

## INSTRUCTIONS FOR UNCONTESTED CUSTODY, VISITATION AND SUPPORT ACTION

ALL FORMS IN THIS PACKET MAY **ONLY** BE USED BY PARENTS WHEN BOTH PARENTS AGREE ON THE FATHER, THE MOTHER WAS NOT MARRIED AT THE TIME OF THE CHILD(REN)'S BIRTH(S), THERE IS NO PATERNITY AFFIDAVIT DESCRIBING ANOTHER PERSON AS THE FATHER, AND THERE IS AN AGREEMENT ON CUSTODY AND VISITATION. THESE FORMS ARE **NOT** DESIGNED TO ASSIST PARENTS WHO DO NOT AGREE ON THESE MATTERS. IF YOU DO NOT AGREE, YOU ARE STRONGLY ADVISED TO OBTAIN AN ATTORNEY TO PROTECT YOUR RIGHTS.

### Who Can Use These Forms?

1. Does the Father acknowledge that he is the biological father of the child(ren)?  
 Yes. Please answer the next question.  
 No. You may not use this form.
2. Was/were the child(ren) born while the Mother was married or within ten months after divorce?  
 Yes. You may not use this form.  
 No, there is no paternity affidavit. Please answer the next question.
3. Has a paternity affidavit been filed with the child(ren)'s birth certificate?  
 Yes, there is a paternity affidavit. You may not use this form.  
 No, there is no paternity affidavit. You may use this form. Please answer the next question.
4. Do the parents agree who will have legal custody?  
 Yes. Please answer the next question.  
 No. You may not use this form.
5. Do the parents agree who will have physical custody?  
 Yes. Please answer the next question.  
 No. You may not use this form.
6. Do the parents agree on how to share parenting time with the minor child(ren)? (For example, splitting holidays, sharing summer visitation, etc.).  
 Yes. Please answer the next question.  
 No. You may not use this form.
7. Is there an existing valid protection order protecting the child and/or custodial parent from the non-custodial parent AND is visitation addressed in the protection order or in another file initiated after the protection order was entered?  
 Yes. You do not need to complete this form.  
 No. Please answer the next question.
8. Within the previous 12 months, was the other parent convicted of a violation of a protection order, criminal assault, child abuse or other domestic violence AND, if so, was visitation NOT addressed after conviction AND were you or the child the victim?  
 Yes. You do not need to complete this form.  
 No. Please complete the form.

## How Do I Complete These Forms?

- **Complete all forms in black or blue ink only!**
- **Make sure the caption (the top portion of each document) is filled out correctly. The caption should be the same for each document.**

### The caption should include:

- County where the action is being started;
- The judicial circuit in which that county is located within (“First,” “Second,” . . . “Seventh”). There are 7 judicial circuits in South Dakota. To locate the circuit, please refer to [www.ujs.sd.gov](http://www.ujs.sd.gov) under the “Court Finder” tab;
- Full legal name of Plaintiff;
- Full legal name of Defendant; and
- Case filing number – this will be provided to you by the Clerk of Courts when you set up your case.

**The caption needs to be the same on all of the forms provided to the Clerk of Courts in this action.**

### STARTING THE CASE:

\_\_\_\_\_ Complete the Case Filing Statement (Form UJS-232) available in this packet. This document is self-explanatory and must be provided to the Clerk of Courts.

\_\_\_\_\_ Complete the Summons (Paternity Action) (Form UJS-181). Attach a copy of the South Dakota Parenting Guidelines (Form UJS-302) to this Summons. The Guidelines can be found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov).

Make sure you date and sign the form and complete all information requested after your signature.

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***It is very important that you read and follow the Initial Custody Order contained within the Summons that becomes automatic when you file your documents. This is a court order and both parties are required to abide by it, unless you have both agreed to another arrangement. Violation of any of these terms could subject you to penalties and delay your action. Read it carefully.***

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\_\_\_\_\_ Complete the Complaint (Paternity Action) Form (UJS-182). Complete this form in its entirety. If a provision does not apply to you, please indicate it is not applicable by writing “N/A.”

