

Going Solo: Representing Yourself in the South Dakota Courts



A Guide to Understanding



This information was provided by the South Dakota Unified Judicial System.

Introduction

Some day you may find you need to go to court – to settle a dispute with a business or a neighbor, to get a divorce, or collect child support. Many people hire a lawyer to take their case to court. It’s a good idea. A lawyer has training and experience – and knows how the system works. Even if you end up representing yourself in court, it’s good to start by talking to a lawyer about your problem. Find out if your case is a simple matter or one that could get complicated. Ask what it would cost to hire a lawyer to handle it for you.

Of course, not everyone can afford a lawyer. And others may decide to take their chances and go at it alone. Going solo in the courthouse can be very scary. Especially if everything you know about the law is from watching television. Going to court isn’t as simple as they make it seem on TV. That’s why the South Dakota Unified Judicial System has published this brochure for you.

In this booklet you will learn how the South Dakota court system works. You will learn the process – step by step. Take it home and read it. It could save you time and headaches later.

Keep in mind that this guide is meant to give you helpful information, not legal advice. Additional helpful information about the court system and its processes is available on the South Dakota Unified Judicial System’s website at <http://uj.s.sd.gov> and at the Frequently Asked Questions sections available at each Circuit’s webpage which can also be accessed through a link from the UJS homepage.



The South Dakota
Unified Judicial System

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MAKING THE DECISION

Can I go to court without a lawyer?



Yes. You have the right to represent yourself in state courts. In fact, many people in South Dakota go to court without a **lawyer**. Some people can't afford to hire a lawyer. Others decide that they would rather handle their legal problem on their own.

Should I go to court without a lawyer?

That is your decision to make. This guide was developed by the South Dakota Unified Judicial System to help you make that decision. Some cases are fairly simple and can be handled without a lawyer. Others involve complicated procedures and legal issues that require the experience and training of a lawyer. It is a good idea to talk to a lawyer about your case if possible. Whether you decide to hire a lawyer or go to court on your own, it helps to know how the court system works.

Can I get help with my case if I need it?

Yes. There is a list of services on pages 10 and 11 of this guide that may help you. You might want to take a moment now, before you begin your case, to find out where you can get information or advice.

What if I need extra help because of a disability or language barrier?

Everyone has a right to come to court and participate in the legal system. This includes people who are disabled, people who are hearing or vision impaired, and people who don't speak English. If you or anyone participating in your case needs special arrangements, first contact the Clerk of Court or Circuit Administrator where you filed the case. They should be able to make proper arrangements for a courtroom that is accessible, a sign language interpreter, or a translator. It is important to contact the Clerk of Court or Circuit Administrator just as soon as possible, so they have time to make the arrangements.

“Can I get help with my case if I need it?”

Is there a way to solve my problems without going to court?

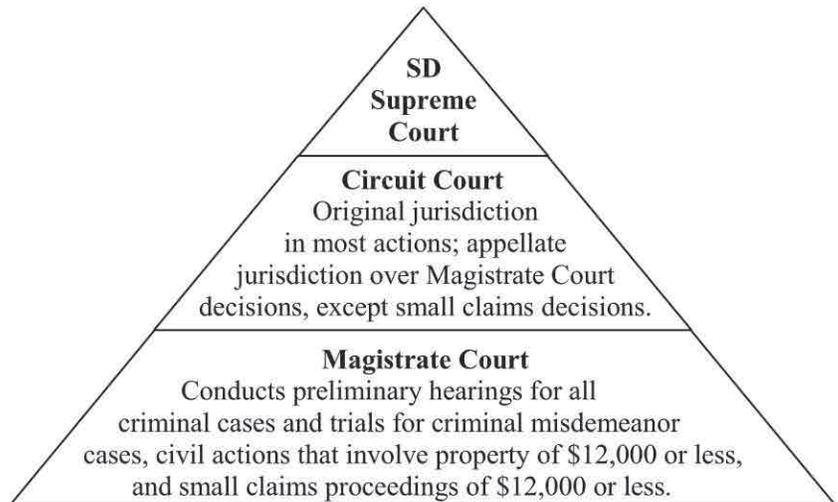


It's possible. You may be able to resolve your dispute through **mediation** without filing a lawsuit. Mediation gives people a chance to sit down with a mediator in an informal setting to try and work out their conflicts. The mediator is a trained problem-solver who can help the parties come to an **agreement**. There is a list of court approved mediators on the UJS website at <http://ujs.sd.gov>.

SOUTH DAKOTA JUDICIAL SYSTEM

How is the court system set up in South Dakota?

The court system is like a pyramid. At the bottom of the pyramid are the **Magistrate Courts**, where misdemeanor criminal cases and small claims court cases are heard. Next in the pyramid are the trial courts called **Circuit Courts**. The highest court in the state is the **South Dakota Supreme Court**. If someone loses a case in the circuit court, they can appeal to the South Dakota Supreme Court.



There are two kinds of legal cases: criminal and civil. A **criminal case** is when the state charges a person with a crime. A **civil case** is when someone sues an individual or a business. There are many kinds of civil cases. Some examples of a civil problem that could end up in court are: a divorce, a dispute with a landlord, a boundary disagreement with a neighbor, or a problem with a store that sold you a faulty product. **This guide covers only civil cases.**



Do I file my case where I live?

It depends. You must decide which county or state is right for your case. This is called finding the right **venue**. The case is usually filed where you live or where the action took place, but not always. Where

you file your case could affect the outcome especially in divorce and child custody cases. See SDCL ch. 15-5 for statutes on venue of actions.

How do I know which kind of court to go to?

That will depend on the type of case and the amount of money involved. If it is a family law matter, like divorce, child support, or custody, your case belongs in Circuit Court. If it is another kind of civil case, you may go to Magistrate Court if the amount of the money involved does not exceed \$12,000. If it is more than \$12,000, then you need to go to Circuit Court.

BASIC STEPS IN A LAWSUIT



1. **File the Summons and Complaint.** The person starting the case is called the **Petitioner** or **Plaintiff**. That person files a written statement, called the Complaint, telling the court what the case is about. Then they arrange to have the Summons and Complaint delivered to the other side. This is called “service of process.”
2. **File the Answer.** The person being sued is either called the **Defendant** or the **Respondent**. That person files a written response telling their side of the story and delivers a copy to the plaintiff. This is called an **Answer**.
3. **Prepare the case.** Both sides have time to gather evidence to prove their case. **Evidence** could include documents, photographs or the testimony of witnesses.
4. **The judge holds a hearing.** This is when both sides appear before the judge to present their evidence to prove their case.
5. **The judge makes a decision.**

FILING THE SUMMONS AND COMPLAINT

Is there a Summons and Complaint form I can use? You may purchase a packet of divorce forms from the Clerk of Court Office for \$10 or you may download the forms for free from the SD UJS's webpage at <http://uj.s.sd.gov/>. Forms for service by mail are available at SDCL 15-6-4(j).



Does it cost to file a lawsuit?

Yes. The court will charge a fee to file your case. *See* SDCL 16-2-29, 16-2-45. There are additional fees for copying and/or certifying copies, or issuing subpoenas. There is also a \$10.00 charge for a divorce forms packet if obtained from the Clerk of Court office, or you may download divorce forms from the UJS website for free and print them yourself.

How do I make sure I've done everything right?

Take it one step at a time and don't be afraid to ask for help. The courthouse staff cannot give you legal advice about your specific case, but they will answer your questions about court procedure. If you decide that there is too much at stake or your case is too difficult to handle on your own, you can contact a lawyer at any time during the court process.

