

## INSTRUCTIONS AND FORMS FOR AFFIDAVIT OF DEFAULT, APPLICATION FOR JUDGMENT AND DECREE OF DIVORCE (DEFAULT), NOTICE OF HEARING AND AFFIDAVIT OF MAILING

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 [ujssrhelp@uj.s.state.sd.us](mailto:ujssrhelp@uj.s.state.sd.us).

### **IMPORTANT NOTICES:**

- These forms can only be completed by the Plaintiff and only if the following is true:
  - The Defendant was served with copies of the Summons and Complaint with Minor Children and Proof of Service was filed with the Clerk of Court.
  - The Defendant has failed to file an Answer to the Summons and Complaint with Minor Children within thirty days of being served.
  - The Defendant is not in the military on active duty.
- A Default Judgment for Divorce can only be granted if it has been at least sixty days since the Defendant was served with the Summons and Complaint.

### **To complete these forms, you will need to:**

- Complete the Affidavit of Default (UJS-323A) by completing the caption, date the Defendant was served with the Summons and Complaint with Minor Children, date, and sign in front of a notary or Clerk of Court.
- Complete the Application for Judgment and Decree of Divorce - Default (UJS-323B), sign and date in front of a notary or Clerk of Court.
- Complete the Affidavit of Mailing (UJS-323D) and sign in front of a notary or Clerk of Court.
- File the originals of the Affidavit of Default (UJS-323A), Application for Judgment and Decree of Divorce – Default (UJS-323B), Affidavit of Mailing (UJS-323D), and Affidavit of Defendant's Military Status (UJS-306) with the Clerk of Court.

\*A hearing may be required on your application for Default Judgment. You will need to contact the Clerk of Court for this information. If a hearing is required continue with the steps below.

- Request a hearing date and time from the Clerk of Court or Court Administration depending on your county. Complete the Notice of Hearing (UJS-323C), sign and file the original with the Clerk of Court. The Notice of Hearing would then be mailed along with the other forms listed above.

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>AFFIDAVIT OF DEFAULT</b></p>
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Plaintiff, being first duly sworn on oath states:

1. That I am the Plaintiff in the above-captioned action.
2. That the Summons and Complaint (with Minor Children) were served together upon the Defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
3. That the proof of service has been filed (*i.e., Admission of Service or Sheriff's Return*)
4. That more than sixty days have passed since service of the Summons and Complaint (with Minor Children) and the Defendant has not filed an Answer, made an appearance, or filed 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.

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

\_\_\_\_\_  
Plaintiff Signature

\_\_\_\_\_  
Plaintiff Printed Name

\_\_\_\_\_  
Plaintiff Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

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

\_\_\_\_\_  
Notary/Deputy Clerk/Clerk of Court

My Commission Expires: \_\_\_\_\_

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>APPLICATION FOR JUDGMENT AND DECREE DEFAULT</b></p>
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COMES NOW, the above-named Plaintiff and respectfully submits this Application for Judgment and Decree of Divorce by Default pursuant to SDCL § 15-6-55(b), hereby requesting the Court to enter a 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 incorporated herein.

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

\_\_\_\_\_  
Plaintiff Signature

\_\_\_\_\_  
Plaintiff Name

\_\_\_\_\_  
Plaintiff Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

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

\_\_\_\_\_  
Notary/Deputy Clerk/Clerk of Court

My Commission Expires: \_\_\_\_\_

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>NOTICE OF HEARING</b></p>
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**TO: THE DEFENDANT IN THE ABOVE-CAPTIONED MATTER:**

**PLEASE TAKE NOTICE** that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_:\_\_\_\_\_ am/pm a hearing on Plaintiff's Affidavit of Default and Application for Judgment and Decree of Divorce – Default will be held in the courtroom of Honorable \_\_\_\_\_, Circuit Court Judge of the \_\_\_\_\_ Judicial Circuit, presiding, located at the \_\_\_\_\_ County Courthouse, in \_\_\_\_\_, South Dakota.

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

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

\_\_\_\_\_  
Plaintiff Signature

\_\_\_\_\_  
Plaintiff Name

\_\_\_\_\_  
Plaintiff Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

COUNTY OF \_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>v.</p> <p>_____ Defendant</p>	<p>Case No.: _____</p> <p style="text-align: center;"><b>AFFIDAVIT OF MAILING</b></p>
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I, \_\_\_\_\_, being sworn, state that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed the (**check all that apply**)

Affidavit of Default,  Application for Judgment and Decree of Divorce – Default

Notice of Hearing, by placing true and correct copies in an envelope addressed to:

\_\_\_\_\_  
(Name of Defendant)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip)

And depositing the envelope, with sufficient postage, in the United States Mail in:

\_\_\_\_\_  
(City and State where you mailed forms from)

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

\_\_\_\_\_  
Plaintiff Signature

\_\_\_\_\_  
Plaintiff Name

\_\_\_\_\_  
Plaintiff Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

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

\_\_\_\_\_  
Notary/Deputy Clerk/Clerk of Court

My Commission Expires: \_\_\_\_\_