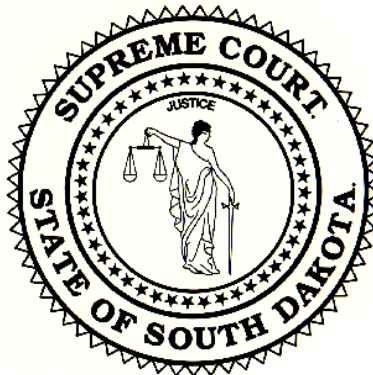


Going Solo: Representing Yourself in the South Dakota Courts



A Guide to Understanding



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

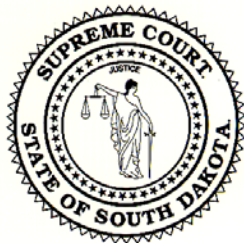
Introduction

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 is a guide 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 www.sdjudicial.com 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

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 to 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 page 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.

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



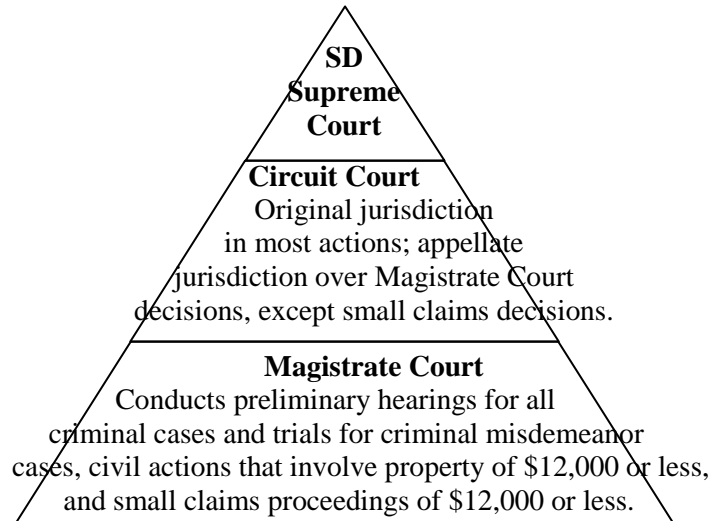
It's possible. You may be able to resolve your dispute through **mediation** without filing a lawsuit. Mediation gives people a chance to sit down with a mediator in an informal setting to try and work out their conflicts. The mediator is a trained problem-solver who will help the parties come to an **agreement**. Mediators usually charge a fee for their services, but mediation could save you time and money in the long run.

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

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**, which are like a small claims court. That is where many court cases take place. 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 will need to 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.
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 papers, 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? The Clerk of Court office can give you a packet of forms for divorce cases only or you may download the forms on the South Dakota Unified Judicial System's webpage at www.sdjudicial.com under the Forms tab. 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 always contact a lawyer at any time.

The following are two scenarios that we would like to provide relating to filing a case:

- **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 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 a final copy.

- **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. Bob filed a counterclaim to ask the court to order his landlord to pay him for it. Answer and counterclaim forms are not available for non-divorce actions.

.... 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 get a friend to read them to 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 or Certificate 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.

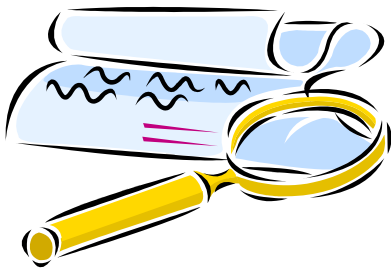
Acceptance of Service: If the other side is willing to accept the papers, you can give them a copy, have them sign a form saying that he received them, and file that form with the Clerk.

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 service with the court showing 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 by the Clerk of Court. There are specific things that Angela needs to do before the hearing. These are spelled out in a 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 statements, pay check stubs, monthly bills, deeds to property, bank accounts, and pension plans.
- Filling out a **Stipulation and Settlement Agreement, if children are involved**. This spells out plans to care for the children and is completed if both parents agree. It is good if both parents can agree on the parenting plan.
- 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 copies: one for the court, one for the landlord, and one 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 15-6-2 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 phone call to his landlord or the landlord's lawyer. He might also want to use 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 help them resolve some or all of their differences in caring for the children. The UJS Circuit Administrator maintains a list of court-approved mediators; contact the Circuit Administrator in your circuit for this list or find this list for your circuit on the UJS website, www.sdjudicial.com. These mediators do charge a fee for their services.



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. If you are handling your own divorce action without a lawyer you must schedule a hearing before the judge.

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.

<p>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.</p>
<p>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 is more likely to 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.</p>

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 at least **three** copies of any evidence you plan to use. 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.



MAKE AN INFORMED CHOICE

The South Dakota Unified Judicial System hopes that this guide has given 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 you can do it on your own. You also understand the risks you are taking if you go to court without a lawyer. Some cases work fine with a "do-it-yourself" approach. Some don't. Keep in mind that 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 series 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 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.state.sd.us/statutes/index.aspx>

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, especially 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:

Contact your local UJS Circuit Court Administrator for a list of mediators who are court-approved in your area.

For Parenting Coordinator Services:

Contact your local UJS Circuit Court Administrator for a list of parenting coordinators who are court-approved in your area.

For Assistance with UJS-Approved Legal Forms found at www.ujs.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
PO 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

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. 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 www.ujs.sd.gov.

General Definitions

Affidavit:

An affidavit is a written document signed under oath and made without prior notice to the opposing party.
SDCL 19-3-2

Alimony (also known as spousal support):

SDCL 25-4-41. Allowance for support when divorce granted. Where a divorce is granted, the court may compel one party to make such suitable allowance to the other party for support during the life of that other party or for a shorter period, as the court may deem just, having regard to the circumstances of the parties represented; and the court may from time to time modify its orders in these respects.

- There are different types of alimony, including:
 - General – an allowance for support and maintenance; the sole object is the provision of food, clothing, habitation and other necessities for support of the spouse.
 - Rehabilitative – awarded to enable a former spouse to refresh or enhance his/her job skills he/she needs to make a living; purpose is to put the former spouse in a position to upgrade his/her economic marketability
 - Restitutive – awarded to reimburse one spouse’s contributions during marriage to the advanced training or education of the other spouse.

There are different factors considered when evaluating each type of alimony. You should consult an attorney when determining whether you qualify for alimony.

Grounds for divorce:

“Grounds for divorce” means the reasons you are seeking a divorce. The reasons that are legally acceptable are set forth in SDCL 25-4-2 as follows:

- 1) Adultery – the voluntary sexual intercourse of a married person with one of the opposite sex to whom he or she is not married. *See also* SDCL 25-4-3.
- 2) Extreme Cruelty – the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage. *See also* SDCL 25-4-4.
- 3) Willful Desertion – the voluntary separation of one of the married parties from the other with intent to desert. SDCL 25-4-5. *See also* SDCL 25-4-8 to 25-4-14, -17 for special conditions or circumstances applicable to willful desertion.
- 4) Willful Neglect – the neglect of a person to provide the common necessities of life for his or her spouse, when having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation. *See also* SDCL 25-4-15, -17.
- 5) Habitual Intemperance – that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. *See also* SDCL 25-4-16, -17.

- 6) Your spouse has been conviction of Felony.
- 7) Irreconcilable Differences – this is the “no fault” reason for divorce. Irreconcilable Differences is where the parties agree that there are substantial reasons for not continuing the marriage and the marriage should be dissolved. SDCL 25-4-17.7. Generally, both parties must agree to use irreconcilable differences as the reason for the divorce. SDCL 25-4-17.2

Minor children:

SDCL 25-5-18.1. Parental duty to support child. The parents of any child are under a legal duty to support their child in accordance with the provisions of § 25-7-6.1, until the child attains the age of eighteen, or until the child attains the age of nineteen if the child is a full-time student in a secondary school. If it is determined by the court that the child support obligation survives the death of the parent, the amount due may be modified, revoked, or commuted to a lump sum payment by the court, taking into consideration all factors deemed relevant, including the financial resources of the child and the other parent and the needs of the decedent's family.

SDCL 25-4-45: Child custody provisions – Modification – Preference of child. In an action for divorce, the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same. In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child’s temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. As between parents adversely claiming the custody, neither parent may be given preference over the other in determining custody.

SDCL 25-5-7.1: Order for joint legal custody – Factors for court’s consideration. In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those aspects between the parties based on the best interest of the child. If it appears to the court to be in the best interest of the child, the court may order, or the parties may agree, how any such responsibility shall be divided. Such areas of responsibility may include the child’s primary physical residence, child care, education, extracurricular activities, medical and dental care, religious instruction, the child’s use of motor vehicles, and any other responsibilities which the court finds unique to a particular family or in the best interests of the child. If the court awards joint legal custody, it may also order joint physical custody in such proportions as are in the best interests of the child, notwithstanding the objection of either parent. (effective July 1, 2012).

SDCL 25-8-64: Disestablishment of Paternity. If a father discovers that he is not the biological father of his child, he must get a genetic test to exclude himself as the father or establish that another man is the biological father by the standards set forth in SDCL 25-8-58 (which refers to the genetic testing). The Court may set aside the presumption of paternity or prior determination of paternity after considering 9 factors. *See also* SDCL 25-7-7.7 (once paternity is disestablished, the child support order is automatically terminated on the date the disestablishment order is entered).

Property:

SDCL 25-4-45.1: Fault is not considered in awarding property.

SDCL 25-4-44: When a divorce is granted, the courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of the Husband or the Wife. In making such division of the property, the court shall have regard for equity and the circumstances of the parties.

When determining whether property is marital or non-marital, there are specific factors utilized by the court. You should consult an attorney if you have questions about property.

Order Regarding Filing Fee and Service of Process Fee:

This document is a court order signed by a Judge ordering that either the filing fees or sheriff's service fees (or both) not be charged to the plaintiff. In order to get this Order, a Motion and Affidavit to Waive Fees must be filed first.

Instructions in Self-Represented Divorce with Children

PLEASE READ ALL INSTRUCTIONS BEFORE BEGINNING TO FILL OUT ANY DOCUMENTS. IT IS IMPORTANT TO FOLLOW ALL INSTRUCTIONS CAREFULLY.

Please use black or blue ink only when filling out all forms!

COMMENCING THE CASE:

- _____ Complete Case Filing Statement (UJS-232) available in this packet.

- _____ Complete the Summons (with Minor Children) (UJS-311). Attach a copy of the South Dakota Parenting Guidelines (UJS-302).

- _____ Complete the Complaint with Minor Children Form (UJS-312).

- _____ Complete the Financial Affidavit (UJS-304).

- _____ Make at least two photocopies of all documents, one for you and one to serve on your spouse.

- _____ Take the original completed Case Filing Statement, Summons (with Minor Children), SD Parenting Guidelines, Complaint with Minor Children, and Financial Affidavit to the Clerk of Court and tell the Clerk you are filing for divorce.

- _____ Pay the \$95.00 filing fee; **OR**

- _____ If you cannot afford the filing fee, you must complete the Motion & Order to Waive Filing Fee & Service of Process Fee (Form UJS-305). The Clerk will present the Motion and your Financial Affidavit to the Judge and you will be notified if the fee has been waived or if you must pay. If the Motion is granted, you will not be charged the filing fee and/or the Sheriff will not charge you for service of process. If your Motion is denied by the judge, you must pay the filing fee and service of process fee in order to proceed with the case. If the filing fee isn't paid within 30 days, your case will be dismissed.

- _____ Arrange for service on the defendant. The different ways to serve the defendant are set forth in the "Instructions for Service of Summons (with Minor Children), South Dakota Parenting Guidelines & Complaint with Minor Children" (Form UJS-314).

_____ Copies of the following documents **MUST** be served on the defendant:
_____ Summons (with Minor Children);
_____ South Dakota Parenting Guidelines; and
_____ Complaint with Minor Children.

Copies of the following documents should be provided to the defendant to make the case flow smoothly:

_____ copy of the Financial Affidavit you completed;
_____ blank copy of the Financial Affidavit form for the defendant's completion;
_____ blank copy of the Instructions & Answer (UJS-318); and
_____ copy of the Instructions in Self-Represented Divorce with Children (UJS-307A).

_____ Upon receipt of the proof of service (either the date the Admission of Service is signed or the date the Summons and Complaint are delivered to the Defendant by the Sheriff or process server), make a copy of proof of service for you and file the original proof of service with the Clerk of Court. Service of the Summons and Complaint starts the lawsuit and starts the 30 days in which the Answer must be filed and the 60 day waiting period before the divorce can be finalized.

_____ An Answer (Form UJS-318) may be filed by the defendant within 30 days after service of the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children.

