INSTRUCTIONS AND FORM FOR JUDGMENT AND DECREE OF DIVORCE
(DEFAULT – WITH MINOR CHILDREN)

These forms are related to specific South Dakota Codified Laws (SDCL) concerning divorce matters. You can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide legal advice or assist with form completion. For specific questions related to the forms, you can also contact the Legal Form Help Line at 1-855-784-0004 or email UJS staff at ujssrlhelp@ujs.state.sd.us.

IMPORTANT NOTICE

A default judgment for divorce can only be granted if it has been at least sixty days since the Defendant was served with the Summons and Complaint and an Answer has not been filed by the Defendant.

To complete this form, you will need to:

1. Fill in the caption.
2. In the first paragraph fill in the blanks regarding the day the Defendant was served with the Summons and Complaint, and the day and location of the marriage.

   a) Attach SDCL 25-4A-5 Sanctions for Violation of Custody or Visitation Decree to the Judgment and Decree of Divorce.
3. Attend the hearing (*if a hearing was required*) that was scheduled on your request for a divorce by default. You will submit this form to the Court at the hearing where the Judge will make their final determination.

4. If the Judge signs the Judgment and Decree of Divorce Default with Minor Children (UJS-322B) the Court will provide you with signed copies and you will need to:

   a) Complete and file the Notice of Entry and Statement of Mailing.

   b) This form may be obtained from the Clerk of Court. Depending on the county, either the Clerk of Court will complete the form for you or provide you with the form for completion. Check with the Clerk of Court in your county.

5. Mail a copy of the Notice of Entry, Statement of Mailing and signed Judgment and Decree of Divorce (UJS-322B) to the Defendant.

STATE OF SOUTH DAKOTA IN CIRCUIT COURT

COUNTY OF_____ _____ JUDICIAL CIRCUIT

_____ Plaintiff v. _____ Defendant	Case No.: _____ **JUDGMENT AND DECREE OF DIVORCE DEFAULT (WITH MINOR CHILDREN)**

The above-entitled matter came before this Court on the _____ day of _____, 20_____ on the Plaintiff's Statement for Judgment and Decree of Divorce (Default). It is satisfactory appearing to the Court from the records and files herein that the Defendant was duly served with Summons and Complaint on the _____ day of _____ , 20____. The parties were married on the _____ day in the month of _____ , in the year of _____, and in the City of_____and State of_____. It further appearing to the Court by virtue of the Statement of Default signed by Plaintiff and filed herein that said Defendant has failed to plead, to otherwise defend, or make any appearance in this action and that said Defendant is in default; Findings of Fact and Conclusions of Law having been waived by virtue of Defendant's failure to appear in this action; the Court having jurisdiction over the parties and the subject matter herein, Now Therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff is granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences and the parties hereto are restored to the status of single persons:

2. The parties are the parents of the following minor child(ren):

_____ Date of Birth: _____

_____ Date of Birth: _____

_____ Date of Birth: _____

_____ Date of Birth: _____

3. Custody of the minor child(ren) shall be **(*check the applicable box*)**

☐ Joint legal custody between the parties with the ☐ Plaintiff / ☐ Defendant **(*check one*)** having primary physical custody.

☐ The parties share joint legal and physical custody of the minor child(ren)

☐ Sole legal and physical custody to the ☐ Plaintiff / ☐ Defendant **(*check one*)**

☐ The parents agree to joint legal and physical custody with shared parenting plan, as set forth below, in which the child(ren) reside no less than 180 nights per calendar year in each parent's home. The parents further agree to share the duties and responsibilities of parenting the child(ren) and shall divide the expense of the child(ren) in proportion to their incomes, i.e. Plaintiff paying _____% and Defendant paying _____%; or:

_____

_____

_____

4. The ☐ Plaintiff / ☐ Defendant **(*check one*)** parenting time with the minor child(ren) shall be as follows:

_____

_____

_____

5. _____shall pay child support and maintenance of the minor child(ren) in the amount of $_____ per month, which includes: ***(check all that apply)***

☐ Their pro rata share of the health insurance provided by the☐ Plaintiff/ ☐ Defendant **(*check one*)** for the parties' minor child(ren).

