

# SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM

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## **Guide to Representing Yourself in South Dakota Courts**



# Introduction

You may find you need to go to court to settle a dispute with a business or a neighbor, file for a divorce or collect child support. Many people hire a lawyer to take their case to court. A lawyer has training and experience and understands how the legal system works.

If you want to represent yourself in court, it's a good idea 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 the case for you and then decide what is best for you.

The South Dakota Unified Judicial System (UJS) has developed this guide to provide an overview of how the court system works in the state and to provide important information for representing yourself in court. Please keep in mind that this guide is meant to give you helpful information, not legal advice.

Additional information about the South Dakota court system and its processes is available on the South Dakota Unified Judicial System's website at <http://uj.s.sd.gov>.



# MAKING THE DECISION

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 and choose to represent themselves because they wish to handle their own case without an attorney. However, just because you can represent yourself, doesn't always mean you should. You should make an informed decision that is best for you and your case.

This guide was developed by the South Dakota Unified Judicial System (UJS) to help you make this decision. Some cases are 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 to go to court on your own, it helps to know how the court system works.

In criminal cases, if you cannot afford a lawyer the court may appoint one for you.

## Legal Assistance

A list of legal resources that may be able to help you is located on page 12 of this guide. Before you begin your case, you may want to look at these resources.

## Special Arrangements

Everyone has the right to access the court and participate fully in the legal process. If you or anyone participating in your case needs special accommodations such as a courtroom that is accessible, a sign language interpreter or a translator, contact the clerk of courts office or circuit court administrator where your case is filed. You can find court contact information at <https://uj.s.sd.gov/court-finder>.



# South Dakota Judicial System

While this guide only covers civil cases, it is good to know the different levels of court and case types that can be filed in South Dakota.

**Circuit courts** are the state's trial courts and handle criminal and civil cases.

**Magistrate courts** operate under the supervision of circuit courts and assist the circuit courts and handle misdemeanor criminal cases and minor civil cases.

The **Supreme Court** is the state's highest court and makes final decisions on state law. The Supreme Court most often serves as an appellate court and hears appeals of circuit court decisions. The Supreme Court also has original jurisdiction over certain types of proceedings, which means the matter is filed directly with the Supreme Court.

## Types of Cases

There are two types of legal cases: criminal and civil.

A **criminal case** is when the state of South Dakota charges a person for violation of a crime.

A **civil case** is when someone sues an individual or a business regarding private rights or obligations. There are many kinds of civil cases, for example divorce, a dispute with a landlord, a boundary disagreement with a neighbor, or a problem with a store that sold you a faulty product.

## Filing a Case

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. See [SDCL 15-5](#) for statutes on venue of actions.

Cases involving family matters like divorce or custody, civil actions against individuals and business, and claims seeking judgement of \$12,000 or more will be filed in circuit court.

Matters requesting judgment of anything less than \$12,000 can be filed as a small claims case in magistrate court.

# Steps in a Lawsuit

## 1. File the summons and complaint.

The person starting the case is called the **plaintiff**. The plaintiff completes and files a **summons**, which notifies the other party that an action is being filed against them, and a **complaint**, which tells the court what the case is about. The court will charge a fee to file the case.

## 2. Serve the defendant.

The person being sued is called the **defendant**. The plaintiff is required to show that the defendant was properly served with copies of the summons and complaint. This is called **service of process** and can be completed by one of the following:

- **Personal Service**

The papers are hand delivered to the defendant. 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 18 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 of courts office. For more information about proof of service requirements, see [SDCL 15-6-4\(g\)](#).

- **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 they received them, and file that form with the clerk of courts office.

- **Service by Publication**

This method is used only if the person you are suing lives out of state, and you don't know how to locate them. Putting an ad in the newspaper is usually considered service by publication, but this can be a little tricky. Service by publication is explained in [SDCL 15-9-7 through 15-9-22](#). Proof of service by publication is described in [SDCL 15-6-4\(g\)\(4\)](#).

## 3. File an Answer.

The defendant files a written response to the complaint telling their side of the story and delivers a copy to the plaintiff. This is called an **answer**. If the defendant chooses not to file an answer, the judge could enter a **default judgment**.

#### **4. Try to reach an agreement with the other party.**

Before having the case heard before a judge, the parties should attempt to find a resolution that is fair and equitable. This can be done by completing a **settlement** agreement. Mediation may be a good option to help the parties reach an agreement. More information about mediation is located on page eight of this guide.

