

## **Instructions for Affidavit of Default, Application for Judgment & Decree of Divorce (Default), Notice of Hearing and Affidavit of Mailing & Forms**

- **Only the Plaintiff fills out these Default forms if the parties have not completed a Stipulation and Settlement Agreement!**

An Affidavit of Default is a sworn statement telling the court that you served the Summons (with Children) and Complaint with Minor Children on the Defendant and that he/she has not responded within thirty days after the completed service.

The Application for Judgment and Decree of Divorce (Default) and Notice of Hearing serve as notice to the Defendant that a date has been set for trial in the divorce case and that he/she is in default for not responding to the Summons (with Minor Children) and Complaint with Minor Children within 30 days after the completed service. Once 60 days have passed after service of the Summons (with Children) and the Complaint with Minor Children (excluding the date of service), the Affidavit of Default, Application for Judgment and Decree of Divorce (Default) and Notice of Hearing along with the Affidavit of Mailing are completed and filed.

### **Affidavit of Default**

- Complete this form in black or blue ink only!
- 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.
- Complete paragraph 2 by inserting the date that Defendant was served with the Summons (with Children), the South Dakota Parenting Time Guidelines and the Complaint with Minor Children. This is the date that the Defendant either signed the Admission of Service or the date the papers were delivered to the Defendant by the Sheriff or process server.
- Read the other paragraphs carefully as you are signing this document under oath and the statements made in all the paragraphs **MUST BE TRUE.**
- **You must sign and date the Affidavit 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.**

### **Application for Judgment & Decree of Divorce (Default)**

- Complete the top portion (the “caption”) of the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing as it appears on the Summons (with Children) and the Complaint with Minor Children.

- As the Plaintiff, fill in your full legal name in the first blank of the body of the Application.
- Date and sign the Application and complete the signature block.
- Obtain a trial date from the Court Administrator's office or the Clerk of Court (depending upon which county your action is filed in). You will then use the date given to you to fill in the "Notice of Hearing" section.
- In the Notice of Hearing section, fill in the blanks to indicate day, month, year and time (including am or pm) of the trial date you got from the Clerk of Court or Court Administrator. Mark the appropriate box indicating where the trial will be held and fill in the blanks.
- Date and sign the Notice of Hearing and complete the signature block.
- File the original Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing with the Clerk of Court. Make two copies of each document. One for yourself and one to mail to the Defendant.
- Mail a copy of the Affidavit of Default, Application for Judgment & Decree of Divorce (Default) and Notice of Hearing to Defendant by first class mail, properly addressed, with sufficient postage at least seven (7) days prior to the hearing. The Defendant has to receive written notice of the Application of Judgment at least three business days prior to the hearing.

### **Affidavit of Mailing**

- The Affidavit of Mailing may only be completed after the Application for Judgment and Decree of Divorce (Default) and Notice of Hearing are placed in the United States Mail.
- Complete the top portion of the Affidavit Mailing (the "caption"). This information will be the same as on the other documents.
- Fill in the blanks as indicated on the Affidavit of Mailing.
- File the original Affidavit of Mailing with the Clerk of Court. Make a photocopy of it for your file.
- **You must sign and date the Affidavit of Mailing in the presence of a notary public or clerk of court. Make sure to bring 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.**

STATE OF SOUTH DAKOTA )  
 :SS  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

_____, Plaintiff,  vs.  _____, Defendant	DIV _____  <b>AFFIDAVIT OF DEFAULT</b>
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STATE OF SOUTH DAKOTA )  
 :SS  
COUNTY OF \_\_\_\_\_ )

Plaintiff, being first duly sworn on oath, states:

1. That I am the Plaintiff in the above-captioned action.
2. That the Summons (with Children), South Dakota Parenting Time Guidelines and Complaint with Minor Children were all served together on the Defendant on \_\_\_\_\_, 20\_\_\_\_\_.
3. That the proof of service has been filed (i.e. Admission of Service or Sheriff's Return).
4. That more than 60 days have passed since service of the Summons (with Children), Parenting Time Guidelines and Complaint with Minor Children. Defendant has made no answer, appearance or any other responsive pleading and is in default.
5. It is my belief that the Defendant is not in the military service on active duty.

Sworn/affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Notary Public/Clerk of Court)

If notary, my commission expires

(SEAL)

\_\_\_\_\_  
Signature of Plaintiff  
**(Sign only in front of a notary or Clerk of Court)**  
Name of Plaintiff (Printed): \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 )  
:SS  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_) JUDICIAL CIRCUIT

<p>_____, Plaintiff,  vs.  _____, Defendant</p>	<p>DIV _____</p> <p><b>APPLICATION FOR JUDGMENT &amp; DECREE OF DIVORCE (DEFAULT) AND NOTICE OF HEARING</b></p>
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Comes now, the above-named Plaintiff, \_\_\_\_\_, and respectfully submits this Application for Judgment & Decree of Divorce by Default pursuant to SDCL 15-6-55(b), hereby requesting the Court to enter Judgment and Decree of Divorce by default against the Defendant in favor of the Plaintiff in the above entitled action. The Plaintiff's Affidavit of Default is by reference incorporated herein as though fully set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Plaintiff's Signature  
  
Name of Plaintiff: (Printed)\_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_\_)\_\_\_\_\_

**NOTICE OF HEARING**

TO: THE DEFENDANT IN THE ABOVE CAPTIONED MATTER:

**PLEASE TAKE NOTICE** that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ .m. a trial for Application for Judgment & Decree of Divorce (Default) will be held:

In the courtroom of the Honorable \_\_\_\_\_, Circuit Court Judge of the \_\_\_\_\_ Judicial Circuit, presiding, located at the \_\_\_\_\_ County Courthouse, in \_\_\_\_\_ County, \_\_\_\_\_, South Dakota.

**OR**

At the Court Administrator’s office, \_\_\_\_\_ County Courthouse, \_\_\_\_\_, South Dakota.

The Plaintiff will seek judgment for the relief demanded in the Complaint with Minor Children filed in the above-entitled action.

Plaintiff’s Application for Judgment & Decree of Divorce (Default) and Notice of Hearing and Plaintiff’s Affidavit of Default are by reference incorporated herein as though fully set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ County, South Dakota.

\_\_\_\_\_  
Plaintiff’s Signature

Name of Plaintiff: (Printed) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_\_) \_\_\_\_\_ STATE

STATE OF SOUTH DAKOTA )  
 )  
:SS  
COUNTY OF \_\_\_\_\_ )

IN CIRCUIT COURT  
\_\_\_\_\_  
JUDICIAL CIRCUIT

<p>_____, Plaintiff,  vs.  _____, Defendant</p>	<p>DIV _____</p> <p><b>AFFIDAVIT OF MAILING</b></p>
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I, \_\_\_\_\_, the above-named Plaintiff,  
being duly sworn, state that on \_\_\_\_\_, 20\_\_\_\_, I served the  
Affidavit of Default and the Application for Judgment & Decree of Divorce (Default) and Notice  
of Hearing, by placing true and correct copies of the documents in an envelope addressed to:

\_\_\_\_\_, the above-named Defendant, at  
\_\_\_\_\_, in the City of \_\_\_\_\_,  
(Defendant's mailing address)

State of \_\_\_\_\_, Zip Code \_\_\_\_\_, and depositing the envelope,  
with sufficient postage, in the United States Mail at \_\_\_\_\_.  
(City & State mailed from)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff's Signature  
(Sign only in front of a notary or clerk of courts)

Sworn/affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public/Clerk of Courts)

Name of Plaintiff: (Printed) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: (\_\_\_\_\_) \_\_\_\_\_

(SEAL)