

# DEFENDANT'S CHECKLIST FOR DIVORCE 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@uj.s.state.sd.us](mailto:ujssrlhelp@uj.s.state.sd.us).

## **Before You Begin**

If you've received a Summons and Complaint from your spouse for a divorce proceeding, you will be designated as the Defendant on all divorce forms, while your spouse will be the Plaintiff. This form serves as a simple checklist outlining the steps for the Defendant in a divorce proceeding. Each form mentioned in this checklist will include detailed instructions.

If you are the spouse who initiated the case, please refer to the Plaintiff's Checklist for Divorce with Children.

Remember that all original copies of any form must be filed with the Clerk of Court, who will provide you with filed stamped copies. Before submitting anything to a Sheriff, process server, or opposing party, make sure to retain a copy for your own records.

## **Answering a Summons and Complaint**

If you've been served with a Summons and Complaint for Divorce, you have thirty days from the date of service to file an Answer. Failing to do so could lead to a Default Judgment against you. To complete and file your Answer, follow these steps:

- ☐ Read and follow the Temporary Restraining Order: The Summons includes a Temporary Restraining Order, which automatically takes effect when a divorce is initiated and you, as the Defendant, have been served. Both parties are required to obey it. Violating any of the terms outlined in the Order could result in penalties and delay the divorce process. Take the time to carefully read and understand it.
- ☐ Complete a Case Filing Statement (UJS-232) with both your demographic information and your spouse's demographic information. It is important to know that your social security number and date of birth are required when filing a divorce action with children.
- ☐ Complete the Financial Affidavit (UJS-023).
- ☐ Complete the Answer (UJS-318).
- ☐ Complete an Affidavit of Mailing (UJS-318).
- ☐ File the original copies of each of the forms listed above with the Clerk of Court in the county the case was initiated in, along with the required \$25 filing fee.
  - ☐ If you cannot afford the \$25 Answer fee, please complete the Motion to Waive Filing Fee (UJS-022) and submit with the above forms in lieu of the \$25.
- ☐ Mail a copy of the above forms to the Plaintiff.

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## South Dakota Parenting Course

According to South Dakota law, all parties involved in an action related to child custody or parenting time must complete a court-approved parenting course within sixty days of being served with the Summons and Complaint. Failure to comply may result in delays in finalizing the divorce proceedings.

1. **Course Requirement:** Both parents must complete a court-approved parenting course. The course aims to educate participants about the impact of divorce proceedings on children.
2. **Waiver or Delay:** Participation in the course can only be waived or delayed if:
  - a. Good cause is shown.
  - b. The individual has previously completed a court-approved course within the last five years.
3. **Course Information:** For more details about court-approved parenting classes, visit the South Dakota Unified Judicial website:  
[https://uj.s.sd.gov/Parenting\\_Education/Default.aspx](https://uj.s.sd.gov/Parenting_Education/Default.aspx)
4. **Requesting a Waiver:** If you believe you have good cause to waive the required parenting course, complete and file the Affidavit on Court-Approved Parenting Course (UJS-364) form and file the original with the Clerk of Court.

## Stipulated Divorce

If/When both parties come to an agreement regarding the terms and conditions of their divorce, it is referred to as a stipulated divorce. If such an agreement has been reached, both parties are required to complete and file the following forms:

- ☐ Stipulation and Settlement Agreement with Minor Children (UJS-325). This form must be initialed and signed by both parties in front of a notary or the Clerk of Court.
- ☐ Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-319B). Both parties need to sign this affidavit in front of a notary or the Clerk of Court.
- ☐ File the originals of the completed forms with the Clerk of Court.

## Finalizing a Stipulated Divorce

If both parties have signed the Stipulation, filed it with the Clerk of Court, and the sixty-day waiting period has elapsed since the Defendant was served with the Summons and Complaint, you may proceed as follows:

- ☐ Complete form UJS/DSS-089 and file with the Clerk of Court.
- ☐ Complete the Judgment and Decree of Divorce Stipulation and Agreement with Children (UJS-326B): Fill out this form and either file the original with the Clerk of Court

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or bring it to your hearing if one is required. Carefully read the instructions and complete the form as directed. Please contact the Clerk of Court to determine whether a hearing is required or not.

- ☐ Judgment and Decree of Divorce Signing: If granted, the Judge will sign the Judgment and Decree of Divorce.

### **Notice of Entry of Judgment and Decree of Divorce**

Once the Judge has signed the Judgment and Decree of Divorce, the Court will provide you with signed certified copies. To finalize the process, follow these steps:

- ☐ Complete and File the Notice of Entry: You may obtain this form from the Clerk of Court. Depending on the county, either the Clerk will complete the form for you or provide you with the form for completion. Check with the Clerk of Court in your county.
- ☐ Complete the Affidavit of Mailing: You may obtain this form from the Clerk of Court. Again, depending on the county, either the Clerk of Court will complete it or provide you with the form for completion. Check with the Clerk of Court in your county.
- ☐ File the originals of both the Notice of Entry and the Affidavit of Mailing with the Clerk of Court.
- ☐ Mail a copy of the Notice of Entry, the Affidavit of Mailing, and the signed, certified copy of Judgment and Decree of Divorce (UJS326A) to the opposing party.

**\*Steps under "Finalizing a Stipulated Divorce" can be completed by either party \***

### **Dismissing the Divorce**

If the parties reconcile before the Judge grants the divorce, the divorce action may be dismissed by both parties signing a Stipulation and Order for Dismissal (UJS-328) and filing the original with the Clerk of Court.

### **Contested Divorce**

A contested divorce arises when a couple cannot find common ground regarding the decisions necessary to terminate their marriage. In such cases, they proceed to Court, where a Judge adjudicates the divorce-related matters. The forms contained in this packet do not cover contested divorces. This would be when the parties are encouraged need to seek legal representation.

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For more information on your case or to track events you may register as a user on eCourts, at: <https://ecourts.sd.gov/Account/Login.aspx?ReturnUrl=%2f>.

# RESOURCES AVAILABLE

## **For Mediation Services:**

A list of court-approved mediators is maintained on the UJS website at [ujs.sd.gov/Resources/ProgramsServices.aspx](http://ujs.sd.gov/Resources/ProgramsServices.aspx)

## **For Parenting Coordinator Services:**

A list of approved parenting coordinators is maintained on the UJS website at [ujs.sd.gov/Resources/ProgramsServices.aspx](http://ujs.sd.gov/Resources/ProgramsServices.aspx)

## **For Assistance with UJS-Approved Legal Forms found at <http://ujs.sd.gov>:**

Contact the UJS Legal Form Help Line at 1-855-784-0004 or email Legal Research at [UJSSRLHelp@ujs.state.sd.us](mailto:UJSSRLHelp@ujs.state.sd.us).

## **Legal Aid Services of South Dakota:**

Residents who meet financial eligibility guidelines can get free legal aid services in SD. To determine if you are eligible, contact one of the following:

**Dakota Plains Legal Services, Inc.**  
<https://www.dpls.org/contact-us>

**East River Legal Services, Inc.**  
335 N Main Ave. Suite 200  
Sioux Falls, SD 57104  
1-605-336-9230  
[East River Legal Services – Advancing Equal Access to Justice for our most vulnerable citizens.](#)  
[\(erlservices.org\)](http://erlservices.org)

## **Access to Justice, Inc.**

This is a statewide program designed to supplement the legal aid programs in SD. Residents must be income eligible to qualify for legal services at a reduced rate or at no cost to you. Clients are responsible for paying case costs. Access to Justice Inc. also offers clinics periodically to assist self-represented litigants in filling out UJS approved legal forms.

Access to Justice Inc  
State Bar of South Dakota  
222 E Capitol Ave #3  
Pierre, SD 57501

Phone: 1-855-287-3510    Or Visit: <https://www.statebarofsouthdakota.com/access-to-justice/>

**For Assistance with Complaints Regarding Businesses:**

Office of the Attorney General  
Division of Consumer Protection  
1302 E. Hwy 14, Suite 3  
Pierre, SD 57501

Phone: (605) 773-4400  
Toll Free: 1-800-300-1986 (in state only)  
Or Visit: <http://atg.sd.gov/Consumers.aspx>

**For Assistance in Finding a Lawyer:**

The State Bar of South Dakota offers a listing of lawyers and firms in South Dakota and can be found at the following: <https://findalawerinsd.com/>. These are private practitioners who will charge for their services.

State Bar of South Dakota  
Toll Free: 1-800-952-2333  
Phone: 605-224-7554

For further information regarding the court system in South Dakota or to obtain legal forms, please visit the South Dakota Unified Judicial System website at <http://uj.s.sd.gov>.



The South Dakota  
Unified Judicial System  
(605) 773-3474  
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# SOUTH DAKOTA PARENTING GUIDELINES



Prepared by the 2021 South Dakota  
Commission on Parenting Guidelines

**The South Dakota Parenting Guidelines are located on the  
South Dakota Legal Self-Help Center found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov)**

**For more information, contact:**

South Dakota Unified Judicial System  
State Court Administrator's Office  
500 E. Capitol Avenue  
Pierre, SD 57501  
605-773-3474

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# SOUTH DAKOTA PARENTING GUIDELINES

## **Enforcement.**

These Guidelines are required to be served with the Summons and Complaint in a divorce, paternity action or any other custody action or proceeding. See <https://ujslawhelp.sd.gov/onlineforms.aspx> under divorce or paternity actions for instructions on how to initiate an action (service of summons).

If the parents are able to agree to a schedule other than the guidelines, these Guidelines should be used as a **minimum** direction in creating the parenting time plan. Parents should agree to parenting times that they find reasonable and in the best interest of their children and the Parenting Guidelines are not intended to prevent such agreements.

**If the parents are unable to agree on a parenting plan, these Guidelines become mandatory as the parenting plan and are enforceable as a court order upon initiation of a divorce or court action involving custody.** SDCL 25-4A-11. If you disagree with the use of these Guidelines as your parenting time plan, either parent has the right to object. Your written objection shall be filed with the Clerk. After it is filed, a hearing will be held and the Judge will determine your parenting time schedule. Instructions and this objection form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>.

Instructions and forms regarding enforcement can be found at <https://ujslawhelp.sd.gov/enforcement.aspx>.

## **Guideline 1. For Parents Who Have Children Under Age 5.**

### **1.1. Children Under Age 5 Generally.**

- O Newborns (birth to 3 months) and infants (3 – 6 months) have a great need for continuous contact with their primary caregiver, but also frequent contact with both parents who provide a sense of security, nurturing and predictability.
- O Generally, overnights for very young children is not recommended unless the parents are both very closely attached to the children, are able to personally provide primary care, the children are adaptable, and the parents are cooperative.
- O Older children are able to tolerate more and longer separations from one parent or the other.

The following Guidelines for children under age 5 are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit the children's individual circumstances.

**1.2. Birth until 3 Months.** Three, 2-hour parenting time periods per week and one weekend parenting time period for 6 hours. In situations where both parents have been engaged in an ongoing caregiving



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routine with a nursing child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the child and maintain stability for the child. If applicable, breastfeeding shall be accommodated, but the parents must cooperate in working out alternatives. See 1.8 below.

**1.3. 3 – 6 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting plans are recommended:

- (1) Three, 3-hour custodial periods per week and one weekend day for 6 hours. If applicable, breast feeding shall be accommodated but the parents must cooperate in working out alternatives; or
- (2) Three, 3-hour custodial periods per week and one overnight on a weekend not to exceed 18 hours, if the parent is capable of personally providing primary care. See exceptions in Section 1.8 below; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.4. 6 – 12 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 4-hour parenting time periods per week and one weekend day for 6 hours; or
- (2) Three, 4-hour parenting time periods per week and one overnight on a weekend not to exceed 18 hours, if the child is not breastfeeding and the parent is capable of personally providing primary care; or
- (3) Children spend time in alternate homes, but spends significantly more time in one parent's home and no more than 1-2 overnights spaced regularly throughout the week at the other parent's home; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.5. 12 – 36 Months.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 8-hour parenting time periods per week on a predictable schedule; or
- (2) Three, 8-hour parenting time periods per week on a predictable schedule and one overnight per week not to exceed 18 hours; or

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- (3) Children spends time in alternate homes, but with significantly more time in one parent's home with 1-2 overnights spaced regularly throughout the week. This arrangement requires adaptable children; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with the children (nursing or otherwise), overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

**1.6. 3 Years – 5 Years.** Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) One overnight parenting time period not to exceed 24 hours and two additional 8-hour parenting time periods each week, separate from the overnight, with the children returning to the other parent's home at least 1 hour before bedtime; or
- (2) Two to three overnights at one home, spaced throughout the week, the remaining time at the other parent's home. This arrangement requires adaptable children; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with the children, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

If the parents cannot agree on which provision shall apply in sections 1.2 through 1.6, the parties shall use option 1 until further order of the court. Absent special circumstances as determined by the court, parenting time shall not decrease from one age category to the next.

