\_, Zip Code \_\_\_\_\_, and depositing the envelope, with sufficient postage, in the United States mail at \_\_\_\_\_ (insert the city and state where you deposited the mail).

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sworn/affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/Clerk of Court  
If Notary, my commission expires: \_\_\_\_\_  
  
\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
Signature (Date & sign in front of Notary /Clerk)  
Name (Print): \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone Number: (\_\_\_\_) \_\_\_\_\_

# Instructions for Affidavit of Default, Application for Judgment & Decree of Divorce (Default), Notice of Hearing and Affidavit of Mailing & Forms

- **Only the Plaintiff fills out these Default forms if the parties have not completed a Stipulation and Settlement Agreement!**

An Affidavit of Default is a sworn statement telling the court that you served the Summons (with Children) and Complaint with Minor Children on the Defendant and that he/she has not responded within thirty days after the completed service.

The Application for Judgment and Decree of Divorce (Default) and Notice of Hearing serve as notice to the Defendant that a date has been set for trial in the divorce case and that he/she is in default for not responding to the Summons (with Minor Children) and Complaint with Minor Children within 30 days after the completed service. Once 60 days have passed after service of the Summons (with Children) and the Complaint with Minor Children (excluding the date of service), the Affidavit of Default, Application for Judgment and Decree of Divorce (Default), the Affidavit on Court-Approved Parenting Course, and Notice of Hearing along with the Affidavit of Mailing are completed and filed.

## **Affidavit of Default**

- Complete this form in black ink only!
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Complete paragraph 2 by inserting the date that Defendant was served with the Summons (with Children), the South Dakota Parenting Time Guidelines and the Complaint with Minor Children. This is the date that the Defendant either signed the Admission of Service or the date the papers were delivered to the Defendant by the Sheriff or process server.
- Read the other paragraphs carefully as you are signing this document under oath and the statements made in all the paragraphs **MUST BE TRUE.**
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public may be found at a bank and sometimes at a courthouse.**

### *Note - Affidavit on Court-Approved Parenting Course*

The parties must complete a parenting course within sixty days of the service of the Summons and Complaint unless there is good cause to waive the requirement. [SDCL 25-4A-32](#). One of the grounds for good cause is the other party’s default. Complete and check the proper box on the Affidavit on Court-Approved Parenting Course form (UJS-364).

### **Application for Judgment & Decree of Divorce (Default)**

- Complete the top portion (the “caption”) of the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing as it appears on the Summons (with Children) and the Complaint with Minor Children.
- As the Plaintiff, fill in your full legal name in the first blank of the body of the Application.
- Date and sign the Application and complete the signature block.
- Obtain a trial date from the Court Administrator’s office or the Clerk of Court (depending upon which county your action is filed in). You will then use the date given to you to fill in the “Notice of Hearing” section.
- In the Notice of Hearing section, fill in the blanks to indicate day, month, year and time (including am or pm) of the trial date you got from the Clerk of Court or Court Administrator. Mark the appropriate box indicating where the trial will be held and fill in the blanks.
- Date and sign the Notice of Hearing and complete the signature block.
- File the original Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing with the Clerk of Court. Make two copies of each document. One for yourself and one to mail to the Defendant.
- Mail a copy of the Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing to Defendant by first class mail, properly addressed, with sufficient postage *at least seven (7) days prior to the hearing*. The Defendant has to receive written notice of the Application of Judgment *at least 3 business days prior to the hearing*.

### **Affidavit of Mailing**

- The Affidavit of Mailing may only be completed after the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing are placed in the United States Mail.
- Complete the top portion of the Affidavit Mailing (the “caption”). This information will be the same as on the other documents.
- Fill in the blanks as indicated on the Affidavit of Mailing.
- File the original Affidavit of Mailing with the Clerk. Make a photocopy of it for your file.
- **You must sign and date the Affidavit of Mailing in the presence of a notary public or clerk of court. Make sure to bring identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**



STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF DEFAULT</b></p>
---	--

Plaintiff, being first duly sworn on oath, states:

1. That I am the Plaintiff in the above-captioned action.
2. That the Summons (with Children), South Dakota Parenting Time Guidelines and Complaint with Minor Children were all served together on the Defendant on \_\_\_\_\_, 20\_\_\_\_.
3. That the proof of service has been filed (i.e. Admission of Service or Sheriff's Return).
4. That more than 60 days have passed since service of the Summons (with Children), Parenting Time Guidelines and Complaint with Minor Children. Defendant has made no answer, appearance or any other responsive pleading and is in default.
5. It is my belief that the Defendant is not in the military service on active duty.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public/Clerk of Court)