STIPULATED DIVORCE (the parties agree on all the terms of the divorce):

_____ Parties may reach an agreement regarding the terms and conditions of their divorce instead of a Judge determining everything for them. If an agreement can be reached, the parties need to complete and file the following documents:

_____ Stipulation and Settlement Agreement with Children (UJS-325)
_____ Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce; and
_____ Child Support Filing Data Form (UJS-089).

_____ **After 60 days from the date of service (either the date the Admission of Service is signed or the date the Summons and Complaint are delivered to the Defendant by the Sheriff or process server), the parties are responsible for presenting the Judgment and Decree of Divorce (UJS-326A) to the Judge for consideration.**

_____ If the parties cannot reach an agreement, the Court can order them both to mediation. A court-approved mediator will help the parties mutually agree on the various issues in your divorce. Mediation is not binding and the issues discussed in mediation are confidential.

_____ If the Judge signs the Judgment and Decree of Divorce, the Clerk of Court will complete the Notice of Entry of Judgment and Decree of Divorce and send both parties a copy of it along with certified copies of the Judgment and Decree of Divorce and the Stipulation and Settlement Agreement with Children.

_____ Provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents to each party. Make sure there is enough postage for all three documents.

- If you do not receive these documents, it is your responsibility to call the Clerk of Courts office and inquire as to the status. **These documents are important for finalization of your divorce.**
- **DO NOT ASSUME YOU ARE DIVORCED! Unless you see the Judgment & Decree of Divorce signed by the Judge & filed, you should follow up!**

CONTESTED DIVORCE (parties cannot agree on some or all of the terms):

_____ If the parties cannot agree on the terms and conditions of the divorce, one party will have to request that a hearing, or trial, be scheduled.

_____ If the parties cannot reach an agreement, the Court can order them both to mediation. A court-approved mediator will help the parties mutually agree on the various issues in your divorce. Mediation is not binding and the issues discussed in mediation are confidential.

Forms are not provided in this packet for contested issues / divorces!

_____ Contact the Clerk of Court or Court Administrator to obtain a court date.

_____ Complete a Notice of Hearing and make two copies. File the original. Send one copy to the other party and keep a copy for yourself.

_____ Complete the Affidavit of Mailing. Make one copy for yourself and file the original.

DEFAULT DIVORCE:

_____ In the event the defendant does not file an Answer or any responsive pleading and within 30 days of service and does not cooperate in signing a Stipulation and Settlement Agreement, complete the following forms upon the expiration of the 60 day waiting period:

- _____ Affidavit of Default;
- _____ Application for Judgment & Decree of Divorce (Default) & Notice of Hearing; and
- _____ Affidavit of Mailing.

_____ Make at least two photocopies of these documents, one for you and one to be sent to the defendant. File the original documents with the Clerk of Court. Send a copy of to the Defendant via certified mail.

_____ Complete the Child Support Filing Data Form (UJS-089) and take with you to the hearing for filing.

_____ Take the Judgment and Decree of Divorce (Default) Form (UJS-322A) to the hearing with you for consideration by the Judge or Circuit Court Administrator.

_____ If the Judge signs the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and send you the following documents:

- _____ a copy of the Notice of Entry; and
- _____ a certified copy of the Judgment and Decree of Divorce (Default).

_____ Provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents to each party. Make sure there is adequate postage for these documents.

- If you do not receive the either of these documents, it is your responsibility to call the Clerk of Courts office and inquire as to the status. **Both of these documents are important for finalization of your divorce.**

DISMISSING THE DIVORCE:

If at any time prior to the Judge granting the divorce the parties reconcile their differences and wish to dismiss the divorce action, they must complete and file the Stipulation and Order for Dismissal Form (UJS-328).

If one party would like to dismiss the action but cannot get the signature of the other party, he/she can file the Motion and Order for Dismissal. (Form UJS-329).

_____ Provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents to each party. Make sure there is enough postage for the document.

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 Financial Affidavit & Form

The Financial Affidavit is a sworn statement about the financial situation of the party completing the form. It is meant to give the judge and the parties accurate information about the property and debts involved in the divorce. The values used should be as of the day the party completes the Financial Affidavit.

Both parties need to complete a separate Financial Affidavit Form and submit the same to the Court.

- **Complete this form in black or blue ink only!**
- Complete the caption (the top portion of the form). **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the Clerk if you do not know), name of plaintiff, name of defendant and case filing number (ask the Clerk if you do not know). The caption will be the same on every form you fill out.
- Fill in the personal information in paragraphs (1)-(25). Use the information from your last two tax returns and your most current pay check stub, if you have them, to help you. **If you do not know an answer then place a question mark (“?”) in the blank.** If you **know for certain** that you don't have or receive the item listed then enter a zero (0).
- Fill in the blanks for sections I, II, and III. Values should be an actual amount (if known) or an estimate of what the property is worth. If you do not have or receive the item listed, enter a zero (0).
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo 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 for not telling the truth.

- (23) If you provide medical or dental insurance for your child(ren), please complete the following:
 Name of the Health and/or Dental Insurance Company _____
 Total monthly cost for the employee only: \$ _____
 Total monthly cost for the employee and child(ren): \$ _____
 Persons covered under the policy of insurance: _____.
- (24) Do you incur child care costs as result of employment, job search or training or education necessary to obtain a job or enhance earning potential? _____
 If so, please complete the following:
 Name and address of child care provider: _____
 The name(s) of the child(ren) for whom child care is provided: _____
 How many hours per week is child care being provided? _____
 Cost of Child Care: Monthly: \$ _____ Weekly: \$ _____ Hourly: \$ _____
 List the costs, per month, of the child care expenses incurred for the past six months: _____
- Do you receive any state assistance for child care? _____ If so, how much? _____
 Do you claim the Federal Child Care Tax Credit? _____

- (25) Enter the amount of Social Security or Veteran's Benefits provided to a child(ren) of the parties due to your retirement, disability or other eligibility: \$ _____
 Which parent receives the payment for the child? _____

(26) The following amounts accurately represent my assets and liability:

1. ASSETS (things we own or are buying)

a. CASH (on hand or in banks)	\$ _____
b. ACCOUNTS and NOTES RECEIVABLE (IOU's and other money payable to me).....	\$ _____
c. INVESTMENTS(stocks, bonds, savings bond, CD's, money market, stock options, etc.)....	\$ _____
d. RETIREMENT ACCOUNT (account balance).....	\$ _____
e. REAL ESTATE (house, land, tribal lease land, rental property, etc.).....	\$ _____
f. AUTOMOBILE(S) make, model, year:	\$ _____
_____	\$ _____
_____	\$ _____
g. RECREATIONAL VEHICLES (boats, campers, ATV's, etc.).....	\$ _____
h. HOUSEHOLD GOODS (furniture, appliances, TV, stereo, etc.).....	\$ _____
i. SPORTING EQUIPMENT (hunting/fishing, camping, boating, etc.).....	\$ _____
j. JEWELRY.....	\$ _____
k. TOOLS, SHOP EQUIPMENT.....	\$ _____
l. VALUE OF BUSINESS	\$ _____
m. OTHER PERSONAL PROPERTY (tools, sports equipment, etc.).....	\$ _____
n. ANY OTHER ASSETS (anything else I could sell or borrow money on).....	\$ _____
TOTAL VALUE OF ASSETS.....	
	\$ _____

2. LIABILITIES (money that we owe)

- a. Our regular monthly expenses are: (housing, utilities, food, insurance, etc.).....\$ _____
- b. DEBTS (vehicle loans, mortgages, credit cards, student loans, medical bills, personal loans, etc.):
- | | |
|-------------|--------------------------|
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |

TOTAL LIABILITIES\$ _____

3. ANTICIPATED INCOME (money or property you are expecting)

a. Total monies or income from sale of house or land, gifts, inheritance, allotments,
trust funds, lease money, etc.....\$ _____
When is the money/income expected? _____

Dated: _____

Signature of Person Filling out this Affidavit
(Sign only in front of notary public or clerk of courts.)

Sworn/affirmed before me this
_____ day of _____.

Notary Public \ Clerk of Courts

If notary, My Commission Expires _____

(SEAL)

- If you have children, you must complete the child support calculation. The DSS calculator is found at <http://dss.sd.gov/childsupport/services/obligationcalculator.asp>
- **Attach your calculation of child support**

Instructions for Motion & Order to Waive Filing Fee & Service of Process Fee & Forms

A Motion to Waive Filing Fee & Service of Process Fee is a request to the Court asking that it not charge you the fee for filing a divorce and to direct the Sheriff not to charge you for service of process. The Motion refers to your Financial Affidavit (Form UJS-304) to explain your financial situation to the Judge and help the Judge decide whether to waive the fees in your case. Basically, you are telling the Judge that **you cannot afford** to pay the filing fee and the service of process fee.

- **Complete this form in black or blue ink only!**
- Complete the caption at the top of the Motion. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the Clerk if you do not know), name of plaintiff, name of defendant and case filing number (ask the Clerk if you do not know). The caption will be the same on every form you fill out.
- Read the entire document and make sure you fully understand it. You do not need to complete anything, but you are signing the document, under oath, that you are in agreement with the statements. *If you do NOT agree with statements, do not sign it!*
- **If you agree with the statements in the Motion, you must sign and date the Motion in the presence of a notary public or clerk of court. Make sure to bring photo 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.

- Make a photocopy of the Motion for you own records and file the original Motion and a blank copy of the Order Waiving Filing Fee and Service of Process Fee with the Clerk of Courts.

GIVE THE COMPLETED AND SIGNED MOTION AND A BLANK COPY OF THE ORDER WAIVING FILING FEE AND SERVICE OF PROCESS FEE TO THE CLERK OF COURTS WHEN YOU FILE YOUR DIVORCE.

If you do not hear from the Clerk in 5 business days, you should contact them and inquire whether the Judge signed your Order Waiving Filing Fee and Service of Process Fee. If he did NOT sign the Order, you have 30 days in which to pay the filing fee or your case will be dismissed.

CASE FILING STATEMENT

(Two-Party Cases)

Please check the case type you are filing:

CIV: Tort Contract Name Change Paternity Quiet Title Claim and Delivery
 Foreign Judgment Administrative Appeal Condemnation Forcible Entry & Detainer
 Habeas Corpus Other Writ Other

DIV: Divorce* Annulment* Separate Maintenance*

SMC: Small Claims

Complete a form for each additional Plaintiff or Defendant

This Statement is not retained in the court file.

Plaintiff: _____
Last/Business name First Middle Suffix

Physical Address: _____ City: _____ State _____ Zip: _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

Date of Birth: _____
mm dd yyyy

Social Security #: _____ - _____ - _____ and/or Drivers license # _____ State _____

Employer ID (if Plaintiff is a business or other entity) _____

Attorney: _____
Last First Phone #

Mailing Address: _____ City: _____ State: _____ Zip: _____

Defendant: _____
Last/Business name First Middle Suffix

Physical Address: _____ City: _____ State _____ Zip: _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

City: _____ State: _____ Zip: _____

Date of Birth: _____
mm dd yyyy

Social Security #: _____ - _____ - _____ and/or Drivers license # _____ State _____

Employer ID (if Defendant is a business or other entity) _____

Attorney: _____
Last First Phone #

Mailing Address: _____ City: _____ State: _____ Zip: _____

* For cases involving divorce, child support, and paternity, you must include your Social Security Number.
42 USC 666(a)(13)(B),

Instructions for Summons (With Minor Children) & Form

- **Complete this form in black or blue ink only!**
- Complete the top portion of the Summons (with Minor Children). (NOTE: The top portion of each form is called the “caption” and the information will be the same on every form you fill out.) **If you are using the Spanish version, the form must be completed in English. The Clerk will reject any forms completed in a language other than English.**
 - 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 (1-7) 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 full legal 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 papers that you file with the Clerk.
- You must date and sign the Summons (with Minor Children) at the bottom. You must also include your mailing address and telephone number.
- Make at least 2 photocopies of the signed Summons (with Minor Children); one for you and one to be served on your spouse. The original must be filed with the Clerk of Courts.
- **You must also attach a copy of the South Dakota Parenting Guidelines (UJS-302) to each copy of the Summons (with Minor Children).** Refer to the Instructions in Self-Represented Divorces with Children (UJS-307A) to ensure you have all the documents collected for service.
- **It is very important that you read and follow the Temporary Restraining Order that becomes automatic when you file for divorce. Both parties are required to obey the Temporary Restraining Order. Violation of any of these terms could subject you to penalties and delay your divorce. Read it carefully.**

INITIAL CUSTODY ORDER

Pursuant to SDCL 25-4A-11 et seq., upon service of this Summons the attached South Dakota Parenting Guidelines (Form UJS-302) become an order of this court. Except as provided in SDCL § 33-6-10, any minor children of this marriage shall remain in the custody of the parent who has been the primary caregiver for the minor children for the majority of time in the twelve months preceding the filing of the Summons and Complaint with Minor Children, unless the parties otherwise agree. The guidelines are subject to any provision established by a South Dakota state court in the following: a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and an order in any other proceeding affecting child custody or support. SDCL 25-4A-14.