**1.7. Children in Day Care.** In families where children are in day care before and/or after parental separation, the children may be able to tolerate more time with each parent earlier than their specific age group indicates above because the children are accustomed to separations from both parents.

**1.8. Breastfeeding Children.** – Parents must be sensitive to the special needs of breastfeeding children. Children's basic sleeping, feeding, and waking cycles should be maintained to limit disruption in the children's routine. Forcibly changing these routines due to the upheaval of parental disagreement is detrimental to the physical health and emotional well-being of the children. On the other hand, it is important that the children be able to bond with both parents.

- a. For children being exclusively breastfed, the nursing child can still have frequent parenting time with the other parent. The amount of time will be guided by/subject to the infant's feeding schedule, progressing to more time as the child grows older. Both parents should be mindful that a feeding may occur, and the child may return to time with the other parent after the feeding.

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- b. Where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain stability for the children.
- c. If the other parent has been caring for the children overnight or for twenty-four hour periods while the nursing mother sleeps or works, that arrangement should/shall continue.
- d. A mother may not use breastfeeding to deprive the other parent of time with the children. If, for example, a nursing mother uses day care or a babysitter for the children, the same accommodations (i.e., bottle feeding with breast milk or formula, or increased time between breast feeding sessions) used with the day care provider or babysitter will be used with the other parent, if the other parent is capable of personally providing the same caregiving.

**1.9. Holidays.** For children aged 0-5 years, when the parents live and/or celebrate the holiday in the same or a nearby community, the parents shall alternate the following holidays in the chart below. Prior to a child's 5th birthday, holiday parenting time shall not exceed the longest period of parenting time currently being exercised and shall be scheduled by the parent exercising holiday time. If the parents cannot otherwise agree, the holiday time shall be exercised within the time frames provided in the chart below not to exceed the longest period of parenting time currently being exercised. It is recommended that the parents communicate two weeks in advance about who is exercising what time period for the holidays set forth below. Parenting time, however, shall not be withheld solely for failure to abide by this two-week recommendation.

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Martin Luther King, Jr. Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
President's Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Easter weekend	8:00 a.m. Friday – 8:00 a.m. Monday	Parent 2	Parent 1
Mother's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 1
Memorial Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Juneteenth (6/19)	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 2
Father's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 2	Parent 2
4 <sup>th</sup> of July	5:00 p.m. July 3rd – 5:00 p.m. July 5th	Parent 1	Parent 2
Labor Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Native American Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Halloween	3:00 p.m. – 8:00 p.m.	Parent 1	Parent 2
Thanksgiving	8:00 a.m. Thursday – 5:00 p.m. Sunday	Parent 2	Parent 1

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Christmas Eve	8:00 a.m. Christmas Eve – 8:00 a.m. Christmas Day	Parent 2	Parent 1
Christmas Day	8:00 a.m. Christmas Day – 8:00 a.m. December 26th	Parent 1	Parent 2
Child's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 1
Parent 2's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 2
Parent 1's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 1	Parent 1

**1.10. Vacation With Children 3 – 5 Years Old.** Upon 30 days advance written notice (by mail, email or text message), each parent is entitled to two separate periods of uninterrupted time for up to 5 days each with their children each year, not to conflict with the other parent's holiday parenting time. Parents are encouraged to coordinate vacation plans. The parents shall consider extending the 5 day time periods to 7 days if the children are adaptable and accustomed to spending time with both parents.

**1.11. Long-Distance Parenting.** When substantial distance between the parents exists, the ability to exercise these Guidelines is compromised. The parents will need to create a developmentally appropriate parenting plan for their unique situation. When parenting time is unable to be frequent, parents are encouraged to use video/audio contact to build and/or maintain the bond between the children and parent who lives afar.

## Guideline 2. For Parents Who Have Children Age 5 and Older And Reside No More Than 200 Miles Apart.

**2.1. Weekends.** In most cases, it is a positive experience for the children to have both parents involved in taking the children to and from school. Parenting time shall consist of alternate weekends starting Friday upon the release of school or 3:15 p.m., whichever is applicable, and continuing until the return to school Monday or 8:00 a.m., whichever is applicable. Parenting time shall be an equivalent period of time if a parent is unavailable on weekends and the children do not miss school.

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**2.2. Mid-Week.** If time and distance allow, parenting time shall include one mid-week overnight every week, in addition to the weekends in 2.1 above, with the children. If the parents cannot otherwise agree, this mid-week time shall be on Wednesdays and shall start when the children are released from school or at 3:15 p.m., whichever is applicable, and concludes when the children are returned to school the next day or at 8:00 a.m., whichever is applicable. All transportation for the midweek parenting time is the responsibility of the parent exercising the parenting time.

**2.3. Summer Break.** The children shall be with each parent for one-half of the school summer break. Summer break begins the day after school is released and ends the day before school commences. The parent with whom the children reside the majority of the time during the school year has priority to have the children the week before school resumes, which counts as part of that parent's summer break. At the option of the other parent, his/her parenting time during summer break may be consecutive or it may be split into 2 or more blocks of time. This parent shall provide a minimum of 30 days advance notice of the dates selected.

If the children go to summer school and it is impossible for a parent to schedule time other than during summer school, the parent may elect to take the time when the children are in summer school and transport the children to the summer school sessions at the children's school or an equivalent summer school session in that parent's community.

The parent with whom the children reside for the majority of the school year shall have the weekend before the beginning and the weekend after the end of the other parent's summer period, regardless of whose weekend it may be. This weekend time will not be made up.

During any summer vacation parenting times of three or more consecutive weeks, the parent exercising parenting time shall arrange for a mutually convenient 48-hour continuous period of time for the other parent to spend with the children.

**2.4. Holidays.** The following chart shows the allocation of the holidays between parents. School breaks and release times may be different from school to school and district to district. The school calendar is published on your children's school's website before each school year starts. It is important to know these dates / times as they pertain to your children.

Holiday / Special Event	Details / Times	Even-Numbered Years	Odd-Numbered Years
Martin Luther King Jr. Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
President's Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2

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Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Mother's Day	Starts at 8:00 a.m. on Mother's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 1	Parent 1
Memorial Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Juneteenth	Starts at 8:00 a.m. on 6/19 and ends at 8:00 a.m. on 6/20	Parent 1	Parent 2
Father's Day	Starts at 8:00 a.m. on Father's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 2	Parent 2
4 <sup>th</sup> of July	Begins July 3 at 5:00 p.m. and ends July 5 at 5:00 p.m.	Parent 1	Parent 2
Labor Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Native American Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Halloween	Starts on 10/31 when school releases for the day or 3:15 p.m., whichever is applicable, and concludes on 11/01 when school resumes or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Thanksgiving weekend	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Christmas Eve	Starts on 12/23 at 8:00 a.m. and concludes on 12/25 at 8:00 a.m.	Parent 2	Parent 1
Christmas Day	Starts on 12/25 at 8:00 a.m. and concludes on 12/27 at 8:00 a.m.	Parent 1	Parent 2
1 <sup>st</sup> half of winter break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 1	Parent 2
2 <sup>nd</sup> half of winter break, including New Year's holiday	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 2	Parent 1

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Children's Birthdays	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before); parenting time shall be with all of the children not just the one who has the birthday.	Parent 2	Parent 1
Parent 2's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 2	Parent 2
Parent 1's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before).	Parent 1	Parent 1

**2.5. Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regularly scheduled weekend time, the holiday takes precedence. Unless mutually agreed in writing, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. This may result in one parent having the children for three weekends in a row; however, neither parent shall have the children for more than 3 weekends in a row.

**2.6. Parent's Vacation with Children Age 5 and Older.** Each parent is entitled to a vacation with the children totaling up to 14 days, with 7 days being the most that may be exercised at one time. When possible, each parent shall provide the other with 30 days advance notice of their intent to utilize their vacation time. Parents are encouraged to coordinate vacation plans. In the event there is a dispute, the mother gets priority in choosing her vacation periods first in even-numbered years and the father gets priority in choosing his vacation periods first in odd-numbered years.

**2.8. Precedence.** The allocation of holidays listed in the above chart shall take precedence over vacations. In other words, a parent cannot exercise their vacation with the children when it is the other parent's holiday. But vacations shall take precedence over the regular parenting time schedule.

**2.9. Notice of Canceled Time With the Children.** Whenever possible, each parent shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled time with the children. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the explanation, shall be provided to the other parent.

**2.10. Pick Up and Return of Children.** When the parents live in the same area/community, the responsibility for picking up and returning the children shall be shared. The parent who receives the children for his/her parenting time will pick the children up from the other parent. Both parents have an obligation to be punctual and to arrive at the agreed upon time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

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### Guideline 3. For Parents Who Have Children Age 5 and Older and Reside More Than 200 Miles Apart.

**3.1. Holidays.** Parents who reside more than 200 miles apart shall exercise the following holidays as follows:

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Thanksgiving	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Winter Break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school.	Parent 1	Parent 2

**3.2. Summer Break.** The parent with whom the children do not reside during the school year shall have the children for the children's summer break as follows: summer break begins 3 days after school is released and ends 7 days before school recommences. This allows 10 days of parenting time during the summer with the parent with whom the children reside during the school year. Additionally, the parent with whom the children reside during the school year shall be entitled to exercise a 48 hour period of parenting time with the children every three weeks during the summer break; to be exercised at the sole expense of the parent with whom the children reside during the school year.

**3.3. Priority of Summer Time With Parent.** Parenting time in the summer with the parent who lives more than 200 miles away takes precedence over summer activities (such as sports) when the parent's time cannot be reasonably scheduled around such events. Even so, the conscientious parent will often be able to enroll the children in a similar activity in the parent's community. When each child reaches an age and maturity where activities are very important to them, the parents should reach an agreement that works best for the child.

**3.4. Notice.** At least sixty (60) days' notice (recommended to be by mail, email, or text message) shall be given by the parent who lives more than 200 miles away from the children of the date for commencing extended summer parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to



## SOUTH DAKOTA PARENTING GUIDELINES

give the precise number of days' notice does not entitle the parent with primary residence of the children the right to deny the other parent parenting time with the children.

**3.5. Additional Time With the Parent Who Lives More Than 200 Miles Away.** The parent who resides more than 200 miles away from the children shall have the following parenting time:

- o If the parent who lives more than 200 miles away wants to travel, at his/her sole expense, to visit with his/her children, this parenting time shall be accommodated for a reasonable time period of no less than 48 hours. However, this is not intended to be exercised more than every other weekend;
- o Where distance and finances permit, additional parenting time for the parent residing more than 200 miles away from the children, such as holiday weekends or special events, is encouraged. Parents are encouraged to reference the holiday schedules set forth in Section 2.4 when determining the allocation and duration of other holidays; and
- o When the parent who lives 200 miles away is in the area where the children reside, or the children are in the area where this parent resides, liberal time with the children based on the circumstances must be allowed. Circumstances will vary and may only allow for a quick visit or may allow for overnight parenting time.

The children may miss some school to spend time with the parent who lives 200 miles away, so long as it does not substantially impair the children's academic progress. However, additional time with the parent who lives more than 200 miles away from the child shall not interfere with the alternating holiday schedule set forth in Section 3.1 herein.

Parents are encouraged to communicate with each other and cooperate in creating additional parenting times for the children. If the additional parenting time exceeds 4 hours, the parent who lives more than 200 miles away shall provide as much advance notice as possible, preferably 30 days. Failure to provide notice shall not be the sole reason for denial of additional parenting time.

### **Guideline 4. General Rules Applicable to All Parents**

**4.1. Rules of Conduct.** A parent shall always avoid speaking negatively about the other parent and must firmly discourage such conduct by relatives or friends. Each parent should speak in positive terms about the other parent in the presence of the children. Each parent shall encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent.

**4.2. Relatives.** Children will usually benefit from continued contact with all relatives on both sides of the family. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit the paternal relatives

## SOUTH DAKOTA PARENTING GUIDELINES

during times when the children are with their father and the maternal relatives during times when they are with their mother. This may include allowing the children to spend time with these relatives even when the parent is not present.

**4.3. Relocation.** Relocation is governed by South Dakota state law. See SDCL 25-4A-17. Instructions and forms on how to comply with the requirements surrounding relocation, as well as how to object to a parent's notice of relocation, can be found at [www.ujslawhelp.sd.gov](http://www.ujslawhelp.sd.gov).

**4.4. Communication between Parents.** Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever possible and unless otherwise stated herein, all communication concerning the children must be conducted directly between the parents (i.e., in person, by telephone, email, text message, communication notebook, a designated third party or co-parenting tool). Absent an emergency, communication should not occur at a parent's place of employment.

**4.5. School and Medical Information.** Both parents shall keep the other parent informed with the name, address and telephone number of the school where each of their children attends and each parent is authorized to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the other parent. Each parent has an obligation to contact the school to ensure receipt of class schedules, school report cards, notices, etc. so that they can remain involved with their children's education. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Attendance at academic or disciplinary meetings pertaining to the minor children shall be limited to the parents and the respective school professional(s). Others may not attend such meetings without advance mutual parental agreement or court order.