\_\_\_\_\_  
If notary, my commission expires

(SEAL)

\_\_\_\_\_  
Signature of Plaintiff

(Sign only in front of a notary or Clerk of Court)

Name of Plaintiff (Printed): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p><b>APPLICATION FOR JUDGMENT &amp; DECREE OF DIVORCE (DEFAULT) AND NOTICE OF HEARING</b></p>
---	--

Comes now, the above-named Plaintiff, \_\_\_\_\_, and respectfully submits this Application for Judgment & Decree of Divorce by Default pursuant to SDCL 15-6-55(b), hereby requesting the Court to enter Judgment and Decree of Divorce by default against the Defendant in favor of the Plaintiff in the above entitled action. The Plaintiff's Affidavit of Default is by reference incorporated herein as though fully set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Notary Public/Clerk of Court)

If notary, my commission expires

\_\_\_\_\_  
Signature of Plaintiff  
(Sign only in front of a notary or Clerk of Court)

Name of Plaintiff (Printed): \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_

(SEAL)

## NOTICE OF HEARING

TO: THE DEFENDANT IN THE ABOVE CAPTIONED MATTER:

**PLEASE TAKE NOTICE** that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ .m. a trial for Application for Judgment & Decree of Divorce (Default) will be held:

In the courtroom of the Honorable \_\_\_\_\_, Circuit Court Judge of the \_\_\_\_\_ Judicial Circuit, presiding, located at the \_\_\_\_\_ County Courthouse, in \_\_\_\_\_ County, \_\_\_\_\_, South Dakota.

**OR**

At the Court Administrator's office, \_\_\_\_\_ County Courthouse, \_\_\_\_\_, South Dakota.

The Plaintiff will seek judgment for the relief demanded in the Complaint with Minor Children filed in the above-entitled action.

Plaintiff's Application for Judgment & Decree of Divorce (Default) and Notice of Hearing and Plaintiff's Affidavit of Default are by reference incorporated herein as though fully set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ County, South Dakota.

\_\_\_\_\_  
Plaintiff's Signature  
Name of Plaintiff: (Printed) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF MAILING</b></p>
---	--

I, \_\_\_\_\_, the above-named Plaintiff,  
 being duly sworn, state that on \_\_\_\_\_, 20\_\_\_\_, I served the  
 Affidavit of Default and the Application for Judgment & Decree of Divorce (Default) and Notice  
 of Hearing, by placing true and correct copies of the documents in an envelope addressed to:

\_\_\_\_\_, the above-named Defendant, at  
 \_\_\_\_\_, in the City of \_\_\_\_\_,  
*(Defendant's mailing address)*

State of \_\_\_\_\_, Zip Code \_\_\_\_\_, and depositing the envelope,  
 with sufficient postage, in the United States Mail at \_\_\_\_\_.  
*(City & State mailed from)*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this  
 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 (Notary Public/Clerk of Court)

\_\_\_\_\_  
 If notary, my commission expires

(SEAL)

\_\_\_\_\_  
 Signature of Plaintiff  
 (Sign only in front of a notary or Clerk of Court)

\_\_\_\_\_  
 Name of Plaintiff (Printed):

\_\_\_\_\_  
 Address:

\_\_\_\_\_  
 City/State/Zip:

\_\_\_\_\_  
 Telephone: (\_\_\_\_) \_\_\_\_\_

## INSTRUCTIONS FOR AFFIDAVIT OF DEFENDANT'S MILITARY STATUS

Before a default judgment may be entered by the Court the Plaintiff is required to file an affidavit stating whether the Defendant is in the military service and show necessary facts to support the affidavit.

- **Complete this form in black ink only.**
- Complete "the Caption" **Note:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don't know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don't know). The caption is the same on every form.
- Verify that Paragraphs 1-3 are correct.
- In completing paragraph 4, the military status of a Defendant may be determined by conducting an on-line search through the Department of Defense Manpower Data Center (DMDC) search engine at <https://scra.dmdc.osd.mil/scra/#/login>. A Plaintiff using the DMDC must attach a printed copy of the certificate generated by the search.

The military status of a Defendant may be determined by contacting each branch of the military. A plaintiff using this method must attach a response from each branch.