☐ Their pro rata share of day care expenses for the minor child(ren).

☐ An annualized abatement of $_____ per month in consideration for the months☐ Plaintiff / ☐ Defendant ***(check one)*** has the child(ren) ten or more overnights per month. Pursuant to SDCL 25-7-6.14, it shall be presumed that the parenting time is exercised for the purposes of the abatement.

☐ A deviation of $_____ per month pursuant to SDCL 25-7-6.10(___) based on:

_____

_____

6. Any reasonable medical costs, including optometric, dental, orthodontic, counseling, or other health care costs for the minor child(ren) which exceed $250.00 in any year and are not covered by insurance shall be split between the parents with the Plaintiff paying_____% and the Defendant paying_____%. Pursuant to SDCL § 25-7-6.16, the parent with physical custody, ☐Plaintiff/ ☐ Defendant **(*check one*)**, being solely responsible for the first $250.00 of health care expenses incurred for each child in any calendar year.
7. The child support calculation is filed herein.
8. The child support obligation shall start on the 1st day of_____, 20 _____.
9. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen or until each attains the age of nineteen, if the child is a full-time student in a secondary school.
10. The obligor's current or subsequent payor of income shall be immediately directed to withhold amounts for current support and past due amounts as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 24-7A-34.

11. Until otherwise notified by the Division of Child Support all payments shall be made payable to "Division of Child Support" and mailed to:

Division of Child Support
700 Governor's Drive, Suite 84
Pierre, SD 57501

12. Regarding Health Insurance: ***(check one)***

☐ The ☐ Plaintiff / ☐ Defendant **(*check one*)** shall obtain and/or maintain health insurance coverage for the minor child(ren) if available through employment or other group carrier at a reasonable cost. _____ shall notify the Department of Social Services of the insurance company name, address, and policy number and the names of the persons covered within thirty days of entry of the Judgment and Decree of Divorce and shall also notify the Department of any changes in coverage. _____ shall also provide _____ with a hard copy of the health insurance card setting forth the insurance company name, address, and policy number and the names of the persons covered within thirty days of entry of the Judgment and Decree of Divorce:

OR

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

address and policy number and the names of persons covered within thirty days.

13. The parties shall retain as their separate property all the vehicles, personal clothing and effect, all household goods, appliances and such other items and personal property as are currently in their respective possessions, free and clear of any claim from the other. In addition, the Plaintiff shall be awarded the following property: _____

_____

_____

The Defendant shall be awarded the following property: _____

_____

_____

14. Retirement/Investment accounts shall be divided as follows: _____

_____

_____

15. Any encumbrances or debts relating to or accompanying an item of personal property shall be the sole responsibility of the party retaining such property.

The following debts shall be assumed by the Plaintiff: _____

_____

_____

The following debts shall be assumed by the Defendant: _____

_____

_____

All other debts shall be paid by the party incurring such debt.

16. Regarding alimony, the Court orders:

☐ Neither party shall be awarded alimony;

OR

☐ _____

_____

17. Plaintiff ☐ / Defendant ☐ **(*check one*)**, currently known as _____shall be restored to their former or maiden name known hereafter as_____;Each party shall, at the request of the other, execute and deliver any such documents as may be required to carry out the intentions and provisions of the Judgment and Decree of Divorce. In the event either party shall fail to execute deeds, titles, or other documents of transfer as required by this Judgment and Decree shall operate as an effective transfer of that party's interest in said property as set forth herein.
18. That SDCL § 25-4A-5 is attached as required by SDCL § 25-4A-5.1 and shall become an Order of this Court.
19. Additional order(s):_____

_____

_____

Dated this_____day of_____, 20_____.

_____
Circuit Court Judge

Attest:

_____
Clerk of Court

_____
Deputy Clerk
(Seal)

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

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

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order.

The court may order one or more of the following sanctions:

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

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

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