Each parent shall immediately notify the other parent of any medical emergencies or serious illnesses of the children. Access to records and information pertaining to minor children, including, but not limited to, medical, dental, therapy, counseling, orthodontia and similar health care and school records must be made equally available to both parents. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If children are taking medications, both parents shall have access to a sufficient amount for their parenting time as well as the instructions.

The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card or copy thereof and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. Except in emergencies, the parent taking the children to a doctor, dentist or other provider not so approved or qualified may be required to pay the additional cost for that provider. However, when there is a change in insurance, which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration shall be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or the economic consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible for paying shall be promptly furnished with the bill, and where applicable, the explanation of benefits, by the other parent. The parents shall

## SOUTH DAKOTA PARENTING GUIDELINES

cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements unless previously paid by the other parent. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

**4.6. Extracurricular Activities.** Both parents shall consult the other parent prior to enrolling the children in any event that may affect the other parent's parenting time. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Both parents shall be provided access to the name of the coach, director, and organization providing the activity for each child along with their contact information. Both parents shall have the obligation to contact the activity director to ensure receipt of information such as practice schedules, games, parental participation, etc.

**4.7. Clothing.** In situations where the children reside primarily with one parent, that parent shall send an appropriate supply of children's clothing with the children for the other parent's parenting time. At the conclusion of his/her parenting time, this clothing shall be returned clean (when reasonably possible). Parents must advise, as far in advance as possible, of any special activities so that appropriate clothing for the children may be sent. It is recommended that both parents have some basic clothing available in their home to ensure that all of the children's basic needs are met.

**4.8. Withholding Support or Time with the Children.** Neither time with the children nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children generally have a right both to support and, time with both parents, neither of which is dependent upon the other. In other words, if the parent ordered to pay child support fails to do so, he/she is still entitled to their parenting time. Likewise, if one parent denies the other parent parenting time, child support payments must still be made.

**Forms and instructions on how to enforce your parenting time can be found on the South Dakota Legal Self-Help Center at <https://ujslawhelp.sd.gov/onlineforms.aspx>.**

**4.9. Adjustments in Parenting Plan.** Parents are expected to fairly modify the parenting plan as family necessities, illnesses, weather or commitments reasonably so require. The parents must work together in good faith to get any missed parenting time rescheduled to occur within a reasonable period of time, usually within 30 days. When possible, each parent must timely advise the other when scheduled parenting time with the children cannot be exercised.

**4.10. Children of Different Ages.** It usually makes sense for all the children to share the same schedule of parenting time. Having brothers or sisters along can be an important support for children. Because it is intended that parenting time with the children be a shared experience between siblings and, unless these Guidelines or a court order provides otherwise, all the children shall enjoy parenting time together. Parents shall consider the children's best interests when scheduling parenting time especially for newborns and infants who may have developmental needs that may prevent them from immediately experiencing the same schedule as their older siblings. Additionally, older teenagers' special needs for

## SOUTH DAKOTA PARENTING GUIDELINES

peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters.

**4.11. Communication with Children.** Unless prohibited by a court order, either parent may mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with the children at reasonable times and with reasonable frequency during those periods the children are with the other parent. The children may, of course, mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with either parent, at reasonable hours or with reasonable frequency.

- Parents are cautioned that communication between the parent and the children should not be so excessive as to interfere with the other parent's time, nor used to undermine the other parent's authority.
- During long vacations, the parent with whom the children are on vacation is required to make the children available for telephone calls with the other parent at least every three days.
- At all other times, the parent the children are with must not refuse to answer the other parents telephone calls or turn off their telephone in order to deny the other parent telephone contact.
- If a parent uses an answering machine or cell phone voicemail, messages left should be returned to that person as soon as possible.
- Parents should agree on a specified time for calls to the children so that the children will be made available no less than three days a week.
- Either parent may provide the children with a cell phone subject to each parent's ability to set restrictions in their home. A parent shall not prohibit contact between the children and the other parent; nor shall they impede the children's ability to contact the other parent during reasonable times and at a reasonable frequency.
- Communication between a parent and the children must not be censored, recorded, or monitored, absent a court order.
- Each parent shall have an unrestricted right to send cards, letters and/or packages to their children. The children shall also have the same right to receive and send items to their parents.

**4.12. Social Media.** Each parent shall have full access to monitor the social media accounts of the children, but neither shall open or read communications between the children and the other parent.

**4.13. Privacy of Residence.** A parent shall not enter the residence of the other parent except by express invitation, regardless of whether a parent retains a property interest in the residence. Unless otherwise indicated herein, the children shall be picked up and returned to the front entrance of the other parent's residence. The parent dropping off the children shall not leave until the children are safely inside the other parent's residence. Parents must refrain from surprise visits to the other parent's home.

**4.14. Refusal / Hesitation by Children.** Parents should always encourage the children to attend parenting time with the other parent absent circumstances outlined in the "Scope of Application" provision on page 3. Parents shall not deny parenting time with the other parent solely based on the refusal of the children.

## SOUTH DAKOTA PARENTING GUIDELINES

**4.15. Special Considerations for Adolescents.** While children never get to choose where they live, the parents should honestly and fairly consider their teenager's wishes regarding time with a parent. Neither parent shall attempt to influence their teenager's wishes on parenting time. Teenagers should explain the reason for their wishes directly to the affected parent, without intervention by the other parent.

**4.16. Daycare Providers.** When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

**4.17. Parents in the Armed Services.** When one or both parents are serving in the military, it is important to create a parenting time schedule that focuses on sharing the children when the parents live close to each other and allowing for temporary duty assignment (TDY) possibilities. Military families should also consider what parenting time would look like if TDY's or overseas commitments were engaged requiring one parent to live more than 200 miles from the children. The residential parent shall support the children's relationship with the other parent by having a consistent plan of communication with the military parent.

### **Legal Notice.**

These Guidelines do not provide legal opinions or legal advice and are not intended to serve as a substitute for the advice of licensed, legal professionals.

Laws and interpretations of laws change frequently, and the material contained in these Guidelines have important legal consequences. In using these Guidelines, parents are responsible for determining the applicability of any information contained in this document to their situation and are strongly encouraged to seek professional legal and other expert assistance in resolving their parenting time issues. Parents will often benefit from getting advice from mediators, counselors, therapists, parenting coordinators and lawyers to help them make a parenting time schedule.

### **Definitions.**

Any custody proceeding involving children is going to involve a determination of both legal and physical custody.

"Legal Custody" refers to the legal authority to make major decisions for your children. There are 2 options when it comes to legal custody:

Joint Legal Custody – "[B]oth parents retain full parental rights and responsibilities with respect to their child[ren] and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child[ren]." See SDCL 25-5-7.1.

Sole Legal Custody – one parent shall have the right and responsibility to make the decisions related to health, education and welfare of the children.

## SOUTH DAKOTA PARENTING GUIDELINES

“Physical Custody” refers to how parenting time is divided between 2 parties. Parents may agree on the amount of time the children spend with each parent. If parents do not agree, the parenting time schedule set forth herein shall remain in place until a court orders otherwise.

### **Shared Parenting.**

These Guidelines do not address shared parenting, which is defined as “a detailed shared parenting plan which provides that the children will reside no less than 180 nights per calendar year in each parent’s home and that the parents will share the duties and responsibilities of parenting the children and the expenses of the children in proportion to their incomes[.]” SDCL 25-7-6.27. If you are interested in this arrangement, you are strongly encouraged to consult with an attorney of your choosing. More information and sample schedules can be found at <https://ujslawhelp.sd.gov/>.

### **Scope of Application.**

**General.** These Guidelines are applicable to all custody situations, including divorces with minor children, paternity actions and cases involving joint legal custody where one parent has primary physical custody. These Guidelines are not applicable to situations where the court reasonably believes the children’s physical health or safety is in danger or the children’s emotional development could be significantly impaired. These situations may include, but are not limited to, the following:

- Family Violence (physical, verbal or otherwise);
- Substance Abuse;
- Mental Illness of Parent or Child;
- Risk of Flight with Children;
- Long Interruption of Contact Between Parent and Children;
- A Parent’s New Relationship;
- Religious & Cultural Holidays; or
- An Incarcerated Parent.

In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be used. The type of help that is needed in such cases is beyond the scope of these Guidelines.

A parent who believes one or more of the above situations exists should file an Objection to the Implementation of the South Dakota Parenting Guidelines (UJS Form 372). This form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>. The opposing parent should also file a response to this Objection and should appear at the hearing.

**Existing Parenting Time Orders.** Existing parenting time orders on the date of adoption of these revised Guidelines shall be enforced according to the parenting time guidelines that were in effect on the date the parenting time order was issued. Changes to the South Dakota Parenting Time Guidelines do not alone constitute good cause for modifying an existing parenting time order; however, a court or parties

## SOUTH DAKOTA PARENTING GUIDELINES

to a proceeding may refer to these Guidelines in requesting changes to their parenting time order after the effective date of the Guidelines.

**Protection Orders.** If a protection order has been established regarding the minor children, that order would prevail over these Guidelines, until a court specifically orders otherwise. If an active protection order prohibits contact between the parents or between one parent and the children, parents are cautioned that the parent who is the subject of the protection order will violate the order if he/she has contact with the other parent and makes agreements as suggested in these Guidelines without permission for contact from the court that issued the protection order.

### Additional Resources

There are several resources available to parents who need help in creating, enforcing or improving their parenting plan. Visit <https://ujslawhelp.sd.gov/> (under the “Parenting” tab) for additional information on mediators, parenting coordinators, co-parenting tools and counseling options.

Additional tips that parents should consider in order to keep the children the focus of the parenting time arrangements can be found in Appendix A.

## **Tips to Stay Focused on the Children**

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather continuing conflict between their parents before, during and after the divorce and/or separation. To minimize harm to the children, parents must agree on some basic rules to keep the children the focus of their parenting time arrangement.

Parents need to keep in mind that it is generally accepted that in most cases of divorce or separation:

1. Children of separated parents do best in both the short-term and the long-run when they feel loved and cared for by both parents;
2. Children generally do better when both parents have stable and meaningful involvement in their children's lives;
3. The strength of a parent's relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by time spent with the child (i.e. quality vs. quantity);
4. Each parent has different and valuable contributions to make to their children's development;
5. Children should have structured routine time (such as bedtime and doing homework) with each parent, as well as unstructured time (such as playing in the park);
6. Parents should help their children maintain positive existing relationships, routines and activities;
7. Children may find security in personal possessions, like a favorite stuffed animal or blanket. Children should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them; and
8. Parenting plans may need to be adjusted over time as the needs and circumstances of parents and children change.

Children are harmed by exposure to conflict between their parents. High conflict between parents increases children's anxiety and negatively impacts healthy child development. The following are guidelines to help you navigate your role in co-parenting your children:

1. Children shall not be put in a position to "choose" between the parents. Children must not be made to feel guilty about having a good time with the other parent;
2. Each parent should strive to show respect for the other parent;
3. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent;



4. Children shall not be expected to communicate messages between parents, regarding parenting time, financial matters or issues about which parents disagree;
5. Parents should exchange the children in a respectful manner;
6. A parent should consider allowing their children to attend important family celebrations and events with both sides of their family, even when the events occur on the other parent's parenting time;
7. Differences between the parent's homes may occur (i.e. daily routines, activities, and diet). Parents should remember these are merely "differences" and are not necessarily a "better" or "worse" practice;
8. Children need consistency in both homes (i.e. bed times, meal times, medications etc.);
9. If one parent has been significantly more involved with the care of the child before separation, that parent may need to help the other parent gain the skills and knowledge to care appropriately for the child and support the development of a positive relationship between the child and the other parent, unless there are legitimate concerns about the other parent's capacity to care for their child. Both parents will need to approach this transition in a cooperative manner.

Parenting plans made for infants and young children may need to change as children get older and start to attend school. Parenting plans designed to accommodate a parent's employment may need to be modified if parents change their employment or work schedule. It is important for parents to communicate effectively, discuss changes that they observe in their children with one another and be prepared to modify the plans consistent with the best interests of the children.

Each family needs to consider the age, temperament, previous caretaking arrangements and the child's relationship with each parent, as well as whether the child has special needs. It is important that parents are able to communicate about their children on a regular basis, whether that communication is written or verbal. Parents shall share information so that a child's experience, as he/she transitions between parents, is as smooth as possible.

**CASE FILING STATEMENT – Information Only; Not Retained in Case Records**

Provide the Case File No. for the record you are filing into or the Case Type if initiating a new action: \_\_\_\_\_

\*A list of case types and party roles can be found here: <https://ujs.sd.gov/Attorneys/FormsDocumentation.aspx>

**Social Security Numbers (not Driver's License Numbers) must be provided for divorce, child support, & paternity cases, 42 USC 666(a)(13)(B).** All filers are **required** to provide the SSN **or** DL# for each of **their** participants regardless of the case type.  
Business entities must provide the EIN number in lieu of SSN or DL#.

