

## INSTRUCTIONS AND CHECKLIST FOR DIVORCE (WITHOUT MINOR CHILDREN)

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

**Please use black ink when filling out all forms!**

### COMMENCING THE CASE

The Plaintiff must:

- \_\_\_\_\_ Complete Case Filing Statement (UJS-232) available in this packet.
- \_\_\_\_\_ Complete the Summons (Without Minor Children) (UJS-309).
- \_\_\_\_\_ Complete the Complaint (Without Minor Children) (UJS-310).
- \_\_\_\_\_ Complete the Financial Affidavit (UJS-023). You will complete one and your spouse will complete one.
- \_\_\_\_\_ Make at least two photocopies of all documents, one set for you and one to serve on the defendant.
- \_\_\_\_\_ Take the original, completed Case Filing Statement, Summons (Without Minor Children), Complaint (Without Minor Children), and Financial Affidavit to the Clerk of Court and tell them you are filing for divorce.
- \_\_\_\_\_ Pay the \$95.00 filing fee; **OR** If you cannot afford the filing fee, you must complete the Motion to Waive Filing Fee & Service of Process Fee (UJS-022), Financial Affidavit (UJS-023), and caption (only) on the Order Waiving Filing Fee and Service of Process Fee (UJS-028). **Visit our website at <https://ujslawhelp.sd.gov/onlineforms.aspx> and follow the “Waiver of Fees” link to find these forms.** If the Motion is granted (or granted in part), you will not be charged the filing fee, and/or the Sheriff will not charge you for service of process. If the Motion is denied, you must pay the filing fee and service of process fee to proceed with your 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 explained in the Instructions for Service of Summons Without Minor Children and Complaint Without Minor Children (Form UJS-314).
- \_\_\_\_\_ Copies of the following documents **MUST** be served on the defendant:
  - \_\_\_\_\_ Summons (Without Minor Children); and
  - \_\_\_\_\_ Complaint (Without Minor Children).
- \_\_\_\_\_ Copies of the following documents should be provided to the defendant to make the case flow smoothly:

- \_\_\_\_\_ a copy of the Financial Affidavit (UJS-023) you completed;
- \_\_\_\_\_ **blank** copies of the Motion to Waive Filing Fee & Service of Process Fee (UJS-028) to allow the defendant to seek a waiver of the Answer filing fee;
- \_\_\_\_\_ a **blank** copy of the Financial Affidavit (UJS-023) for the defendant's completion;
- \_\_\_\_\_ a **blank** copy of the Instructions & Forms For Answer (UJS-316); and
- \_\_\_\_\_ a copy of the Instructions and Checklist for Divorce Without Children (**this** 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 the 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 30 days in which the Answer must be filed and the 60-Day waiting period required before the divorce can be finalized. Proof of Service documents include:

- \_\_\_\_\_ Signed Admission of Service of Summons and Complaint (UJS-317A), if they were hand-delivered;
- \_\_\_\_\_ Completed Affidavit of Mailing (UJS-315A), if you mailed them to the defendant; **or**
- \_\_\_\_\_ Document from the sheriff or process server providing the date they delivered them to the Defendant.

## **DEFENDANT ACKNOWLEDGING THE COMPLAINT**

Forms are provided on the <https://ujslawhelp.sd.gov> website or at the Clerk of Courts office, for a copy fee).

\_\_\_\_\_ Complete the Admission of Service of Summons and Complaint (Without Minor Children) (UJS-317A).

\_\_\_\_\_ Complete the Financial Affidavit (UJS-023).

\_\_\_\_\_ Make at least two photocopies of all documents, one set for you and one to serve on the plaintiff.

\_\_\_\_\_ Serve the Admission of Service of Summons and Complaint (UJS-317A) on the plaintiff. The different ways to serve a party are explained in the Instructions for Service of Summons and Complaint Without Minor Children (Form UJS-314).

