

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!**
- This is a 4 page form. 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 7: The primary reason for a divorce, in uncontested situations, is irreconcilable differences (no fault by either party). However, both parties must agree to the use of irreconcilable differences in order for a judge to grant the divorce on this grounds. 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 primarily 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: If you have minor children, a child support order is required. If you already have an order of support for the children, please attach a copy of the order to this Complaint.
 - 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 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 Complaint 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.

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

_____,
Plaintiff,

DIV _____

vs.

**COMPLAINT WITH
MINOR CHILDREN**

_____,
Defendant

1. Plaintiff's full legal name is _____ and his/her date of birth is _____.
2. Plaintiff is a resident of _____ County, State of _____.
3. Defendant's full legal name is _____ and his/her date of birth is _____.
4. Defendant is a resident of _____ County, State of _____.
5. Plaintiff and Defendant were married on _____ (date) in _____ (city and state). If the parties are living apart, the date upon which they began to do so is _____.
6. Is Plaintiff an active duty member of the armed forces? Yes _____
No _____

Is Defendant an active duty member of the armed forces? Yes _____
No _____
7. Irreconcilable differences have arisen between the Plaintiff and Defendant which necessitates the dissolution of the marriage. Alternatively further grounds for dissolution of marriage exist under SDCL 25-4-2, subsection (Unless both parties agree the grounds, checking one of these grounds will require a hearing and you will need to provide proof to support your grounds):
____ (1) Adultery;
____ (2) Extreme cruelty;
____ (3) Willful desertion;
____ (4) Willful neglect;
____ (5) Habitual intemperance; or

____ (6) Conviction of felony.
8. We have _____ minor child(ren) which have been born to or adopted by the parties. One party is / is not (*circle one*) pregnant. If one spouse 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 acknowledges that in South Dakota an order for child support must be entered.

If a child support order already exists, please indicate the case number here and attach a copy of it to this Complaint: _____

(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;
5. That an order for child support be established if one does not already exist;

- 6. That health insurance for the minor child(ren) be addressed, if requested above;
- 7. That daycare expenses for the minor child(ren) be allocated between the parties, if requested above;
- 8. For alimony, if requested above; and
- 9. For such other and further relief as may be equitable and just.

Dated this _____ day of _____, 20____.

Plaintiff's Signature

Print Plaintiff's name

Mailing Address

City/State/Zip

Phone Number

VERIFICATION

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF _____)

Plaintiff, being first duly sworn, deposes and states that he or she verifies the facts expressed within the Complaint with Minor Children are true.

Dated _____, 20_____.

Plaintiff's Signature

Subscribed and sworn to before me this _____ day of _____, _____.

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

(SEAL)