**INFORMATION FOR PLAINTIFF/PETITIONER/APPLICANT:**

_____ Last/Business Name	_____ First Name	_____ Middle	_____ Suffix	
_____ Physical Address <input type="checkbox"/> Check if Same as Mailing	_____ City	_____ State	_____ Zip	
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Home	_____ Work	_____ Cell		
_____ Social Security No.	_____ Date of Birth	_____ Driver's License No.	_____ State	_____ Employer ID (Business)
<b>Attorney:</b>				
_____ Last Name	_____ First Name	_____ State Bar ID No.		
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Phone				

**INFORMATION FOR DEFENDANT/RESPONDENT/MINOR/DECEDENT/PERSON IN NEED OF PROTECTION:**

_____ Last/Business Name	_____ First Name	_____ Middle	_____ Suffix	
_____ Physical Address <input type="checkbox"/> Check if Same as Mailing	_____ City	_____ State	_____ Zip	
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Home	_____ Work	_____ Cell		
_____ Social Security No.	_____ Date of Birth	_____ Date of Death	_____ Driver's License No.	_____ State
		_____ Employer ID (Business)		
<b>Attorney:</b>				
_____ Last Name	_____ First Name	_____ State Bar ID No.		
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Phone				

## INSTRUCTIONS AND FORM FOR FINANCIAL AFFIDAVIT

If you have any legal questions while completing this form, 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@ujss.state.sd.us](mailto:ujssrlhelp@ujss.state.sd.us).

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

- ☐ Plaintiff and Defendant each will need to complete their own Financial Affidavit.
- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, name of the Plaintiff and Defendant on the lines provided, case filing number, and check if you are the Plaintiff or Defendant. The Clerk will provide you with a case number at the time of filing.
  - Your circuit number can be found here:  
[https://ujss.sd.gov/Circuit\\_Court/Default.aspx](https://ujss.sd.gov/Circuit_Court/Default.aspx)
- ☐ Provide your full name on the first line provided.
- ☐ Numbers 1 through 3 is your contact and employment information.
- ☐ Numbers 4 through 11 is your gross monthly income.
- ☐ Number 12 is your total gross monthly income. You will need to add lines 4 through 11 for this total.
- ☐ Numbers 13 through 18 is your monthly deductions from your income.
- ☐ Number 19 is your total monthly deductions. You will need to add lines 13 through 18 for this total.
- ☐ Number 20 is your total net monthly income. You will need to take the total of your monthly income (line 12) and subtract your total monthly deductions (line 19) from that. This will be your total net monthly income.
- ☐ Numbers 21 and 22 are previous years gross income.
- ☐ Numbers 23 through 30 is information on dependent/childcare and health insurance, if any.
- ☐ Numbers 31 through 43 is your asset information. You will need to state the fair market value of the assets, if any.
- ☐ Number 44 is the combined total of your assets. Add lines 31 through 43 for this total.
- ☐ Number 45 lines a through i, are your listed and total debts:
  - ☐ List the name of the debt (who you owe money to);
  - ☐ The total outstanding balance of that debt; and
  - ☐ Your monthly payment for that debt.
- ☐ Number 46 is your average total of monthly expenses such as house, utilities, food, insurance, etc.
- ☐ Number 47 is the combined total of your monthly liabilities. You will need to add the combined total of your monthly debt payments (#45 line i) with your average monthly expenses (line 46).
- ☐ Numbers 48 and 49 is anticipated income. This is any income you are expecting to receive that isn't already listed above.
- ☐ Sign and date once in front of a notary or Clerk of Court.

STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 ) :SS  
COUNTY OF \_\_\_\_\_ ) \_\_\_\_\_ JUDICIAL CIRCUIT

<hr/> <div>Plaintiff</div> <div>v.</div> <hr/> <div>Defendant</div>	<div>Case No.: _____</div> <div style="text-align: center;"><b>FINANCIAL AFFIDAVIT</b></div> <div><input type="checkbox"/> PLAINTIFF      <input type="checkbox"/> DEFENDANT</div>
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I, \_\_\_\_\_ hereby swear under oath and under  
(Name of party filling out this Affidavit)  
penalty of law that the following is true.

### CONTACT INFORMATION

(1) My mailing address is:

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(2) My telephone number is:


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### EMPLOYMENT


(3) I am **(check one)** ☐ Employed ☐ Unemployed ☐ Self-Employed

### MONTHLY INCOME

	Monthly Income Source	Per Month Amount
(4)	(If employed) My gross monthly pay is:	\$
(5)	(If self-employed) My monthly gain/profit from my business/profession is:	\$
(6)	My pension, retirement, disability, veterans, social security, or insurance payments received is:	\$

(7)	My interest, dividends, rentals, royalties, or other gains is:	\$
(8)	Gain from sale, trade or conversion of capital assets is:	\$
(9)	I receive unemployment insurance and workers compensation benefits of:	\$
(10)	Benefit in lieu of compensation including but not limited to military pay allowances is:	\$
(11)	Other income (including spousal support) is: Explain:_____	\$
(12)	<b>Total Gross Monthly Income</b> (add columns 4-11) 	\$

## DEDUCTIONS

	Deduction Item	Deduction Amount Per Month
(13)	Income tax based on one withholding allowance for a single taxpayer (not actual number of dependents):	\$
(14)	Social Security and Medicare taxes withheld from wages or salary:	\$
(15)	Contributions to an IRS qualified retirement plan not exceeding 10% of gross income:	\$
(16)	Unreimbursed employee business expenses (Attach IRS form 2106):	\$
(17)	Payments made on other support orders OTHER THAN FOR CHILDREN IN THIS PROCEEDING (Attach court order and evidence of payments.):	\$
(18)	Payments made for spousal support:	\$
(19)	<b>Total Monthly Deductions</b> (add columns 13-18) 	\$

(20)	<b>—</b>	<b>=</b>	<b>\$</b>
	<b>Total Gross Monthly Income</b>	<b>Total Monthly Deductions</b>	<b>Total Net Monthly Income</b>

(Subtract the value of your total monthly deductions from your total gross monthly income)

(21) My total gross income before deductions for the previous year was:

\$ \_\_\_\_\_

(22) My total gross income before deductions for two years ago was:

\$ \_\_\_\_\_

(23) Including myself, I have the following number of dependents: \_\_\_\_\_

(24) Do you have health insurance available for dependents through your employer? **(check one)** Yes ☐ No ☐

(25) If you provide health or dental insurance for your child(ren), please complete the following:

a) Name of the health and/or dental insurance

Company: \_\_\_\_\_

b) Total monthly cost for the employee only: \$ \_\_\_\_\_

c) Total monthly cost for the employee and child(ren):

\$ \_\_\_\_\_

d) Persons covered under the insurance policy:

\_\_\_\_\_  
\_\_\_\_\_

(26) Do you incur childcare costs as a result of employment, job search, training, or education? **(check one)**

Yes ☐ No ☐

If so, please complete the following:

a) Name and address of childcare provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) Name(s) of child(ren) whom childcare is provided:

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c) Hours per week that childcare is provided: \_\_\_\_\_

d) Childcare cost is: \$\_\_\_\_\_ per month; \$\_\_\_\_\_ per week; \$\_\_\_\_\_ per hour

(27) Total amount of childcare cost for the past six months: \$ \_\_\_\_\_

(28) Do you receive any assistance for childcare? **(check one)** Yes ☐ No ☐

a) If yes, how much do you receive per month? \$\_\_\_\_\_

(29) Do you claim the Federal Child Care Tax Credit? **(check one)** Yes ☐ No ☐


(30) Amount of Social Security or Veteran's Benefits provided to a child(ren) of the parties due to your retirement, disability or other eligibility:

\$\_\_\_\_\_

a) Which parent receives payment for the child: \_\_\_\_\_

## ASSETS

	Asset	Value
(31)	Cash on hand/in the bank	\$
(32)	Accounts and Notes Receivable (IOU's and other money payable to me)	\$
(33)	Investments (stocks, bonds, savings bond, CD's, money market, etc.)	\$
(34)	Retirement Account balance	\$
(35)	Real Estate (house, land, tribal lease land, rental property, etc.)	\$
(36)	Automobile(s) (include value, make, model, and year) _____ _____ (if multiple vehicles, add the value of all vehicles to get total)	\$

(37)	Recreational Vehicles (boats, campers, ATV's, etc.)	\$
(38)	Household Goods (furniture, appliances, TV, etc.)	\$
(39)	Sporting Equipment	\$
(40)	Jewelry	\$
(41)	Tools / Shop Equipment	\$
(42)	Value of Business	\$
(43)	Any other assets (anything else I could sell or borrow money on)	\$
(44)	<b>Total Value of Assets</b> (add value of columns 31-43) 	\$

### LIABILITIES (money that you owe)

(45) Debts (vehicle, mortgage, student, or personal loans, credit cards, medical bills, etc.)

	Name of Debt (who you owe to)	Outstanding balance	Monthly payment
a)		\$	\$
b)		\$	\$
c)		\$	\$
d)		\$	\$
e)		\$	\$
f)		\$	\$
g)		\$	\$
h)		\$	\$
i)	<b>TOTAL DEBTS</b>	(combined total of outstanding balance)	(combined total of monthly payments)

(46) Total of regular monthly expenses (housing, utilities, food, insurance, etc.):

\$ \_\_\_\_\_



(47) **TOTAL MONTHLY LIABILITIES:** \$ \_\_\_\_\_  
(Add your total monthly payments with your total of monthly expenses)

**ANTICIPATED INCOME** (money or property you are expecting)

(48) Total monies or income from sale of house or land, gifts, inheritance, allotments, trust funds, lease money, etc. \$ \_\_\_\_\_

(49) When is the money/income expected? \_\_\_\_\_

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

\_\_\_\_\_  
**Plaintiff/Defendant** (circle one) Signature

\_\_\_\_\_  
**Plaintiff/Defendant** (circle one) printed  
Name

\_\_\_\_\_  
Address

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

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

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

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

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

## INSTRUCTIONS AND FORMS FOR ANSWER 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@uj.s.state.sd.us](mailto:ujssrlhelp@uj.s.state.sd.us).

### **IMPORTANT NOTICES**

The Answer is a written response to the Complaint with Minor Children submitted by the Defendant to safeguard their rights. As the Defendant, if you decide to file an Answer, you must submit it to the Clerk of Court and serve it on the Plaintiff within thirty days of receiving the Summons and Complaint.

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

- ☐ Complete the caption of the Answer.
  - ☐ County (insert county name).
  - ☐ Judicial Circuit (insert circuit number). You may find your judicial circuit number at the following web address.
    - [https://uj.s.sd.gov/Circuit\\_Court/Default.aspx](https://uj.s.sd.gov/Circuit_Court/Default.aspx)
  - ☐ Plaintiff (insert your spouse's name).
  - ☐ Defendant (insert your name).
  - ☐ Upon filing, the Clerk of Court will assign a unique case number to the Plaintiff. This case number should be included on all subsequent documents after the initial filing. If you are not aware of the case number, please contact the Clerk of Court.
- ☐ Complete the remainder of the information on the lines provided throughout the form. Complete the Affidavit of Mailing and sign in front of a notary or Clerk of Court.
- ☐ Complete a Case Filing Statement (UJS-232) with both your demographic information and your spouse's demographic information. It is important to know that your social security number and date of birth are required when filing a divorce action with children.
- ☐ Complete the Financial Affidavit (UJS-023).
- ☐ File the original copies of each of the forms listed above with the Clerk of Court along with the required \$25 filing fee.
- ☐ If you cannot afford the \$25 filing fee, please complete the Motion to Waive Filing Fee (UJS-022) and submit with the above forms in lieu of the \$25.
- ☐ Mail copies of all the above documents to the Plaintiff.

<hr/> Plaintiff  v.  <hr/> Defendant	Case No.: _____  <b>ANSWER (WITH MINOR CHILDREN) AND AFFIDAVIT OF MAILING</b>
--	---

The above-named Defendant's Answer to the Complaint with Minor Children as follows:

1. I **AGREE** with the following paragraphs of the Complaint with Minor Children (list the corresponding paragraph numbers from the Complaint)

\_\_\_\_\_  
\_\_\_\_\_

2. I **DISAGREE** with the following paragraphs of the Complaint with Minor Children (list the corresponding paragraph numbers from the Complaint)

\_\_\_\_\_  
\_\_\_\_\_

3. I **PARTIALLY AGREE** or **PARTIALLY DISAGREE** with the following paragraphs of the Complaint with Minor Children (list the corresponding paragraph numbers from the Complaint)

\_\_\_\_\_  
\_\_\_\_\_

4. I **DO NOT HAVE ENOUGH INFORMATION** to either agree or disagree with the following paragraphs of the Complaint with Minor Children (list the corresponding paragraph numbers from the Complaint)

---

---

If you wish to explain any of your answers to the previous statements, please use the space below. If you do not wish to explain your answers further, leave the next four paragraphs blank.

1. 

---

---
2. 

---

---
3. 

---

---
4. 

