

INSTRUCTIONS

Late Fees Due to Chronically Delinquent Child Support Payments

The procedure for requesting late fees due to chronically delinquent child support payments can be found at SDCL §§ 25-7-37 & 25-7-38. It is up to you to decide whether and how you use a lawyer in your case. The law allows you to represent yourself without a lawyer, which is also known as proceeding *pro se* (pronounced “pro-say”).

If you choose to proceed in this manner without the assistance of an attorney **you** must complete all the forms necessary. The clerk of court’s office cannot assist you in preparing any legal documents, or advise you of the process. However, you may contact the **Legal Form Help Line at 1-855-784-0004** if you have questions regarding completion of the forms.

COMPLETION OF FORMS

READ ALL INSTRUCTIONS PRIOR TO FILLING OUT ANY OF THE FORMS.

Eligibility: In order to recover late fees for chronically delinquent child support payments, you have to prove the following: (1) there is an order for support; and (2) in the preceding twelve month consecutive period, payments were ten or more days delinquent in three or more months or the payment was less than ninety percent of the ordered child support in three or more months.

You will file this action in the same file in which the last child support order was issued.

You will be referred to as the **Obligee** – the person to whom the support payments are owed. The opposing party will be referred to as the **Obligor** – the person who is ordered by the court to make payments of a set amount to the obligee.

Captions: All of the forms for this proceeding have a caption at the top that, except the bolded name of the form, will be identical. They will appear as follows (with the exception of the bolded form name):

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)ss:	
COUNTY OF _____)	_____ JUDICIAL CIRCUIT
_____)	File No. _____
Obligee,)	
vs.)	PETITION FOR ORDER AND JUDGMENT
)	AWARDING LATE FEES PER
_____)	SDCL 25-7-38
Obligor.)	

Each caption will be completed identically using the following instructions:

- At the top, the County, Judicial Circuit No. (1-7) and the File No. are the same numbers that appear on caption of the legal document ordering child support to be paid (example would be Judgment & Decree of Divorce, Child Support Order, etc). The File No. begins with “Rec” or “Civ” or “Div.” You must include the case number on all papers you file. (Example: Div. 10-101).
- Enter the name (first, middle and last) of Obligee.
- Enter the name (first, middle and last) of Obligor.

FORM UJS-128: PETITION FOR ORDER AND JUDGMENT AWARDING LATE FEES PER SDCL 25-7-38

- Complete the caption as set forth in the Instructions beginning on page 1.

The numbers below give instructions for completing the numbered paragraphs with the same numbers in the Petition.

- Paragraph 1. Enter your first, middle and last name and your complete physical address.
- Paragraph 2. Enter the full name (first, middle and last) of the Obligor in the first line and enter his/her complete physical address.
- Paragraph 3. Enter the full names (first, middle and last) and dates of birth of all children born to or adopted by the parties of this action.
- Paragraph 4. In the first blank, enter the date the child support order was signed by the Judge. In the second blank, enter the amount the Judge ordered the obligor to pay each month. Do not include the amount for arrears. In the third blank, enter to whom the support payments are to made (you, Office of Child Support Enforcement or the Clerk of Court office). In the fourth blank, enter the day of the month the child support payment is due. In the fifth blank, enter the date (month, day and year), the child support obligation was to start.
- Attach a copy of your most current child support order. Write “Exhibit A” on the bottom right hand side of the first page of the child support order.
- Paragraph 5. For the past twelve months, beginning with the month prior to filing the Petition, enter the amount due for each payment, the amount received, and the date the payment was received (by whomever the obligor was ordered to pay – you, the Office of Child Support Enforcement or the Clerk of Court office).
- Attach a copy of the Affidavit of Arrears from the Department of Social Services – Office of Child Support Enforcement, Division of Child Support. Write “Exhibit B” on the bottom right hand side of the first page.

- Date the Petition with the day, month and year.
- On the first line, sign your first, middle and last name.
- On the remaining lines, enter your personal information.

Do not fill out the verification until you are in the presence of a Notary Public or Clerk of Court. Make sure to bring identification to show the Notary Public or Clerk of Court. A Notary Public can usually be found at the bank and sometimes at the courthouse.

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

FORM UJS-129: NOTICE OF FILING

- Complete the caption as set forth in the Instructions beginning on page 1.

Read the document carefully. If you agree,

- Date the Notice of Filing with the day, month and year.
- On the first line, sign your full name (first, middle and last).
- On the remaining lines, enter your personal information.

SERVICE TO OBLIGOR:

A copy of the Petition (UJS-128) and Notice of Filing (UJS-129) must be received by the Obligor by certified mail or as otherwise provided by law.

