

Instructions to Request Mediation on Parenting Time or Child Custody Disputes

The term “visitation” was changed to “parenting time” by the South Dakota Legislature. “Parenting time” means the time a parent spends with a child regardless of the custodial designation regarding the child.

READ THESE INSTRUCTIONS AND REVIEW THE FORMS BEFORE BEGINNING

THESE FORMS ARE ONLY FOR A PARTY TO SEEK MEDIATION IF THEY HAVE A CHILD CUSTODY OR PARENTING TIME DISPUTE WITH THE OTHER PARTY IN AN EXISTING DIVORCE OR PATERNITY CASE (OPEN OR CLOSED).

IMPORTANT NOTICES:

- Review the requirements of the law below and the UJS webpage on mediation to see if it is right for your issue: <https://ujslawhelp.sd.gov/mediation.aspx> .
- The judge expects every person who appears in court without an attorney to know and follow the law. The judge will not be able to give you any help in court.
- Court employees **cannot** help you fill out forms or give you legal advice. If you have questions, please **consult an attorney**.
- You must follow the instructions included in this packet.
- Type your answers or print neatly using black or blue ink.

REQUIREMENTS OF THE LAW: SDCL [25-4-56](#), [25-4A-23](#). You may use these forms IF:

- There is a custody or visitation dispute for your minor child(ren) between you (a parent) and the other parent; OR
- You and the other parent are having difficulty agreeing on an initial Order for Child Support (**not a modification**); OR
- If you and the other parent have submitted—or intend on submitting—to the court a joint physical custody petition for your minor child(ren).

Note that mediation will not be ordered if:

- (1) One of the parents has been convicted of domestic abuse as defined in [SDCL 25-10-1\(1\)](#);
- (2) One of the parents has been convicted of assault against a person defined in [SDCL 25-10-1\(2\)](#), excluding assault of any person related by consanguinity and not living in the same household;
- (3) One of the parents has a history of domestic abuse; or
- (4) Mediation is not readily available or the court determines that mediation is not appropriate based on the facts and circumstances of the case.

In order to seek mediation, you must file a Motion for Hearing form with the clerk of court’s office in the county where the existing divorce or paternity case is filed.

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;">ORDER ADOPTING MEDIATED AGREEMENT</p>
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The above-entitled matter having come before this Court on a Mediated Agreement entered into by and between Plaintiff and Defendant with references to settlement of pending child custody, parenting time, and/or establishment of child support issues, subject to approval of the Court; the Court having reviewed the Mediated Agreement; and the Court being duly advised and for good cause appearing, it is hereby:

ORDERED that the terms and conditions as set forth in the parties' Mediated Agreement, which is filed herein, shall be hereinafter considered a part of the Court's Order and enforceable as such, including all powers of contempt for failure or refusal of either party who disobey the same.

Dated this _____ day of _____, 20_____.

BY THE COURT:

Circuit Court Judge

ATTEST:
CLERK OF COURT

BY _____
Clerk/Deputy Clerk
(SEAL)

FILLING OUT THE FORMS:

CAPTIONS

All forms for this proceeding have a caption at the top that, except the name of the form, appear as follows:

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF _____	_____ JUDICIAL CIRCUIT

<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="text-align: right; margin-bottom: 5px;">Plaintiff</div> <div style="text-align: center; margin-bottom: 5px;">vs</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="text-align: right; margin-bottom: 5px;">Defendant</div>	<div style="border-bottom: 1px solid black; margin-bottom: 5px;">FILE NO: _____</div> <div style="text-align: center; font-weight: bold; margin-top: 10px;">ORDER FOR MEDIATION</div>
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Each form will be completed identically using the following instructions:

- On the top left, enter the name of the county where you are filing the Verified Petition.
- On the top right, enter the judicial circuit number (First through Seventh) in which the county lies. This information can be obtained from the clerk of court’s office or on the UJS website.
- Fill out the remainder of the caption with the Plaintiff’s and Defendant’s names, and the file number, of the existing divorce or paternity case. If you need assistance in obtaining this information, please contact the clerk of court’s office in the county where the case is filed.

FORM UJS-335: MOTION FOR HEARING

The Motion for Hearing is a generic form. You will tailor this form to this proceeding by filling the blanks as follows:

1. Fill out the caption as provided above.
2. In the first blank after the caption, insert the date when Plaintiff served Defendant with the Complaint that started the case.
3. In the series of blanks that follow, write one of the following that describes your case:
 - “Mediation of a child custody dispute pursuant to SDCL 25-4-56”;
 - “Mediation of a parenting time dispute pursuant to SDCL 25-4-56”;
 - “Mediation of a child custody and parenting time dispute pursuant to SDCL 25-4-56”;
 - “Mediation of a dispute regarding the initial establishment of child support”; or
 - “Mediation prior to the court ruling on a joint physical custody petition per SDCL 25-4A-23.”
4. **Do not sign and date the Motion for Hearing until you are in front of a notary public or a clerk who can witness your signature.** Make sure to bring identification to show the notary public or clerk. Once you have signed and dated the form, fill out the rest of your signature block.
5. Make a COPY of the Motion for Hearing. You must also retain the ORIGINAL, ink-signed form until the proper time to file it 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.

FORM UJS-337: AFFIDAVIT IN SUPPORT OF MOTION

The Affidavit in Support of Motion is a generic form. This form is optional. You may want to complete this form if it is not clear from the case record or from prior hearings in the case that you meet either of the REQUIREMENTS OF THE LAW on page 1 of this document.

If you need the form, you will need to fill out the form's caption as provided above and then follow the instructions at the top of the form. Make a COPY of the form. You must also retain the ORIGINAL, ink-signed form until the proper time to file it with the clerk of court.