---

---

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

---

Defendant Signature

---

Defendant Name

---

Defendant Address

---

City, State, Zip Code

---

Phone Number

**AFFIDAVIT OF MAILING ANSWER**  
**WITH MINOR CHILDREN**

I, \_\_\_\_\_ (your name) the above-named Defendant  
being sworn, state that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
mailed a true and correct copy of the Answer in an envelope addressed to the  
Plaintiff at:

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

\_\_\_\_\_  
Plaintiff's Street Address

\_\_\_\_\_  
Plaintiff's City, State & Zip

And depositing the envelope, with sufficient postage in the United States mail in

\_\_\_\_\_  
*(City and State you Mailed the form from)*

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

\_\_\_\_\_  
Defendant Signature

\_\_\_\_\_  
Defendant Name

\_\_\_\_\_  
Defendant Address

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

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

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

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

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

## INSTRUCTION FOR MOTION TO WAIVE FILING & SERVICE OF PROCESS FEE FORM

This form references specific South Dakota Codified Laws (SDCL) and 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 you with legal advice or assist you in completing this form. For specific questions related to the forms, you can also contact the Legal Form Helpline at 1-855-784-0004 email UJS staff at [ujssrlhelp@uds.state.sd.us](mailto:ujssrlhelp@uds.state.sd.us).

### **Important Notice:**

A Motion to Waive Filing Fee & Service of Process Fee is a request to the Court asking that it not charge you the filing fee and to direct the Sheriff not to charge you for service of process. The Motion refers to your Financial Affidavit (Form UJS-023) to explain your financial situation to the Judge to decide whether to waive the fee in your case.

If you do not hear from the Clerk of Court in five business days, you should contact them and inquire whether the Judge signed your Order Waiving Filing Fee and Service of Process Fee. If the Judge did not sign the Order, you have thirty days to pay the filing fee, or your case will be dismissed.

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

- ☐ Complete the caption of the Motion.
  - ☐ County (insert county name).
  - ☐ Judicial Circuit (insert circuit number). You may find your judicial circuit number at the following web address.
    - [https://uds.sd.gov/Circuit\\_Court/Default.aspx](https://uds.sd.gov/Circuit_Court/Default.aspx)
  - ☐ Enter Plaintiff and Defendant name.
  - ☐ Case Number will be provided to you by the Clerk of Court at the time of filing if you don't already have one.
- ☐ If you agree with the statement in the Motion, sign and date the Motion in the presence of a notary or Clerk of Court.
- ☐ File the complete form along with UJS-028 Order Waiving Filing Fee and Service of Process Fee with the Clerk of Court. Remember to retain a copy for your records.

<div>_____</div> <div>Plaintiff</div> <div>v.</div> <div>_____</div> <div>Defendant</div>	<div>Case No.: _____</div> <div><b>MOTION TO WAIVE FILING &amp; SERVICE OF PROCESS FEE</b></div>
---	--

Comes now the Plaintiff/Defendant (*circle one*) named above, and makes this Motion to the Court to waive the following fees for the following reasons (*check one*):

I am the Plaintiff name above and make this Motion pursuant to SDCL 16-2-29.2 and 16-2-29.3 for the purposes of requesting a waiver of the filing fee and service of process fee for the Summons and Complaint.

I am the Defendant named above and make this Motion pursuant to SDCL 16-2-29.2 and 16-2-29.3 for the purposes of requesting a waiver of the filing fee for the Answer/Response to the Summons and Complaint.

I do solemnly swear that I am unable to pay the above-specified fee(s) for the legal proceedings which I am about to commence; and that I verily believe I am justly entitled to the relief sought by such legal proceedings. My Financial Affidavit, which sets forth my entire financial situation, (Form UJS-023) is filed herein and incorporated herein by reference.

WHEREFORE, based upon the foregoing statements and allegations, I respectfully request that the Court enter its Order to Waive Payment of the above-specified fee(s) in this matter, pursuant to SDCL 16-2-29.2. If this Request is denied, I understand that I must pay the above-specified fee(s) to proceed with the case. Furthermore, if I am the Plaintiff, I understand that if the filing fee is not paid within thirty days, my case will be dismissed.

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

\_\_\_\_\_  
Plaintiff/Defendant Signature (*circle one*)

\_\_\_\_\_  
Plaintiff/Defendant Name (*circle one*)

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

\_\_\_\_\_  
Address

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

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

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

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



## INSTRUCTION FOR ORDER ON MOTION TO WAIVE FILING & SERVICE OF PROCESS FEE FORM

This form references specific South Dakota Codified Laws (SDCL) and 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 you with legal advice or assist you in completing this form. For specific questions related to the forms, you can also contact the Legal Form Helpline at 1-855-784-0004 email UJS staff at [ujssrlhelp@uds.state.sd.us](mailto:ujssrlhelp@uds.state.sd.us).

### **Important Notice:**

A Motion to Waive Filing Fee & Service of Process Fee is a request to the Court asking that it not charge you the filing fee and to direct the Sheriff not to charge you for service of process. The Motion refers to your Financial Affidavit (Form UJS-023) to explain your financial situation to the Judge to decide whether to waive the fee in your case.

If you do not hear from the Clerk of Court in five business days, you should contact them and inquire whether the Judge signed your Order Waiving Filing Fee and Service of Process Fee. If the Judge did not sign the Order, you have thirty days to pay the filing fee, or your case will be dismissed.

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

- ☐ Complete the caption of the Motion.
  - ☐ County (insert county name).
  - ☐ Judicial Circuit (insert circuit number). You may find your judicial circuit number at the following web address.
    - [https://uds.sd.gov/Circuit\\_Court/Default.aspx](https://uds.sd.gov/Circuit_Court/Default.aspx)
  - ☐ Enter Plaintiff and Defendant name.
  - ☐ Case Number will be provided to you by the Clerk of Court at the time of filing if you don't already have one.
- ☐ Leave the remainder of the form blank and file the form along with UJS-022 Motion to Waiving Filing Fee and Service of Process Fee with the Clerk of Court. Remember to retain a copy for your records.

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

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

_____ Plaintiff  v.  _____ Defendant	Case No.: _____  <p style="text-align: center;"><b>ORDER ON MOTION TO WAIVE FILING &amp; SERVICE OF PROCESS FEE</b></p>
--	---

The ☐ Plaintiff / ☐ Defendant **(check one)** named above having moved the Court to enter an Order to waiver certain fees and the Court having reviewed and considered said motion/application and the party's Financial Affidavit filed herein, based upon the evidence presented, the Court determines that it is hereby:

☐ ORDERED that the **Plaintiff's** payment for the filing fee of the Summons and Complaint in the action herein is:

\_\_\_\_\_ Waived

\_\_\_\_\_ Not Waived

☐ AND IT IS FURTHER ORDERED that the **Plaintiff's** payment for the Sheriff's fee for service of the Summons and Complaint in the action herein is:

\_\_\_\_\_ Waived

\_\_\_\_\_ Not Waived

☐ ORDERED that the **Defendant's** payment for filing the Answer/Response to the Complaint in the Action herein is:

\_\_\_\_\_ Waived

\_\_\_\_\_ Not Waived

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

ATTEST:

BY THE COURT:

\_\_\_\_\_  
Clerk of Court\_\_\_\_\_  
Circuit Court Judge
 BY: \_\_\_\_\_  
 Deputy Clerk

(SEAL)

## INSTRUCTIONS AND FORM ON AFFIDAVIT OF COURT APPROVED PARENTING COURSE

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@uds.state.sd.us](mailto:ujssrlhelp@uds.state.sd.us). Remember that legal matters are better addressed by professionals who specialize in this field.

### **IMPORTANT NOTICES:**

- ☐ In order for a final decree or order to be entered in a case involving child custody or parenting time a parenting course is required to be completed by both parties within sixty days of service of a summons, complaint, petition, motion, or other request concerning child custody.
- ☐ Participation in the course may be waived if good cause is shown, or there has been completion of a court-approved course within the past five years.
- ☐ More information and a list of court-approved parenting classes can be found on the South Dakota Unified Judicial website:
  - [https://uds.sd.gov/Parenting\\_Education/Default.aspx](https://uds.sd.gov/Parenting_Education/Default.aspx)
- ☐ The following form should only be completed if you are requesting to waive the Parenting Course Requirement.

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

- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, and list the names of the parties as they appear on the Summons and Complaint.
- ☐ Fill in your name on the first line provided as you are the Petitioner.
- ☐ Number 2 – Check mark one or both boxes depending on what fits your case.
- ☐ Number 3 – Check mark A, B, or C.
  - ☐ Option A – can be marked if you have completed a court-approved parenting course within the past five years.
  - ☐ Option B – can be marked if you are seeking to waive the parenting course requirement with good reason for the request.
  - ☐ Option C – can be marked if you are seeking additional time (more than sixty-day requirement) to complete the parenting course and reason for the delay.
  - ☐ Date, Sign, and file with the Clerk of Court.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

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

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

<div>_____</div> <div>Plaintiff</div> <div>v.</div> <div>_____</div> <div>Defendant</div>	<div>Case No.: _____</div> <div><b>AFFIDAVIT ON COURT-APPROVED PARENTING COURSE AND ORDER</b></div>
---	---

I, \_\_\_\_\_, the Petitioner, hereby swear under oath and penalty of law that the following is true to the best of my knowledge and belief:

1. I am a party to the above-captioned action.
2. The above-captioned action involves (**circle one or both**) child custody/parenting time issues, it is not a protection order proceeding, and does not terminate parental rights.
3. I \_\_\_\_\_, the Petitioner (**check A, B, or C**)
  - ☐ A – Have completed a court-approved parenting course within the last five years. I have attached proof of completion to this Affidavit.
  - ☐ B – Seek to waive the court requirement for the following reason (*check one*):
    - ☐ The other party has not responded within the required timeframe.
    - OR
    - ☐ Other: \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
  - ☐ C – Seek to delay the court requirement until \_\_\_\_\_ days after the summons, petition, or motion (**circle one**) is/was served for the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. I understand that if the course requirement is waived or delayed by the Court, the Court may order that I receive the course information in an alternative format.
5. I further understand that a final decree shall not be granted or a final order in this matter shall not be entered until both parties have complied with the parenting course requirement, unless the Court waives or delays the participation in the Court for good cause.

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

\_\_\_\_\_  
Petitioner Signature

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

\_\_\_\_\_  
Petitioner Name

\_\_\_\_\_  
Petitioner Address

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

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

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

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

## **ORDER**

The Petitioner having moved this Court to waive or delay the parenting requirement or having completed a court-approved parenting course within the last five years, and the Court having reviewed and considered said request the Court determines that it is hereby:

- ☐ ORDERED that the petitioner's proof of completion of a court-approved parenting course is:
- ☐ DENIED      ☐ GRANTED
- ☐ ORDERED that the request made by the Petitioner to waive the parenting course requirement is hereby:
- ☐ DENIED      ☐ GRANTED
- ☐ ORDERED that the request made by the Petitioner to delay the court required parenting course requirement is hereby:
- ☐ DENIED      ☐ GRANTED

---

Circuit Court Judge

Attest:

---

Clerk of Court

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Deputy Clerk

(Seal)

## INSTRUCTIONS AND FORM FOR STIPULATION AND SETTLEMENT AGREEMENT 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@uds.state.sd.us](mailto:ujssrlhelp@uds.state.sd.us). Remember that legal matters are better addressed by professionals who specialize in this field.

### **IMPORTANT NOTICES:**

The Stipulation and Settlement Agreement is an agreement made between the Plaintiff and the Defendant on the dissolution of their divorce case. The Stipulation and Settlement Agreement is required for the Court to grant a divorce without either party appearing in court. Although, in some cases, a hearing may still be required.

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

- ☐ Read each page in detail.
- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, name of the Plaintiff and Defendant on the lines provided, and case filing number.
- ☐ Pages 1 and 2 – Read and fill in the lines provided.
- ☐ Page 3 Number 3 – List the name(s), date of birth(s), and date of adoption, if applicable.
- ☐ Page 3 Section A – Mark the appropriate box regarding the custody of the child(ren).
- ☐ Page 4 Section B – Provide the parenting time schedule for both the Plaintiff and the Defendant.
- ☐ Pages 4 and 5 Section C – Provide the transportation arrangement of the child(ren) during holidays.
- ☐ Page 8 Number 4 Section A – Provide the agreed upon child support obligation.
- ☐ Page 8 Number 4 Section B – List the parties percentage of health care coverage for the child(ren) that exceeds \$250.
- ☐ Page 9 Section D – List the month and year the child support obligation will begin.