**You must sign and date the Complaint 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 or courthouse.**

**\*\* Your signature is required in 2 places! \*\***

**WARNING: By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be charged with a crime for not telling the truth.**

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

\_\_\_\_\_ Take the original completed Case Filing Statement, Summons, SD Parenting Guidelines, and Complaint to the Clerk of Court and tell the Clerk you want to start a Paternity Action.

\_\_\_\_\_ Pay the \$70.00 filing fee; **OR**

\_\_\_\_\_ If you cannot afford the filing fee, you must complete the Motion & Order to Waive Fee & Service of Process Fee (Form UJS-022) AND the Financial Affidavit (Form UJS-023), found at <https://ujslawhelp.sd.gov/WaiverofFees.aspx>. Present the Motion, Financial Affidavit, AND a **blank** Order Waiving Filing Fee And Service of Process Fee (Form UJS-028) to the Clerk of Court. The Clerk will present them to the judge and will be notify you if the fees have been waived or if you must pay them. If the Motion is granted, you will not be charged the filing fee and/or the Sheriff will not charge you for service of process. If your Motion is denied by the judge, you must pay the filing fee and service of process fee in order to proceed with the 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 (Paternity Action), South Dakota Parenting Guidelines & Complaint" (Form UJS-184).

\_\_\_\_\_ Copies of the following documents **MUST** be served on the defendant:

\_\_\_\_\_ Summons (Paternity Action);  
\_\_\_\_\_ South Dakota Parenting Guidelines; and  
\_\_\_\_\_ Complaint (Paternity Action).

\_\_\_\_\_ Upon receipt of the proof of service (either the date the Admission of Service is signed by the Defendant or the date the Summons and Complaint are delivered to the Defendant by the Sheriff or process server), make a copy of 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.

\_\_\_\_\_ An Answer may be filed by the defendant within 30 days after service of the Summons

(Paternity Action), South Dakota Parenting Guidelines and Complaint (Paternity Action). If an Answer is filed, the matter is no longer uncontested, and the remaining forms in this packet are no longer appropriate. At that point, you are strongly encouraged to meet with and hire an attorney to protect your rights and interests.

\_\_\_\_\_ 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.

### **PUTTING YOUR AGREEMENT IN WRITING:**

Complete UJS Form-185 which is called the “Stipulation, Custody, Parenting Time & Support Agreement.” Read this document carefully and follow the instructions contained within this document.

The South Dakota Parenting Guidelines provides the *minimum* guidelines if you need some assistance in completing this section.

If you don’t have a child support order, **make sure you provide the child support calculation for the Judge’s consideration. Child support must be calculated before an Order will be signed.** A child support obligation calculator or shared parenting child support obligation worksheet can be found on the Department of Social Services website: <https://dss.sd.gov/childsupport/obligationsdetermined.aspx>.

**Any modification of an existing child support order requires that you obtain a Petition for Modification of Child Support Obligation from the Department of Social Services and follow the associated process.** For more information, please review this webpage: <https://dss.sd.gov/childsupport/modifysupportorder.aspx>.

Once the form is complete, make at least two photocopies of the signed Stipulation; one for you and one to be served on the other parent. The original copy must be filed with the Clerk of Courts.

### **WRAPPING IT UP...**

When you file the Stipulation, Custody, Parenting Time & Support Agreement (Paternity Action), provide the Order (Paternity Action) (Form UJS-186) to the Clerk for the Judge’s consideration. The caption should be filled out.

Depending on your specific area, a hearing may or may not be required before the Judge will sign the Order.

Once the Order (Form UJS-186) is signed by the Judge, you will need to get a minimum of 2 certified copies of it. Send one certified copy to the Defendant along with the Notice of Entry of Order (Form UJS-187) and send one copy to Department of Health, Vital Records:

SOUTH DAKOTA DEPARTMENT OF HEALTH  
VITAL RECORDS OFFICE  
221 W CAPITOL AVE  
PIERRE SD 57501

Additionally, if the Order establishes child support, you will need to fill out and file with the Clerk of Court a **UJS/DSS Form 089, Child Support Order Filing Data Form**.

### **WHAT IF WE NEED HELP?**

If you and the other parent cannot agree upon certain provisions, you are strongly urged to contact an attorney of your choosing. Alternatively, parents have used mediators to help them reach an agreement. A list of mediators can be found on the UJS website at <https://ujs.sd.gov>.