

## **INSTRUCTIONS AND FORM FOR SUMMONS (WITH MINOR CHILDREN)**

These forms are related to specific South Dakota Codified Laws (SDCL) concerning divorce matters. You can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide legal advice or assist with form completion. For specific questions related to the forms, you can also contact the Legal Form Help Line at 1-855-784-0004 or email UJS staff at [ujssrlhelp@ujs.state.sd.us](mailto:ujssrlhelp@ujs.state.sd.us).

### **To complete this form, you will need to:**

- Complete the caption of the Summons.
  - County (insert county name).
  - Judicial Circuit (insert circuit number). You may find your judicial circuit number at the following web address.
    - [https://ujs.sd.gov/Circuit\\_Court/Default.aspx](https://ujs.sd.gov/Circuit_Court/Default.aspx)
  - Plaintiff (insert your name).
  - Defendant (insert spouses name).
  - Case Number will be provided to you by the Clerk of Court at the time of filing.
  
- Date and sign.
  
- File this form along with the Complaint (with Minor Children) (UJS-312), Case Filing Statement (UJS-232), the required filing fee, and Financial Affidavit (UJS-023) with the Clerk of Court.
  
- It is very important that you read and follow the Temporary Restraining Order that becomes automatic when you file for divorce and the other party has been served. Both parties are required to obey it. Violation of any of these terms could subject you to penalties and delay your divorce. Please read it carefully.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____</p> <p>Plaintiff</p> <p>v.</p> <p>_____</p> <p>Defendant</p>	<p>Case No.: _____</p> <p style="text-align: center;"><b>SUMMONS (WITH MINOR CHILDREN)</b></p>
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**TO THE ABOVE-NAMED DEFENDANT:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint with Minor Children of the Plaintiff, a copy of which is herewith served upon you, and to serve the Plaintiff with a copy of your Answer, or other proper response, within thirty days from the date of the service of the Summons upon you, not counting the day of service.

IF YOU FAIL TO DO SO, judgment by default may be taken against you for the relief demanded in the Complaint sixty days from the date of the service of this Summons and Complaint with Minor Children, not counting the day of service.

**NOTICE**

South Dakota law provides that upon the filing and service of the Summons and Complaint with Minor Children on the Defendant, a Temporary Restraining Order shall be in effect against both parties until the final decree is entered, the Complaint with Minor Children is dismissed or until further order of the Court. Either party may apply to the Court for further temporary orders or modification or revocation of this Order.

**TEMPORARY RESTRAINING ORDER**

**PER SDCL § 25-4-33.1, BY ORDER OF COURT, YOU AND YOUR SPOUSE ARE:**

- (1) Restrained from transferring, encumbering, concealing or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the Court, except as may be necessary in the usual course of business or for the necessities of life. You are to notify the other party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the Temporary Restraining Order is in effect;

- (2) Restrained from molesting or disturbing the peace of the other party;
- (3) Restrained from removing any minor child of the parties from the state without the written consent of the other party or an order of the Court; and
- (4) Restrained from making any changes to any insurance coverage for the parties or any child of the parties without the written consent of the other party or an order of the Court unless the change under the applicable insurance coverage increases the benefits, adds additional property, persons, or perils to be covered, or is required by the insurer.

### **INITIAL CUSTODY ORDER**

Pursuant to SDCL § 25-4A-11 et seq., upon service of this Summons, the attached South Dakota Parenting Guidelines (Form UJS-302) become an Order of this Court. Except as provided in SDCL § 33-6-10, any minor children of this marriage shall remain in the custody of the parent who has been the primary caregiver for the minor children for the majority of time in the twelve months preceding the filing of the Summons and Complaint with Minor Children, unless the parties otherwise agree. The guidelines are subject to any provision established by a South Dakota state court in the following: a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and an order in any other proceeding affecting child custody or support. SDCL § 25-4A-14.

The attached guidelines apply and shall continue in effect unless the parties agree or the Court otherwise orders. Imposition of these standard guidelines creates no presumption as to who may be awarded custody at any hearing. Per SDCL § 25-4A-12, any agreement by the parties for visitation other than the standard guidelines must be in writing, signed by both parties, and filed with the Court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan previously filed.

Per SDCL § 25-4A-13, if either party objects to the implementation of the South Dakota Parenting Guidelines (Form UJS-302) as the initial custody arrangement, the objecting party shall file an objection with the Clerk of Court. The Court shall order a hearing which shall be held not later than thirty days after the date of the objection. The Court shall then issue its temporary custody and visitation order after considering the best interest of the child(ren) consistent with the provisions of SDCL § 25-4-45.

**IF EITHER SPOUSE VIOLATES ANY OF THESE PROVISIONS, THAT SPOUSE MAY BE FOUND TO BE IN CONTEMPT OF COURT AND MAY BE ORDERED TO PAY COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO THE ATTORNEY FEES OF THE OTHER SPOUSE.**

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

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Plaintiff's Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone No.

*Forms for representing yourself in a divorce action can be found on the UJS self-help website at: <https://ujslawhelp.sd.gov/onlineforms.aspx>*