When you go to the post office to mail the documents, send the documents by certified mail to the Obligor. You do not need to send the documents by registered mail, nor do you need to insure it. Take the green card that the post office sends back to you to the Clerk of Court office immediately. The service to the obligor is considered complete **when proof of the service (the green card) is filed with the Court.**

The obligor has 10 days from the date the green card is filed with the Clerk to file objections with the Clerk of Court office. If objections are filed, a hearing will be scheduled as soon as practical. If no objections are filed, the Judge may consider the Petition without the necessity of a hearing.

If the Obligor refuses to accept the certified mail, you may have him/her served by the Sheriff's Office or a process server. Deliver a copy of the Petition and Notice of Filing to the Sheriff's Office or process service. You will be required to pre-pay their service fee.

You will receive an Affidavit of Service once the Obligor is served. Make a copy for your records, but **file the original Affidavit of Service with the Clerk immediately.**

UJS FORM 130: NOTICE OF HEARING

There is only a hearing if the Obligor files objections within 10 days from the date the green card (or Affidavit of Service) is filed with the Clerk, so be sure to file it immediately!

If objections are filed, request a hearing date from the Clerk of Courts or Scheduling Clerk. Once you have a date, you can complete the Notice of Hearing:

- Complete the caption as set forth in the Instructions beginning on page 1.
- Enter the day, month, year and time of the hearing. Circle either “am” or “pm” to designate the time of day the hearing will be held.
- Enter the name of the Judge who has been assigned to hear your case, the name of the Courthouse where your case will be heard, the city where the hearing will be heard and the county where the hearing will be heard.

The Judge or the Clerk of Court will sign and date the Notice of Hearing. The Clerk will complete the Affidavit of Mailing, file the original and send out copies to the parties.

UJS FORM 131: ORDER AND JUDGMENT AWARDING LATE FEES, PER SDCL 25-7-38 (OBJECTIONS FILED)

Before the hearing date, you must print and take the Order and Judgment Awarding Late Fees, Per SDCL 25-7-38 to the hearing.

- Complete the caption as set forth in the Instructions beginning on page 1.
- STOP! Only the Judge can fill in the rest of the information, if applicable.

If the court grants the late fees, the Judge will determine the amount and sign the Order. You will need to obtain two certified copies of the Order from the Clerk of Court office, one to keep for yourself and another to provide to the Obligor with a copy of the Notice of Entry.

The Clerk will also require that you complete and file the Child Support Data Form (UJS-089).

UJS FORM 132: ORDER AND JUDGMENT AWARDING LATE FEES PER SDCL 25-7-38 (NO OBJECTIONS FILED)

This document will be completed, instead of UJS Form 131, if no objections are filed and no hearing is held.

- This form is completed in the same manner as UJS Form 131, above; however, it will be completed by the Court and certified copies of the Order will be sent to you. Thus, it is important to keep the Court informed of any change in address for either party.

UJS FORM 133: NOTICE OF ENTRY OF ORDER AND JUDGMENT AWARDING LATE FEES PER SDCL 25-7-38

A Notice of Entry of Order and Judgment Awarding Late Fees Per SDCL 25-7-38 is a document that notifies the obligor that the Judge has signed an Order and Judgment Awarding Late Fees Per SDCL 25-7-38. This document must be sent to the obligor to start the appeal period and ensure finality to your action.

- Complete the caption as set forth in the Instructions beginning on page 1.
- Fill in the date (day, month and year) that the Judge signed the Order and Judgment Awarding Late Fees.
- Fill in the name of the Judge who signed the Order and Judgment Awarding Late Fees.
- Fill in the City where the Courthouse is located and where all the documents are filed.
- Place an “x” next to the method used for serving the obligor.
 - If the obligor was personally served, enter the obligor’s full name (first, middle and last) and the name of the city where he was served.
- Enter the date you signed the Notice of Entry (day, month and year).
- On the first line, sign your full name (first, middle and last).
- Enter your personal information on the remaining lines.
- Complete the Affidavit of Mailing:
 - Enter your full legal name;
 - Enter the date, month and year that you sent the documents to the Obligor;
 - Enter the Obligor’s full legal name;
 - Enter the Obligor’s mailing address, city, state and zip code;
 - Enter the city and state where you mailed the documents from;
 - Enter the date (day, month and year) when you sign the document;
 - As the person sending the documents, sign using your full name (first, middle and last) **before a notary**;
 - Print your full name (first, middle and last) and the remaining personal information; and
 - Have the notary complete the notary section.

Make two copies of the Notice of Entry, one for you and one to mail to the Obligor with a **certified** copy of the signed Order and Judgment Awarding Late Fees Per SDCL 25-7-38. **The original Notice of Entry must be filed with the Clerk of Court.**