The following are two examples of common actions that may come before the court:

- **Angela** wanted to get a divorce because her husband left her. She went to the Clerk of Court Office to get a “Divorce Packet” which contains most of the forms she needs to fill out to file for divorce. There is a \$10 charge for the divorce packet. The Clerk explained that she needed to read the instructions carefully before starting to fill out the forms. She suggested she practice in pencil before making final copies.
- **Bob** was sued by his landlord. The landlord filed a Summons and **Complaint** stating that Bob had not paid his rent. The landlord asked the court to force Bob to move out. Bob received a copy of the Complaint and a **Summons** telling how long he had to respond. Bob went to the Clerk of Court Office and was told that he needed to file an **Answer**. If Bob did not file an answer by the deadline, his landlord could have asked the court to rule against him right away. This is called a **default judgment**. Bob filed an answer stating “A pipe broke in my basement. The landlord told my wife that we should get a plumber to fix it, pay him and deduct it from the rent, so we did. The plumber cost more than the rent so that's why the landlord didn't get a check from us last month.” When the pipe broke in Bob's basement, it also damaged a rug. So, Bob filed a counterclaim to ask the court to order his landlord to pay him for it.

.... is there someone who can help me with the forms?

If I have trouble reading, is there someone who can help me with the forms?

Yes, you can ask someone in the Clerk's office to help you or contact your local library. You may also contact the South Dakota Literacy Council at 1-800-484-6690 Code 8585 or (605) 224-8212. You have to tell the person helping you what to write. The person helping you can only write down what **you** say. You can also take the forms home and ask a friend to help you.

How do I notify the other person that I have filed a Summons and Complaint against them? Whenever you file a lawsuit, including a divorce, you have to arrange to have the Summons and Complaint delivered to the other side and provide the court with proof of how, when and where the papers were received. This is called **service of process**. There are several ways that you can legally serve someone. The most common methods are listed below and are addressed in SDCL 15-6-4(a) – (j) and SDCL 15-6-5(a) – (i). *See also* SDCL ch. 15-39 for small claims procedures.

Personal Service: The papers are hand delivered to the defendant or respondent. This is often done by the sheriff's office or, in some larger communities, a private process server. Personal service can also be done by any credible person over the age of eighteen who is not involved in the case. An **Affidavit of Service** form proving that the person received the papers must be filled out and filed at the Clerk's office. See SDCL 15-6-4(g) for proof of service requirements.

Acceptance of Service: If the other side is willing to accept the papers, you can give them a copy, have them sign an Admission of Service form saying that he received them, and file that form with the Clerk.

Service by Publication: This method is used only if the person you're suing lives out of state or you don't know how to locate them. Putting an ad in the newspaper usually does it but it can be a little tricky. Service by publication is explained in greater detail in SDCL 15-9-7 – 15-9-22. A court order is needed before you may serve someone by publication. Proof of such service is described in SDCL 15-6-4(g)(4).

Do I serve the papers the same way when filing an Answer?

You can serve an Answer by mailing it to the person who sued you. You will still need to file an **Affidavit of Mailing Service** with the court showing when and where you sent the papers.

PREPARING FOR THE HEARING



My papers have been filed and served. What do I do to get ready for the hearing? Now is the time to prepare your case. You need to gather the evidence that will help prove your case to the judge. The evidence could be papers, like receipts or bills that you bring to court with you. You could also use witnesses to tell the court what they know about your case. Let's look at how Angela and Bob prepared for their hearing.



Angela received a Divorce Packet from the Clerk of Court. There are specific things that Angela needs to do before the hearing. These are spelled out in the divorce packet and include:

- Filling out a **Financial Affidavit** to help the judge make decisions about dividing property and providing child support and setting alimony. The Court will need copies of financial records, like income tax returns, pay check stubs, monthly bills, deeds to property, bank account statements, and retirement or pension plan statements.
- Filling out a **Stipulation and Settlement Agreement**. This spells out plans to separate assets and debts and the parties' plan to care for the children. It is completed if both parents agree to the terms of the divorce.
- Attending **Parent Education Class**, where required.

Bob needs to figure out what evidence he needs to prove his case. The kinds of things he should consider are:

- The receipt from the plumber or a copy of his cancelled check. The plumber's **testimony** might also be helpful. He could testify that he did the repair and identify the bill.
- **Testimony** from Bob's wife. She can testify that the landlord told her to hire a plumber and deduct the cost from their rent.
- A receipt showing what Bob paid for the rug. If Bob uses receipts or checks as evidence, he should make sure that he has three sets: the original for the court, one copy for the landlord, and one copy to keep for his own records.

If his wife or the plumber is going to testify, Bob needs to write out his questions and go over them with each witness before the hearing. If the plumber does not want to come to court, Bob can get a **subpoena** forcing him to come to court. The Clerk's office can provide Bob with a subpoena form that includes instructions for service. But he should be careful - a witness who doesn't want to testify may hurt his case more than he helps it.



Can I find out what the other side is going to say and bring to the hearing?

It is possible to find out what evidence the other side is going to present through a process called **discovery**. In civil cases, you have the right to get information about witnesses and copies of documents before the hearing. There are complicated rules about what you can get through discovery and strict time limits apply. In South Dakota, discovery rules are generally located at SDCL 15-6-26 through 15-6-37. If you need to use discovery, you may want to talk to a lawyer.

Can I try to settle my case before the hearing?

Absolutely. Many cases settle out of court without a hearing. For example: Bob's case might be just a simple misunderstanding and could be settled with a phone call to his landlord or the landlord's lawyer. He might also want to use a mediator to help Bob and his landlord reach a **settlement** or an **agreement**.

In Angela's case, it will be better for everyone if they can agree on the parenting plan before the hearing. If the parents can't agree on how the children will be cared for, what arrangements will be made for custody and visitation, the Circuit Court Judge may appoint a mediator. See SDCL 25-4-56 through 25-4-62. The mediator will sit down with both parents in an informal setting and try to help them resolve some or all of their differences in caring for the children. A list of court approved mediators can be found on the UJS website at <http://uj.s.sd.gov> or you may ask a circuit court administrator for a list in that circuit. These mediators do charge a fee for their services and the parties can agree on how to pay for this service.



THE HEARING

How do I get a hearing? Will the court just schedule one?

Ask the clerk of the court where your case was filed whether you need to request a hearing or whether the court will schedule one on its own. In most Magistrate and small claims court cases, the court will send both sides a **notice of hearing** telling them when and where the hearing will take place. In Circuit Court cases, the hearing will be scheduled only upon request. In that case, it's up to you to contact the Clerk of Court's office to request that a hearing be scheduled. Then, you must send out a notice to the other side telling them the time and date of the hearing.

I've never been to court. What should I expect?

Each court is a little different. Some courts use formal rooms like the ones you see on television. But some hearings may be held in a small room or the judge's office, called the judge's chambers. In general, this is what you can expect to see at your hearing.



Magistrate Court	Circuit Court
<ul style="list-style-type: none">• Magistrate Judge or Clerk• May be less formal setting• Court reporter and/or taped recording of proceeding• Clerk of Court, who keeps track of official court file	<ul style="list-style-type: none">• Judge in robe on bench• More formal• Court reporter and/or taped recording of proceeding• Clerk of Court, who keeps track of official court file

What will happen at the hearing?

That will also depend on the kind of court and the judge. The chart below describes what you can usually expect to happen in each of these kinds of courtrooms.

Magistrate Court: The judge will probably start off by asking you to tell the court what your case is about. It will also be up to you to question your witnesses and present your evidence. The judge will probably ask questions and each side has the right to question the other's witnesses.

