



OFFICE OF THE STAFF JUDGE ADVOCATE

28th Bomb Wing
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A GUIDE TO REPRESENTING YOURSELF IN SOUTH DAKOTA DIVORCE PROCEEDINGS

Phase 1: Preparing and Serving Documents

Print forms and Instructions for Divorce without minor children OR divorce with minor children:

<https://ujslawhelp.sd.gov/DivorceSelfRepLitigant.aspx>.

There are three ways to access the forms:

- a. **Option 1:** use the Guide and File option, which will allow you to answer questions and will generate the completed forms based on your answers;
- b. **Option 2:** download the PDF forms and fill them out electronically; or
- c. **Option 3:** print the divorce forms and fill them out by hand. **The legal office has printed forms available for pickup.**

The following forms are required when filling for divorce.

- a. The Case Filing Statement, Complaint, Summons, Financial Affidavit, and the South Dakota Parenting Guidelines (if children are involved) are documents that you will need to get things started. Make at least 2 copies of all documents. (Note: Originals need to be filed with the court and copies are for you and your spouse).
- b. Take the originals of the above documents to the Clerk of Court and tell the clerk you are filing for divorce. There is a filing fee associated with the commencement of divorce proceedings. However, if you cannot afford the filing fee, you can petition to have it waived.
- c. In order to start the divorce, the Defendant **MUST** be served with copies of the Complaint and Summons. However, in order for the process to move smoothly you should also provide them with a copy of your Financial Affidavit, a blank Financial Affidavit, a blank copy of the Instructions & Answer, and a copy of the Checklist for Self-Represented Divorce.
- d. **Service: There are 3 ways to do this:**
 - i. Personal Service – If the parties are on agreeable terms service by Sheriff can be avoided by hand delivering the documents. However, an **Admission of Service of Summons and Complaint must be signed by the Defendant**. (Note: The Defendant is neither admitting or denying the contents of the documents, they are merely admitting they received the documents on the specified date.)
 - ii. Service by Mail – Copies of the documents may be mailed, but again the **Defendant must sign the Admission of Service of Summons and Complaint** (typically within 20 days). (Note: The Plaintiff must also complete an Affidavit of Mailing to file with the Clerk of Court.)

- iii. Service by Sheriff – Plaintiff can request the Sheriff’s Office or a private process server serve the Defendant. Provide a copy of the documents, Defendant’s address, telephone number and place of employment to the Sherriff or process server. They will mail you a form indicating the date and time of service that you will file with the Clerk of Court. (Note: A service fee and mileage reimbursement will be charged.)

Phase 2: After Service

- a. Upon receipt of the proof of service (either by Admission signed by the Defendant or from the sheriff/process server), make a copy for your file and take the original to the Clerk of Court.
- b. Service of the Summons and Complaint starts the clock. The Defendant has 30 days to file an Answer and there is a 60 day waiting period before the divorce can be finalized.

Phase 3: Divorce

- a. There are three types of divorce proceedings: **1) Stipulated Divorce** (the parties agree on all the terms of divorce); **2) Contested Divorce** (the parties do not agree to the terms of divorce); and **3) Default Divorce** (one party has not responded to the divorce; however, the divorce proceedings will still continue.)

STIPULATED:

- a. A stipulated divorce occurs when the parties reach an agreement regarding the terms and conditions of their divorce. Instead of the Judge determining everything for them the agreement of the parties will determine the terms of the divorce. The parties needs to compete and file the following documents:
 - i. Stipulation and Settlement Agreement; and
 - ii. Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce
 - iii. If children are involved – Complete the Child Support Filing Data Form
- b. After 60 days from the date of service of the Summons and Complaint, the parties are responsible for presenting the “Judgment and Decree of Divorce” to the Judge for consideration. You should contact the Clerk of Courts to assist you in getting this document to the judge. (Note: You will be expected to provide self-addressed and stamped envelopes for each part to the clerk so that they can mail you the finalized divorce papers.)
- c. If the judge signs the Judgment and Decree of Divorce then you should expect to receive copies of 3 documents from the Clerk of Court: Judgment and Decree of Divorce, Notice of Entry of Judgment and Decree of Divorce, and the Stipulation and Settlement Agreement. (Note: Until you receive these documents your divorce is **NOT** finalized!)

