

Instructions for Complaint With Minor Children Form

CAUTION: THIS FORM IS DESIGNED FOR DIVORCES WITH MINOR CHILDREN WHERE THE PHYSICAL CUSTODY (WHERE THE CHILDREN WILL LIVE) IS NOT IN DISPUTE. DISPUTED CHILD CUSTODY CASES ARE VERY COMPLICATED AND VERY EXPENSIVE. YOU ARE STRONGLY ADVISED TO MEET WITH AND HIRE AN ATTORNEY TO PROTECT YOUR RIGHTS AND INTERESTS IN A DISPUTED CHILD CUSTODY CASE.

A Complaint is required to begin a divorce action. A Complaint tells your spouse (and the court) what you are asking for and why. Please note that you are not divorced until a Judgment and Decree of Divorce has been signed by the Judge. This is merely the start of your divorce action.

- Complete the top portion of the Complaint. (NOTE: The top portion of each form is called the “caption” and the information will be the same on every form you fill out)
 - Fill in the name of the county in which you are filing for divorce. This must be the county in which either you or your spouse live.
 - Fill in the name of the Judicial Circuit that the county in which you are filing for divorce is located. (Ex. First, Second, Third, etc.) If you do not know, contact the Clerk of Courts in your county.
 - Fill in your full legal name where it says “Plaintiff” and your spouse’s name where it says “Defendant”
 - When you file your papers, the Clerk of Court will assign a case number which you will insert in the space following “DIV.” For example, if your case number is 011234, your form should show DIV.: 01-1234. This case number should appear on all your papers.
- Answer or complete the paragraphs according to the following directions:
 1. Fill in the name of the county and state in which you live.
 2. Fill in the name of the county and state in which your spouse lives.
 3. Fill in the information regarding date and location of your marriage. If the parties are living apart, the date they began to do so.
 4. Check the appropriate grounds for divorce in the event that you and your spouse do not agree to use of irreconcilable differences. **Please understand that**

seeking a divorce for other than irreconcilable differences is likely to result in a contested divorce which is both costly and complex. In those circumstances, you are strongly advised to meet with and hire an attorney to fully protect your interests. You are not required to check other grounds for divorce.

5. Indicate the number of children born of your relationship/marriage or adopted into it
 6. Fill in the children's names and dates of birth, and, if adopted, adoption dates.
 - Advise if you have other children that are not involved in this divorce action because they have a parent other than the Defendant
 - Ask the Clerk of Courts whether you are required to attend a parenting class, a SMILE class or other such class prior to the Judge signing a final Judgment and Decree of Divorce.
- For the Court to have the power to make custodial/parenting time orders, certain information must be provided.
 1. Indicate where the children have lived during the past five years and who they lived with and the date they lived in each location. If the children have not lived with anyone but the parents, please write out in the lines provided: "With the parents only" and then simply provide the county/state information for the past five years.
 2. Indicate whether there have been previous court hearings concerning the custody of the children. If so, indicate in which county, state and year those proceedings happened.
 3. Indicate whether anyone other than the parents has ever had legal custody (court-ordered) of any of the children.
 4. This paragraph presumes there is no custody fight and asks the Court to award legal custody to both parents and grant physical custody to one parent, or as otherwise agreed between the parties. Circle Plaintiff or Defendant to indicate which parent you think the children should live with most of the time.
 5. You need to nothing. This paragraph simply informs the Court that you have some marital property and some marital debts that need to be divided between you.
 6. This paragraph informs the Court whether the parties can support themselves following a divorce and indicates whether the Plaintiff is seeking alimony. Circle the appropriate words in each sentence.
 - Answer or complete set of paragraphs telling the Court what you want:
 1. You do not need to write anything for this paragraph. It tells the court that you are asking for a divorce from your spouse.
 2. You do not need to write anything for this paragraph. It tells the court that you are asking the court to equitably divide your property and debts.
 3. Indicate if either party wishes to have his/her former last name restored. Insert their date of birth.

4. You do not need to write anything for this paragraph. It tells the court that you are requesting any other relief that is equitable and just.

- You must date and sign the Complaint and fill in your address and phone number.
- Make at least two photocopies of the signed Summons; one for you and one to be served on your spouse. The original copy will be filed with the Clerk of Courts.
- Complete the **Verification** portion: **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 prosecuted for not telling the truth.

7. During the past five years the children have lived with the following persons at the times and places indicated below:

Caretaker=s Name	County/State	Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. There have/have not (circle one) been prior court proceedings regarding the custody of the children. If so, that action took place in _____ County, _____ State in the year _____.

9. Other than the parties, no one has ever had legal custody of any of these children except _____ (if none, so state).

10. Both parties are fit and proper persons to share the joint legal custody of the child or children. Physical custody should be vested in the Plaintiff/Defendant (circle one) subject to the visitation established in the South Dakota Guidelines or set by court order,

OR, in the alternative, Plaintiff seeks sole legal and physical custody for the following reasons:

11. The parties have accumulated property and debts during the course of the marriage which must be equitably divided.

12. Plaintiff seeks spousal support (alimony). Yes _____ No _____

WHEREFORE, Plaintiff prays for Judgment as follows:

1. For a decree of divorce dissolving the marriage of the parties.
2. For an equitable division of the marital property and debts.
3. That Plaintiff's / Defendant's (circle one) last name be restored to: _____ Date of birth: _____.
4. That custody of the child or children be established as set out above.
5. That child support be set by the Referee.