The attached guidelines apply and shall continue in effect unless the parties agree or the court otherwise orders. Imposition of these standard guidelines creates no presumption as to who may be awarded custody at any hearing. Per SDCL 25-4A-12, any agreement by the parties for visitation other than the standard guidelines must be in writing, signed by both parties, and filed with the court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan previously filed.

Per SDCL 25-4A-13, if either party objects to the implementation of the South Dakota Parenting Guidelines (Form UJS-302) as the initial custody arrangement, the objecting party shall file an objection with the Clerk of Court. The court shall order a hearing which shall be held not later than 30 days after the date of the objection. The court shall then issue its temporary custody and visitation order after considering the best interest of the child(ren) consistent with the provisions of SDCL 25-4-45.

IF EITHER SPOUSE VIOLATES ANY OF THESE PROVISIONS, THAT SPOUSE MAY BE FOUND TO BE IN CONTEMPT OF COURT AND MAY BE ORDERED TO PAY COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO THE ATTORNEY FEES OF THE OTHER SPOUSE.

Dated this _____ day of _____, 20_____.

Plaintiff's Signature

Print Name

Mailing Address

City, State, Zip

Telephone Number

- **The instructions & forms for self-represented litigants can be found at Clerk of Court's office or at <http://www.ujs.sd.gov>**

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. This is merely the start of your divorce action. Please note that you are not divorced until a Judgment and Decree of Divorce has been signed by the Judge and filed with the Clerk of Court.

- **Complete this form in black or blue ink only!**
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Answer or complete the paragraphs within the Complaint.
- Paragraphs 1 – 6 are self-explanatory.
- Paragraph No. 7: The primary reason for a divorce, in uncontested situations, is irreconcilable differences (no fault by either party). However, you may want to select an alternative reason in addition to irreconcilable differences. You are not, however, required to do so.
 - **Please understand that seeking a divorce on the grounds 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.**
- Paragraph 8: Indicate the present number of minor children born to or adopted by the parties during your relationship / marriage. Indicate whether the Wife is pregnant and if so, what her due date is.
- Paragraph 9: Fill in the minor children’s names and dates of birth.
- Paragraph 10-12: For the Court to have the power to make custodial / parenting time (visitation) orders, certain information must be provided:
 10. For the past five years, indicate who the minor children have lived with, the county and state of residence and time periods at each residence. 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.

11. Indicate whether there have been any previous court hearings concerning the custody of the minor children. If so, indicate in which county, state and year those proceedings happened.
12. Indicate whether anyone other than the parents has ever had legal custody (court-ordered) of any of the children.

- Paragraph 13: Choose between the 3 custody / parenting time (visitation) scenarios or fill in your own.
- Paragraph 14: Check whether you are seeking a child support order.
- Paragraph 15: Check whether you are requesting that one of the parties be ordered to provide health insurance for the minor children and if so, circle which party.
- Paragraph 16: Check whether you would like daycare expenses of the minor children divided between the parties.
- Paragraph 17: Check “yes” if you have marital property and debts that need to be divided between of you. Check “no” if you did not acquire any marital property or debt during your marriage.
- Paragraph 18: Check whether you are seeking alimony.

In the “Prayer for Relief” (the Section starting with “Wherefore”):

Review the paragraphs in this section. This is the section where you are telling the Court what you want. You do not need to do anything unless one of the parties is seeking to have a former name restored, which is in Paragraph 3.

Paragraph 1: You do not need to write anything. This paragraph tells the court that you are asking for a divorce from your spouse.

Paragraph 2: You do not need to write anything. This paragraph tells the court that you are asking the court to equitably divide your property and debts.

Paragraph 3: Indicate if either party wishes to have his/her former last name restored. Circle which party wants their former name restored. Enter the first, middle and last name (former name) of that party. Insert that party’s date of birth.

Paragraph 4-9: You do not need to write anything. These paragraphs tell the court that you are requesting the additional relief requested in your Complaint as well as any other relief that is equitable and just.

- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo 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.**

Verification Section:

- **Although this section needs to be completed, do not fill out the verification until you are in the presence of a notary public or clerk of court. Make sure to bring photo 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 for not telling the truth.

- Make at least two photocopies of the signed Complaint with Minor Children; one for you and one to be served on your spouse. The original copy must be filed with the Clerk of Courts.

SMILE PROGRAM:

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. At this time, the parties must both attend the SMILE class in the 2nd, 4th and 7th Judicial Circuits before a divorce is granted.

8. We have _____ minor child(ren) which have been born to or adopted by the parties. The Wife is / is not (*circle one*) pregnant. If the Wife is pregnant, her due date is _____.

9. Those minor children's names and dates of birth are:

_____	_____
_____	_____
_____	_____
_____	_____

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

<u>Name of Person Living With</u>	<u>County/State</u>	<u>Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. 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 _____. **Attach all orders regarding custody of minor children.**

12. Other than the parties, no one has ever had legal custody of any of these children except _____ (*if not applicable, write "none"*). **Attach all orders regarding custody of minor children.**

13. In regards to custody, the Plaintiff alleges: (*Check one of the following*)

- Both parties are fit and proper persons to share the joint legal custody of the child(ren) or children, with Plaintiff / Defendant (*circle one*) having primary physical custody, subject to reasonable visitation rights with Plaintiff / Defendant (*circle one*); or

Plaintiff / Defendant (*circle one*) is the fit and proper persons to have sole legal and physical custody of the minor child(ren), subject to visitation with the Plaintiff / Defendant (*circle one*) as follows: _____

_____ ; or

Both parties are fit and proper persons to share the joint legal and physical custody of the minor child(ren), with the parents sharing the duties and responsibilities of parenting the child(ren), the child(ren) residing no less than 180 nights per calendar year in each parent's home and the parents dividing the expenses of the child(ren) in proportion to their incomes; or

Other _____

_____.

14. Plaintiff requests that an order for child support be established. Yes _____
No _____ (Even if the Plaintiff is the non-custodial parent, he/she can still request that a child support order be entered).
15. Plaintiff requests that the Plaintiff / Defendant (*circle one*) be ordered to provide health insurance for the minor child(ren) with the uncovered medical expenses, including the premium attributable to the minor child(ren), being allocated between the parties in proportion to their incomes. Yes _____ No _____
16. Plaintiff requests that the daycare expenses of the minor child(ren) be allocated between the parties. Yes _____ No _____
17. The parties have accumulated property and debts during the course of the marriage which must be equitably divided. Yes _____ No _____
18. Plaintiff seeks spousal support (alimony). Yes _____ No _____

WHEREFORE, Plaintiff prays for Judgment as follows:

1. For a Judgment and 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 and visitation of the minor child(ren) be established as set forth above;

Instructions for Service of Summons (With Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children

In order to start the divorce, the Defendant must be served with copies the following documents (the originals are filed with the Clerk of Court Office):

1. Summons (With Minor Children);
2. South Dakota Parenting Guidelines; and
3. Complaint with Minor Children.

The Instructions in Self Represented Divorce with Minor Children (Form UJS-307A) should be served with these documents as well.

The most common ways to serve the Defendant are:

1. In divorces where the parties are agreeable to the terms, the Defendant will often times agree to accept service, avoiding the need to have a Sheriff or private process server serve him/her. This means that as the Plaintiff, you may hand-deliver copies of the above itemized documents to the Defendant and the Defendant signs the **Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children**. The Defendant neither admits nor denies the contents of the documents; he/she merely admits that they received the documents on the specified date.
2. The Plaintiff can also mail copies of the above itemized documents and a self-addressed, stamped envelope to the Defendant along with 2 copies of the **Notice and Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint With Minor Children**. The Defendant then has 20 days in which to sign the Admission of Service and return it to the Plaintiff. Failure to do so may result in the Defendant having to reimburse you for the cost of service by the Sheriff or private process server.

Per SDCL 15-6-4(g)(5), the Plaintiff will also need to complete an **Affidavit of Mailing** when mailing copies to the Defendant. Keep a copy of the document for your file and file the original with the Clerk of Court.

3. Finally, the Plaintiff can request that the Sheriff's Office or private process server serve the Defendant. Under this scenario, the Plaintiff delivers one full copy of the Summons, South Dakota Parenting Guidelines and Complaint with Minor Children to the Sheriff's Office along with the Defendant's current physical address, telephone number, place of employment and any other relevant information. Typically the cost of service (the service fee and mileage reimbursement) is pre-paid. After service, the Sheriff or process server has his own form that he/she uses to prove service and that form is usually mailed to you. Make sure you make a copy of this form for yourself and file the original with the Clerk of Court's office.

If you HAND-DELIVER the documents to the Defendant:

Complete the Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children (Form UJS-317):

- **Complete the form in black or blue ink only!**
- Complete the “caption.” This information will be the same as on the Summons (with Minor Children) and Complaint with Minor Children.
- The Defendant must fill in his full legal name in the body of the text.
- The Defendant must fill in the town, county and state of the place where he/she received the documents.
- The Defendant must fill in the date with the month, day and year he/she received the documents.
- The Defendant must complete the signature block with his/her signature, printed name, mailing address and telephone number.
- The Defendant should make a copy of the completed Admission for his/her own records and return the original document to the Plaintiff.
- Plaintiff should also make a copy for his/her own records and then file the original Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children with the Clerk of Court.
- **The divorce may not be finalized until at least sixty days have elapsed from the date the summons and complaint are served. (The day of service is not counted).**

If you MAIL the documents to the Defendant:

Complete the Notice and Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children (Form UJS-315):

- **Complete the form in black or blue ink only!**
- Complete the “caption” on both forms of Form UJS-315. This information will be the same as on the Summons (with Minor Children) and Complaint with Minor Children.
- As the Plaintiff, sign and date the Notice and Admission of Admission of Service of Summons, SD Parenting Guidelines and Complaint with Minor Children (By Mail), including your address and telephone number.

- On the Affidavit of Mailing, fill in the date the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint (with Minor Children) were sent to the Defendant.
- Fill in the address of the Defendant where the copies of the documents were sent to the Defendant.
- Upon receipt, the Defendant must fill in their name on the Admission of Service of Summons, SD Parenting Guidelines and Complaint as well as the town, county and state of the place where he/she received the documents.
- The Defendant shall enter the date the copies of the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children were received and sign and date the Admission, including his/her mailing address and telephone number.
- The Defendant should make a copy of the completed Notice and Admission forms for his/her own records and return the original document to the Plaintiff in the self-addressed, stamped envelope.
- Upon receipt, Plaintiff should also make a copy of the document for his/her own records and then file the original forms - Notice and Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children - with the Clerk of Court.
- **The divorce may not be finalized until at least sixty days have elapsed from the date the summons and complaint are served. (The day of service is not counted).**

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

COUNTY OF _____) :SS

_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

DIV _____

**ADMISSION OF SERVICE
OF SUMMONS, SD PARENTING
GUIDELINES, AND COMPLAINT**

(BY HAND DELIVERY)

I, _____, the above-named Defendant, admit receiving a copy of the Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children in the above-captioned matter at:

_____ (city)
_____ (county)
_____ (state).

This Admission merely acknowledges receipt of the papers; I do not admit or deny any of the statements contained in those papers.

Dated this _____ day of _____, 20_____.

Signature of Defendant
(Sign only in front of a notary or Clerk of Court)

Sworn/affirmed before me this
_____ day of _____, 20_____.

Name: (Printed)_____

(Notary Public/Clerk of Court)

Address:_____

If notary, my commission expires
(SEAL)

City/State/Zip:_____

Telephone: (____)_____

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____) JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant</p>	<p>DIV _____</p> <p>NOTICE AND ADMISSION OF SERVICE OF SUMMONS, SD PARENTING GUIDELINES, AND COMPLAINT (BY MAIL)</p>
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TO THE ABOVE NAMED DEFENDANT: The enclosed Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children are sent to you pursuant to SDCL § 15-6-4(i), as well as two (2) copies of this Notice and Admission of Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children, and a return envelope, postage prepaid, addressed to the Plaintiff.

You must complete the Admission of Service portion of this form and return the original to the sender within 20 days. In completing the form, you must fill in the town and state where you received the papers and sign and date the document. Failure to sign and return the original Admission of Service within 20 days after the date of mailing without good cause will result in the Court ordering you to pay the costs of personal service. SDCL 15-6-4(i).