FORM UJS-336: NOTICE OF HEARING

The Notice of Hearing is a generic form. You will need to complete this form by filling the blanks as follows:

1. Fill out the caption as provided above.
2. Have the clerk of court fill out the body of the Notice and sign the Notice.
3. Make a COPY of the Notice of Hearing. You must also retain the ORIGINAL, ink-signed form for the time being.
4. **Mail the COPIES of the Motion for Hearing, Notice of Hearing, and any Affidavit in Support of Motion to the other party.**

FORM UJS-338: AFFIDAVIT OF SERVICE BY MAIL

The Affidavit of Service by Mail is a generic form. You will need to complete this form AFTER mailing the Motion for Hearing (UJS-335), Notice of Hearing (UJS-336), and any Affidavit in Support of Motion (UJS-337) by filling the blanks as follows:

1. Fill out the caption as provided above.
2. Fill out the body of the form as prompted in the first paragraph of the form.
3. **Do not sign and date the Affidavit of Service by Mail until you are in front of a notary public or a clerk who can witness your signature.** Make sure to bring identification to show the notary public or clerk. Once you have signed and dated the form, fill out the remainder of the signature block under your signature line.
4. **File with the clerk the ORIGINAL forms you sent to the other party—Motion for Hearing, Notice of Hearing, and any Affidavit in Support of Motion (UJS-337)—along with the signed Affidavit of Service by Mail (UJS-338)**

FORM UJS-331: ORDER FOR MEDIATION

If a hearing is held and the judge orders mediation to occur, you should provide the court with a draft Order for Mediation.

In advance of the hearing, you should complete a portion of this form by filling the blanks as follows:

1. Fill out the caption as provided above.
2. Insert the date of the hearing in the first blanks in the body of the order.

Provide the form to the court immediately before the hearing. If the judge orders mediation at the hearing, the judge should speak to both parties' responsibility to pay the mediator. The judge would then write those percentages in the draft order and sign the order. It will then be filed by the court.

FORM UJS-333: ORDER FOR CUSTODY EVALUATION

This form is to be used if directed by the judge. A judge may direct that this order be filled out if mediation on child custody or parenting time issues fails to produce an agreement between the parents. This process may begin when the mediator reports to the court that the parties are unable to reach an agreement. [SDCL 25-4-62](#). It is also possible that a judge may order a custody evaluation instead of mediation to begin with.

A custody evaluation (or home study) is a review of persons living in the home of each parent, including the parent themselves. The study may review these persons' interactions with the child(ren), the persons' personal history, as well as the conditions of the neighborhood and home—including physical, safety, and financial concerns. The study includes an interview portion. The study is most often conducted by personnel with the Department of Social Services or private agencies specializing in home studies.

If directed by the judge, you should complete a portion of this form by filling the blanks as follows:

1. Fill out the caption as provided above.
2. In the first set of blanks after the caption, insert the date on which the Motion for Hearing was filed.
3. In the second set of blanks after the caption, insert the date on which the hearing was held.
4. If the judge directed you to fill out the Order for Custody Evaluation because you and the other parent were unable to mediate an agreement, check the box at the end of the first paragraph.

FORM UJS-332: ORDER ADOPTING MEDIATED AGREEMENT

If the mediation results in an agreement, the mediator should produce the written agreement for the parents' signature. If it is signed by the parents, the mediator should provide the agreement to the court. **The agreement is not binding until approved by the judge.**

This form is the order that makes the agreement binding. After the agreement is signed by both parties and submitted to the court, complete this form's caption as provided above and submit it to the clerk.

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;">ORDER FOR MEDIATION</p>
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On _____, 20____, the Plaintiff / Defendant (*circle one*) filed a Motion for Hearing to order mediation in the above-entitled matter. A hearing was held on this matter on _____, 20____. The Court having reviewed the Motion for Hearing, having considered all evidence, and the Court being duly advised and for good cause appearing,

IT IS HEREBY ORDERED that:

1. The parties shall mutually select a mediator within two weeks of the date of this order. The expenses of the mediator shall be allocated with Plaintiff paying _____% and Defendant paying _____. Said Expense may be subject to reallocation later upon further order of the Court. If the parties cannot agree upon a mediator, they shall immediately inform the court and the court shall select one for them.
2. The parties shall promptly mediate the matter in good faith within sixty (60) days of a mediator being chosen, unless the extension is mutually agreed upon in writing. Good faith includes the obligation to provide full, fair, and honest discovery of income, assets, debts, etc. prior to the mediation; failure to provide such a discovery may be considered a contempt of this order and a basis for the court to extend the mediation deadline date if requested by a party.

3. A party's failure or refusal to participate in mediation, failure to provide fair and full discovery in advance of mediation, or failure to negotiate in good faith, may be considered by the Court in any request or resistance to an award of attorney fees.
4. If mediation is unsuccessful and custody or visitation of minor children is at issue:
 - A. The parties shall agree upon a custody evaluator within one week of the unsuccessful mediation as provided below. If the parties cannot agree upon an evaluator, they shall immediately inform the court and the court shall select one for them.
 - B. The parties shall submit an Order for Custody Evaluation to the court within five days of the evaluator being chosen.
 - C. Each party shall personally make contact with the custody evaluator within one week of the evaluator being chosen. Each party shall promptly comply with and pay the evaluator in accordance with the evaluator's requirements with each party being responsible for one-half of the fee, subject to later reallocation if justified.

Dated this _____ day of _____, 20_____.

BY THE COURT:

ATTEST:
CLERK OF COURT

Circuit Court Judge

BY _____
Clerk/Deputy Clerk
(SEAL)