#### **5. Request and prepare for a hearing.**

If an agreement cannot be reached between the parties, one side will have to request a hearing with the clerk of courts office. At this time, both parties will also need to begin gathering evidence to prove their case. Evidence could include documents, photographs or the testimony of witnesses.

#### **6. The hearing is held.**

This is when both sides appear before the judge to present their evidence to prove their case.

#### **7. The judge makes a decision.**



# Court Forms

UJS offers a variety of forms that may help you initiate a case, answer a summons and complaint, or complete another action in a case. Many forms have an instructions page attached, instructions written throughout the form, or a checklist. It is important to carefully read through the instructions before completing the form. Also be sure that you have all the necessary pages to your form.



## Guide and File

Guide and File is a free electronic service that helps people easily create and fill out the forms necessary to start court proceedings for a divorce, name change, small claim, protection order or an expungement. Other options available with this system include annual reporting for guardianships and conservators, motion for order to show cause, petition for child support modification, and answering a small claim. Guide and File is designed to make a legal proceeding easier for self-represented litigants and to improve the accuracy and completeness of the forms filed.

Simply answer the interview questions in Guide and File, and the website will generate the forms with your answers that you may then print. Please be sure to read all the instructions in the interview and in the instructions and checklist that are on the UJS website (which are linked in the interviews). You can then submit these printed forms to the court by filing them with the clerk of courts office in the proper county.

## Legal Form Help Line

UJS provides a Legal Form Help Line to answer questions about or help people complete UJS forms. This service cannot provide legal advice but can answer questions related to UJS self-help forms. Submit a question online at <https://uj.s.sd.gov/self-help/submit-a-question> or call 1-855-784-0004.

# Attempt to Settle

Before requesting a hearing on the case, the parties should make efforts to reach an agreement/settlement. This can be done by communicating with the other party or their attorney. Settlement agreements are best reached when both parties are open to compromise, flexible, and can work together toward finding a solution that is fair and equitable.



## Mediation

You may be able to resolve your dispute through mediation without needing to go to court. Mediation gives people a chance to sit down with a mediator in an informal setting to try and work out their conflicts. Many cases settle without a hearing by using the services of a mediator.

Mediators are neutral professionals trained to help disputing parties resolve conflicts typically related to family law issues such as custody, parenting time, child support and divorce-related matters. The mediator facilitates discussions, promotes communication, and helps the parties reach mutually acceptable agreements without taking sides or making decisions for them. Mediators charge a fee for their services, and the parties must decide how to pay for this service.

A list of court-approved mediators can be found on the UJS website at <https://uj.s.sd.gov/programs-services/mediators>.

# Preparing for Court

If negotiations between the parties are unsuccessful, you will want to prepare by organizing and gathering the evidence that will help prove your case. Evidence could include documents like receipts, bills, text messages or photos that you could bring to court with you.

- ✓ Make sure you have all the documents you need for your court case.
- ✓ Bring the original documents and have at least two copies available. If you will be using records from a government office or agency, you should obtain certified copies from them.
- ✓ Decide what you want out of the case. This will help you evaluate any possibilities of settling your case without a trial.
- ✓ Prepare a page of notes to read from with all the points you want to make so you don't forget anything. Be ready with dates, names, addresses and dollar amounts.

Witnesses can also be subpoenaed to testify on your behalf to tell the court what they know about your case. A **subpoena** is a written legal notice requiring a person to appear in court and give testimony or produce documentary evidence. Subpoenas can be requested through the clerk of courts office.

## Discovery of Evidence

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 (see [SDCL 15-6-26 through 15-6-27](#)). If you need to use discovery, you may want to talk to a lawyer.



# The Hearing

When the complaint, answer and other pretrial papers have been filed and if a resolution between the parties has been unsuccessful, the case is ready to be heard. A judge hears civil cases, unless one of the parties to the lawsuit demands a jury trial.

In most magistrate and small claims 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 of one of the parties. Once a hearing is set, you must send a notice to the other side telling them the time and date of the hearing. Failure to provide proper notice could result in your hearing being canceled or rescheduled.

## What to Expect in Court

Each court is a little different. Some courts use formal rooms like the ones you see on TV. Some hearings may be held in a small room or the judge's office (chambers).