Circuit Court: There are strict rules for presenting evidence and questioning witnesses in Circuit Court. You will be expected to know what those rules are and follow them. The other side may be represented by a lawyer. In cases tried without a jury, the judge decides the case. In cases tried before a jury, the judge rules on what evidence may be considered by jurors in reaching their verdict. The judge also instructs the jury on points of law pertaining to the case.

When will the judge decide my case?

The judge may make a decision at the hearing. But often judges will take additional time to consider the evidence and the law before deciding.

7 Tips

when representing yourself in court

- 1. Make a good impression.** If you dress nicely, it tells the judge that you respect the courtroom and care about your case.
- 2. Be respectful.** Be respectful to everyone in court, including the other side – and don't argue with the judge. Try to stay calm.
- 3. Know what to ask.** You can ask court officials for information about the process and what type of information to put on the forms. But remember, court employees cannot tell you what to write on the forms or what to say at the hearing.
- 4. Arrive early.** Arrive early. Most judges like to start on time. But some cases take longer than expected, so be prepared to wait.
- 5. Tell your story.** Tell the judge in a few brief sentences what your case is about and how you plan to prove the facts of your case. Lawyers call this an **opening statement**.
- 6. Come prepared.** Bring the original document and at least **two copies** of any evidence you plan to present. Write out the questions you plan to ask and go over them with your witnesses before the hearing.
- 7. Use a lawyer if you need help.** Most important of all, you can use a lawyer if you need help. You may start this case on your own, but later realize that you need the help of an attorney. You can hire an attorney at any time during the court process.

MAKE AN INFORMED CHOICE



The South Dakota Unified Judicial System hopes this guide gives you a better idea of how the court system works. If you ever decide to go to court, you'll know the basic steps. You can decide whether to hire a lawyer or do it on your own. You also understand the risks you are taking if you go to court without a lawyer. Some cases go well with a "do-it-yourself" approach. Some don't. Keep in mind some cases are better left to a trained professional – if you can possibly afford it. Just be smart. Decide what is best for you.

Legal Terms

Affidavit of Indigency – a sworn statement used to determine if someone meets the income guidelines so that they are not required to pay court fees

Agreement – an oral or written promise to do something

Answer – The defendant’s written response to allegations in the case

Certificate of Service – Form filed with the Clerk’s office stating that the opposing party in a lawsuit received the papers filed in the case

Circuit Court – Original jurisdiction in most actions, appellate jurisdiction over Magistrate Court decisions, except small claims decisions. South Dakota’s 66 counties are divided into 7 circuits

Civil Case – an action brought by a person, company, or other entity to protect some right or to help recover money or property from another person or company

Complaint – (civil) written statements by the plaintiff setting forth the claims against the defendant

Counterclaim – a claim filed by the Defendant or Respondent in a legal action

Criminal Case - a criminal lawsuit filed by the State of South Dakota against a defendant for violation of a criminal law

Default – failure to act, appear or perform an act or obligation that is legally required

Default Judgment – when a party who has been sued fails to answer, either the Clerk or the court may enter a judgment by default against that party

Defendant – the person against whom a civil lawsuit is brought. In divorce cases, the person against whom the divorce is being filed

Discovery – a pretrial proceeding where a party to an action may be informed of the facts known by other parties or witnesses

Divorce Packet - a packet of forms and instructions developed by the South Dakota Unified Judicial System to assist persons filing for divorce

Evidence – any presented proof, which may be established by witnesses, testimony, records, documents, etc.

Interrogatory – a written question or set of questions submitted (with the court’s permission) by one party to a civil suit to the opposing party on any matter relevant to the case

Lawyer – a person licensed and authorized to practice law, conduct lawsuits, or give legal advice

Magistrate Court – may hear small claims and uncontested civil cases and minor misdemeanor criminal cases

Mediation – a method of solving problems without going to court

Notice of Hearing – an official notice telling the parties when and where a hearing is scheduled

Opening Statement – summary of the case and the evidence that will be presented given at the beginning of the trial

Petitioner – in a civil case, the person or other entity who files a claim against another person; may be called Plaintiff depending on type of action (see Plaintiff)

Plaintiff – in a civil case, the person or other entity who files a claim against another person. In divorces, this is the person who files or starts the divorce

Respondent – the person against whom a civil lawsuit is being brought; may be called Defendant depending on type of action (see Defendant)

Restitution – a payment made by a defendant to a victim for monetary losses suffered by the victim as a result of the defendant’s conduct

SDCL - South Dakota Codified Laws - these are the laws of South Dakota. Copies can be found in public libraries or on the web at <http://legis.sd.gov/statutes>

Service of Process – legal methods of delivering the papers to the other side in a lawsuit and proving to the court (by filing an affidavit of service or a certificate of service) that they were received

Settlement – an oral or written promise to resolve a problem, usually entered into before going to court

Subpoena – a written legal notice requiring a person to appear in court and give testimony or produce documentary evidence

Summons – a writ notifying the person named that an action has been filed against the person

Testimony – a solemn statement made under oath

Venue – The specific county, city or geographical area in which a court has jurisdiction

South Dakota Supreme Court – South Dakota’s highest court where five Supreme Court Justices hear appeals of circuit court decisions and interpret the laws and constitutions of South Dakota and the United States

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 USD School of Law Legal Form Help Line Toll Free at 1-855-784-0004.

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.
816 6th St.
PO Box 495
Rapid City, SD 57709

Phone: (605) 791-4147
Or Visit: www.helpsouthdakota.com

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's website at <http://ujs.sd.gov>.



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SOUTH DAKOTA PARENTING GUIDELINES

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather the continuing conflict between their parents before, during, and after the divorce-and/or separation. To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of their children. It is recommended that an annual calendar be prepared so that the parents and the children are aware of the parenting schedule. If the parents are unable to agree on their own Parenting Plan, however, these Guidelines become mandatory and will be used as their Parenting Plan. SDCL 25-4A-10, 25-4A-11. In the event a parent's time with the children becomes an issue in court, the judge will set whatever Parenting Plan best meets the needs of the children.

1. GENERAL RULES.

A parent must 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 must encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent. The basic rules of conduct and discipline established by the custodial parent should be the baseline standard for both parents and any step-parents, and consistently enforced by all caregivers, so that the children do not receive mixed messages.

Children will benefit from continued contact with all relatives and friends on both sides of the family for whom they feel affection. Such relationships must 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 during times when the children are with their father and the maternal relatives during times when they are with their mother.

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the Parenting Plan, the court will consider imposing on the parent who moved the travel costs for the children necessary to facilitate future time with the children; however, the court will also consider other factors such as the economic circumstances of the parents

and the reasons prompting the move. Before relocating the children, the custodial parent is required to comply with South Dakota's statutory forty-five-day written notice requirements. SDCL 25-4A-17.

1.1 Parental Communication. Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children must be conducted directly between the parents in person, or by telephone, or at their residences, or via email or text message. Absent an emergency, communication should not occur at a parent's place of employment.

1.2 Grade Reports and Medical Information. The custodial parent must provide the noncustodial parent with the name, address, and telephone number of the school where any child attends and must authorize the noncustodial parent to communicate concerning the child directly with the school and with the child's doctors and other professionals, outside the presence of the custodial parent. The noncustodial parent also has an obligation to contact the school to ensure receipt of school report cards, notices, etc., so that he/she can remain involved with their child's education. Both parents will be listed on all of the child's records. Each parent must immediately notify the other parent of any medical emergencies or serious illnesses of a child. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, orthodontia and similar health care, and school records must be made equally available to both parents. Counseling, psychiatric, psychotherapy, and other records subject to confidentiality or privilege must only be released in accordance with state and federal law; but, if available to one parent, must be available to both. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If the child is taking medications, the custodial parent must provide a sufficient amount and appropriate instructions. If either parent enrolls the child in any social, beneficent, religious, or peer group activity, service, benefit, or program for which written application is required, the enrolling parent must provide the name and address of the other parent on, or supplementary to, the application. [This provision does not apply to insurance or annuities.] The parent enrolling the child shall advise the other parent of the name of the coach, director, and organization providing the activity along with their contact information. The custodial parent must notify the noncustodial parent of all school or other events (for example, church and sports) involving parental participation. The noncustodial parent also has an obligation to contact the activity director to ensure receipt of information such as practice schedules, games, etc.