After you complete and return this form, you must then respond to the complaint within 30 more days. If you fail to do so, judgment may be entered against you by default as requested in the complaint.

Dated this _____ day of _____, 20_____.

Signature of Plaintiff

Printed Name of Plaintiff

Mailing address

City, State and Zip Code

Telephone Number

AFFIDAVIT OF MAILING

I, _____, being sworn, state that on
(Full legal name of Plaintiff)

_____, 20____, I sent the following documents:

2 copies of the "Notice & Admission of Service of Summons, South Dakota Parenting Guidelines and Complaint with Minor Children"; 1 copy of the "Summons (with Minor Children)"; 1 copy of the "South Dakota Parenting Guidelines"; and 1 copy of the "Complaint with Minor Children"

by placing true and correct copies in an envelope addressed to:

_____ at _____
(Full legal name of Defendant) (Defendant's mailing address)

in the City of _____, State of _____,

Zip Code _____ and depositing the envelope, with sufficient postage, in the

United States Mail at _____.
(city and state mailed from)

Dated this _____ day of _____, 20_____.

Signature of Plaintiff
(Sign only in front of a notary or Clerk of Court)

Sworn/affirmed before me this
_____ day of _____, 20_____.

Name: (Printed)_____

Public/Clerk of Court)

Address:_____ (Notary

City/State/Zip:_____

If notary, my commission expires
(SEAL)

Telephone: (____)_____

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

DIV _____

**ADMISSION OF SERVICE OF
SUMMONS, SD PARENTING
GUIDELINES AND COMPLAINT
(BY MAIL)**

**ADMISSION OF SERVICE OF SUMMONS,
SD PARENTING GUIDELINES AND COMPLAINT**

I, _____, admit receiving a copy of the Summons,
South Dakota Parenting Guidelines and Complaint in the above-captioned matter at

_____ (city),
_____ (county), _____ (state). This

Admission merely acknowledges receipt of the papers on the date provided below; I do not admit or
deny any of the statements contained in those papers.

Dated this _____ day of _____, 20_____.

Signature of Defendant
(Sign only in front of a notary or Clerk of Court)

Sworn/affirmed before me this
_____ day of _____, 20_____.

Name: (Printed)_____

(Notary Public/Clerk of Court)

Address:_____

City/State/Zip:_____

If notary, my commission expires
(SEAL)

Telephone: (____)_____

Instructions for Answer & Forms

An Answer is a written response to the Complaint with Minor Children. This must be completed by the Defendant to protect the Defendant's rights. If the Defendant chooses to file an Answer, he/she must file the Answer with the Clerk of Courts and serve it on the Plaintiff within 30 days after Defendant is served with the Summons and Complaint (the date Defendant either signed the Admission of Service or the papers were delivered to the Defendant by the Sheriff or process server). **If an Answer is not filed, the court may grant the Plaintiff everything requested in the Complaint and the judge may enter a Default Judgment & Decree of Divorce.**

- **Complete this form in black or blue ink only!**
- Complete the top portion of the Answer (the "caption") just as it appears in the Summons and Complaint with Minor Children. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don't know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don't know). The caption is the same on every form.
- Answer or complete paragraphs 1-4. **You must respond to each and every paragraph of the Complaint with Minor Children. (You must Admit, Deny, Partially Admit or Deny, or state "I do not have enough information to respond to Paragraph number _____ of the Complaint.")**
- You must date and sign the Answer and provide your address and telephone number and complete the **Verification** portion. **But, do not sign the documents in either spot until you are in the presence of a notary public or clerk of court. Make sure to bring photo 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.**
- Make 2 photocopies of the Answer; one for your file and another to be served on the Plaintiff. The original must be filed with the Clerk of Court.

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.

Affidavit of Mailing

You must prove to the Court that you mailed the Answer to the Plaintiff. This is done by completing the Affidavit of Mailing, which is a statement sworn under oath that the Defendant actually mailed the Answer to the Plaintiff on the date indicated at the correct address with the correct postage.

- The Affidavit of Service by Mail may only be completed after the papers/documents listed are placed in the United States Mail.

- Complete the top portion of the Answer (the “caption”) just as it appears in the Summons and Complaint with Minor Children.
- Fill in the blanks as indicated on the Affidavit.
- Make a photocopy of the Affidavit for your file. The original will be filed with the Clerk of Courts.
- **You must sign and date the Affidavit 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.**

Service of Answer by Hand-Delivery

If you hand deliver this form to the Plaintiff, please complete the Admission of Service of Answer (By Hand-Delivery) (Form UJS-351). However, if the Plaintiff will not sign the Admission of Service of Answer, you will still need to mail the document to him/her and complete the Affidavit of Mailing, as set forth above.

- **Complete the form in black or blue ink only!**
- Complete the “caption.” This information will be the same as on the Summons (with Minor Children) and Complaint with Minor Children.
- The Plaintiff must fill in his full legal name in the body of the text.
- The Plaintiff must fill in the town, county and state of the place where he/she received the documents.
- The Plaintiff must fill in the date with the month, day and year he/she received the documents.
- The Plaintiff must complete the signature block with his/her signature, printed name, mailing address and telephone number.
- The Plaintiff should make a copy of the completed Admission for his/her own records and return the original document to the Defendant.
- Defendant should also make a copy for his/her own records and then file the original Admission of Service of Answer with the Clerk of Court.

STATE OF SOUTH DAKOTA)
)
) :SS
)
COUNTY OF _____)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

_____, Plaintiff, vs. _____, Defendant	DIV _____ ANSWER
--	--------------------------------

Defendant answers the Complaint as follows:

1. I **AGREE** with the following paragraphs of the Complaint with Minor Children:

2. I **DISAGREE** with the following paragraphs of the Complaint with Minor Children:

3. I either **PARTIALLY Agree or Disagree** with the following paragraphs of the Complaint with Minor Children: _____

4. I **DO NOT HAVE ENOUGH INFORMATION** to either agree or disagree with the following paragraphs of the Complaint with Minor Children: _____

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, leave these spaces blank and sign the document; however make sure you sign before a notary.

1.

2.

3.

4.

Dated this _____ day of _____, 20_____.

Defendant's Signature

Print Defendant's name

Street Address

City, State, Zip

Telephone Number

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

DIV _____

vs.

_____,
Defendant

**AFFIDAVIT OF MAILING
ANSWER**

I, _____, being sworn, state that on
(Full legal name of Defendant)

_____, 20_____, I served the Answer on the Plaintiff by

placing a true and correct copy of the document in an envelope addressed to:

_____ at _____
(Full legal name of Plaintiff) (Plaintiff's mailing address)

in the City of _____, State of _____, Zip Code _____

and depositing the envelope, with sufficient postage, in the United States Mail at

_____.
(City and State mailed from)

Dated this _____ day of _____, 20_____.

Signature of Defendant
(Sign only in front of a Notary or Clerk of Courts)

Sworn/affirmed before me this
_____ day of _____, _____.

Printed name of Defendant: _____

Address: _____

City/State/Zip: _____

Telephone: (_____) _____

(Notary Public/Clerk of Courts)

If Notary, my commission expires: _____
(SEAL)

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

COUNTY OF _____) :SS

_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant</p>	<p>DIV _____</p> <p>ADMISSION OF SERVICE OF ANSWER</p> <p><u>(BY HAND DELIVERY)</u></p>
---	---

I, _____, the above-named Plaintiff, admit receiving a copy of the Answer in the above-captioned matter at:

_____ (city)
 _____ (county)
 _____ (state).

This Admission merely acknowledges receipt of the papers; I do not admit or deny any of the statements contained in those papers.

Dated this _____ day of _____, 20_____.

 Signature of Plaintiff
 (Sign only in front of a notary or Clerk of Court)

Sworn/affirmed before me this _____ day of _____, 20_____.

Name: (Printed)_____

 (Notary Public/Clerk of Court)

Address:_____

If notary, my commission expires (SEAL)

City/State/Zip:_____

Telephone: (____)_____

Instructions for Financial Affidavit & Form

The Financial Affidavit is a sworn statement about the financial situation of the party completing the form. It is meant to give the judge and the parties accurate information about the property and debts involved in the divorce. The values used should be as of the day the party completes the Financial Affidavit.

Both parties need to complete a separate Financial Affidavit Form and submit the same to the Court.

- **Complete this form in black or blue ink only!**
- Complete the caption (the top portion of the form). **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask the Clerk if you do not know), name of plaintiff, name of defendant and case filing number (ask the Clerk if you do not know). The caption will be the same on every form you fill out.
- Fill in the personal information in paragraphs (1)-(25). Use the information from your last two tax returns and your most current pay check stub, if you have them, to help you. **If you do not know an answer then place a question mark (“?”) in the blank.** If you **know for certain** that you don't have or receive the item listed then enter a zero (0).
- Fill in the blanks for sections I, II, and III. Values should be an actual amount (if known) or an estimate of what the property is worth. If you do not have or receive the item listed, enter a zero (0).
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo 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 for not telling the truth.

- (23) If you provide medical or dental insurance for your child(ren), please complete the following:
 Name of the Health and/or Dental Insurance Company _____
 Total monthly cost for the employee only: \$ _____
 Total monthly cost for the employee and child(ren): \$ _____
 Persons covered under the policy of insurance: _____.
- (24) Do you incur child care costs as result of employment, job search or training or education necessary to obtain a job or enhance earning potential? _____
 If so, please complete the following:
 Name and address of child care provider: _____
 The name(s) of the child(ren) for whom child care is provided: _____
 How many hours per week is child care being provided? _____
 Cost of Child Care: Monthly: \$ _____ Weekly: \$ _____ Hourly: \$ _____
 List the costs, per month, of the child care expenses incurred for the past six months: _____
- Do you receive any state assistance for child care? _____ If so, how much? _____
 Do you claim the Federal Child Care Tax Credit? _____

- (25) Enter the amount of Social Security or Veteran's Benefits provided to a child(ren) of the parties due to your retirement, disability or other eligibility: \$ _____
 Which parent receives the payment for the child? _____

(26) The following amounts accurately represent my assets and liability:

1. ASSETS (things we own or are buying)

a. CASH (on hand or in banks)	\$ _____
b. ACCOUNTS and NOTES RECEIVABLE (IOU's and other money payable to me).....	\$ _____
c. INVESTMENTS(stocks, bonds, savings bond, CD's, money market, stock options, etc.)....	\$ _____
d. RETIREMENT ACCOUNT (account balance).....	\$ _____
e. REAL ESTATE (house, land, tribal lease land, rental property, etc.).....	\$ _____
f. AUTOMOBILE(S) make, model, year:	\$ _____
_____	\$ _____
_____	\$ _____
g. RECREATIONAL VEHICLES (boats, campers, ATV's, etc.).....	\$ _____
h. HOUSEHOLD GOODS (furniture, appliances, TV, stereo, etc.).....	\$ _____
i. SPORTING EQUIPMENT (hunting/fishing, camping, boating, etc.).....	\$ _____
j. JEWELRY.....	\$ _____
k. TOOLS, SHOP EQUIPMENT.....	\$ _____
l. VALUE OF BUSINESS	\$ _____
m. OTHER PERSONAL PROPERTY (tools, sports equipment, etc.).....	\$ _____
n. ANY OTHER ASSETS (anything else I could sell or borrow money on).....	\$ _____
TOTAL VALUE OF ASSETS.....	
	\$ _____

2. LIABILITIES (money that we owe)

- a. Our regular monthly expenses are: (housing, utilities, food, insurance, etc.).....\$ _____
- b. DEBTS (vehicle loans, mortgages, credit cards, student loans, medical bills, personal loans, etc.):
- | | |
|-------------|--------------------------|
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |
| I owe _____ | this amount.....\$ _____ |

TOTAL LIABILITIES\$ _____

3. ANTICIPATED INCOME (money or property you are expecting)

a. Total monies or income from sale of house or land, gifts, inheritance, allotments,
trust funds, lease money, etc.....\$ _____
When is the money/income expected? _____

Dated: _____

Signature of Person Filling out this Affidavit
(Sign only in front of notary public or clerk of courts.)

Sworn/affirmed before me this
_____ day of _____.