**INSTRUCTIONS AND FORM FOR STIPULATION AND  
SETTLEMENT AGREEMENT WITH MINOR CHILDREN**

- ☐ Pages 9 and 10 Section H – Mark who will be responsible for obtaining health insurance for the child(ren).
- ☐ Page 11 Number 5 Section C – List property that the Plaintiff will receive as a part of the divorce. Property would include vehicles, boats, motorcycles, ATV/Mobile homes, etc. Include make and model number for each.
- ☐ Page 11 Number 5 Section D – List property the Defendant will receive as part of the divorce. Property would include vehicles, boats, motorcycles, ATV/ Mobile homes, etc. Include make and model number for each.
- ☐ Pages 11 and 12 Section E – List any property that either party has possession of but is to be given to the other party within thirty days of entry of the Judgment and Decree of Divorce.
- ☐ Page 13 Number 6 Sections A and B – List any debt each party will be responsible for. This will include debt such as credit cards, banks loans, personal loans, vehicle loans, outstanding bills, student loans, medical bills, etc.
- ☐ Page 14 Number 7 – Set the timeframe for the parties to remove the others name from any property or debt received as a part of this Agreement.
- ☐ Page 14 Number 8 – Provides for the parties to equalize the property and debt distribution by requiring one party to make an equalization payment to the other party. If the parties believe the distribution of assets and debts is equal, you should mark the second box.
- ☐ Pages 15 and 16 Number 9 – Request the distribution of real property such as houses, land, and buildings.
- ☐ Pages 16 and 17 Number 10 – List investment and retirement account information, if any, and the division of each.
- ☐ Pages 17 and 18 Number 11 – Include life insurance information, if any, and the division of such.
- ☐ Pages 18 and 19 Number 12 – Mark if either party is currently a member of the military.
- ☐ Page 19 Number 13 – Select whether alimony is appropriate and if so, enter the amount and payment details.
- ☐ Page 20 Number 14 – Enter income tax return agreement.



**INSTRUCTIONS AND FORM FOR STIPULATION AND  
SETTLEMENT AGREEMENT WITH MINOR CHILDREN**

- ☐ Page 20 Number 15 – Indicate if either the Plaintiff or Defendant would like to be restored to a maiden or former name and if so, provide that information.
- ☐ Page 20 Number 16 – Provide any other agreement the Plaintiff and Defendant have agreed upon if not listed previously.
- ☐ Page 21 Number 17 – Select if either party is awarded attorney fees.
- ☐ Each page must be initialed by each party.
- ☐ Each party will need to sign and date in front of a notary or Clerk of Court.

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

:SS

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

)

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

<p>_____, Plaintiff</p> <p>v.</p> <p>_____, Defendant</p>	<p>Case No.: _____</p> <p><b>STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN)</b></p>
---	---

THIS STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the Plaintiff, \_\_\_\_\_ and the Defendant, \_\_\_\_\_. Within this document we understand that we may be referred to individually as Plaintiff/Defendant, or together as party(ies).

**WHEREAS**, the parties were married in the City of \_\_\_\_\_, in the State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and ever since that time have been and are now married; and

**WHEREAS**, irreconcilable differences and disputes have arisen between the parties and have or will separate with the intent to live apart; and

**WHEREAS**, Defendant was served with a true and correct copy of the Summons and Complaint (with Minor Children) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and;

**WHEREAS**, At the time of the commencement of this divorce action Plaintiff resided in the City of \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, and presently

\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials

resides in the City of \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, and the Defendant at the time of the commencement of this divorce action resided in the City of \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, and presently resides in the City of \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_.

Both parties agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue; and

**WHEREAS**, the parties are the parents of \_\_\_\_\_ (#) minor child(ren) born to or adopted by the parties during the course of their relationship/marriage. Spouse **is / is not (circle one)** pregnant at the time of this action. If pregnant, the spouse is due on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and

**WHEREAS**, the parties hereto now desire to enter into an Agreement settling all claims, visitation, child support, property division, and all other matters between the parties regarding this divorce action,

**NOW THEREFORE**, it is hereby stipulated and agreed by and between the parties herein as follows:

1. **Release.** Except as herein specified, each of the parties is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other. Each of the parties releases the other from any and all liabilities, debts and/or obligations of any kind or character incurred by the other from and after the date of this Agreement and from any and all claims and demands. It being expressly understood and agreed, this Agreement is intended to settle the rights of the parties in all respects, except as hereinafter provided.
2. **After-Acquired Property.** Any and all property, whether real or personal, acquired by either party, from and after the date of this Agreement, shall be the sole and separate property of the one so acquiring the same, and each of said

parties hereby respectfully grants to the other all such other and future acquisitions of property as the sole property of the one so acquiring the same.

**3. Custody & Visitation.** The parties are the parents of the following minor child(ren) born to or adopted by them during their relationship/marriage:

Name

Date of Birth

Date of Adoption

---

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A. Legal & Physical Custody: The parties agree that as to custody of the minor child(ren) **(check one)**:

- ☐ The parties share joint legal custody of the minor child(ren) with **Plaintiff / Defendant (circle one)** having primary physical custody;
- ☐ The parties share joint legal and joint physical custody of the minor child(ren);
- ☐ **Plaintiff / Defendant (circle one)** has sole legal and physical custody of the minor child(ren);
- ☐ The parties agree to joint legal and physical custody with a shared parenting plan, as set forth below, in which the child(ren) reside no less than 180 nights per calendar year in each parent's home. The parents further agree to share the duties and responsibilities of parenting the child(ren) and shall divide the expenses of the child(ren) in proportion to their incomes, i.e. Plaintiff paying \_\_\_\_% and Defendant paying \_\_\_\_%.

B. Parenting Time Schedules: The parties agree to the following parenting time schedules with the minor child(ren):

During the school week, including pick-up and return times and location, the **Plaintiff** shall have the minor child(ren): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

During the school week, including pick-up and return times and location, the **Defendant** shall have the minor child(ren): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

During the summer, including pick-up and return times and location, the **Plaintiff** shall have the minor child(ren): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

During the summer, including pick-up and return times and location, the **Defendant** shall have the minor child(ren): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

C. Holidays: In addition to the custodial arrangement designated above, and unless the parties otherwise agreed, major holidays shall be alternated as set forth in the South Dakota Parenting Guidelines (Form UJS-302). When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence. Therefore, if the Defendant misses a regular weekend because it is Plaintiff's holiday, the regular parenting time schedule will resume following the holiday. If the Defendant receives two consecutive weekends

because of a holiday, the regular alternating weekend schedule will resume the following weekend with the Plaintiff. Unless mutually agreed, there will be no makeup parenting time after any conflicts between the holiday weekend and the regularly scheduled weekend time. Parenting time "missed" during the summer period is not made up.

The parties agree to arrange transportation for the child(ren) for holiday visits as follows:

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**The parties may, by mutual agreement, alter the parenting time schedule above which shall be in writing and signed by both parties. Text messages and emails are sufficient in amending this agreement as long as the text messages and emails are retained.**

- D. Failure to comply: Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right to both support and parenting time, neither of which is dependent upon the other. In other words, if you do not receive child support, you still have to allow parenting time and if you are denied parenting time, you still have to pay child support. If there is a violation of either parenting time or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.
- E. Telephone Calls: Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent, if it is a long-distance call. The parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. Messages or voice mails left for a child should be returned

in a timely manner.

- F. Clothing: If one parent has primary physical custody, that parent shall send an appropriate supply of the child(ren)'s clothing with them during the other parent's parenting time, which shall be returned clean (when reasonably possible), with the child(ren). The parent exercising parenting time shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the child(ren) may be sent.

If the parties are exercising shared parenting, it is expected that they will each maintain clothing at their individual homes for the child(ren). However, the parents agree to cooperate in returning clothing to the appropriate parent so each can maintain a supply of clothing.

- G. Transportation: Unless otherwise agreed to herein, the transportation between the parents shall be handled equally. When the parents live in the same community, the parent commencing their parenting time will pick up the child(ren) from the other parent's home and upon conclusion of the parenting time, the other parent shall retrieve the child(ren) from the home of the parent who just had parenting time. The parents have an obligation to be punctual, arriving at the agreed time, not substantially early or late. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

- H. Parental Affection: Each of the parents shall take all measures deemed advisable to foster a feeling of affection between the minor child(ren) and the other parent and neither will do anything which may estrange the child(ren) from the other parent nor impair their high regard for the other parent. Both parties agree they will speak only favorably of the other while in the child(ren)'s presence. Each will promote and foster good parental relations between the child(ren) and the other parent and avoid any communication of any kind which would be detrimental to the child(ren)'s

respect or admiration for the other parent.

- I. Grade Reports and Medical Information: If the parties share joint legal custody, each parent shall provide the other parent with grade reports and notices from school as they are received and shall authorize the other parent to communicate concerning the child(ren) directly with the daycare, the school, and the child(ren)'s doctors and other professionals outside the presence of the other parent. Unless there are abuse, neglect, criminal or protection orders to the contrary, both parents shall also be listed as the child(ren)'s parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the child(ren). Each parent shall, as soon as reasonably possible, notify the other parent of all school or various activities (for example, music or sports) involving parental participation. If a child is taking medications, each parent shall have a sufficient amount of medication and appropriate instructions during their parenting time.
- J. Future Disputes: If the parties develop disputes in the future, they agree to first review the South Dakota Parenting Time Guidelines (UJS-302) to determine if a resolution can be reached.
- K. Relocation: The parties acknowledge that if either of them desire to relocate, they must abide by specific provisions required by law. These provisions can be found at SDCL §§ 25-4A-17-19.
- L. Parenting Course Requirement: Because this stipulation involves issues of custody and parenting time, the parties recognize that they must complete a court-approved parenting course pursuant to SDCL § 25-4A32. The parties have therefore each filed a certificate of completion or an Affidavit on the Court-Approved Parenting Course with the Clerk of Court within sixty days of the service of the Complaint on the other party.



**4. Child Support.**

A. The parties agree that \_\_\_\_\_ shall pay child support to \_\_\_\_\_ for the support and maintenance of the minor child(ren) in the amount of \$\_\_\_\_\_ per month, which includes:

**(check all that apply)**

- ☐ Their pro rata share of the health insurance provided by the **Plaintiff / Defendant (circle one)** for the parties' minor child(ren).
- ☐ Their pro rata share of daycare expenses for the minor child(ren).
- ☐ An annualized abatement of \$\_\_\_\_\_ per month in consideration for the months \_\_\_\_\_ has the child(ren) six or more over-nights per month. Pursuant to SDCL § 25-7-6.14, it shall be presumed that the parenting time is exercised for the purposes of the abatement, although if the noncustodial parent does not exercise this extended parenting time, the noncustodial parent is required to repay the abated amount of child support to the custodial parent;
- ☐ A cross-credit calculation for the shared parenting plan, as allowed in SDCL § 25-7-6.27;
- ☐ A deviation of \$\_\_\_\_\_ per month pursuant to SDCL § 25-7-6.10(\_\_\_\_), based on the following facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Any reasonable medical costs, including optometrist, dental, orthodontic, counseling, or other health care costs for the minor child(ren) which exceed \$250.00 in any year and are not covered by insurance, shall be split between the parents with Plaintiff paying \_\_\_\_% and Defendant paying \_\_\_\_%. Pursuant to SDCL § 25-7-6.16, the parent with physical custody, which is \_\_\_\_\_, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year.

*(This option would not be applicable in shared parenting arrangements.)*

C. The child support calculation is attached to this document and was prepared by the **Plaintiff / Defendant (circle one)**. (You may want an attorney to calculate child support or you can determine the support obligation by using the child support calculator provided by the Department of Social Services and found at:

<http://dss.sd.gov/childsupport/services/obligationcalculator.asp>.

D. The child support obligation shall commence on the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_\_.

E. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen or until each child attains the age of nineteen if the child is a full-time student in a secondary school.

F. The employer of the parent who is required to pay child support shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 25-7A-34.

G. Until otherwise notified by the Department of Social Services – Division of Child Support, all payments shall be made payable to “Division of Child Support” and mailed to:

**Division of Child Support**  
**700 Governor’s Drive**  
**Suite 84 Pierre, SD 57501-2291**

H. Regarding Health Insurance **(choose one)**:

☐ **Plaintiff / Defendant (circle one)** shall obtain and/or maintain health insurance coverage for the minor child(ren) if available through employment or other group carrier at a reasonable cost. **Plaintiff / Defendant (circle one)** shall notify the Department of Social Services of the insurance company name, address, policy number, and the names of persons covered within thirty days of entry of the Judgment

and Decree of Divorce. **Plaintiff / Defendant (circle one)** shall also notify the Department of any changes in coverage. **Plaintiff / Defendant (circle one)** shall also provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address, policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce;

**OR**

- ☐ Neither parent currently has medical insurance for the minor child(ren). Health insurance shall be provided for the child(ren) by a parent if the insurance is accessible for the child(ren) and available to a parent at reasonable cost. SDCL § 25-7-6.16. The cost shall be apportioned between the parents. *Id.* The parent providing health insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within thirty days and shall also notify the Department of Social Services of any changes in coverage. The parent providing medical insurance shall also provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address, policy number, and the names of persons covered within thirty days.

**5. Property Division:** The parties agree that the following marital property shall be divided as follows and such division is equitable:

- A. Clothing, Personal Effects, Personal Property: Each of the parties shall receive their own clothing, personal effects, and all personal property in their possession, free and clear of any claim from the other, unless otherwise specified herein.

