

INSTRUCTIONS AND CHECKLIST FOR DIVORCE (WITH 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!

PLAINTIFF 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-023). You will complete one and your spouse will complete one. Attach the child support calculation form to the affidavit.
- _____ 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), Complaint (With Minor Children), and Financial Affidavit referenced above, and a copy of the SD Parenting Guidelines (UJS-302), 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 also complete the Motion to Waive Filing Fee & 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 (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 in order 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 set forth in the “Instructions for Service of Summons (with Minor Children), South Dakota Parenting Guidelines and Complaint with Minor Children” (Form UJS-314B).
- _____ Copies of the following documents **MUST** be served on the defendant:

- _____ Summons (with Minor Children) (UJS-311);
- _____ Complaint (with Minor Children) (UJS-312); and
- _____ South Dakota Parenting Guidelines (UJS-302).

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-022) and Order 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 form (UJS-023) for the Defendant's completion;
- _____ a **blank** copy of the Answer & Affidavit of Mailing With Children (UJS-318); and
- _____ a copy of the Instructions in Self-Represented Divorce with Children (UJS-307B).

_____ 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 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.

_____ **Within sixty days of the date of service of the Summons and Complaint**, you must complete a Court-approved parenting course per SDCL 25-4A-32. This requirement is met if you and the Defendant have completed a Court-approved course within the last five years. The Judge can also waive the requirement, but only for good cause shown. You must file an Affidavit on Court-Approved Parenting Course (UJS-364) with the Clerk to either provide proof of meeting the requirement or to seek waiver of the requirement. **If you seek a waiver, file the Affidavit well in advance of the deadline.**

DEFENDANT ACKNOWLEDGING THE COMPLAINT

_____ Complete the Admission of Service of Summons, SD Parenting Guidelines, and Complaint (UJS-317B if served by hand delivery) **or** (UJS-315B if served by mail).

_____ Complete the Financial Affidavit (UJS-023).

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

_____ Take the original completed Admission of Service of Summons, SD Parenting Guidelines, and Complaint and Financial Affidavit to the Clerk of Court and tell the Clerk you are responding to a 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 serve it on the Plaintiff within 30 days after being served the Summons and Complaint and must:

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

_____ Complete the Answer and Affidavit of Mailing Answer (UJS-318).

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

_____ **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 Answer (UJS-318) to the Clerk of Court and tell the clerk you are answering a divorce complaint.

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

_____ If you cannot afford the filing 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 in order to have your Answer filed.

_____ **Within sixty days of the date of service of the Summons and Complaint**, you must complete a Court-approved parenting course per SDCL 25-4A-32. This requirement is met if you and the Plaintiff have completed a Court-approved course within the last five years. The Judge can also waive the requirement, but only for good cause shown. You must file an Affidavit on Court-Approved Parenting Course (UJS-364) with the Clerk of Court to either provide proof of meeting the requirement or to seek waiver of the requirement. **If you seek a waiver, file the Affidavit well in advance of the deadline.**

Note: The Case Filing Statement and Answer & Affidavit forms can also be found with the other Divorce with Minor Children forms at <https://ujslawhelp.sd.gov/onlineforms.aspx>.

STIPULATED 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 should review the Instructions for Stipulation and Settlement Agreement and Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-323A) and need to complete and file the following documents:

_____ Stipulation & Settlement Agreement (with Minor Children) (UJS-325);

_____ Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-319B);

_____ Child Support Filing Data Form (UJS-089).

_____ **After sixty 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- 326B) to the Judge for consideration.**

_____ If the parties cannot reach an agreement, the Judge 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. A list of Court-approved mediators can be found at www.ujs.sd.gov.

_____ 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 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—the Judgment and Decree of Divorce, the Notice of Entry of Judgment and Decree of Divorce, and the Stipulation and Settlement Agreement (with Minor Children).

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 with the Clerk of Court!

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 Judge 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 (UJS-336), available in the General Motions link on the UJS forms webpage, <https://ujslawhelp.sd.gov/onlineforms.aspx>, 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 (UJS-340), available at the General Motions link given immediately above. Make one copy for yourself and file the original.

FINALIZING DIVORCE:

- _____ Prior to finalizing the divorce, the Court may require a hearing. The Judge determines whether stipulation or default forms must be filed prior to the hearing. At the hearing, the parties answer any questions the Judge has, and the parties can present the Judge with the Order and Decree they want the Judge to sign.

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 (UJS-321B); and
- _____ Affidavit of Military Status (UJS-306).
- _____ 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-322B) 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 a copy of each to both parties. **You must provide self-addressed, stamped envelopes for the Plaintiff and Defendant to the Clerk of Court for the mailing of these documents. Make sure there is adequate postage on them.**

_____ If you do not receive either of these documents, it is your responsibility to call the Clerk of Court's office and inquire as to the status. **Both 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).