**Magistrate court** may be a less formal setting. A magistrate judge or clerk magistrate will typically start by asking you to tell the court what your case is about. It will be up to you to present your evidence and question your witnesses. The judge will probably ask questions, and each side has the right to question the other's witnesses.

**Circuit court** is a more formal setting with a circuit court judge in a robe on the bench. 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 hearings without a jury, the judge decides the case. In hearings 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.

In both magistrate and circuit court, clerk of courts staff keeps track of official court files brought before the court. Court reporters/recorders take verbatim notes (exact words) on all that is said in court.

Neither the clerk of courts office nor the judge can provide you with legal advice. Rules prohibit the judge from talking to you about your case outside of the court proceedings. You cannot "talk to the judge" on the phone, in person or via email. To communicate with the judge, you must file a motion, schedule a hearing, and provide the other party with notice and opportunity to be heard before the judge.

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

# Tips to Representing Yourself in Court

1. **Make a good impression.** Dressing appropriately tells the judge that you respect the courtroom and care about your case. Before entering the courtroom, turn off your cell phone, take off your hat, and throw away chewing gum.
2. **Be respectful.** Be respectful to everyone in the court, including the other side, and don't argue with the judge. Do not interrupt anyone while they are speaking, and do not make attacks on the other side. Try to stay calm. Explain your side briefly and clearly.
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. Remember, court employees cannot tell you what to write on the forms or what to say at the hearing.
4. **Arrive early.** Judges like to start on time. You should arrive at the courtroom 30 minutes before your hearing time. Give yourself plenty of time to go through security, find the correct room and collect yourself. 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. Some lawyers call this an opening statement. Speak loud enough for the judge to hear you.
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. Have a clear plan of what you want to say and the order you want to say it. You may even want to watch other cases in the courtroom to learn where the parties sit, how to explain your case, and what the processes and procedures are.
7. **Use a lawyer if you need help.** Most important of all, you can use a lawyer if you need help. You may start a case on your own but later realize that you need the help of a lawyer. You can hire a lawyer at any time during the court process.

## Tips for Testifying in Court

- ✓ After you state your name, you will be asked to raise your right hand and swear to tell the truth.
- ✓ You must speak your answers out loud. Do not just nod or shake your head.
- ✓ Look at the judge when he or she asks you a question.
- ✓ If a lawyer says "objection" after you have been asked a question, stop talking. Then wait for the judge to tell you if you can answer the question.
- ✓ If you do not understand something, say "I don't understand" and ask the judge to repeat the question.

# Resources Available

## **Mediators:**

Locate a court-approved mediator by circuit for effective conflict resolution in family law and other matters at <https://uj.s.sd.gov/programs-services/mediators>.

## **Parenting Coordinators and Classes:**

Find approved parenting coordinators to assist in managing parenting disputes amicably and learn about parenting classes at <https://uj.s.sd.gov/programs-services/parenting-coordinators-and-classes>.

## **Legal Form Help Line:**

UJS provides a Legal Form Help Line to answer questions about or help people complete UJS forms. Call 1-855-784-0004 or submit a question online at <https://uj.s.sd.gov/self-help/submit-a-question>.

## **Legal Aid:**

If you need legal assistance in civil matters, you can apply for free or low-cost legal help in South Dakota. SD Law Help is a website created by three nonprofit legal aid groups serving South Dakota and local Tribal Nations. Apply at <https://www.sdlawhelp.org>.

## **Justice Bus:**

Dakota Plains Legal Services Justice Bus is a mobile legal aid office. Legal aid attorneys with the Justice Bus offer free legal services to the communities they visit. (Eligibility requirements apply.) Learn more at <https://www.dpls.org>.

## **Business Complaints:**

The South Dakota Office of the Attorney General Division of Consumer Protection is a resource for consumer information. If you feel you have been scammed by a business or to file a complaint against a business, visit <https://consumer.sd.gov>, email [consumerhelp@state.sd.us](mailto:consumerhelp@state.sd.us), or call 1-800-300-1986 (in-state only).

## **Lawyer Referral Service:**

The State Bar of South Dakota Lawyer Referral Service is a public service to help you find a qualified, local lawyer. Lawyers who participate in this program will give you a consultation and discuss the costs associated with hiring a lawyer. Visit <https://findalawyerinsd.com> or call 1-800-952-2333.

# Questions

For additional information about the court system in South Dakota or to obtain legal forms, visit the UJS website at <https://uj.s.sd.gov>.

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