B. Photographs, Memorabilia: The parties agree to equally split the photographs and any special memorabilia acquired during the marriage/relationship within ninety days of execution of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Plaintiff shall exclusively receive, as their sole and separate property, the following items:

- |         |         |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

D. Defendant shall exclusively receive, as their sole and separate property, the following items:

- |         |         |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

E. Property in Possession of the Other: If Plaintiff has property to be given to Defendant, then Plaintiff shall, within thirty days of execution of entry of the Judgment and Decree of Divorce, give to Defendant the following personal property items:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

and Defendant shall, within thirty days of execution of this Agreement, give to Plaintiff the following personal property items:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

F. Checking and Savings Accounts: It is acknowledged by the parties, that they have divided their bank accounts, encompassing checking and/or savings accounts. Each party shall maintain exclusive ownership of the cash balance in their individual accounts, unencumbered by any claims from the other party. Furthermore, any joint accounts that remain, shall be promptly closed and the funds shall be divided equally between the parties.

G. Tax Consequences: The parties agree that the foregoing transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on their tax returns filed after this Agreement is signed.

6. **Debt Division:** The parties agree the following martial debt of the parties shall be divided as follows: *(list all debts and outstanding balances incurred by one or both parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans, medical bills, etc.):*

A. Plaintiff shall be solely responsible for and take over the following debts:

- |         |         |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

B. Defendant shall be solely responsible for and take over the following debts:

- |         |         |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

C. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts they incur from the date of execution of this Agreement. Each party agrees not to incur any debt or liability that could potentially hold the other party, their property, or estate responsible in the future.

- D. Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.
- E. Unless otherwise provided herein, each of the parties promise, at all times, to keep the other party free, harmless and indemnified from any and all debts, charges or liabilities previously contracted or incurred by said party individually, and to be hereafter contracted or incurred by said party individually. Each shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors involved will approve a release from liability. If a creditor denies a release presently, the parties agree to renew their applications for formal transfer or assumption in the future at reasonable intervals.

7. As set forth above, the party receiving the property or debt listed in this agreement shall assume receipt commencing on the date of this agreement. Further, the party receiving the asset or debt obligation, shall remove the other party's name therefrom within \_\_\_\_\_ days from entry of the Judgment and Decree of Divorce. The other party shall also cooperate in transferring titles to the party receiving the asset(s) once their name is removed.

8. In respect to equalizing the property distribution, the parties agree **(check one)**:

☐ That **Plaintiff / Defendant (circle one)** shall pay to the other the amount of \$\_\_\_\_\_ to equalize the property/debt distribution within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce;

**OR**

☐ That the allocation of personal property and debt is equitable, and no amount is necessary to equalize the distribution.

9. **Real Property (house, land or buildings):**

☐ The parties have no real property (*check if applicable and then proceed to #10*).

☐ The parties have an interest in the following real property:

A. Physical Address: \_\_\_\_\_

\_\_\_\_\_

B. Legal description (obtained from a document such as a Warranty Deed, Mortgage or Title Insurance):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C. Regarding the property, the parties agree (**check one**):

- ☐ That the **Plaintiff / Defendant (circle one)** will receive the house/land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$\_\_\_\_\_.  
(Value – Debt(s) = Equity)  
The party receiving the real estate shall pay \$\_\_\_\_\_ to the other to equalize this division within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. If there is a mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and shall sign a quit claim deed releasing all interest in the property to the other party.



**OR**

☐ The parties agree that the house/land and all the fixtures therein and/or the improvements thereon shall be listed for sale by \_\_\_\_\_, 20\_\_\_\_ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor, and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market value. During the pendency of sale of the home, **Plaintiff / Defendant / Not Applicable (circle one)** shall have exclusive possession of the marital home if they do not commit waste thereto. Commencing \_\_\_\_\_, 20\_\_\_\_, the parties agree that **Plaintiff / Defendant / Not Applicable (circle one)** shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agree that the net proceeds of the sale of the home shall be divided with Plaintiff receiving \_\_\_\_% and Defendant receiving \_\_\_\_%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Plaintiff receiving \_\_\_\_% and Defendant receiving \_\_\_\_%. The parties agree, if they are not able to file a joint return, **Plaintiff / Defendant (circle one)** shall claim the real estate taxes on their 20\_\_\_\_ income tax return and **Plaintiff / Defendant (circle one)** shall claim the mortgage interest on their 20\_\_\_\_ income tax return.

**10. Investments and Retirement Funds and Pension Plans:** Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirement and investment accounts and you are strongly advised to consult an attorney if you are dividing such property.

A. The parties agree (**check the appropriate box**):

- ☐ Each party specifically waives any and all claims, if any, to the other's 401K, IRA, stock options, retirement, pension, and profit-sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or will become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including both present and future benefits;

**OR**

- ☐ Effective the date this Agreement is signed by both parties, the Plaintiff shall receive the following investments and retirement accounts (list the current value of each): \_\_\_\_\_  
\_\_\_\_\_ and;  
Effective the date this Agreement is signed by both parties, the Defendant shall receive the following investments and retirement accounts (list the current value of each): \_\_\_\_\_  
\_\_\_\_\_

B. The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

**11. Life Insurance.** Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree (**check one**):

- ☐ The parties do not have any life insurance policies to distribute;

**OR**

- ☐ The parties agree to the allocation of the life insurance policies as follows:

Plaintiff shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium associated with said policy:

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Defendant shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium associated with said policy:

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**12. Military Benefits (If one of the parties is a military member) (check one)**

☐ **Plaintiff / Defendant (circle one or both, if applicable)** confirms they are not currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

**OR**

☐ **Plaintiff / Defendant (circle one or both, if applicable)** was a member of the military (includes the National Guard and Reserves) during the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, and the Survivor Benefit Plan. There are numerous and complicated laws, and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Service to understand and protect all benefits you may be entitled to. When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of

disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Service and, if necessary, an Order requiring Survivors Benefit Protection (SBP).

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that they were in service (ex. 1992–2004) and the specific years of service during marriage (ex. 1994-2004):

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In respect to military benefits of the service member, the parties agree as follows:

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**13. Alimony (Spousal Support).** Please check the appropriate box and fill in the appropriate blanks. (*You are strongly encouraged to consult with an attorney before completing this section*):

☐ **Plaintiff / Defendant (circle one)** shall receive alimony in the sum of \$\_\_\_\_\_ each month beginning the 1<sup>st</sup> of \_\_\_\_\_, 20\_\_\_\_ for the following duration:

☐ A period of \_\_\_\_\_ months; or

☐ Until remarriage of the person receiving alimony or death of either party.

**OR**

☐ No permanent, general, rehabilitative or restitutional alimony shall be granted to either party. Both parties waive any right they may have to alimony and accepts this Agreement (with Minor Children) in full and final

satisfaction of all marital claims.

**14. Income Tax Returns.** The parties agree to share historical accounting and tax information, documents and records with the other as may be necessary for each to prepare a complete and accurate income tax return for subsequent tax years. The parties agree:

☐ File a joint tax return if possible for the \_\_\_\_\_ tax year, if allowed by law, and share the expenses and tax liability or refund as follows: \_\_\_\_\_% to Plaintiff and \_\_\_\_\_% to Defendant;

**OR**

☐ File as single persons for the \_\_\_\_\_ tax year. Commencing with the tax year that the Judgment and Decree of Divorce is signed, the parties shall file as single persons on their IRS returns and every year thereafter.

The parties further agree that the minor child(ren) shall be claimed as dependents on their individual tax returns as follows: \_\_\_\_\_

**15. Former Name.** If one party would like their maiden name or former name restored to them, complete this section: *(Leave section blank if not applicable)*

**Plaintiff / Defendant (circle one),** presently known as

\_\_\_\_\_ DOB \_\_\_\_\_, will be restored to their full former or maiden name of:

\_\_\_\_\_ in any Judgment and Decree of Divorce issued herein and will be known hereafter as: \_\_\_\_\_

**16. Other Agreements Not Covered Previously.**

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17. **Attorney's Fees.** (Check one if appropriate and fill in where necessary):

☐ Each party shall be solely responsible for their own attorney fees, costs and expenses incurred in this proceeding.

**OR**

☐ **Plaintiff / Defendant (circle one)** will pay the sum of \$\_\_\_\_\_ towards the attorney fees, costs and expenses of their spouse within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce.

18. **Address.** Until all provisions herein are satisfied, the parties agree that each will promptly notify the other of any change of address and/or telephone number.

19. **Other Documents.** The parties shall, at any and all times upon request by the other party or their legal representative, make, execute, and deliver any and all such other and further instruments as may be deemed necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

20. **Grounds.** The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL § 25-4-17.3. The parties have executed an Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the Court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.

21. **Interference.** The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

**22. Enforcement.** The parties agree this Agreement shall be binding upon them until otherwise mutually agreed or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or if one party determines modifications are necessary without consent of the other party, each shall be free to petition the Court to have this Agreement modified/enforced in accordance with the law.

**23. Release of Inheritance Rights.** Unless otherwise specified herein, each party releases all rights to shares in the estate of the other or shares in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed after the date of this Agreement.

**24. Modification and Waiver.** Any modification/waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement and approved by the Court. The failure of either party to insist upon strict performance of any of the provisions shall not be construed as waiver of any subsequent default of the same or similar nature.

**25. Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

**26. Titles.** The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.

**27. Conflict of Laws.** This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

**28. Waiver and Incorporation.** The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce. It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

**29. Written Memorandum.** This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

**30. Ratification.**

- A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.
- B. The parties represent to the Court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The parties acknowledge that it is a legal document and binding upon them.
- C. Each party covenants and warrants to the other: (a) they have fully disclosed the existence of and value of all assets and debts in which they have any interest whatsoever; and, (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them individually, or in conjunction with a third party; and, (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

**(SIGNATURE PAGE TO FOLLOW)**



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

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

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

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

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

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

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

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

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

---

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

\_\_\_\_\_  
Defendant Signature

\_\_\_\_\_  
Defendant Printed Name

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

\_\_\_\_\_  
Defendant Address

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

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

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

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

\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials

## INSTRUCTIONS FOR AFFIDAVIT OF PLAINTIFF AND DEFENDANT AS TO JURISDICTION AND REASON FOR DIVORCE AND FORM

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@uds.state.sd.us](mailto:ujssrlhelp@uds.state.sd.us).

### **IMPORTANT NOTICE:**

- ☐ This Affidavit establishes jurisdiction and grounds for divorce in which the Court may grant a divorce without requiring their personal appearance. Although this Affidavit can be used to help waive a court hearing, **the Judge presiding over your case may still require one.**
- ☐ In South Dakota, both parties typically must agree to use irreconcilable differences as the reason for divorce. Additionally, the Plaintiff must be a resident of the State of South Dakota when the divorce is started. This Affidavit confirms those facts for the Court.
- ☐ This form shall be completed once the Stipulation and Settlement Agreement has been signed by both parties.

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

- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, Plaintiff and Defendant's names.
  - ☐ The Clerk of Court will provide you a case number at the time of filing.
  - ☐ Your judicial circuit can be found here:
    - [https://uds.sd.gov/Circuit\\_Court/Default.aspx](https://uds.sd.gov/Circuit_Court/Default.aspx)
- ☐ Plaintiff and Defendant will need to sign and date in front of a notary or Clerk of Court.
- ☐ Once signed it will need to be filed with the Clerk of Court.
- ☐ If the Defendant refuses to sign this form, the Plaintiff should still file this Affidavit with only their notarized signature.

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

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

<div>_____</div> <div>Plaintiff</div> <div>v.</div> <div>_____</div> <div>Defendant</div>	<div>Case No.: _____</div> <div><b>AFFIDAVIT OF PLAINTIFF &amp; DEFENDANT AS TO JURISDICTION AND GROUNDS FOR DIVORCE</b></div>
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The above-named Plaintiff and Defendant, being first duly sworn upon their oath, depose and state as follows:

1. That they are the Plaintiff and the Defendant in the above-entitled divorce action.
2. This Affidavit is made pursuant to the provisions of SDCL § 25-4-17.3 so that the divorce may be granted without requiring the personal appearance by either party in Court.
3. Pursuant to SDCL § 24-4-30, the Plaintiff, at the time of the commencement of this divorce action was a bona fide resident of \_\_\_\_\_ County in the State of South Dakota (or stationed in the State of South Dakota while a member of the armed services)
4. Plaintiff and Defendant agree by signing this Affidavit that there are irreconcilable differences between the parties which the parties cannot repair to save the marriage. Both parties' consent to the Court's entry of a Judgment and Decree of Divorce to both parties on the grounds of irreconcilable differences.
5. A written Stipulation and Settlement Agreement (with Minor Children) has been entered into between the Plaintiff and the Defendant setting forth the terms and conditions of the division of property and other matters. The Agreement is presented to the Court with this Affidavit.
6. Both parties authorize the immediate presentation of the Stipulation and Settlement Agreement (with Minor Children), this Affidavit of Jurisdiction and Ground for Divorce and the proposed Judgment and Decree of Divorce to the Court and

respectfully request the Court to consider the same without need for any noticed hearing or trial. The Parties further waive the entry of formal Findings of Fact and Conclusions of Law.