1.3 Clothing. The custodial parent will send an appropriate supply of children's clothing with the children, which must be returned clean (when reasonably possible) with the children by the noncustodial parent. The noncustodial parent must advise, as far in advance as possible, of any special activities so that

appropriate clothing belonging to the children may be sent. It is recommended that the noncustodial parent have some basic clothing available in his/her home to ensure that all of the children's basic needs are met.

1.4 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 have a right both to support and, absent abuse or other safety concerns, time with the noncustodial parent, neither of which is dependent upon the other. In other words, no support does **not** mean the children will spend no time with the noncustodial parent, and no time with the noncustodial parent does **not** mean no support needs to be paid to the custodial parent. If there is a violation of either the parenting order or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in Parenting Plan. Although this is a specific schedule, the parents are expected to fairly modify the Parenting Plan when family necessities, illnesses, or commitments reasonably so require. The requesting parent must act in good faith and give as much notice as circumstances permit.

1.6 Parent's Vacation with Children. Unless otherwise specified in a court order or agreed upon by the parents, each parent is entitled to a vacation with the children for a reasonable period of time, usually equal. The custodial parent should plan a vacation during the time when the other parent is not scheduled to spend time with the children. Parents are encouraged to coordinate vacation plans.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children must supply to the other parent an insurance card 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 thus created. 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 should 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 must be promptly furnished with the bill, and where applicable, the explanation of benefits, by the other parent. The parents must cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill must make arrangements directly with the health care provider and will inform the other parent of such arrangements. Insurance refunds must be promptly turned over to the parent who paid the bill for which the refund was received.

1.8 Child Support Abatement. Unless a court order otherwise provides, child support will not abate during any period when the children are with the noncustodial parent. South Dakota law allows for child support abatements and offsets under certain circumstances. See generally SDCL 25-7. However, no abatement or offset may be taken unless there is a court order authorizing it.

1.9 Noncustodial Parent's Missed Time With the Children. When scheduled time with the children cannot occur due to events beyond either parent's control, such as illness of the parent exercising time with the children, then a mutually agreeable substituted date will be arranged, as quickly as possible. Each parent must timely advise the other parent when scheduled time with the children cannot be exercised. Missed time with the children must not be unreasonably accumulated.

1.10 Children of Different Ages. Except with very young children and adolescents, it usually makes sense for all the children to share the same schedule of parenting time with the noncustodial parent. Having brothers or sisters along can be an important support for children. Infants have special needs that may well prevent a parent from being with both the infant and the older children at the same time. Teenagers' special needs for peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters. Because it is intended that the noncustodial parent's time with the children be a shared experience between siblings and, unless these guidelines, a court order, or circumstances such as age, illness, or a particular event suggests otherwise, all the children should participate together in spending time with the noncustodial parent.

1.11. Communication with Children.

Either parent may call, text, email, 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, call, text, email, or Skype (or use similar technology) to communicate with either parent, at reasonable hours and with reasonable frequencies. 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 parent's telephone calls or turn off the 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 by a telephone call to that parent as soon as possible. Parents should agree on a specified time for calls to the children so that the children will be made available. A parent may wish to provide an older child with a cell phone to facilitate these communications. In such instances, it is not appropriate for a parent to use restrictions from talking to the other parent on that cell phone as a means of punishing the child. Communication between a parent and child must not be

censored, recorded, or monitored, absent a court order. With older children, establishing an email account for communication with the other parent is recommended and should likewise not be read or monitored by the other parent without court permission. Email communication or text messaging between parents is also helpful in keeping the other parent informed about the children. Abuse, neglect, criminal activity, or protection orders may impact access to information regarding the custodial parent or the children.

1.12 Other Contact. Parents have an unrestricted right to send cards, letters, packages, audio and video cassettes, CDs, or similar items, to their children. Children also have the same right to send items to their parents. Neither parent will interfere with this right. A parent may wish to provide the children with self-addressed, stamped envelopes for the children's use in corresponding with that parent.

1.13 Privacy of Residence. A parent may not enter the residence of the other parent except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence. The children must be picked up at and returned to the front entrance of the other parent's residence. The parent dropping off the children must 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. A parent's time with the children is his/her own, and the children's time with the other parent is equally private.

1.14 Special Considerations for Adolescents. While children never get to choose where they live, within reason, the parents should honestly and fairly consider their teenager's wishes on time with a parent. Neither parent should attempt to pressure their teenager to make a decision on time with a parent adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15 Day Care 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.

1.16 Special Circumstances:

- A. Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all time with the abusive parent must cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.
- B. Domestic Abuse.** Witnessing domestic abuse has long-term, emotionally detrimental effects on children. A person who loses control and acts

impulsively with the other parent may be capable of doing so with children as well. Depending on the nature of the spousal abuse and when it occurred, the court may require an abusive parent to successfully complete appropriate counseling before being permitted unsupervised time with the children.

- C. **Substance Abuse.** Time with the children must not occur when a parent is abusing substances.
- D. **Long Interruption of Contact.** In those situations where the noncustodial parent has not had an ongoing relationship with the children for an extended period, time with the children should begin with brief parenting time and a gradual transition to the Parenting Plan in these guidelines.
- E. **Abduction Threats.** Noncustodial parents who have threatened to abduct or hide the children will have either no time with the children or only supervised time.
- F. **Breastfeeding Child.** Parents must be sensitive to the special needs of breastfeeding children. A child's basic sleep, feeding, and waking cycles should be maintained to limit disruption in the child'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 child. On the other hand, it is important that the child be able to bond with both parents.
 - (a) For children being exclusively breastfed, the nursing child can still have frequent parenting time with the father. The amount of time will be dictated by the infant's feeding schedule, progressing to more time as the child grows older. Yet 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 child. If the father has been caring for the child overnight or for twenty-four hour periods while the nursing mother sleeps or works, then these guidelines encourage that arrangement to continue.
 - (b) A mother may not use breastfeeding as a means to deprive the father of time with the child. If, for example, a nursing mother uses day care or a babysitter for the child, 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 father, if the father is capable of personally providing the same caregiving.
- G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and/or divorce.

- H. Religious Holidays and Native American Ceremonies.** Parents must respect their children's needs to be raised in their faith and to maintain their cultural heritage and must cooperate with each other to achieve these goals. However, religious holidays and Native American ceremonies should not be used to unreasonably deprive the noncustodial parent of time with the children.
- I. Other.** The court will limit or deny time with the children to parents who show neglectful, impulsive, immoral, criminal, assaultive, or other risk-taking behavior with or in the presence of the children.

2. NONCUSTODIAL PARENTING TIME WITH CHILDREN UNDER AGE FIVE.

2.1 Children Under Age Five Generally. Newborns (birth to three months) and infants (three to six 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. Generally, overnights for a very young child is not recommended unless the noncustodial parent is very closely attached to the child and is able personally to provide primary care, the child is adaptable, and the parents are cooperative. Older children are able to tolerate more and longer separations from one parent or the other. The following guidelines for children under age five are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit a child's individual circumstances. These guidelines will not apply in those instances where the parents are truly sharing equally all the caregiving responsibilities for the children and the children are equally attached to both parents. In those situations where the custodial parent has been the primary caregiver and the noncustodial parent has maintained a continuous relationship with the children, but has not shared equally in child caregiving, the following guidelines generally apply.