Notary Public \ Clerk of Courts

If notary, My Commission Expires _____

(SEAL)

- If you have children, you must complete the child support calculation. The DSS calculator is found at <http://dss.sd.gov/childsupport/services/obligationcalculator.asp>
- **Attach your calculation of child support**

WHEREAS, Plaintiff resided at _____, (city) _____, County, _____ (state), at the time of the commencement of this divorce action and presently resides at _____, (city) _____ County, _____ (state). Defendant resided at _____, (city) _____ County, _____ (state), at the time of the commencement of this divorce action and presently resides at _____, (city) _____ County, _____ (state). Both parties

agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue, and

WHEREAS, the parties are the parents of _____ (insert number of child(ren)) minor child(ren) born to or adopted by the parties during the course of their relationship / marriage. Wife is / is not (circle one) pregnant at the time of this action. If pregnant, Wife is due on the _____ day of _____, 20_____, and

WHEREAS, the parties hereto now desire to enter into an Agreement settling all claims, custody, visitation, child support, property division and all other matters between the parties with regard to the divorce action,

NOW THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, it is agreed and understood by and between the parties as follows:

1. **Release.** Except as herein specified, each of the parties is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and each of the parties releases the other from any and all liabilities, debts and/or obligations of any kind or character incurred by the other from and after the date of this Agreement and from any and all claims and demands, it being expressly understood and agreed this Agreement is intended to settle the rights of the parties in all respects, except as hereinafter provided.
2. **After-Acquired Property.** Any and all property, whether real or personal, acquired by either party from and after the date hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same, and each of said parties hereby respectfully grants to the other all such other and further acquisitions of property as the sole property of the one so acquiring the same.
3. **Custody & Visitation.** The parties are the parents of the following minor child(ren) born to or adopted

by them during their relationship or marriage:

<u>Name</u>	<u>Date of Birth</u>	<u>Date of Adoption</u>	<u>Age</u>	<u>Sex</u>

A. Legal & Physical Custody: The parties agree that custody of the minor child(ren) shall be (*check one box*):

- The parties share joint legal custody of the minor child(ren) with Mother / Father having primary physical custody (*circle one parent*);
- The parties share joint legal and joint physical custody of the minor child(ren);
- Mother / Father has sole legal custody and physical custody of the minor child(ren) (*circle one parent*);
- The parents agree to joint legal and physical custody with a 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 expenses of the child(ren) in proportion to their incomes; i.e. Father paying ____% and Mother paying ____% (*these percentages are obtained from the child support calculation form*).

B. Parenting Time Schedules: The parties agree to the following parenting time schedules with the minor child(ren) (*you may review the South Dakota Parenting Guidelines to assist you in designing these schedules*):

During the school week, Mother shall have the minor child(ren) (including pick-up and return times and location): _____

and Father, during the school week, shall have the minor child(ren) (including pick-up and return times and location): _____

During the summer, Mother shall have the child(ren) (including pick-up and return times and location):

and Father, during the summer, shall have the child(ren) (including pick-up and return times and location):

C. Holidays: In addition and unless the parties otherwise agreed, major holidays shall be alternated in the following manner:

Even Years:

Mother shall enjoy the following holidays with the minor child(ren):

Martin Luther King, Jr. Day weekend (in January)

Spring Break, if one is separate from Easter

4th of July

Labor Day weekend

First Half of Christmas Break

Child(ren)'s Birthday(s)

Father shall enjoy the following holidays with the minor child(ren):

President's Day (in February)

Easter

Memorial Day weekend

Thanksgiving

Second Half of Christmas Break, including New Year's Eve and Day

Odd Years:

Mother shall enjoy the following holidays with the minor child(ren):

President's Day weekend (in February)

Easter

Memorial Day weekend

Thanksgiving

Second Half of Christmas Break, including New Year's Eve and Day

Father shall enjoy the following holidays with the minor child(ren):

Martin Luther King, Jr. Day weekend (in January)

Spring Break, if one is separate from Easter

4th of July

Labor Day weekend

First Half of Christmas Break

Child(ren)'s Birthday(s)

Mother shall also have the child(ren) every Mother's Day and Father shall have the child(ren) every Father's Day. It is also agreed that the child(ren) will spend the day with the parent who is celebrating his or her birthday, unless it interferes with a major holiday or scheduled vacation (which is different than regular parenting time). If a parent's birthday falls on a holiday that is allocated to other parent that year, that parent may elect to exercise parenting time on another day during that month, upon sufficient advance notice to the other parent.

Unless the parties otherwise agree, Thanksgiving shall begin on Wednesday at 5:30 p.m. and end on Sunday at 7:00 p.m.; Martin Luther King Jr Day, President's Day, Memorial Day and Labor Day weekends shall begin on Friday at 5:30 p.m. and end on Monday at 7:00 p.m.; Mother's Day and Father's Day shall begin on at 9:00 a.m. on Sunday and end at 8:00 p.m. that same day; Easter weekend shall begin on Thursday at 5:30 p.m. and end on Sunday at 7:00 p.m. 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.

The parties agree to equally share the Christmas break, based on the school calendar in the child(ren)'s district. The break begins at 5:30 p.m. on the day the child(ren) are released from school and continues until 7:00 p.m. of the day before the child(ren) return from school. 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, that parent shall have from 11:00 a.m. to 8:00 p.m. on Christmas Day.

Unless there is a holiday conflict, Mother shall have the child(ren) on the child(ren)'s birthday(s) in even-numbered years and Father shall have the child(ren) on the child(ren)'s birthday(s) in odd-numbered years. If the parents do not otherwise agree, the birthday parenting time begins at 11:00 a.m. and concludes that same day at 8:00 p.m. If the child's birthday conflicts with a holiday, the parent who has parenting time on that holiday shall have the child(ren).

When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence. Therefore, if Father misses a regular weekend because it is Mother's holiday, the regular alternating parenting time schedule will resume following the holiday. If Father receives two consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with Mother. Unless mutually agreed, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. Parenting time "missed" during the summer period is not made up.

The parties agree to arrange transportation for the child(ren) for holiday visits as follows (*examples: Father picks up at the start of the holiday period and Mother picks up at the end of the holiday period; or parties agree to meet at a specific location at the start and end of the holiday period*):

The parties may, by mutual agreement, alter the parenting time schedule above which shall be in writing and signed by both parties. Text messages and emails are sufficient in amending this agreement as long as the text messages and emails are retained.

D. Failure to Comply: Neither parenting time 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 to parenting time, neither of which is dependent upon the other. In other words, if you do not receive child support, you still have to allow parenting time and if you are denied parenting time, you still have to pay child support. **If there is a violation of either a parenting time or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.**

E. Telephone Calls: Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent, if it is a long distance call. The parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. Messages or voice mails left for a child should be returned in a timely manner.

F. Clothing: If one parent has primary physical custody, that parent shall send an appropriate supply of the child(ren)'s clothing with them during the other parent's parenting time, which shall be returned clean (when reasonably possible), with the child(ren). The parent exercising parenting time shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the child(ren) may be sent.

If the parties are exercising shared parenting, it is expected that they will each maintain clothing at their individual homes for the child(ren). However, the parents agree to cooperate in returning clothing to the appropriate parent so each parent can maintain a supply of clothing.

G. Transportation: Unless otherwise agreed to herein, the transportation between the parents shall be handled equally. When the parents live in the same community, the parent commencing his/her parenting time will pick up the child(ren) from the other parent's home and upon conclusion of the parenting time, the other parent shall retrieve the child(ren) from the home of the parent who just had parenting time. The parents have an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

H. Parental Affection: Each of the parents shall take all measures deemed advisable to foster a feeling of affection between the minor child(ren) and the other parent and neither will do anything which may estrange the child(ren) from the other parent nor impair their high regard for the other parent. Both parties agree they will speak only favorably of the other when in the child(ren)'s presence. Each will promote and foster good parental relations between the child(ren) and the other parent, and avoid any communication of any kind which would be detrimental to the child(ren)'s respect or admiration for the other parent.

I. Grade Reports and Medical Information: If the parties share joint legal custody, each parent shall provide the other parent with grade reports and notices from school as they are received and shall authorize the other parent to communicate concerning the child(ren) directly with the daycare, the school, and the child(ren)'s doctors and other professionals outside the presence of the other parent. Unless there are abuse, neglect, criminal or protection orders to the contrary, both parents shall also be listed as the child(ren)'s parent and as an emergency contact with the daycare, the school and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the child(ren). Each parent shall, as soon as reasonably possible, notify the other parent of all school or other events (for example, church or sports) involving parental participation. If a child is taking medications, both parents shall provide a sufficient amount and appropriate instructions to the other parent.

J. Future Disputes: If the parties develop disputes in the future, they agree to first review the South Dakota Parenting Time Guidelines to determine if a resolution can be reached.

K. Relocation: The parties acknowledge that if either of them desire to relocate, they must abide by specific provisions required by law. These provisions can be found at SDCL §§ 25-4A-17, -18, -19.

L. S.M.I.L.E. Certificate: The parents understand that they may be required to attend a parenting education class and file the certificates of their completion before their divorce can be finalized. [*Please check with your local clerk of court to determine if attendance is required in your circuit prior to the granting of the divorce.*]

4. Child Support.

A. The parties agree that _____ (*insert name of party*) shall pay child support to _____ (*insert name of party*) for the support and

maintenance of the minor child(ren) in the amount of \$_____ per month, which includes (*check all the boxes that apply*):

his/her pro rata share of the health insurance provided by the Plaintiff / Defendant (*circle one*) for the parties' minor child(ren);

his / her pro rata share of day care expenses for the minor child(ren);

an annualized abatement of \$_____ per month in consideration for the months _____ (*insert name of parent paying support*) has the child(ren) 10 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 cross-credit calculation for the shared parenting plan, as allowed in SDCL 25-7-6.27;

a deviation of \$_____ per month pursuant to SDCL 25-7-6.10(____), based on _____

_____.

B. Any reasonable medical costs, including optometric, dental or 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 Mother paying _____% and Father paying _____%. Pursuant to SDCL § 25-7-6.16, the parent with physical custody, which is _____, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year. *This last sentence would not be applicable in shared parenting arrangements.*

The child support calculation is attached to this document and was prepared by _____. (You may want an attorney to calculate child support or you can determine the support obligation by using the child support calculator provided by DSS and found at <http://dss.sd.gov/childsupport/services/obligationcalculator.asp>).

C. The child support obligation shall commence on the 1st day of _____, 20_____.

D. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.

E. The employer of the parent who is required to pay child support shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 25-7A-34.

F. Until otherwise notified by the Office of Child Support Enforcement all payments shall be made payable to “Office of Child Support Enforcement” and mailed to:

Office of Child Support Enforcement
700 Governor’s Drive
Pierre, SD 57501-2291

G. Regarding health insurance (*choose one*):

- Father / Mother (*circle 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. Father / Mother (*circle one*) shall notify the Department of Social Services of the insurance company name, address and policy number and the names of 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. Father / Mother (*circle one*) 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 of entry of the Judgment and Decree of Divorce;

OR

- Neither parent currently has medical 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 reasonable cost. SDCL § 25-7-6.16. The cost shall be apportioned between the parents. Id. The parent providing medical insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within 30 days and shall also notify the Department of any changes in coverage. The parent providing medical 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.

5. Property Division: The parties agree that the following marital property shall be divided as follows and such division is equitable:

A. Clothing, Personal Effects, Personal Property: Each of the parties shall receive his/her own clothing, personal effects, and all personal property in his/her possession, free and clear of any claim from the other, unless otherwise specified herein.

B. Photographs, Memorabilia: The parties agree to equally split the photographs and any special memorabilia acquired during the course of the marriage / relationship within 90 days of execution of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Wife's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Wife shall exclusively receive, as her sole and separate property, the following vehicle(s): _____

_____ (provide year,

make and model), subject to any debts against the asset(s). Wife shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

D. Husband's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Husband shall exclusively receive, as his sole and separate property, the following vehicle(s): _____

_____ (provide year,

make and model), subject to any debts against the asset(s). Husband shall be solely responsible for the debt

associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

E. As set forth above, the party receiving the assets listed above in 5(C) and 5(D) shall assume the debt associated with them and remove the other party's name therefrom within _____ days from entry of the Judgment and Decree of Divorce. The other party shall cooperate in transferring the titles to the party receiving the assets once his/her name is removed from the debt.

F. Property in Possession of the Other: If either party has property to be given to the other, then Wife shall, within 30 days of execution of this Agreement, give to Husband the following personal property items: _____

and Husband shall, within 30 days of execution of this Agreement, give to Wife the following personal property items: _____

G. Checking and Savings Accounts: The parties represent that they have separated their bank accounts including checking and/or savings, and each shall keep the cash balance in any bank accounts in his/her name, free and clear of any claim by the other. The parties shall immediately close any remaining joint accounts with the proceeds to be divided equally.

H. Tax Consequences: The parties agree that the foregoing transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on his or her tax returns filed after this Agreement is signed.

