

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.