2.2 Newborns - Birth to Three Months. Three, two-hour custodial periods per week and one weekend custodial period for six hours at the custodial parent's residence or another agreed location. No overnights, except in circumstances described in 1.16 F(a) and (b) (noncustodial parent caring for infant in accord with previous arrangements). Breastfeeding must be accommodated, but the parents must cooperate in working out alternatives. See Paragraph 1.16 F (breastfeeding).

2.3 Infants - Three to Six Months. Alternative Parenting Plans: (1) Three, three hour custodial periods per week, with one weekend day for six hours. Breast feeding must be accommodated. Or (2) Three, three-hour custodial periods per week, with one overnight on a weekend for no longer than a twelve-hour period, if the child is not breastfeeding and the noncustodial parent is capable of personally providing primary care. See exceptions in Paragraph 1.16 F(a) and (b).

2.4 Babies - Six to Twelve Months. Alternative Parenting Plans: (1) Three custodial periods per week of up to four hours each with one weekend day for six hours; or (2) Three custodial periods per week of up to four hours each with one weekend day for six hours, but with one overnight not to exceed twelve hours, if the child is not breastfeeding, and the noncustodial parent is capable of providing personal primary care; or (3) Child spends time in alternate homes, but spends significantly more time in one parent's home and no more than one to two overnights spaced regularly throughout the week at the other parent's home, if the child is not breastfeeding. As to arrangements (1), (2), and (3), see exceptions in Paragraph 1.16 F(a) and (b). Arrangement (3) should be considered only for mature, adaptable children and cooperative parents.

2.5 Toddlers – Twelve to Thirty-six Months. Alternative Parenting Plans: (1) Three custodial periods per week of up to eight hours each on a predictable schedule; or (2) Three custodial periods per week of up to eight hours each on a predictable schedule in addition to one overnight per week; or (3) Child spends time in alternate homes, but with significantly more time in one parent's home with one or two overnights spaced regularly throughout the week. Arrangement (3) requires an adaptable child and cooperative parents.

2.6 Preschoolers - Three to Five Years. Alternative Parenting Plans: (1) One overnight custodial period and one midweek custodial period with the child returning to the custodial parent's home at least one hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other parent's home. Arrangement (2) requires an adaptable child and cooperative parents. In addition, a vacation of no longer than two weeks with the noncustodial parent.

2.7 Children in Day Care. In families where a child has been in day care before the parental separation, the child may be able to tolerate more time with the noncustodial parent earlier because the child is more accustomed to separations from both parents. The noncustodial parent of a child under age five should not during his/her time place the child with a babysitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Allowing the child to visit with relatives for short periods of time may be appropriate, if the relatives are not merely serving as babysitters. While a child is in day care, the noncustodial parent may remove the child to have parenting time, provided that suitable prior arrangements are made with both the custodial parent and the day care provider. This parenting time must also not jeopardize the provision of the day care by that provider. The noncustodial parent must be available to provide direct care and at least one day's notice is given to the custodial parent. The parent removing the child is either to take the child to the other parent at the regular pick up time, or see that the child is returned to day care prior to the pick up time. Parental responsibility for day care costs will remain the same.

2.8 Holidays and Summer. For toddlers and preschool-age children, when the parents celebrate the holiday in the same or a nearby community, the parents will alternate Christmas Eve and Christmas Day each year so that the children spend equal time with each parent during this holiday period. Other major holidays should also be divided between the parents. With children ages three to five, a vacation of up to two weeks of uninterrupted time in the summer upon thirty days advance written notice (by mail, email, or text message) is reasonable. Parents are encouraged to coordinate vacation plans.

3. NONCUSTODIAL PARENTING TIME FOR CHILDREN OVER AGE FIVE WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND THE PARENTS RESIDE NO MORE THAN 200 MILES APART.

3.1 Weekends. Parenting time will consist of alternate weekends from Friday at 5:30 p.m. to Sunday at 7:00 p.m., or an equivalent period of time if the noncustodial parent is unavailable on weekends and the children do not miss school. The starting and ending times may change to fit the parents' schedules. In addition, if time and distance allow, the noncustodial parent may spend time on a regular schedule with the children once or twice per week for two or three hours, or have one midweek overnight time. In most cases, it is a positive experience for the children to have the noncustodial parent involved in taking the children to and from school, and it is recommended that the noncustodial parent extend the alternating weekends by picking up the children from school on Friday and taking the children to school on Monday. All transportation for the midweek custodial periods is the responsibility of the parent exercising them.

3.2 Mother's Day — Father's Day. The children shall be with their mother each Mother's Day and with their father each Father's Day from 9:00 a.m. to 8:00 p.m. Conflicts between these special days and regular parenting time will be resolved under Paragraph 1.9.

3.3 Summer Vacation. The children will be with each parent for one-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two or more blocks of time. If the children go to summer school and it is impossible for the noncustodial parent to schedule this time other than during summer school, the noncustodial 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 the noncustodial parent's community.

3.4 Winter (Christmas) Vacation. The children will spend with each parent one-half of the school winter vacation, a period that begins the evening the children are

released from school and continues to the evening of the day before the children will return to school. If the parents cannot agree on the division of this period, the noncustodial parent will have the first half in even-numbered years. Holidays, such as Christmas, are extremely important times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities must work out ways for the children to spend part of each important holiday at both homes. If the parents are unable to work out a shared arrangement for the Christmas/New Year holiday and they celebrate the holidays in the same or a nearby community, in those years when Christmas does not fall in a parent's week, the children will be with the other parent from 11:00 a.m. to 8:00 p.m. on Christmas Day.

3.5 Holiday Weekends. Parents will alternate the following holiday weekends: Martin Luther King, Jr. Day; President's Day; Easter; the 4th of July; Native Americans' Day; and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; Martin Luther King Jr. Day, President's Day, and Native Americans' Day weekends will begin on the preceding Friday evening and end on Monday evening; the 4th of July will begin the evening of July 3 at 5:00 p.m. and end the morning of July 5 at 10:00 a.m. Unless otherwise specified, holiday weekends begin at 5:30 p.m. and end at 7:00 p.m. on the designated days. The noncustodial parent will have Memorial Day weekend and the custodial parent will have Labor Day weekend.

3.6 Children's Birthdays. As with holidays, a child's birthday will be alternated annually between the parents. If a child's birthday falls on a weekend, it will be celebrated with the noncustodial parent from 11:00 a.m. to 8:00 p.m. (or so much of the period as the noncustodial parent elects to use). In some instances, the parents may agree to share the child's birthday, with each parent spending a few hours with the child.

3.7 Parent's Birthdays. The children will spend the day with the parent on the parent's birthday, unless it interferes with the other parent's scheduled time during a vacation or a major holiday. If a parent's birthday falls on a holiday, that parent may elect to exercise parenting time on another day during that month, upon sufficient advance notice to the other parent.

3.8 Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regularly scheduled weekend time with the parent, the holiday takes precedence. Unless mutually agreed, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time.

3.9 Parenting Time Before and During Summer Periods. The custodial parent will have the weekend before the beginning and the weekend after the end of the

noncustodial parent's summer period, regardless of whose weekend it may be. Weekend time "missed" during the summer period will not be "made up." During the noncustodial parent's extended summer time with the children of more than three consecutive weeks, it will be the noncustodial parent's duty to arrange for a mutually convenient 48-hour continuous period of time for the custodial parent to spend with the children, unless impractical because of distance.