6. Debt Division: In addition to the allocation of the debts associated with the property distributed herein, the remaining marital debt of the parties shall be divided as follows (*list all debts incurred by one or both of the parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans,*

medical bills, etc.):

A. Wife shall be solely responsible for and take over the following debts: _____

_____;

B. Husband shall be solely responsible for and take over the following debts:

_____.

C. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts he/she has incurred since (mark one) date of separation on _____ (fill in date you starting living apart); or date of execution of this Agreement. Each of the parties agrees not to contract any debt, charge or liability whatsoever for which the other or his or her property or estate shall or may become liable or answerable in the future.

Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during the course of their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.

D. In respect to equalizing the property distribution, the parties agree (check one):

That Wife / Husband (circle one) shall pay to the other the amount of \$ _____ to equalize the property / debt distribution within _____ days of entry of the Judgment and Decree of Divorce;

OR

That the allocation of personal property and debt is equitable and no amount is necessary to equalize the distribution.

Plaintiff's Initials

Defendant's Initials

E. Unless otherwise provided herein, each of the parties promises at all times to keep the other party free, harmless and indemnified of and from any and all debts, charges or liabilities previously contracted or incurred by said party individually, and to be hereafter contracted or incurred by said party individually, and each shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors involved will approve a release from liability. If a creditor denies a release presently, the parties agree to renew their applications for formal transfer or assumption in the future at reasonable intervals.

7. Real Property (house, land or buildings):

- The parties have no real property (*check if applicable and then proceed to #8*).
- The parties have an interest in the following real property:

Physical Address: _____

Legal description (*obtained from a document such as a Warranty Deed, Mortgage or Title Insurance*):

In regards to the property, the parties agree:

Wife / Husband (*circle one*) will receive the house / land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$_____ (*Value – Debt(s)*). The party receiving the real estate shall pay \$_____ to the other to equalize this division within _____ days of entry of the Judgment and Decree of Divorce. If there is a

Plaintiff's Initials

Defendant's Initials

mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within _____ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and sign a quit claim deed releasing all interest in the property to the other party.

OR

The parties agree that the house / land and all the fixtures therein and/or the improvements thereon shall be listed for sale by _____, 20____ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market value. During the pendency of sale of the home, Husband / Wife / Not Applicable (*Circle One*) shall have exclusive possession of the marital home as long as he/she does not commit waste thereto. Commencing _____, 20____, the parties agree that Husband / Wife / Not Applicable (*Circle One*) shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agree that the net proceeds of the sale of the home shall be divided with Wife receiving _____% and Husband receiving _____%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Wife receiving _____% and Husband receiving _____%. The parties agree, if they are not able to file a joint return, Husband / Wife (*circle one*) shall claim the real estate taxes on his/her 20____ income tax return and Husband / Wife (*circle one*) shall claim the mortgage interest on his/her 20____ income tax return.

8. Investments and Retirement Funds and Pension Plans: Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirements and investments and you are strongly advised to consult an attorney if you are dividing this type of property.

The parties agree (*check the appropriate box*):

Each party specifically waives any and all claims, if any, to the other's 401 K, IRA, stock options, retirement, pension, and profit sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or to become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including both present and future benefits; **OR**

Wife shall receive the following investments and retirement accounts:

_____ ; and

Husband shall receive the following investments and retirement accounts:

The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

9. Life Insurance. Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree (*check the appropriate box*):

The parties do not have any life insurance policies to distribute;

OR

The parties agree to the allocation of the life insurance policies as follows:

Wife shall receive the following (term/whole life) life insurance policy(ies):

Husband shall receive the following (term/whole life) life insurance policy(ies):

10. Military Benefits (If one of the parties is a military member).

Neither party was or currently is a member of the military. (*Mark if applicable and then move to section 11*).

OR

Husband / Wife (*circle one or both, if applicable*) was a member of the military (includes the National Guard and Reserves) during a time period of the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, the Survivor Benefit Plan. There are numerous and complicated laws and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Center to understand and protect all benefits you may be entitled to.

When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Center.

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that he/she were in service (ex. 1992 – 2004) and the specific years of service during marriage (ex. 1994-2004): _____

In respect to military benefits of the service member, the parties agree as follows: _____

11. Alimony (Spousal Support). Please check the appropriate box and fill in the appropriate blanks. (*You are strongly encouraged to consult with an attorney before completing this section*):

Wife / Husband (*circle one*) shall receive alimony in the sum of \$_____ each month for a period of _____ months, or until remarriage of the recipient or death of either party. Alimony is tax-deductible to the spouse paying it and taxable income to the spouse receiving it.

OR

No permanent, general, rehabilitative or restitutional alimony shall be granted to either party.

Both parties waive any right he / she may have to alimony and accepts this Stipulation and Settlement Agreement (With Minor Children) in full and final satisfaction of all marital claims.

12. Income Tax Returns. The parties agree to share historical accounting and tax information, documents and records with the other as may be necessary for each to prepare a complete an accurate income tax return for subsequent tax years. The parties further agree:

File a joint tax return if possible for the _____ tax year, if allowed by law, and share the expenses and tax liability or refund as follows: _____% to Husband and _____% to Wife;

OR

File as single persons for the _____ tax year.

Commencing with the tax year that the Judgment and Decree of Divorce is signed, the parties shall file as single persons on their IRS returns and every year thereafter.

12. Former Name. If one party would like his/her maiden name or former name restored to them, complete this section:

Not applicable (*check if neither party wants their maiden or former name restored*);

OR

Wife / Husband (*circle one*), presently known as _____ DOB _____, will be restored to her / his former or maiden name of “_____” in any Judgment and Decree of Divorce issued herein and will be known hereafter as _____.

13. Other Agreements Not Covered Above. _____

14. Attorney’s Fees. (*Check the appropriate box and fill in where necessary*):

Each party shall be solely responsible for his/her own attorney fees, costs and expenses incurred in this proceeding;

OR

Husband / Wife (*circle one*) will pay the sum of \$_____ towards the attorney fees, costs and expenses of his / her spouse within _____ days of entry of the Judgment and Decree of Divorce.

15. Address. Until the youngest minor child is of majority age and the parties’ names are removed from the other party’s debts, the parties agree that each will promptly notify the other of any change of address and/or

telephone number. It is imperative that as long as a child support order exists, the parties MUST keep the Office of Child Support notified of any change of address.

16. Other Documents. The parties shall, at any and all times upon request by the other party or his or her legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

17. Grounds. The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL 25-4-17.3. The parties have executed an Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.

18. Interference. The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

19. Enforcement. The parties agree that this Agreement shall be binding upon them until otherwise mutually agreed or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or in the event that one party determines that modifications are necessary which are not consented to by the other party, each shall be free to petition the Court to have this Agreement modified or enforced in accordance with the law.

20. Release of Inheritance Rights. Unless otherwise specified herein, each party releases all right to share in the estate of the other or to share in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed subsequent to the date of this Agreement.

21. Modification and Waiver. Any modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement, and approved by the

Court. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

22. Partial Invalidity. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

23. Titles. The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.

24. Conflict of Laws. This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

25. Waiver and Incorporation. The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce.

It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

26. Military Service. Husband confirms that he is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

Wife confirms that she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act.

27. Written Memorandum. This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

28. Ratification.

A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.

B. The parties represent to the court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The

parties acknowledge that it is a legal document and binding upon them.

C. Each party covenants and warrants to the other: (a) he or she has fully disclosed the existence of and value of all assets and debts in which he or she has any interest whatsoever; and, (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them individually, or in conjunction with a third party; and, (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

DATED this _____ day of _____, 20_____.

Plaintiff's Signature

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF _____)

On this the _____ day of _____, 20_____, before me, the undersigned officer, personally appeared _____, **Plaintiff**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

(SEAL)

DATED this _____ day of _____, 20_____.

Defendant's Signature

Plaintiff's Initials

Defendant's Initials

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

File No. _____

MOTION
(Self-Represented Litigants)

Comes now, _____ (insert name), and respectfully moves
this Court for an Order awarding _____

A hearing is requested as soon as practicable to hear the parties and present evidence regarding the above-stated issue. The Affidavit in Support of Motion is / is not (*circle one*) attached hereto and incorporated herein by reference.

Dated this _____ day of _____, 20_____.

Self-Represented Litigant's Signature

Name: (Printed) _____
Address: _____
City/State/Zip: _____
Telephone: (_____) _____

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant.</p>	<p>File No. _____</p> <p>AFFIDAVIT IN SUPPORT OF MOTION</p>
--	--

I, _____, (*insert legal name*) hereby swear under oath and under penalty of law that the following is true:

1. I am the above-named Plaintiff / Defendant (*circle one*) in the above-entitled action.
2. I submit this Affidavit in Support of my Motion, dated _____.
3. The facts that support my Motion are as follows: _____

_____.
4. I am requesting that the Court _____

_____.

Dated this _____ day of _____, 20_____.

Sworn/affirmed before me this
_____ day of _____, _____.

(Notary Public/Clerk of Courts)

Plaintiff's Signature
(**Sign only in front of a notary or clerk of courts**)
Name:(Printed)_____
Address: _____
City/State/Zip: _____
Telephone: (_____)_____

(SEAL)

If notary, my commission expires: _____

STATE OF SOUTH DAKOTA)
) :SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant</p>	<p>File No. _____</p> <p style="text-align: center;">AFFIDAVIT OF MAILING</p>
---	--

I, _____, the above-named Plaintiff / Defendant (*circle one*), being duly sworn, state that on _____, 20____, I served the following documents (*check the documents sent to the other party*):

- Motion
- Affidavit in Support of Motion

by placing true and correct copies of the documents in an envelope addressed to: _____, the above-named Plaintiff / Defendant (*circle one*), at _____ (*insert the other party's mailing address*), in the City of _____, State of _____, Zip Code _____, and depositing the envelope, with sufficient postage, in the United States Mail at _____ (*insert the city and state where you deposited the mail*).

Dated this _____ day of _____, 20_____.

Self-Represented Litigant's Signature
(Sign only in front of a notary or clerk of courts)

Name: (Printed) _____
Address: _____
City/State/Zip: _____
Telephone: (_____) _____

Sworn/affirmed before me this _____ day of _____, _____.

(Notary Public/Clerk of Courts)

(SEAL)

If notary, my commission expires: _____

Instructions for Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce & Form

In South Dakota, both parties must typically agree to use irreconcilable differences as the grounds for divorce. Additionally, the Plaintiff must be a resident of the State of South Dakota when the divorce is started. This Affidavit confirms those issues for the Court.

If the parties sign the Stipulation and Settlement Agreement (Without Children) document, they must also sign this document.

- Complete the “caption.” This information will be the same as on the Summons and Complaint without Minor Children.
- Fill in the full legal names of the Plaintiff and Defendant.
- In Paragraph 3, insert the name of the city where the Plaintiff resided when the divorce action was started.
- The Plaintiff must fill in the date with the day, month and year that he/she signs the Affidavit.
- **The Plaintiff must sign the document 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.**
- The Defendant must fill in the date with the day, month and year that he/she signs the Affidavit.
- **The Defendant must sign the document 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.**
 - **If the Defendant refuses to sign the form, the Plaintiff should still file the Affidavit with his/her single signature.**
- **Make a copy for each of you and file the original with the Clerk of Court.**

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.

6.

The affiants authorize the immediate presentation of the Stipulation and Settlement Agreement (Without Children) and of this Affidavit to Jurisdiction and Grounds for Divorce and of the proposed Judgment and Decree of Divorce to the Court and respectfully request the Court to consider the same without need for any noticed hearing or trial. The affiants further waive the entry of formal Findings of Fact and Conclusions of Law.

Dated this _____ day of _____, 20_____.

Signature of Plaintiff

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____.

(SEAL)

If notary, my commission expires:

Notary Public/Clerk of Court

Dated this _____ day of _____, 20_____.

Signature of Defendant

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____.

(SEAL)

If notary, my commission expires:

Notary Public/Clerk of Court

Instructions for Judgment and Decree of Divorce (Stipulation and Agreement (With Minor Children)) & Form

*** Use this form only if you and the Defendant have signed a Stipulation and Settlement Agreement (With Minor Children) and you want the court to incorporate that Agreement in your Judgment and Decree of Divorce.

The Judgment and Decree of Divorce is signed by the Judge. You must wait at least sixty (60) days after serving the Defendant before submitting your Judgment and Decree of Divorce to the Judge.

- Complete this form in black or blue ink only!
- Complete the top portion of the Judgment and Decree of Divorce (the “caption”) the same as on the other documents you have filed in this divorce. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- **YOU DO NOT COMPLETE THE JUDGMENT AND DECREE OF DIVORCE – THIS IS DONE BY THE JUDGE.**
- Submit the Judgment and Decree of Divorce to the court along with the signed Stipulation and Settlement Agreement (With Minor Children).
- If **no hearing** is required and the Judge signs the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and send both parties a certified copy of the signed Judgment and Decree of Divorce along with a copy of the Notice of Entry. Make sure the Clerk has current addresses for both parties.
- If a **hearing** was required and the Judge signed the Judgment and Decree of Divorce, the Clerk of Courts will complete the Notice of Entry and provide a certified copy of the Judgment and Decree of Divorce along with a copy of the Notice of Entry to each party either by mail or hand-delivery.