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

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

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

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

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

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

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

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

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

---

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

\_\_\_\_\_  
Defendant Signature

\_\_\_\_\_  
Defendant Name

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

\_\_\_\_\_  
Defendant Address

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

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

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

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

## INSTRUCTIONS AND FORM FOR JUDGMENT AND DECREE OF DIVORCE (STIPULATION AND AGREEMENT 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@uj.s.state.sd.us](mailto:ujssrlhelp@uj.s.state.sd.us). Remember that legal matters are better addressed by professionals who specialize in this field.

### **IMPORTANT NOTICES**

- ☐ Use this form only if you and the Defendant have signed a Stipulation and Settlement Agreement (With Minor Children) and you want the Court to incorporate that Agreement into your Judgment and Decree of Divorce.
- ☐ Even if you and the other party have signed the Stipulation and Settlement Agreement, the Judge assigned to your case may still require you to appear in court.

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

- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, list your name for the Plaintiff and the other party for the Defendant.
- ☐ In the first paragraph enter the day the Defendant was served with the Summons and Complaint, and the date and location of the marriage.
- ☐ Provide the Clerk of Court with the proposed Judgment and Decree of Divorce (UJS-326B). The Clerk of Court will give to the Judge to grant or deny.
- ☐ If the Judge signs the proposed Judgment and Decree of Divorce (UJS-326B), a Notice of Entry will need to be completed and filed with the Clerk of Court.
  - ☐ The Notice of Entry form can be obtained from the Clerk of Court. Depending on the county, this may be completed by the Clerk of Court, or they may provide it to you to complete and file.
- ☐ Certified copies of the Judgment and Decree of Divorce (UJS-326B) along with a copy of the Notice of Entry will need to be provided to both parties and an Affidavit of Mailing will need to be completed. Depending on the county, this may be completed by the Clerk, or they may provide to you to complete and file. You will need to check with the Clerk of Court on this.
  - ☐ The Affidavit of Mailing form can be obtained from the Clerk of Court.
- ☐ If a hearing is required, you will need to bring the Judgment and Decree of Divorce (UJS-326B) with you and if the Judge signs at the conclusion of the hearing, certified copies of the signed Judgment and Decree of Divorce (UJS-326B) along with a copy of the Notice of Entry will need to be provided to both parties and an Affidavit of Mailing will need to be completed. Depending on the county, this may be completed by the Clerk, or these forms may be provided to you to complete and file. You will need to check with the Clerk of Court on this.
  - ☐ The Affidavit of Mailing form can be obtained from the Clerk of Court.

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

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

<p>_____ Plaintiff</p> <p style="text-align: center;">v.</p> <p>_____ Defendant</p>	<p>Case No.: _____</p> <p style="text-align: center;"><b>JUDGMENT AND DECREE OF DIVORCE (STIPULATION AND AGREEMENT WITH MINOR CHILDREN)</b></p>
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The above-entitled matter came before this Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. It is satisfactory appearing to the Court from the records and file herein that the Defendant was duly served with the Summons and Complaint (With Minor Children) on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the parties thereafter entered into a Stipulation and Agreement (With Minor Children) on file and dated \_\_\_\_\_, herein. The parties were married on the \_\_\_\_ day of \_\_\_\_\_, in the City and State of \_\_\_\_\_. After due consideration of the same and on the matters of record herein the Court finds and concludes that it has jurisdiction over the parties and the subject matter herein, that the parties have met their obligations for court-approved parenting courses under SDCL § 25-4A-32, and that the parties have expressly waived entering of Findings of Fact and Conclusions of Law. Now therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The parties are both granted a Judgment and Decree of Divorce on the grounds of irreconcilable differences and the parties hereto are restored to the status of single persons.
2. That the Stipulation and Agreement (With Minor Children) on file between the parties is hereby approved and by this reference made a part hereof merged and incorporated herein.

3. The parties are the parents of the following minor child(ren):

\_\_\_\_\_, DOB \_\_\_\_\_  
\_\_\_\_\_, DOB \_\_\_\_\_  
\_\_\_\_\_, DOB \_\_\_\_\_

4. Custody and parenting time with the minor child(ren) shall be as set forth in the Stipulation and Agreement (With Minor Children) on file herein, which is incorporated herein by reference.

5. \_\_\_\_\_ shall pay child support to \_\_\_\_\_ for the minor child(ren) in the amount of \$\_\_\_\_\_ per month, commencing the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_, pursuant to the calculations and child support provisions set forth in the Stipulation and Agreement (With Minor Children), which are incorporated herein by reference as well as the child support calculation, which is filed here in and incorporated by reference.

6. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen, or until each child attains the age of nineteen if the child is a fulltime student in a secondary school.

7. The obligor's current or subsequent payor of income shall be immediately directed to withhold amount for current support or arrearages as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 24-7A-34.

8. Until otherwise notified by the Division of Child Support all payments shall be made payable to "Division of Child Support" and mailed to:

**Division of Child Support  
700 Governor's Drive, Suite 84  
Pierre, SD 57501-2291**

9. Plaintiff ☐ / Defendant ☐ (**check one**), currently known as \_\_\_\_\_ born as \_\_\_\_\_ shall be restored to their former name of \_\_\_\_\_; therefore, they shall be known hereafter as \_\_\_\_\_.

10. That SDCL § 25-4A-5 is attached as required by SDCL § 25-4A-5.1 and shall become an Order of this Court.
11. All the other terms and conditions specifically set forth in the Stipulation and Agreement (With Minor Children) as hereby approved and incorporated herein by reference as though fully set forth in extenso.

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

\_\_\_\_\_  
Circuit Court Judge

Attest:

\_\_\_\_\_  
Clerk of Court

\_\_\_\_\_  
Deputy Clerk  
(Seal)



South Dakota Codified Laws  
Title 25. Domestic Relations  
Chapter 25-4a. Custody and Visitation Rights (Refs & Annos)

SDCL § 25-4A-5

25-4A-5. Sanctions for violation of custody or visitation decree

Effective: July 1, 2018  
Currentness

If the court finds that any party has willfully violated or willfully failed to comply with any provisions of a custody or visitation decree, the court shall impose appropriate sanctions to punish the offender or to compel the offender to comply with the terms of the custody or visitation decree.

The court may enter an order clarifying the rights and responsibilities of the parents and the court's order. The court may order one or more of the following sanctions:

- (1) To require the offender to provide the other party with make up time with the child equal to the time missed with the child, due to the offender's noncompliance;
- (2) To require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance;
- (3) To require the offender to pay a civil penalty of not more than the sum of one thousand dollars;
- (4) To require the offender to participate satisfactorily in counseling or parent education classes;
- (5) To require the offender to post bond or other security with the court conditional upon future compliance with the terms of the custody or visitation decree or any ancillary court order;
- (6) To impose a jail sentence on the offender of not more than three days; or
- (7) In the event of an aggravated violation or multiple violations, the court may modify the existing visitation or custody situation, or both of any minor child.

The provisions of this section do not prohibit the court from imposing any other sanction appropriate to the facts and circumstances of the case.

**Credits**

**Source:** SL 1994, ch 195, § 5; SL 2008, ch 125, § 1; SL 2018, ch 155, § 3.

## INSTRUCTIONS FOR CHILD SUPPORT ORDER FILING DATA FORM (UJS/DSS FORM 089)

**PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY. COMPLETE ALL SECTIONS OF THIS FORM AND FILE THE FORM WITH THE CLERK OF COURT'S OFFICE IN WHICH YOUR CASE IS BEING HANDLED.**

As a result of federal welfare reform, *effective October 1, 1998*, new procedures apply to child support cases in South Dakota. The most significant changes are:

- ➡ The Department of Social Services will be the central case registry for the state.
- ➡ The Department of Social Services will be the central payment center for the state and will handle all disbursements.
- ➡ Your failure to update certain information on file with the Department of Social Services and the court, by using this Child Support Order Filing Data Form, can have serious legal consequences regarding your legal right to be notified of enforcement actions regarding your child support obligations.

### INSTRUCTIONS

1. Upon entry of any new or modified court order for child support, the parties in the case must personally, or through their attorney, file a completed Child Support Order Filing Data Form with the clerk of court.
2. Whenever any information on the form changes (for example, you change jobs or place of residence), you must complete a new form and file it with the clerk of court's office.

**PLEASE NOTE:** You are responsible for ensuring that all information is accurate and current. If you fail to keep the information current, you may be served with future notices and orders of enforcement actions regarding your child support obligation at the last residential or employer address provided. Failure to appear in court when so notified may result in a default judgment being entered against you.

3. If a protection order for domestic violence against a spouse or abuse of a child is in effect (whether temporary or permanent), check the appropriate box on the form and attach a copy of the order to the form.
4. Keep the pink copy for your records and file the white and yellow copies with clerk of court.

**THIS FORM WILL BE TREATED AS A CONFIDENTIAL DOCUMENT BY THE COURT (This means the information will not be released to the public as defined by SDCL 15-15A-2(1)-(3)).**

To be completed by clerk of court:

(Docket Number)

Date Clerk Initials

## CONFIDENTIAL FORM

- ☐ Original Court Order
- ☐ Modification Order
- ☐ Information Change
- ☐ Change of Venue

### Child Support Order Filing Data

Please type or print information on form.

PLAINTIFF/PETITIONER (Circle one)	DEFENDANT/RESPONDENT (Circle one)
Name: _____	Name: _____
SSN: _____ SEX: M F	SSN: _____ SEX: M F
Driver's License #: _____	Driver's License #: _____
Date of Birth: _____ Race: _____	Date of Birth: _____ Race: _____
Residential Address: _____	Residential Address: _____
Mailing Address (if different from above) _____	Mailing Address (if different from above) _____
Phone No. _____	Phone No. _____
Attorney Name _____	Attorney Name _____
Attorney Phone No. _____	Attorney Phone No. _____
Employer _____	Employer _____
Employer Address _____	Employer Address _____
Employer Phone No. _____	Employer Phone No. _____
Second Employer _____	Second Employer _____
Second Employer Address _____	Second Employer Address _____
Second Employer Phone No. _____	Second Employer Phone No. _____

Full names, sex of child, dates of birth, and social security numbers of the children involved in this proceeding (if more than six, write on back of form):

_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____
_____	SEX: M / F	DOB: _____	SSN: _____ - _____ - _____

Is a protection order for domestic violence against a spouse or abuse of a child currently in effect?

☐ Yes ☐ No ☐ Unknown **If yes, please attach a copy of the order.**

I certify that the above information is true and accurate concerning ☐ Plaintiff/Petitioner or ☐ Defendant/Respondent and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because \_\_\_\_\_

I hereby certify that the information required by SDCL 25-7A-56.7 is not available.

Circuit Judge

Signature

Date

## INSTRUCTIONS FOR JOINT MOTION AND ORDER FOR DISMISSAL FORM

Please note that court staff cannot provide you with legal advice or assist you in completing these forms. The use of these forms does not guarantee you will be successful in court. It is highly encouraged that you speak with an attorney if you are needing assistance. For specific questions on the forms, you may contact the legal form helpline at 1-855-784-0004 or email UJS staff at [ujssrlhelp@uj.s.state.sd.us](mailto:ujssrlhelp@uj.s.state.sd.us). Additionally, for more information on South Dakota laws, you can also visit the South Dakota Legislature website.

### **Important Notice:**

In the event the parties resolve their differences prior to the entry of the Judgment and Decree of Divorce and want to stop the divorce proceeding, they may request the Court for an Order dismissing the divorce action, without prejudice.

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

- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, Plaintiff and Defendant's names.
- ☐ Provide your reasoning for the request to dismiss the action on the line provided.
- ☐ Both parties must sign and date the Motion in front of a notary or Clerk of Court.
- ☐ Leave the Order section on page two blank as the Judge will date and sign the Order.
- ☐ File the original with the Clerk of Court. Retain a copy for your records.
- ☐ Once the Judge has ruled on your motion you will be provided with two certified copies. One is for you and the other is for your spouse.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

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

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

<p>_____ Plaintiff</p> <p>v.</p> <p>_____ Defendant</p>	<p>Case No.: _____</p> <p><b>JOINT MOTION AND ORDER FOR DISMISSAL</b></p>
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COMES NOW, the above-named Plaintiff and Defendant and respectfully requests this Court for an Order dismissing this action without prejudice based on the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Defendant Signature

\_\_\_\_\_  
Defendant Name

**ORDER**

This matter having come before the Court by the parties Joint Motion for Dismissal, this action is hereby DISMISSED without prejudice.

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

\_\_\_\_\_  
Circuit Court Judge

ATTEST:

\_\_\_\_\_  
Clerk of Court

\_\_\_\_\_  
Deputy Clerk  
(SEAL)