3.10 Notice of Canceled Time With the Children. Whenever possible, the noncustodial parent will 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, will be provided to the other parent. Custodial parents will give the same type of notice when events beyond their control make the cancellation or modification of the scheduled time with the noncustodial parent necessary. If the custodial parent cancels or modifies the noncustodial parent's time with the children because the children have a scheduling conflict, the noncustodial parent will be given the opportunity to take the children to the scheduled event or appointment.

3.11 Pick Up and Return of Children. When the parents live in the same community, the responsibility for picking up and returning the children will be shared. Usually the parent who receives the children will handle the transportation. The person picking up or returning the children has an obligation to be punctual, 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.

3.12 Additional Time With the Noncustodial Parent. The children's time with the noncustodial parent should be liberal and flexible. For many parents, these guidelines should be considered only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to modify the Parenting Plan as they find reasonable and in the best interests of their children at any given time.

4. NONCUSTODIAL PARENTING TIME WITH CHILDREN OVER AGE FIVE WHEN PARENTS RESIDE MORE THAN 200 MILES APART.

4.1 Summer and Holidays. This parenting time will consist of all but three weeks of the school summer vacation period. It is recommended that the time start one week after school is out and end two weeks before school begins so that the child will be well prepared to recommence school. In addition, where distance and finances permit, on an alternating basis, the Thanksgiving break, school winter (Christmas) break, and spring break will be with the noncustodial parent.

4.2 Priority of Summer Time With Noncustodial Parent. Summer time with the noncustodial parent takes precedence over summer activities (such as sports) when the noncustodial parent's time cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in a similar activity in the noncustodial parent's community.

4.3 Notice. At least sixty (60) days written notice (by mail, email, or text message) must be given by the noncustodial parent 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 give the precise number of days notice does not entitle the custodial parent the right to deny the noncustodial parent parenting time with the children.

4.4 Additional Time with the Noncustodial Parent. Where distance and finances permit, additional parenting time for the noncustodial parent, such as holiday weekends or special events, is encouraged. When the noncustodial parent is in the area where the children reside, or the children are in the area where the noncustodial parent resides, liberal time with the children must be allowed and because the noncustodial parent does not get weekly time with the children, the children can miss some school to spend time with the noncustodial parent, so long as it does not substantially impair the children's scholastic progress.

5. Shared Parenting Plan. South Dakota law allows parents to agree in writing to a detailed Shared Parenting Plan, which provides that the children will reside no less than one hundred eighty 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. Such Shared Parenting Plan must be incorporated into the custody order. SDCL 25-7-6.27. A Shared Parenting Plan requires adaptable children and cooperative parents.

Approved by the South Dakota Supreme Court April 18, 2012. SDCL 25-4A-10.

Instructions for Implementing the South Dakota Parenting Time Guidelines

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

IMPORTANT NOTICES

- The Court 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 dark ink.

PETITION Instructions for Implementing South Dakota Parenting Time Guidelines

REQUIREMENTS OF THE LAW: *SDCL 25-4A-16.1. Subject to the jurisdictional and procedural provisions of chapter 26-5B, any parent subject to a court order of this state or subject to the jurisdiction of a court of this state pursuant to chapter 26-5B relating to visitation, custody, or child support may request the court to enter an order implementing the standard visitation guidelines. If the request is made in a child support proceeding, compliance with chapter 26-5B, including appropriate notice and an opportunity to be heard, if not previously provided, is required. The request shall be in writing and shall include a copy of the existing order establishing custody or visitation and provide a current address of the responding party. Upon filing of the written request, the moving party shall serve a copy of the standard guidelines, together with a copy of the request and provide notice that absent an objection, the guideline visitation shall be imposed. The notice shall provide instructions as to the manner in which objections may be made. The service of such notice shall be deemed complete when an affidavit of the service of such notice and of the particular mode thereof, duly signed and verified by the person or officer making the service, shall have been filed with the court and such record or affidavit shall be presumptive evidence of the completed service of the notice herein required. If a party objects to the imposition of the standard guidelines within ten days of service, the court shall conduct an expedited hearing as soon as practical. Based upon the evidence presented at the hearing, the court may order the parties to abide by the standard visitation guidelines or may order any other relief as it deems appropriate.*

- If you have a visitation, support or custody order from a court in South Dakota,

AND

- You would like the South Dakota Parenting Time Guidelines included into your court Order

THEN YOU MAY FOLLOW THESE INSTRUCTIONS TO FILE A PETITION AND ASK THE COURT TO INCLUDE THE GUIDELINES INTO PRIOR COURT ORDER:

1. Fill out the Petition For Order Implementing South Dakota Parenting Time Guidelines (Form UJS-366) and the Notice of Petition for Parenting Time Guidelines (Form UJS-367). The information to fill in the top part of the forms (called the Caption) can be found at the top of your current support or custody Order. Be sure to copy the information **exactly** as it appears on your current custody or visitation Order. If you need to start a new civil file, you are the Plaintiff. You will also need to complete and file a Civil Case Filing Statement (Form UJS-232).
2. Sign the Petition **in the presence** of a Notary Public. 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 request. If you are not telling the truth, or if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court can impose penalties.
3. File the Petition and the Notice of Petition with the Clerk of Court along with the filing fee.
4. For a fee, the Clerk of Court can make copies of all paper work for your file and for service on the other party.
5. You must serve the Petition and Notice of Petition on the other party, which means you must give all the documents to the other party and you **must** provide proof to the Court that you gave all the documents to the other party.
6. The Petition and Notice of Petition can be served in two ways:
 - 1) Mail a file stamped copy of the Petition and Notice of Petition with attachments and the Admission of Service (Form UJS-368) to the other party. The other party is not required to sign the Admission of Service but they may choose to sign the Admission and mail it back to you. If the other party signs and returns the Admission of Service they are considered served.
 - Or**
 - 2) If you do not think the other party will sign the Admission of Service, or if the other party refuses to sign the Admission, take your paper work to the local sheriff's office and pay the sheriff's office to serve him/her. The sheriff's office will provide Proof of Service for the Court.
7. Once you have proof that the other party was served you **must** file the **original** Proof of Service (either the Admission of Service or the Sheriff's proof of his service) with the Clerk of Court.
8. **Failure to file** any of these documents with the Clerk of Court may result in the dismissal of your case.
9. If the other party has not objected within the allowed time from the date of service, you must submit the Order Implementing South Dakota Parenting Time Guidelines (Form UJS-370) to the Clerk of Court. Based upon the information within the Petition and the prior support/custody Court Order, the Judge may order the standard guidelines to be implemented and will mail both parties a copy of the signed Order.

10. If, within 10 days of Service, the other party **does** object to the Court ordering the standard guidelines the Court will order a hearing and both parties will be sent a Notice of Hearing, which will include the hearing date set by the Court.

11. Once the Objection is filed with the Court, the Clerk of Court will schedule a hearing and send all parties a copy of the Notice of Hearing. You must go to court on the date set for the hearing. Be sure to be on time. Bring copies of your documents with you to the hearing. **Do not** bring child(ren) to the hearing. Take any proof you have or witnesses who can verify your claims and who will explain why the standard guidelines should be implemented in part or whole to the hearing with you. The hearing is very formal. You should be polite to everyone in the courtroom and address the Judge as “your honor.” Remember to talk to the Judge, not the opposing party. Do not argue with the other party. The Judge may issue the Order at the end of the hearing or may send a copy of the Order to you in the mail.

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

)SS.