CONTESTED:

- a. If the parties are not in agreement then the Court may order you to mediation in order to attempt to reach a stipulation/agreement. (Note: Mediation is not binding and issues discussed are confidential.)
- b. If the parties do not reach an agreement during mediation then a court date will have to be set in order for the judge to decide on remaining issues. Contact the Clerk of Court or Court Administrator to obtain a court date.
- c. After receiving a Court date, complete a “Notice of Hearing” and an “Affidavit of Mailing.” Mail a copy to the other party and file the original with the court. This puts the other party on notice of the court date.

DEFAULT

- a. If the other party does not file an Answer or any responsive pleading within 30 days of service then complete the following forms upon expiration of the 60 day waiting period:
 - i. Affidavit of Default
 - ii. Application for Judgment & Decree of Divorce (Default) & Notice of Hearing; and
 - iii. Affidavit of Mailing
 - iv. If children involved – complete the Child Support Filing Data form to take with you to the final hearing
- b. Mail a copy of each of these documents to the other party and file the originals with the Clerk of Court. (Note: The other party is still entitled to copies of all documents even upon default.)
- c. Contact the Clerk of Courts or Court Administrator to obtain a court date for a default divorce.
- d. If the judge signs the Judgment & Decree of Divorce then you are responsible for providing the Clerk of Court with self-addressed and stamped envelopes for both parties. (Note: If you do not receive your finalized documents in the mail you are responsible for contacting the Clerk of Court to follow up!)

NOTE: If at any time prior to the divorce being finalized the parties reconcile, they MUST complete and file the Stipulation and Order for Dismissal Form.

Clerk of Courts Contact

Pennington County

Mailing: PO Box 230
Rapid City, SD 57709-0230

Physical: 315 St. Joseph St. #5
Rapid City, SD 57709

Phone: (605) 394-2575

Mead County

Mailing: PO Box 939
Sturgis, SD 57785-0939

Physical: 1425 Sherman St.
Sturgis, SD 57785

Phone: (605) 347-4411

<p>NOTICE: This brochure is based in South Dakota law and is designed to inform, not to advise. No person should ever apply or interpret any law without the aid of an attorney who knows the facts and may be aware of any changes in the law.</p>
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FREQUENTLY ASKED DIVORCE QUESTIONS

Do I Need an Attorney?

Obtaining an attorney is dependent upon your situation. Some factors to consider when determining if you need an attorney are:

- Assets
- Is the divorce amicable?
- Jurisdictional issues
- Are children involved?

How Do I Know if I Should File in South Dakota?

- One would typically file for divorce in the state in which he or she or his or her spouse resides. If you have recently moved to a new state and wish to file in that new state, you may have to establish residency prior to filing.
- If you are in the military and are stationed on a base outside your residency state, you typically are able to file in that state or in your residency state.
- If you are in the military and are stationed overseas, you would typically file in your home residency state.

Who Determines Child Support?

- If the plaintiff and defendant cannot come to a stipulated agreement, the judge will determine child support.
- Generally, the judge will use Parenting Guidelines, which can be found on the South Dakota Judicial System website located below.

The judge will use a child support calculator to determine how much support will be paid, which can be found at the following link: <http://dss.sd.gov/childsupport/obligationsdetermined.aspx>

Do I Have to Go to Court in South Dakota?

Depending on your state and your situation, you may or may not have to attend a short hearing. The hearing is where you will be granted your divorce and the judge will sign the final judgment or decree.

When is the Divorce Actually Finalized in South Dakota?

The divorce is typically finalized when the Judge signs the final judgment or decree.

For more information visit the South Dakota Unified Judicial System website located at:

<https://ujslawhelp.sd.gov/divorce.aspx>

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