STATE OF SOUTH DAKOTA)
)
) :SS
)
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant</p>	<p>DIV _____</p> <p>JUDGMENT AND DECREE OF DIVORCE (STIPULATION AND AGREEMENT (WITH MINOR CHILDREN))</p>
---	---

The above-entitled matter came before this Court on the _____ day of _____, 20____. It satisfactorily appearing to the Court from the records and files herein that the Defendant was duly served with the Summons, Parenting Time Guidelines and Complaint with Minor Children on the _____ day of _____, 20____, and that the parties thereafter entered into the Stipulation and Agreement (With Minor Children) on file herein. Parties were married on _____ (date) at _____ (city and state). After due consideration of the same and on the matters of record herein the Court finds and concludes that it has jurisdiction over the parties and the subject matter herein, and that the parties having expressly waived entering of Findings of Fact and Conclusions of Law. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The parties are both 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. That the Stipulation and Agreement (With Minor Children) on file between the parties is hereby approved and by this reference made a part hereof merged and incorporated herein.
3. The parties are the parents of the following minor child(ren):

_____, DOB _____

_____, DOB _____

_____, DOB _____
4. Custody and parenting time with the minor child(ren) shall be as set forth in the Stipulation and Agreement (With Minor Children) on file herein, which is incorporated herein by reference.

5. _____ shall pay to _____ child support for the minor child(ren) in the amount of \$_____ per month, commencing the 1st day of _____, 20_____, pursuant to the calculations and child support provisions set forth in the Stipulation and Agreement (with Minor Children), which are incorporated herein by reference as well as the child support calculation, which is filed herein and incorporated herein by reference.
6. Pursuant to SDCL 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.
7. The obligor's current or subsequent payor of income shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL 25-7A-23 and shall transmit said amount as provided in SDCL 25-7A-34.
8. Until otherwise notified by the Office of Child Support Enforcement all payments shall be made payable to "Office of Child Support Enforcement" and mailed to:

Office of Child Support Enforcement
700 Governor's Drive
Pierre, SD 57501-2291

9. The Plaintiff Defendant shall successfully complete the S.M.I.L.E. program within _____ days of entry of this Judgment and Decree of Divorce and file a Certificate of Completion with the court.
10. Plaintiff / Defendant (*circle one*), currently known as _____, born _____ shall be restored to their former name of _____; therefore, they shall be known hereafter as _____.
11. All of the other terms and conditions specifically set forth in the Stipulation and Agreement (With Minor Children) are hereby approved and incorporated herein by reference as though fully set forth in extenso.

Dated this _____ day of _____, _____.

BY THE COURT:

ATTEST:

CIRCUIT COURT JUDGE

Clerk of Courts

By _____
Deputy Clerk

(SEAL)

Instructions for Notice of Entry of Judgment & Decree of Divorce & Forms

A Notice of Entry of Judgment & Decree of Divorce is a document that notifies the other party that the Judge has signed a Judgment & Decree of Divorce. A copy of this document must be sent to both parties by the Clerk, along with certified copies of the Judgment and Decree of Divorce, the Stipulation and Settlement Agreement and the Affidavit of Mailing.

**** The Clerk completes this document as well as the Affidavit of Mailing. Nothing needs to be done by either party except complete the caption, deliver the document to the Clerk and make sure the Clerk has current addresses for both parties!**

- Complete this form in black or blue ink only!

- Complete the caption: This information will be the same as on the Summons (With Minor Children) and Complaint With Minor Children. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don't know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don't know). The caption is the same on every form.

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant</p>	<p>DIV _____</p> <p>NOTICE OF ENTRY OF JUDGMENT AND DECREE OF DIVORCE</p>
---	--

PLEASE TAKE NOTICE that the Judgment and Decree of Divorce was entered in the above-entitled matter on the _____ day of _____, 20____, by the Honorable _____ and duly filed on the _____ day of _____, 20____ by the County Clerk of Courts at _____, South Dakota. Certified copies of the Judgment and Decree of Divorce and the Stipulation and Settlement Agreement are attached hereto and served upon you.

Dated this _____ day of _____, 20__.

Clerk of Court or Deputy
Name: (Printed) _____
Address: _____
City/State/Zip: _____
Telephone: (____) _____

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____) JUDICIAL CIRCUIT

_____, Plaintiff, vs. _____, Defendant	DIV _____ AFFIDAVIT OF MAILING
--	--

I, _____, being sworn, state that on
(Name of person who mailed documents)

_____, 20____, I served the following papers:

(List all papers mailed to the parties)

by placing true copies of the documents in an envelope addressed to:

and depositing the envelope, with sufficient postage, in the United States Mail at

_____, South Dakota.
(city mailed from)

Dated this _____ day of _____, 20__.

Signature of Clerk

INSTRUCTIONS FOR CHILD SUPPORT ORDER FILING DATA FORM (UJS/DSS FORM 089)

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY. COMPLETE ALL SECTIONS OF THIS FORM AND FILE THE FORM WITH THE CLERK OF COURT'S OFFICE IN WHICH YOUR CASE IS BEING HANDLED.

As a result of federal welfare reform, *effective October 1, 1998*, new procedures apply to child support cases in South Dakota. The most significant changes are:

- ➔ The Department of Social Services will be the central case registry for the state.
- ➔ The Department of Social Services will be the central payment center for the state and will handle all disbursements.
- ➔ Your failure to update certain information on file with the Department of Social Services and the court, by using this Child Support Order Filing Data Form, can have serious legal consequences regarding your legal right to be notified of enforcement actions regarding your child support obligations.

INSTRUCTIONS

1. Upon entry of any new or modified court order for child support, the parties in the case must personally, or through their attorney, file a completed Child Support Order Filing Data Form with the clerk of court.
2. Whenever any information on the form changes (for example, you change jobs or place of residence), you must complete a new form and file it with the clerk of court's office.

PLEASE NOTE: You are responsible for ensuring that all information is accurate and current. If you fail to keep the information current, you may be served with future notices and orders of enforcement actions regarding your child support obligation at the last residential or employer address provided. Failure to appear in court when so notified may result in a default judgment being entered against you.

3. If a protection order for domestic violence against a spouse or abuse of a child is in effect (whether temporary or permanent), check the appropriate box on the form and attach a copy of the order to the form.
4. Keep the pink copy for your records and file the white and yellow copies with clerk of court.

THIS FORM WILL BE TREATED AS A CONFIDENTIAL DOCUMENT BY THE COURT (This means the information will not be released to the public as defined by SDCL 15-15A-2(1)-(3)).

To be completed by clerk of court:

(Docket Number)

Date _____ Clerk Initials _____

CONFIDENTIAL FORM

- Original Court Order
- Modification Order
- Information Change
- Change of Venue

Child Support Order Filing Data

Please type or print information on form.

PLAINTIFF/PETITIONER <i>(Circle one)</i>	DEFENDANT/RESPONDENT <i>(Circle one)</i>
Name: _____	Name: _____
SSN: _____ SEX: M F	SSN: _____ SEX: M F
Driver's License # : _____	Driver's License # : _____
Date of Birth: _____ Race: _____	Date of Birth: _____ Race: _____
Residential Address: _____	Residential Address _____
_____	_____
Mailing Address <i>(if different from above)</i> _____	Mailing Address <i>(if different from above)</i> _____
_____	_____
Phone No. _____	Phone No. _____
Attorney Name _____	Attorney Name _____
Attorney Phone No. _____	Attorney Phone No. _____
Employer _____	Employer _____
Employer Address _____	Employer Address _____
_____	_____
Employer Phone No. _____	Employer Phone No. _____
Second Employer _____	Second Employer _____
Second Employer Address _____	Second Employer Address _____
_____	_____
Second Employer Phone No. _____	Second Employer Phone No. _____

Full names, sex of child, dates of birth, and social security numbers of the children involved in this proceeding *(if more than six, write on back of form)*:

_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____

Is a protection order for domestic violence against a spouse or abuse of a child currently in effect?

- Yes No Unknown ***If yes, please attach a copy of the order.***

I certify that the above information is true and accurate concerning Plaintiff/Petitioner or Defendant/Respondent and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because _____

I hereby certify that the information required by SDCL 25-7A-56.7 is not available.

Circuit Judge

Signature

Date

Instructions for Affidavit of Default, Application for Judgment & Decree of Divorce (Default), Notice of Hearing and Affidavit of Mailing & Forms

- **Only the Plaintiff fills out these Default forms if the parties have not completed a Stipulation and Settlement Agreement!**

An Affidavit of Default is a sworn statement telling the court that you served the Summons (with Children) and Complaint with Minor Children on the Defendant and that he/she has not responded within thirty days after the completed service.

The Application for Judgment and Decree of Divorce (Default) and Notice of Hearing serve as notice to the Defendant that a date has been set for trial in the divorce case and that he/she is in default for not responding to the Summons (with Minor Children) and Complaint with Minor Children within 30 days after the completed service. Once 60 days have passed after service of the Summons (with Children) and the Complaint with Minor Children (excluding the date of service), the Affidavit of Default, Application for Judgment and Decree of Divorce (Default) and Notice of Hearing along with the Affidavit of Mailing are completed and filed.

Affidavit of Default

- Complete this form in black or blue ink only!
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Complete paragraph 2 by inserting the date that Defendant was served with the Summons (with Children), the South Dakota Parenting Time Guidelines and the Complaint with Minor Children. This is the date that the Defendant either signed the Admission of Service or the date the papers were delivered to the Defendant by the Sheriff or process server.
- Read the other paragraphs carefully as you are signing this document under oath and the statements made in all the paragraphs **MUST BE TRUE**.
- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo 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.**

Application for Judgment & Decree of Divorce (Default)

- Complete the top portion (the “caption”) of the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing as it appears on the Summons (with Children) and the Complaint with Minor Children.
- As the Plaintiff, fill in your full legal name in the first blank of the body of the Application.

- Date and sign the Application and complete the signature block.
- Obtain a trial date from the Court Administrator’s office or the Clerk of Court (depending upon which county your action is filed in). You will then use the date given to you to fill in the “Notice of Hearing” section.
- In the Notice of Hearing section, fill in the blanks to indicate day, month, year and time (including am or pm) of the trial date you got from the Clerk of Court or Court Administrator. Mark the appropriate box indicating where the trial will be held and fill in the blanks.
- Date and sign the Notice of Hearing and complete the signature block.
- File the original Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing with the Clerk of Court. Make two copies of each document. One for yourself and one to mail to the Defendant.
- Mail a copy of the Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing to Defendant by first class mail, properly addressed, with sufficient postage *at least seven (7) days prior to the hearing*. The Defendant has to receive written notice of the Application of Judgment *at least* three business days prior to the hearing.

Affidavit of Mailing

- The Affidavit of Mailing may only be completed after the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing are placed in the United States Mail.
- Complete the top portion of the Affidavit Mailing (the “caption”). This information will be the same as on the other documents.
- Fill in the blanks as indicated on the Affidavit of Mailing.
- File the original Affidavit of Mailing with the Clerk of Court. Make a photocopy of it for your file.
- **You must sign and date the Affidavit of Mailing 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.**

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

Plaintiff,

DIV _____

vs.

AFFIDAVIT OF DEFAULT

Defendant

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

Plaintiff, being first duly sworn on oath, states:

1. That I am the Plaintiff in the above-captioned action.
2. That the Summons (with Children), South Dakota Parenting Time Guidelines and Complaint with Minor Children were all served together on the Defendant on _____, 20_____.
3. That the proof of service has been filed (i.e. Admission of Service or Sheriff's Return).
4. That more than 60 days have passed since service of the Summons (with Children), Parenting Time Guidelines and Complaint with Minor Children. Defendant has made no answer, appearance or any other responsive pleading and is in default.
5. It is my belief that the Defendant is not in the military service on active duty.

Sworn/affirmed before me this
_____ day of _____, 20____.

(Notary Public/Clerk of Court)

If notary, my commission expires

(SEAL)

Signature of Plaintiff
(Sign only in front of a notary or Clerk of Court)
Name of Plaintiff (Printed): _____
Address: _____
City/State/Zip: _____
Telephone: (____) _____

NOTICE OF HEARING

TO: THE DEFENDANT IN THE ABOVE CAPTIONED MATTER:

PLEASE TAKE NOTICE that on the _____ day of _____, _____, at _____ .m. a trial for Application for Judgment & Decree of Divorce (Default) will be held:

In the courtroom of the Honorable _____, Circuit Court Judge of the _____ Judicial Circuit, presiding, located at the _____ County Courthouse, in _____ County, _____, South Dakota.