COUNTY OF _____)

_____ JUDICIAL CIRCUIT

No. _____

Plaintiff,)

**PETITION FOR ORDER
IMPLEMENTING SOUTH DAKOTA
PARENTING TIME GUIDELINES**

v.)

Defendant.)

COMES NOW, _____, (person filing Petition) and petitions this Court for an order to include the South Dakota Parenting Time Guidelines into the court order establishing visitation / child custody / child support (circle one) regarding my minor child(ren).

In support of my request I state as follows:

1. That I am the Plaintiff/Defendant (circle one) in the above-entitled action which was an action establishing visitation / child custody / child support (circle one) regarding my minor child(ren).

2. I have attached a copy of the prior Court Order to this Petition.

3. Child(ren)'s name (list all involved minor children)

1. _____ DOB _____

2. _____ DOB _____

3. _____ DOB _____

4. Current address of minor child(ren): _____

City: _____ State: _____ Zip: _____

5. The addresses of minor child(ren) for the past five years: (attach additional pages if necessary): _____

-
6. Names and addresses of all persons with whom the child(ren) has lived during the past five years: _____
-
-
7. I have/have not (circle one) participated in any capacity in any other legal proceeding that concerns the visitation / child custody /child support (circle one) with the child?
If so, please explain: _____
-
8. I know/do not know (circle one) of any proceeding (Protection Order, adoption, termination of parental rights, etc) which could effect this proceeding?
If so, please explain: _____
-
9. Names and addresses of any person not a party to this proceeding who has the physical custody of the child or claim rights to the legal and/or physical custody of or visitation with the child.
-
-
10. I will serve a copy of this Petition, the South Dakota Parenting Time Guidelines and the Notice of Petition for Order Implementing Parenting Time Guidelines on the opposing party.

I ask the Court that if the opposing party objects to the implementation of the standard guidelines **within ten days** of Service, the Court will set an expedited hearing on the matter. The Clerk will send separate Notices of Hearing to both parties.

If the opposing party does not object within ten days, I will provide the Court with an Order to implement the South Dakota Parenting Time Guidelines. I further request whatever other relief the Court believes justified.

My current address is: _____

City: _____ State: _____ Zip: _____.

The opposing parties current address is: _____

City: _____ State: _____ Zip: _____.

Dated this _____ day of _____, 20__.

Signature (person filing Petition)

State of South Dakota)
)ss.
County of _____)

On this _____ day of _____, 20__, I swear under oath that the allegations set forth in this Verified Petition are true and correct to the best of my knowledge, and that I believe that I am entitled to the relief requested for, and that this legal action is not filed for harassment, abuse of process, or delay.

Signature (person filing Petition)

Signed and sworn to before me this _____ day of _____, 20__.

(SEAL)

Notary Public
Commission Expires:

STATE OF SOUTH DAKOTA)
)
COUNTY OF _____)
)
)

Plaintiff)
)
v.)
)

Defendant.)

IN CIRCUIT COURT

JUDICIAL CIRCUIT
No. _____
**NOTICE OF PETITION FOR
ORDER IMPLEMENTING
PARENTING TIME GUIDELINES**

To _____, (opposing party), pursuant to SDCL 25-4A-16.1, you are hereby notified that a Petition has been filed to request the Court to enter an Order implementing the South Dakota Parenting Time Guidelines. A copy of the Petition and the South Dakota Parenting Time Guidelines are attached to this Notice.

An Order implementing the attached Guidelines will be entered, unless you file an Objection in the Clerk of Court's Office within **10 days** of the service of this Notice. If you object within 10 days to the Petition, a hearing date will be set by the Clerk who will send a Notice of the hearing date to both parties.

If you **do** wish to object to the Petition, forms are available from the clerk of court or on the UJS website at www.sdjudicial.com. If you **do not** wish to object to the Petition, you do not need to take any further action. A copy of the Order implementing the attached South Dakota Parenting Time Guidelines will be entered by the Court and mailed to you.

Dated this _____ day of _____, 20__.

Signature (person filing Petition)

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

COUNTY OF _____

)SS.

_____ JUDICIAL CIRCUIT

Plaintiff,

)

No. _____

v.

)

NOTICE OF HEARING

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)

Defendant

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Due to a timely objection filed in response to a Petition asking the Court to implement the South Dakota Parenting Time Guidelines, you are hereby notified that a hearing will be held before the Court pursuant to SDCL 25-4A-16.1, to consider a request for an Order implementing the South Dakota Parenting Time Guidelines.

IT IS SO ORDERED that the Parties in the above captioned matter appear before this Court at _____am/pm, on the _____ day of _____, 20____, to show cause, if any, why the South Dakota Parenting Time Guidelines should not be implemented.

Please check with the Clerk of Court's office fifteen minutes before your scheduled hearing to determine which courtroom your case has been assigned.

Dated this _____ day of _____, 20____.

BY THE COURT:

Circuit Court Judge

ATTEST:

Clerk of Court

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)SS.	
COUNTY OF _____)	_____ JUDICIAL CIRCUIT
)	
_____)	No. _____
Plaintiff,)	
)	ORDER IMPLEMENTATING
v.)	SOUTH DAKOTA
)	PARENTING TIME GUIDELINES
_____)	
Defendant)	

The Plaintiff/Defendant's petition dated on the ____ day of _____, 20____, and
(circle one)
 filed with the Clerk of Courts on the ____ day of _____, 20____,
 (with no objections having been filed)/(with objections having been filed) and the matter having
(circle one)
 come before the court for a hearing on the ____ day of _____, 20____, and it appearing
 that all parties were properly served and given proper notice; having considered all of the
 evidence presented, the prior court Order and for good cause shown, the Court orders as follows:

IT IS HEREBY ORDERED that the South Dakota Parenting Time Guidelines be
 implemented and incorporated into the above captioned matter and that the parties shall abide by
 the Parenting Time Guidelines with the exception of

 _____.

Dated this _____ day of _____, 20____.

BY THE COURT:

 The Honorable
 Circuit Court Judge

ATTEST:

(SEAL)

Clerk

Instructions for Objecting to Implementation of the South Dakota Parenting Time Guidelines

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 ALL INSTRUCTIONS AND REVIEW THESE FORMS BEFORE BEGINNING

IMPORTANT NOTICES

- The Court 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 the 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 dark ink.

REQUIREMENTS OF THE LAW: SDCL 25-4A-16.1. *Subject to the jurisdictional and procedural provisions of chapter 26-5B, any parent subject to a court order of this state or subject to the jurisdiction of a court of this state pursuant to chapter 26-5B relating to visitation, custody, or child support may request the court to enter an order implementing the standard visitation guidelines. If the request is made in a child support proceeding, compliance with chapter 26-5B, including appropriate notice and an opportunity to be heard, if not previously provided, is required. The request shall be in writing and shall include a copy of the existing order establishing custody or visitation and provide a current address of the responding party. Upon filing of the written request, the moving party shall serve a copy of the standard guidelines, together with a copy of the request and provide notice that absent an objection, the guideline visitation shall be imposed. The notice shall provide instructions as to the manner in which objections may be made. The service of such notice shall be deemed complete when an affidavit of the service of such notice and of the particular mode thereof, duly signed and verified by the person or officer making the service, shall have been filed with the court and such record or affidavit shall be presumptive evidence of the completed service of the notice herein required. If a party objects to the imposition of the standard guidelines within ten days of service, the court shall conduct an expedited hearing as soon as practical. Based upon the evidence presented at the hearing, the court may order the parties to abide by the standard visitation guidelines or may order any other relief as it deems appropriate.*

INSTRUCTIONS FOR OBJECTION

- These instructions are **only** for individuals who have received a “Notice of Petition for Order Implementing Parenting Time Guidelines.”
1. Carefully read the South Dakota Parenting Time Guidelines. You should have received a copy of the guidelines with the Petition from the other party. If not, you may obtain a copy of the guidelines on the UJS website at <http://ujs.sd.gov/>. While reading, make notes on specific sections to which you agree or disagree.