\_\_\_\_\_ Take the original completed Admission of Service of Summons and Complaint Without Minor Children (UJS-314) and Financial Affidavit (UJS-023) to the Clerk of Court and tell them you are responding to the divorce complaint.

**Note: Failure to answer or respond to the Plaintiff's complaint could result in the judge granting a Default Judgment of Decree and Divorce!**

## **DEFENDANT RESPONDING TO COMPLAINT BY FILING AN ANSWER**

If the defendant chooses to file an Answer, they must file it and service it on the plaintiff within 30 days after being served the Summon and Complaint and must:

\_\_\_\_\_ Complete the Case Filing Statement (UJS-232) available in this packet.

\_\_\_\_\_ Complete the Answer and Affidavit of Mailing (UJS-316).

\_\_\_\_\_ Make at least two photocopies of all documents, one set for you and one to serve on the Plaintiff.

\_\_\_\_\_ **Within 30 days after service of the Summons and Complaint**, take the original completed Case Filing Statement (UJS-232) and Answer and Affidavit of Mailing (UJS-316) to the Clerk of Court and tell them you are answering a divorce complaint.

\_\_\_\_\_ Pay the \$25 Answer/Response Fee; **OR**

\_\_\_\_\_ If you cannot afford the \$25 Answer/Response Fee, you must Complete the Motion to Waive Filing Fee and Service of Process Fee (UJS-022) and the caption (only) on the order Waiving Filing Fee and Service of Process Fee (UJS-028). Visit our website at <https://ujslawhelp.sd.gov/onlineforms.aspx> and follow the “Waiver of Fees” link to find these forms. If the Motion is granted, you will not be charged the answer/response fee. If the motion is denied, you must pay the answer/response fee to have your Answer filed.

**Note: The Case Filing Statement and Answer & Affidavit forms can also be found with the other Divorce Without Minor Children forms at <https://ujslawhelp.sd.gov/onlineforms.aspx>.**

## **STIPULATED DIVORCE (Both parties agree on all terms & conditions of the divorce.)**

Parties may reach an agreement regarding the terms and conditions of their divorce instead of making the Judge determine define them. If an agreement is reached, the parties must complete and file the following forms:

\_\_\_\_\_ Stipulation and Settlement Agreement Without Minor Children (UJS-324); &

\_\_\_\_\_ Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-319A).

\_\_\_\_\_ **After 60 days have passed since the Summons & Complaint were properly served on the defendant (and Proof of Service was filed with the Clerk of Court), the parties are responsible for presenting the Judgment and Decree of Divorce (Stipulation and Agreement) Without Minor Children (UJS-326A) to the Judge for consideration.**

\_\_\_\_\_ If the parties cannot reach an agreement, the Court may order mediation. A court-approved mediator can often help the parties come to an agreement on various terms and conditions of the divorce. Mediation is not binding, and the issues discussed are confidential. A list of court-approved mediators is provided on the [www.ujlsd.gov](http://www.ujlsd.gov) website.

\_\_\_\_\_ If the Judge approves the stipulation and signs the Judgment and Decree of Divorce, the Clerk of Court will complete the Notice of Entry of Judgment and Decree of Divorce and will mail a copy to both parties along with certified copies of the Judgment and Decree of Divorce (Stipulation and Agreement) Without Minor 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.

**THESE DOCUMENTS ARE NECESSARY TO FINALIZE YOUR DIVORCE. Do not assume you are divorced if there isn't a Judgment & Decree of Divorce signed by the Judge and filed with the Clerk of Court. If you do not have a signed, file-date stamped, certified copy from the court, follow-up with the Clerk of Court!**

**DEFAULT DIVORCE (Only used when defendant does not file Answer timely.)**

In the event the defendant does not file an Answer or any responsive pleading and within 30 days of being served the Summons & Complaint and does not cooperate by signing a Stipulation and Settlement Agreement, the **plaintiff** must, upon the expiration of the 60-day waiting period:

\_\_\_\_\_ Complete the Affidavit of Default, Application For Judgment & Decree of Divorce (Default) & Notice of Hearing, and Affidavit of Mailing (UJS-321A).