OR

At the Court Administrator's office, _____ County Courthouse, _____, South Dakota.

The Plaintiff will seek judgment for the relief demanded in the Complaint with Minor Children filed in the above-entitled action.

Plaintiff's Application for Judgment & Decree of Divorce (Default) and Notice of Hearing and Plaintiff's Affidavit of Default are by reference incorporated herein as though fully set forth.

Dated this _____ day of _____, _____, at _____ County, South Dakota.

Plaintiff's Signature

Name of Plaintiff: (Printed) _____

Address: _____

City/State/Zip: _____

Telephone: (_____) _____

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant</p>	<p>DIV _____ AFFIDAVIT OF MAILING</p>
---	---

I, _____, the above-named Plaintiff,
being duly sworn, state that on _____, 20____, I served the
Affidavit of Default and the Application for Judgment & Decree of Divorce (Default) and Notice
of Hearing, by placing true and correct copies of the documents in an envelope addressed to:
_____, the above-named Defendant, at
_____, in the City of _____,
(Defendant's mailing address)
State of _____, Zip Code _____, and depositing the envelope,
with sufficient postage, in the United States Mail at _____.
(City & State mailed from)

Dated this _____ day of _____, 20_____.

Plaintiff's Signature
(Sign only in front of a notary or clerk of courts)

Sworn/affirmed before me this
_____ day of _____, _____.

(Notary Public/Clerk of Courts)

Name of Plaintiff: (Printed) _____
Address: _____
City/State/Zip: _____
Telephone: (_____) _____

(SEAL)

Instructions for Judgment and Decree of Divorce (Default) (With Children) & Form

- **This form is used only if the parties have not completed a Stipulation and Settlement Agreement!**

You must wait at least sixty (60) days **after** serving the Defendant before requesting that the Judge sign the Judgment and Decree of Divorce (Default).

- Complete this form in black or blue ink only!
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- **YOU DO NOT COMPLETE THE REMAINDER OF THIS FORM NOR DO YOU SIGN THIS FORM – THE JUDGE WILL COMPLETE THE REMAINDER OF THE DOCUMENT AND SIGN THE JUDGMENT AND DECREE OF DIVORCE.**
- At the time of your trial on the Application for Judgment and Decree of Divorce (Default), submit the Judgment and Decree of Divorce (Default) to the court.
- If the judge signs the Judgment and Decree of Divorce (Default), the Clerk of Courts will complete the Notice of Entry (Form UJS-327) and send a certified copy to each party.

STATE OF SOUTH DAKOTA)
)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____) JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

DIV _____

**JUDGMENT AND
DECREE OF DIVORCE
(DEFAULT)**

The above-entitled matter came before this Court on the _____ day of _____, 20_____ on Plaintiff's Application for Judgment and Decree of Divorce (Default). It satisfactorily appearing to the Court from the records and files herein that the Defendant was duly served with the Summons (with Minor Children), Parenting Time Guidelines and Complaint with Minor Children on the _____ day of _____, _____. The parties were married on _____ (date) and at _____ (city and state). It further appearing to the Court by virtue of the Affidavit 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):

_____, DOB _____
_____, DOB _____
_____, DOB _____

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

Joint legal between the parties with Father / Mother (*circle one*) having primary physical custody;

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

Sole legal and physical custody to Father / Mother (*circle one*);

The parents agree to joint legal and physical custody with a 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 expenses of the child(ren) in proportion to their incomes; i.e. Father paying _____% and Mother paying _____%; or

4. Father / Mother's (*circle one*) parenting time (visitation) with the minor child(ren) shall be as follows: _____

_____.

5. _____ (*insert name of party*) shall pay child support for the support and maintenance of the minor child(ren) in the amount of \$_____ per month, which includes (*check all the boxes that apply*):

his/her pro rata share of the health insurance provided by the Plaintiff / Defendant (*circle one*) for the parties' minor child(ren);

his / her pro rata share of day care expenses for the minor child(ren);

an annualized abatement of \$_____ per month in consideration for the months _____ has the child(ren) 10 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 or 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 Mother paying ____% and Father paying ____%. Pursuant to SDCL 25-7-6.16, the parent with physical custody, which is _____, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year.

The child support calculation is filed herein.

7. The child support obligation shall commence on the 1st day of _____, 20_____.
8. Pursuant to SDCL 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.
9. The obligor's current or subsequent payor of income shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL 25-7A-23 and shall transmit said amount as provided in SDCL 25-7A-34.
10. Until otherwise notified by the Office of Child Support Enforcement all payments shall be made payable to "Office of Child Support Enforcement" and mailed to:

Office of Child Support Enforcement
700 Governor's Drive
Pierre, SD 57501-2291

11. Regarding health insurance:

Father / Mother (*circle 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 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 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 of entry of the Judgment and Decree of Divorce; or

The court finds that neither parent currently has medical 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 reasonable cost. SDCL 25-7-6.16. The cost shall be apportioned between the parents. Id. The parent providing medical insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within 30 days and shall also notify the Department of any

changes in coverage. The parent providing medical 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.

12. The parties shall retain as their separate property all of the vehicles, personal clothing and effects, 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 exclusively receive, as their sole and separate property, the following: _____

_____ ; and

The Defendant shall exclusively receive, as their sole and separate property, the following:

_____.

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

_____.

14. 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 and paid solely by Plaintiff:

_____ ; and

The following debts shall be assumed and paid solely by Defendant:

_____.

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

15. Regarding alimony, the Court orders:

Neither party shall be given alimony or spousal support; or

_____.

16. Plaintiff, born _____ Defendant, born _____ shall be restored to his/her former or maiden name of “_____” pursuant to SDCL 25-4-47 and shall be known hereafter as “_____.”

17. If required by the Court, the Plaintiff Defendant shall successfully complete the S.M.I.L.E. program within ninety days of signing this Judgment and Decree of Divorce and file a Certificate of Completion with the court.

18. Each party shall, at the request of the other, sign and deliver any such instruments (legal documents or papers) as may be required in order to carry out the intentions and provisions of this 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 of Divorce, this Judgment and Decree shall operate as an effective transfer of that party’s interest in said property as set forth herein.

19. Additional order(s):

Dated this _____ day of _____, _____.

BY THE COURT:

ATTEST:

CIRCUIT COURT JUDGE

Clerk of Courts

By _____

(SEAL)

Instructions for Notice of Entry of Judgment & Decree of Divorce (Default)

A Notice of Entry of Judgment & Decree of Divorce (Default) is a document that notifies the other party that the Judge has signed a Judgment & Decree of Divorce (Default). This document must be sent to the other party and the Affidavit of Service filed with the Clerk of Courts.

- Complete the top portion of the Notice of Entry (the “caption”) just as it appears on the Judgment & Decree of Divorce (Default).
- Fill in the blanks on the Notice of Entry with the Judge’s name (you can find this on the Judgment & Decree of Divorce-Default), the date that the Judge signed the Judgment & Decree of Divorce (Default), and the City where the Courthouse is located.
- Date and sign the Notice of Entry. Make two copies of the Notice of Entry, one for you and one to mail to the defendant. The original will be filed with the Clerk of Courts.
- Mail copies of the Notice of Entry, Judgment & Decree of Divorce (Default), and Stipulation and Agreement, if there is one, to the Defendant.
- The Affidavit of Service may only be completed after the documents are placed in the United States Mail.
- Complete the top portion of the Affidavit of Service (the “caption”). This information will be the same as the Notice of Entry.
- Fill in the blanks as indicated on the Affidavit.
- Make a photocopy of the Affidavit for your file. The original will be filed with the Clerk of Courts.
- **You must sign and date the Affidavit 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.**
- File the original Notice of Entry of Judgment & Decree of Divorce (Default) and the Affidavit of Service with the Clerk of Courts. Failing to file the Notice of Entry of Judgment & Decree of Divorce (Default) may extend the time an appeal may be filed.

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

DIV _____

**NOTICE OF ENTRY
OF JUDGMENT AND DECREE
OF DIVORCE (DEFAULT)**

PLEASE TAKE NOTICE that the Judgment and Decree of Divorce (Default) was entered in the above-entitled matter on _____, 20____, by the Honorable _____ and duly filed by the County Clerk of Courts at _____, South Dakota. A certified copy of said Judgment and Decree of Divorce (Default) is attached hereto and served upon you.

Dated this _____ day of _____, 20____.

Plaintiff / Defendant (Circle One)
Name: (Printed) _____
Address: _____
City/State/Zip: _____
Telephone: (____)_____

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT
 _____ JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

DIV _____

AFFIDAVIT OF SERVICE

I, _____, being sworn, state that on
(Name of person who mailed documents)

_____, 20____, I served the following papers:

(List all papers mailed to the other party)

by placing true copies of the documents in an envelope addressed to:

_____ at _____
(Name of other party) (Other party's address)

in the City of _____, State of _____, Zip Code _____

and depositing the envelope, with sufficient postage, in the United States Mail at

_____.
(Place mailed from)

Dated this _____ day of _____, 20__.

Signature of Person Who Mailed Documents
(Sign only in front of a notary or clerk of courts)

Name: (Printed) _____

Sworn/affirmed before me this _____ day of _____, _____. Address: _____

_____. City/State/Zip: _____

_____. Telephone: (_____) _____

(Notary Public/Clerk of Courts) If Notary, my commission expires: _____

(SEAL)

Instructions for Stipulation and Order for Dismissal & Form

Use this form only if both parties have reached a mutual agreement to dismiss the divorce action.

In the event the parties resolve their differences prior to entry of the Judgment and Decree of Divorce and want to stop the divorce proceeding, they may file the Stipulation and Order for Dismissal to ask the Court for an Order dismissing the divorce action, without prejudice.

- **Complete this form in black or blue ink only!**
- Complete the “caption. This information will be the same as on the Summons (without Minor Children) and Complaint without Minor Children. **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Both parties, as well as a witness for each party, must sign the stipulation. The date of the signatures must also be included.
- **Do NOT fill out anything below the Order section.** The Judge will date and sign the Order.
- You will be provided 2 certified copies of the Stipulation and Order for Dismissal. One is for you and the other is for your spouse.

STATE OF SOUTH DAKOTA)
)
) :SS
)
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

vs.

_____,
Defendant

File No. DIV _____

**STIPULATION AND
ORDER FOR DISMISSAL**

It is hereby agreed to by the parties that this action be dismissed. We respectfully ask the Court for an Order dismissing it without prejudice.

Plaintiff

Defendant

Witness

Witness

Date

Date

ORDER

Pursuant to the stipulation of the parties, this action is hereby DISMISSED without prejudice.

Dated this _____ day of _____, 20__.

BY THE COURT:

Circuit Court Judge

ATTEST:

Clerk of Courts

BY: _____
Deputy Clerk

(SEAL)

STATE OF SOUTH DAKOTA)
)
) :SS
)
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant</p>	<p>File No. DIV _____</p> <p>MOTION AND ORDER FOR DISMISSAL</p>
---	--

The Plaintiff hereby requests to dismiss the above-entitled matter, pursuant to SDCL 15-6-41(a). The Defendant has not filed an Answer or Motion for Summary Judgment. Thus, I respectfully move the Court for an Order dismissing this case, without prejudice.

Dated this _____ day of _____, 2013.

Plaintiff

Witness

ORDER

Pursuant to SDCL 15-6-41(a), this action is hereby DISMISSED without prejudice.

Dated this _____ day of _____, 20____.

BY THE COURT:

ATTEST:

Circuit Court Judge

Clerk of Courts

BY: _____
Deputy Clerk

(SEAL)

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

_____, Plaintiff, vs. _____, Defendant	DIV _____ AFFIDAVIT OF MAILING
--	--

I, _____, being sworn, state that on
(Full legal name of Plaintiff)
_____, 20____, I sent the following document:

1 certified copy of the Motion and Order for Dismissal

by placing true and correct copies in an envelope addressed to:

_____ at _____
(Full legal name of Defendant) (Defendant's mailing address)

in the City of _____, State of _____,

Zip Code _____ and depositing the envelope, with sufficient postage, in the United States Mail

at _____.
(City and state where mailed from)

Dated this _____ day of _____, 20_____.

Signature of Plaintiff
(Sign only in front of a notary or Clerk of Court)

Sworn/affirmed before me this
_____ day of _____, 20_____.

Name: (Printed) _____

(Notary Public/Clerk of Court)

Address: _____

City/State/Zip: _____

If notary, my commission expires
(SEAL)

Telephone: (____) _____