The military status of a Defendant may also be determined by the Plaintiff, or his or her agent, personally asking the Defendant or another individual that has sufficient reason to know the defendant's military status.

The Plaintiff is not limited to the options discussed above and may have other reason to know the Defendant's military status. Any additional reasons should be explained for review by the court.

- You must date and sign the Affidavit of Non-Military Status in front of a Notary Public or Clerk of Court.
- You must make a copy for yourself and file the original with the Clerk of Court.

**WARNING: By signing your name, you are telling the Court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the Court, or if you are serving or filing this document for an improper purpose, the Court could find you in contempt or you could be prosecuted for not telling the truth.**

<div style="text-align: right; margin-bottom: 10px;">_____ Plaintiff</div> <div style="text-align: center; margin-bottom: 10px;">vs</div> <div style="text-align: left; margin-bottom: 10px;">_____ Defendant</div>	FILE NO: _____  <b>AFFIDAVIT OF DEFENDANT'S MILITARY STATUS</b>
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I, the undersigned litigant, being first duly sworn on my oath, depose and state:

1. I am over the age of eighteen years and am competent to make this Affidavit.
2. I am the plaintiff in the above-entitled matter.
3. That I have either made a personal investigation or personally reviewed the business records of the defendant.
4. As a result of the investigation or review:
  - It is my belief that the above-named defendant is not in the military services on active duty;
  - It is my belief that the above-named defendant is in the military service on active duty;
  - I have been unable to determine whether the defendant is in the military service on active duty.

My information and belief are based on the following and I have attached the necessary documentation as set forth in the instructions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I understand that any false statements in this document are made under perjury, and that making a false statement is a violation of Federal Law and is subject to both fine and imprisonment.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Sworn/affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature  
*(Date and sign in front of Notary Public/Clerk.)*

\_\_\_\_\_  
Notary Public/Clerk of Court  
If Notary, my commission expires:

Name (Print): \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone Number: (\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
(SEAL)

## **Instructions for Judgment and Decree of Divorce (Default) (With Children) & Form**

**This form is used only if the parties have not completed a Stipulation and Settlement Agreement!**

You must wait at least sixty (60) days **after** serving the Defendant before requesting that the Judge sign the Judgment and Decree of Divorce (Default).

- Complete this form in black or blue ink only!
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case file number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- **YOU DO NOT COMPLETE THE REMAINDER OF THIS FORM NOR DO YOU SIGN THIS FORM – THE JUDGE WILL COMPLETE THE REMAINDER OF THE DOCUMENT AND SIGN THE JUDGMENT AND DECREE OF DIVORCE.**
- At the time of your trial on the Application for Judgment and Decree of Divorce (Default), submit the Judgment and Decree of Divorce (Default) to the court.
- If the judge signs the Judgment and Decree of Divorce (Default), the Clerk of Courts will complete the Notice of Entry (Form UJS-327) and send a certified copy to each part

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_  
JUDICIAL CIRCUIT

<p>_____, Plaintiff</p> <p>vs.</p> <p>_____, Defendant</p>	<p>FILE NO: _____</p> <p><b>JUDGMENT AND DECREE OF DIVORCE (DEFAULT)</b></p>
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The above-entitled matter came before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on Plaintiff's Application for Judgment and Decree of Divorce (Default). It satisfactorily appearing to the Court from the records and files herein that the Defendant was duly served with the Summons (with Minor Children), Parenting Time Guidelines and Complaint with Minor Children on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 20 \_\_\_\_\_. The parties were married on \_\_\_\_\_ (date) in \_\_\_\_\_ (city) \_\_\_\_\_ (state). It further appearing to the Court by virtue of the Affidavit of Default signed by Plaintiff and filed herein that said Defendant has failed to plead, to otherwise defend, or make any appearance in this action and that said Defendant is in default; Findings of Fact and Conclusions of Law and the Court-approved parenting course requirement having been waived by virtue of Defendant's failure to appear in this action; the Court having jurisdiction over the parties and the subject matter herein.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. Plaintiff is granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences, and the parties hereto are restored to the status of single persons.
2. The parties are the parents of the following minor child(ren):

\_\_\_\_\_, DOB \_\_\_\_\_

\_\_\_\_\_, DOB \_\_\_\_\_

\_\_\_\_\_, DOB \_\_\_\_\_



3. Custody of the minor child(ren) shall be (check the applicable box):

Joint legal between the parties with Plaintiff / Defendant (*circle one*) having primary physical custody;

