

Instructions for Answer and Counterclaim With Minor Children

*****This form may be completed by the Defendant in a divorce action*****

An Answer is a written response by the Defendant to the Complaint to protect the Defendant's rights. A Counterclaim is the way a Defendant informs the court and the Plaintiff that he or she also wants a divorce and upon what grounds. It tells the Plaintiff (and the court) what the Defendant is asking for and why. If the Defendant files an Answer and Counterclaim, he/she must file the Answer and Counterclaim with the Clerk of Courts and serve it on the Plaintiff within 30 days after Defendant is served with the Summons and Complaint. Service of the Answer and Counterclaim may be made by mail. If an Answer is not filed, the court may grant the Plaintiff everything requested in the Complaint and the judge will enter a decree of divorce in default. **The Defendant is not required to file an Answer and Counterclaim if he or she agrees with everything in the Complaint.**

- Complete the top portion of the Answer (the "caption") just as it appears in the Summons and Complaint.
- Answer or complete paragraphs 1-4. **You must respond to each and every paragraph of the Complaint for Divorce. (You must Admit, Deny, Partially Admit or Deny, or state you Do Not Have Enough Information to Answer.)**
- Complete the "Counterclaim" section:
 1. Fill in the name of the county in which you reside.
 2. Fill in the name of the county in which your spouse resides.
 3. Fill in the information regarding the date of your marriage.
 4. Check the appropriate grounds for divorce in the event that you and your spouse do not agree to the use of irreconcilable differences. **Please understand that seeking a divorce for other than irreconcilable differences is likely to result in a contested divorce which is both costly and complex. In those circumstances, you are strongly advised to meet with and hire an attorney to fully protect your interests.** You are not required to check other grounds for divorce.
 5. Indicate the number of minor children born during your marriage or adopted in to it. (If you and your spouse have children together from before the marriage list them here as well.)
 6. Fill in the children's names and dates of birth, and, if adopted, adoption dates.

For the Court to have the power to make custodial/visitation orders, certain information must be provided.
 7. Indicate where the children have lived during the past five years and who they lived with and the date they lived in each location. If the children have not lived with

anyone but the parents, please write out in the lines provided: AWith the parents only@ and then simply provide the county/state information for the past five years.

8. Indicate whether there have been previous court hearings concerning the custody of the children. If so, indicate in which county, state and year those proceedings happened.
 9. Indicate whether anyone other than the parents has ever had legal custody (court-ordered) of any of the children.
 10. This paragraph presumes there is no custody fight and asks the Court to award legal custody to both parents and grant physical custody to one parent. Circle Plaintiff or Defendant to indicate which parent you think the children should live with most of the time. **If you and your spouse do not agree on custody and visitation, then you should seek the advice of lawyer immediately.**
 11. You do not need to write anything for this paragraph. It tells the court that you and your spouse own property and have debts which need to be divided.
 12. Circle or otherwise indicate the correct information in this paragraph so that the court knows how to handle support issues.
- Answer or complete the last four paragraphs which tell the court what you are asking for in the divorce:
 1. You do not need to write anything for this paragraph. It tells the court that you are asking for a divorce from your spouse.
 2. You do not need to write anything for this paragraph. It tells the court that you are asking the court to equitably divide your property and debts.
 3. If either party would like to have his/her former name restored, circle either “Plaintiff’s” or “Defendant’s” and insert the prior name and date of birth.
 4. You do not need to write anything for this paragraph. It tells the court that you are requesting any other relief that is equitable and just.
 - You must date and sign the Answer and Counterclaim and provide your address and telephone number.
 - Complete the **Verification** portion: **Do not fill out the verification until you are in the presence of a notary public or clerk of court. Make sure you bring identification to show the notary 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.

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

_____,
 Plaintiff,

 vs.

_____,
 Defendant

DIV _____

**ANSWER AND
COUNTERCLAIM WITH
MINOR CHILDREN**

Defendant answers the Complaint as follows:

1. I **AGREE** with the following paragraphs of the Complaint for Divorce:

2. I **DISAGREE** with the following paragraphs of the Complaint for Divorce:

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

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

*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 omit this page when you submit your **Answer** to the Clerk of Courts.*

1.

2.

3.

4.

COUNTERCLAIM

1. Plaintiff is a resident of _____ County, State of _____.
2. Defendant is a resident of _____ County, State of _____.
3. Plaintiff and Defendant were married on _____. If the parties are currently living apart, the date upon which they started living apart is _____.
4. Irreconcilable differences have arisen between the Plaintiff and Defendant which necessitates the dissolution of the marriage. Further grounds for dissolution of marriage exist under SDCL 25-4-2, subsection:
____ (1) Adultery;
____ (2) Extreme cruelty;
____ (3) Willful desertion;
____ (4) Willful neglect;
____ (5) Habitual intemperance;
____ (6) Conviction of felony;
5. We have _____ minor children together, born or adopted. The Wife is/is not (circle one) pregnant.
6. The children=s names and dates of birth are:

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

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

9. Other than the parties, no one has ever had legal custody of any of these children except _____ (if none, so state).
10. Both parties are fit and proper persons to share the joint legal custody of the child or children. Physical custody should be vested in the Plaintiff/Defendant (circle one) subject to the visitation established in the South Dakota Guidelines or set by court order.
11. The parties have accumulated property and debts during the course of the marriage which must be equitably divided.
12. I request/do not request support (alimony) be paid by Plaintiff.

WHEREFORE, Defendant prays for Judgment as follows:

1. For a decree of divorce dissolving the marriage of the parties.
2. For an equitable division of the marital property and debts.
3. That Plaintiff's / Defendant's (circle one) last name be restored to:
_____.
4. That custody of the child or children be established as set out above.
5. That child support be set by the Referee.
6. For alimony, if requested above.
7. For such other and further relief as may be equitable and just.

Dated _____, 20____.

Defendant's Signature

Print or type name

Street Address

City, State, Zip

Telephone Number