2. If you **agree** with all of the South Dakota Parenting Time Guidelines, **no further action** is needed. The Court will enter an Order implementing the guidelines legally binding you and will mail you a copy.
3. If you **disagree** with all or part of the South Dakota Parenting Time Guidelines, you must complete and file the “Objection to Order Implementing Parenting Time Guidelines” (Form UJS-372) with the Clerk of Court within ten (10) days of receiving the Notice of Petition. You may obtain a copy of the Objection form on the UJS website (<http://usj.sd.gov>). You **must** strictly adhere to the following instructions:
 - a. Fill out the top part of the form (called the Caption) with the information found at the top of your current support, visitation or custody Order. Be sure to copy the information **exactly** as it is on your current support, custody or visitation order.
 - b. Write down the section numbers you **Agree** with in paragraph one on the Objection form.
 - c. Write down the section numbers you **Disagree** with in paragraph two of the Objection form.
 - d. Write down the section numbers you ***partially* Agree or Disagree** in paragraph three of the Objection form.
 - e. If you wish to further explain your answers, you may do so using the attached sheet marked for that purpose.
 - f. Sign the Objection form **in the presence** of a Notary Public or Clerk of Court and have the Notary Public/Clerk of Court complete their portion. By signing your name you are swearing to the Court that you are telling the truth. If you are not telling the truth, or if you are misleading the court, or filing this document for an improper purpose, the Court can impose penalties.
 - g. Make one copy for your records and one for the Petitioner. You **must** mail the opposing party a copy of your Objection form (Form UJS-372).
 - h. File your original Objection form with the Clerk of Court. Again, this **must** be done within **ten (10)** days of receiving the “Notice of Petition For Implementing Parenting Time Guidelines.”
4. **ALWAYS** make photocopies for your personal files.
5. **Failure to file** any of these documents with the Clerk of Court’s may result in the dismissal of your case.

6. Once the Objection is filed with the Court, the Clerk of Court will send all parties a copy of the Notice of Hearing. You must go to court on the date set for the hearing. Be sure to be on time. Bring copies of your documents with you to the hearing. **Do not** bring child(ren) to the hearing. Take any proof you have or witnesses who can verify your claim and who will explain why the standard guidelines should not be implemented in part or whole to the hearing with you. The hearing is very formal. You should be polite to everyone in the courtroom and address the judge as “your Honor.” Remember to talk to the Judge, not the opposing party. Do not argue with the other party. The Judge may issue an Order at the end of the hearing or may send a copy of the Order to you in the mail.

STATE OF SOUTH DAKOTA

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)SS.
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IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

Plaintiff

No. _____

v.

**OBJECTION TO THE
IMPLEMENTATION OF THE
SOUTH DAKOTA PARENTING
TIME GUIDELINES**

Defendant.

I _____, (person opposing=Petitioner) pursuant to SDCL § 25-4A-16.1, object to the request for the Court to enter an Order implementing the South Dakota Parenting Time Guidelines.

I am answering the Petition implementing South Dakota Parenting Time Guidelines as follows:

1. I **AGREE** with the following sections of the South Dakota Parenting Time Guidelines:

2. I **DISAGREE** with the following section of the South Dakota Parenting Time Guidelines:

3. I either **PARTIALLY Agree or Disagree** with the following paragraphs of the South Dakota Parenting Time Guidelines: _____

VERIFICATION

Respondent (person opposing petition), being first duly and sworn, deposes and states that he or she verifies the facts expressed within the Objection are true.

Dated _____, 20__

Respondent's Signature (person opposing petition)

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public/Clerk of Courts

(SEAL)

If Notary, my commission expires: _____

NOTICE OF MAILING STATEMENT

I _____, swear and affirm, under penalty of law, that

I mailed my objection to _____ by U.S. Mail at this address:

Petitioner's (person who filed petition) Name

PO Box/Street Address

City, State, Zip Code

Dated: _____, 20__.

Respondent's (person opposing petition) Signature

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public/Clerk of Courts

(SEAL)

If Notary, my commission expires: _____

*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, omit this page when you submit your **Objection** to the Clerk of Courts.*

1.

2.

3.

4.

**CHECKLIST FOR IMPLEMENTING
SOUTH DAKOTA PARENTING TIME GUIDELINES**

(No Objection Filed)

- Petition for Order Implementing SD Parenting Time Guidelines (UJS-366)
(with attached previous court order)

- Notice of Petition for Order Implementing SD Parenting Time Guidelines (UJS-367)
(with attached Parenting Time Guidelines)

- Admission of Services for Guidelines (UJS-368)

OR

- Sheriff's Return

Attached document:

- (Proposed) Order Implementing SD Parenting Time Guidelines (UJS-370)

CASE FILING STATEMENT
(Needed for **Each Participant**)

Informational only/not retained in case files

Documents for the following case types may **not** be eFiled (submitted through File & Serve):

- | | | |
|---|--------------------|--|
| ▪ Abuse & Neglect | ▪ Adoption | ▪ Informal Probate – initial only |
| ▪ Mental Illness | ▪ Small Claims | Subsequent Inf. Probate |
| ▪ Involuntary Commitments
(Drug/Alcohol Abuse) | ▪ Juvenile Records | Filings <u>may</u> be eFiled |

Please check the case type you are filing:

CIVIL

- Litigation
- Administrative Appeal
- Claim and Deliver Action
- Expungement
- Federal Transcript
- Forcible Entry and Detainer
- Foreclosure

- Foreign Judgment
- Habeas Corpus
- Paternity
- Small Claim
- Other Writ
- Other

PROBATE

- Administration of Small Estates
- Conservatorship
- Determination of Inheritance Tax
- Formal Probate
- Guardian Ad Litem
- Guardian/Conservatorship
- Guardianship
- Informal Probate
- Safekeeping of a Will
- Special Administration
- Summary Administration
- Termination of Joint Tenancy
- Termination of Life Estate
- Trust
- Will-Filing Only

FAMILY

- Adoption
- Annulment
- Divorce
- Reciprocal
- Separate Maintenance

MENTAL HEALTH

- Involuntary Commitment
- Mental Illness

Please check the participant role that applies:

CIVIL

- Plaintiff/Petitioner
- Defendant/Respondent
- Other _____

FAMILY

- Plaintiff/Petitioner
- Defendant/Respondent
- Adoptive Infant/Child
- Adoptive parent
- Birth Mother
- Birth Father

PROBATE

- Minor
- Person alleged to need protection
- Guardian Ad Litem
- Trustee
- Trustor
- Name of Trust
- Deceased
- Personal Representative
- Other _____

MENTAL HEALTH

- Petitioner
- Alleged Mentally Ill Person
- Alleged Alcoholic/Drug Abuser
- Other _____

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.

_____ Last/Business Name	_____ First Name	_____ Middle	_____ Suffix
_____ Physical Address	_____ City	_____ State	_____ Zip
<input type="checkbox"/> Check if Same as Physical	_____ City	_____ State	_____ Zip
Date of Birth: ____/____/____ (mo /day/ yr)			
(____) ____ - ____ Phone No.	____ - ____ - ____ Social Security No.	____ - ____ Driver's License No. State	_____ Employer ID (if plf is a business)
Attorney: _____ Last Name First Phone No. State Bar ID #			
_____ Mailing Address	_____ City	_____ State	_____ Zip