The parties share joint legal and joint physical custody of the minor child(ren);

Sole legal and physical custody to Plaintiff / Defendant (*circle one*);

The parents agree to joint legal and physical custody with a shared parenting plan, as set forth below, in which the child(ren) reside no less than 180 nights per calendar year in each parent's home. The parents further agree to share the duties and responsibilities of parenting the child(ren) and shall divide the expenses of the child(ren) in proportion to their incomes; i.e. Plaintiff paying \_\_\_\_\_% and Defendant paying \_\_\_\_\_%; or

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Plaintiff / Defendant's (*circle one*) parenting time (visitation) with the minor child(ren) shall be as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. \_\_\_\_\_ (*insert name of party*) shall pay child support for the support and maintenance of the minor child(ren) in the amount of \$ \_\_\_\_\_ per month, which includes (*check all the boxes that apply*):

his/her pro rata share of the health insurance provided by the Plaintiff/Defendant (*circle one*) for the parties' minor child(ren);

his / her pro rata share of day care expenses for the minor child(ren);

an annualized abatement of \$ \_\_\_\_\_ per month in consideration for the months \_\_\_\_\_ has the child(ren) 10 or more overnights per month. Pursuant to SDCL 25-7-6.14, it shall be presumed that the parenting time is exercised for the purposes of the abatement;

a deviation of \$ \_\_\_\_\_ per month pursuant to SDCL 25-7-6.10(\_\_\_\_), based on

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. Any reasonable medical costs, including optometric, dental or orthodontic, counseling or other health care costs for the minor child(ren) which exceed \$250.00 in any year and are not covered by insurance shall be split between the parents with Plaintiff paying \_\_\_\_\_% and Defendant paying \_\_\_\_\_%. Pursuant to SDCL 25-7-6.16, the parent with physical custody, which is \_\_\_\_\_, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year.

The child support calculation is filed herein.

7. The child support obligation shall commence on the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_.
8. Pursuant to SDCL 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full-time student in a secondary school.
9. The obligor's current or subsequent payor of income shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL 257A-23 and shall transmit said amount as provided in SDCL 25-7A-34.
10. Until otherwise notified by the Division of Child Support all payments shall be made payable to "Division of Child Support" and mailed to:

Division of Child Support  
700 Governor's Drive, Suite 84  
Pierre, SD 57501-2291

11. Regarding health insurance:

Plaintiff / Defendant (*circle one*) shall obtain and/or maintain health insurance coverage for the minor child(ren) if available through employment or other group carrier at a reasonable cost. \_\_\_\_\_ shall notify the Department of Social Services of the insurance company name, address and policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce and shall also notify the Department of any changes in coverage. \_\_\_\_\_ shall also provide \_\_\_\_\_ with a card or copy of the health insurance card setting forth the insurance company name, address and policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce; or

The court finds that neither parent currently has medical insurance for the minor child(ren). Medical insurance shall be provided for the child(ren) by a parent if the insurance is accessible for the child(ren) and available to a parent at reasonable cost. SDCL 25-7-6.16. The cost shall be apportioned between the parents. The parent providing medical insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within 30 days and shall also notify the Department of any changes in coverage. The parent providing medical insurance shall also provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address and policy number and the names of persons covered within thirty days.

12. The parties shall retain as their separate property all the vehicles, personal clothing and effects, all household goods, appliances and such other items and personal property as are currently in their respective possessions, free and clear of any claim from the other.

In addition the Plaintiff shall exclusively receive, as their sole and separate property, the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

The Defendant shall exclusively receive, as their sole and separate property, the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

13. Retirement / Investment accounts shall be divided as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

14. Any encumbrances or debts relating to or accompanying an item of personal property shall be the sole responsibility of the party retaining such property.

The following debts shall be assumed and paid solely by Plaintiff:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

The following debts shall be assumed and paid solely by Defendant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

All other debts shall be paid by the party incurring such debt.

15. Regarding alimony, the Court orders:

Neither party shall be given alimony or spousal support; or

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

16.  Plaintiff, born \_\_\_\_\_  Defendant, born \_\_\_\_\_ shall be restored to his/her former or maiden name of “\_\_\_\_\_” pursuant to SDCL 25-4-47 and shall be known hereafter as “\_\_\_\_\_.”