\_\_\_\_\_ Complete the Affidavit of Military Status (UJS-306);

\_\_\_\_\_ Make at least two photocopies of all these documents, one set for you and one to serve on the defendant.

\_\_\_\_\_ Send a copy of the Affidavit of Default, Application for Judgment & Decree of Divorce (Default) & Notice of Hearing (UJS-321A) to the defendant by certified mail with return receipt requested.

\_\_\_\_\_ File the original documents with the Clerk of Court along with a completed Affidavit of Mailing (UJS-321A); and

\_\_\_\_\_ Complete the caption on the Judgment and Decree of Divorce (Default) (UJS-322A) and take it with you to the hearing for consideration by the Judge if a hearing is required.

\_\_\_\_\_ If the Judge signs the Judgment and Decree of Divorce, the Clerk of Courts will send a copy of it and a Notice of Entry of Judgment to both parties. **You must provide 2 self-addressed, stamped envelopes to the Clerk of Court for the mailing of these documents. Make sure there is adequate postage on them.**

**THESE DOCUMENTS ARE NECESSARY TO FINALIZE YOUR DIVORCE. Do not assume you are divorced if there isn't a Judgment & Decree of Divorce signed by the Judge and filed with the Clerk of Court. If you do not have a signed, file-date stamped, certified copy from the court, follow-up with the Clerk of Court!**

## **FINALIZING A DEFAULT OR STIPULATED DIVORCE:**

Prior to finalizing a divorce, the judge may require a hearing. The judge determines whether stipulation or default forms must be filed prior to the hearing. Ask the Clerk of Court if such a hearing is required and if the Judgment & Decree of Divorce form (**with only the caption completed**) must be provided prior to the hearing. The hearing allows an opportunity for the judge to ask the parties questions and allows the parties the opportunity to submit one of the Judgment & Decree of Divorce forms listed below for the judge's signature (if required and not already signed):

Judgment & Decree of Divorce – Default (Without Children) (UJS-322A); or  
Judgment & Decree of Divorce – Stipulation & Agreement (Without Children) (UJS-326A)

## **CONTESTED DIVORCE (Both parties do not agree on all terms & conditions of the divorce.)**

Forms are **not** available for contesting a divorce; contesting a divorce requires a hearing or trial.

\_\_\_\_\_ If the parties cannot agree on the terms and conditions of the divorce, one of them will have to request a hearing or trial.

\_\_\_\_\_ The Judge can order mediation. A court-approved mediator can often help the parties come to an agreement on various terms and conditions of the divorce. Mediation is not binding and the issues discussed are confidential. A list of court-approved mediators is provided on the [www.ujs.sd.gov](http://www.ujs.sd.gov) website.

\_\_\_\_\_ Contact the Clerk of Court or Court Administrator to obtain a hearing/trial date.

\_\_\_\_\_ Complete the Notice of Hearing (UJS-336) available in the General Motions link on the <https://ujslawhelp.sd.gov/onlineforms.aspx> website and make two copies. File the original with the Clerk of Court, send one copy to the other party, and keep one copy for your records.

\_\_\_\_\_ Complete the Affidavit of Mailing (UJS-340) also available on the link listed directly above. File the original with the Clerk of Court and keep a copy for your records.

Following the hearing, the judge will decide how the issues the parties are unable to resolve will be addressed.

## **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 may complete and file the:

\_\_\_\_\_ Stipulation and Order for Dismissal (UJS-328), only if both parties agree about dismissing the divorce action; **or**

\_\_\_\_\_ Motion and Order for Dismissal (UJS-329), if one party wishes to dismiss the action and is Unable to obtain the signature of the other on the Stipulation and Order for Dismissal form mentioned above.