17. Each party shall, at the request of the other, sign and deliver any such instruments (legal documents or papers) as may be required in order to carry out the intentions and provisions of this Judgment and Decree of Divorce. In the event either party shall fail to execute deeds, titles, or other documents of transfer as required by this Judgment and Decree of Divorce, this Judgment and Decree shall operate as an effective transfer of that party’s interest in said property as set forth herein.

18. That SDCL 25-4A-5 is attached as required by SDCL 25-4A-5.1 and shall become an Order of this Court.

19. Additional order(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY THE COURT:

ATTEST:

\_\_\_\_\_  
CIRCUIT COURT JUDGE

Clerk of Courts

By \_\_\_\_\_

(SEAL)

South Dakota Codified Laws  
Title 25. Domestic Relations  
Chapter 25-4a. Custody and Visitation Rights (Refs & Annos)

SDCL § 25-4A-5

25-4A-5. Sanctions for violation of custody or visitation decree

Effective: July 1, 2018  
Currentness

If the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree.

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;
- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;
- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

The provisions of this section do not prohibit the court from imposing any other sanction appropriate to the facts and circumstances of the case.

**Credits**

**Source:** SL 1994, ch 195, § 5; SL 2008, ch 125, § 1; SL 2018, ch 155, § 3.

## **Instructions for Stipulation and Order for Dismissal & Form**

**Use this form only if both parties have reached a mutual agreement to dismiss the divorce action.**

In the event the parties resolve their differences prior to entry of the Judgment and Decree of Divorce and want to stop the divorce proceeding, they may file the Stipulation and Order for Dismissal to ask the Court for an Order dismissing the divorce action, without prejudice.

- **Complete this form in black ink only!**
- Complete the “caption. This information will be the same as on the Summons (without Minor Children) and Complaint without Minor Children. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Both parties, as well as a witness for each party, must sign the stipulation. The date of the signatures must also be included.
- **Do NOT fill out anything below the Order section.** The Judge will date and sign the Order.
- You will be provided 2 certified copies of the Stipulation and Order for Dismissal. One is for you and the other is for your spouse.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>STIPULATION AND ORDER FOR DISMISSAL</b></p>
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It is hereby agreed to by the parties that this action be dismissed. We respectfully ask the Court for an Order dismissing it without prejudice.

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ORDER**

Pursuant to the stipulation of the parties, this action is hereby DISMISSED without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:

\_\_\_\_\_  
Circuit Court Judge

ATTEST:

\_\_\_\_\_  
Clerk of Courts

BY: \_\_\_\_\_  
Deputy Clerk

(SEAL)

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>MOTION AND ORDER FOR DISMISSAL</b></p>
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The Plaintiff hereby requests to dismiss the above-entitled matter, pursuant to SDCL 15-6-41(a). The Defendant has not filed an Answer or Motion for Summary Judgment. Thus, I respectfully move the Court for an Order dismissing this case, without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Plaintiff  
(Sign in front of a Notary or Clerk)

\_\_\_\_\_  
Signature of Witness  
(Sign in front of a Notary or Clerk)

Name: (Printed) \_\_\_\_\_

Sworn/affirmed before me is

Address: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

City/State/Zip: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public/Clerk of Court)

Phone: \_\_\_\_\_

\_\_\_\_\_  
If notary, my commission expires

**ORDER**

Pursuant to SDCL 15-6-41(a), this action is hereby DISMISSED without prejudice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ se \_\_\_\_\_, 20\_\_.

BY THE COURT:

ATTEST:

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Clerk of Courts

BY: \_\_\_\_\_  
Deputy Clerk

(SEAL)



STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF MAILING</b></p>
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I, \_\_\_\_\_, (full legal name of plaintiff) being sworn, state that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I sent the following document:

1 certified copy of the Motion and Order for Dismissal

by placing true and correct copies in an envelope addressed to:

\_\_\_\_\_ at \_\_\_\_\_  
(Full legal name of Defendant) (Defendant's mailing address)

in the City of \_\_\_\_\_, State of \_\_\_\_\_, Zip Code \_\_\_\_\_ and depositing the envelope, with sufficient postage, in the United States Mail at \_\_\_\_\_ (City and state where mailed from).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Plaintiff  
**(Sign only in front of a notary or Clerk of Court)**

Sworn/affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name: (Printed) \_\_\_\_\_

\_\_\_\_\_  
(Notary Public/Clerk of Court)

Address: \_\_\_\_\_

If notary, my commission expires

City/State/Zip: \_\_\_\_\_

(SEAL)

Telephone: (\_\_\_\_) \_\_\_\_\_