

## Instructions for Complaint With Minor Children & Form

CAUTION: THIS FORM IS DESIGNED FOR DIVORCES WITH MINOR CHILDREN WHERE THE PHYSICAL CUSTODY (WHERE THE CHILDREN WILL LIVE) IS NOT IN DISPUTE. DISPUTED CHILD CUSTODY CASES ARE VERY COMPLICATED AND VERY EXPENSIVE. YOU ARE STRONGLY ADVISED TO MEET WITH AND HIRE AN ATTORNEY TO PROTECT YOUR RIGHTS AND INTERESTS IN A DISPUTED CHILD CUSTODY CASE.

**A Complaint is required to begin a divorce action. A Complaint tells your spouse (and the court) what you are asking for and why. This is merely the start of your divorce action. Please note that you are not divorced until a Judgment and Decree of Divorce has been signed by the Judge and filed with the Clerk of Court.**

- **Complete this form in black or blue ink only!**
- Complete “the Caption.” **NOTE:** The caption is the top portion of each form. You will need to know the name of your county, judicial circuit (ask your Clerk of Court if you don’t know), name of Plaintiff, name of Defendant and case filing number (ask your Clerk of Court if you don’t know). The caption is the same on every form.
- Answer or complete the paragraphs within the Complaint.
- Paragraphs 1 – 6 are self-explanatory.
- Paragraph No. 7: The primary reason for a divorce, in uncontested situations, is irreconcilable differences (no fault by either party). However, you may want to select an alternative reason in addition to irreconcilable differences. You are not, however, required to do so.
  - **Please understand that seeking a divorce on the grounds other than irreconcilable differences is likely to result in a contested divorce which is both costly and complex. In those circumstances, you are strongly advised to meet with and hire an attorney to fully protect your interests.**
- Paragraph 8: Indicate the present number of minor children born to or adopted by the parties during your relationship / marriage. Indicate whether the Wife is pregnant and if so, what her due date is.
- Paragraph 9: Fill in the minor children’s names and dates of birth.
- Paragraph 10-12: For the Court to have the power to make custodial / parenting time (visitation) orders, certain information must be provided:
  10. For the past five years, indicate who the minor children have lived with, the county and state of residence and time periods at each residence. If the children have not lived with

anyone but the parents, please write out in the lines provided: “With the parents only” and then simply provide the county/state information for the past five years.

11. Indicate whether there have been any previous court hearings concerning the custody of the minor children. If so, indicate in which county, state and year those proceedings happened.
12. Indicate whether anyone other than the parents has ever had legal custody (court-ordered) of any of the children.

- Paragraph 13: Choose between the 3 custody / parenting time (visitation) scenarios or fill in your own.
- Paragraph 14: Check whether you are seeking a child support order.
- Paragraph 15: Check whether you are requesting that one of the parties be ordered to provide health insurance for the minor children and if so, circle which party.
- Paragraph 16: Check whether you would like daycare expenses of the minor children divided between the parties.
- Paragraph 17: Check “yes” if you have marital property and debts that need to be divided between of you. Check “no” if you did not acquire any marital property or debt during your marriage.
- Paragraph 18: Check whether you are seeking alimony.

### **In the “Prayer for Relief” (the Section starting with “Wherefore”):**

Review the paragraphs in this section. This is the section where you are telling the Court what you want. You do not need to do anything unless one of the parties is seeking to have a former name restored, which is in Paragraph 3.

Paragraph 1: You do not need to write anything. This paragraph tells the court that you are asking for a divorce from your spouse.

Paragraph 2: You do not need to write anything. This paragraph tells the court that you are asking the court to equitably divide your property and debts.

Paragraph 3: Indicate if either party wishes to have his/her former last name restored. Circle which party wants their former name restored. Enter the first, middle and last name (former name) of that party. Insert that party’s date of birth.

Paragraph 4-9: You do not need to write anything. These paragraphs tell the court that you are requesting the additional relief requested in your Complaint as well as any other relief that is equitable and just.

- **You must sign and date the Affidavit in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**

### **Verification Section:**

- **Although this section needs to be completed, do not fill out the verification until you are in the presence of a notary public or clerk of court. Make sure to bring photo identification to show the notary public or clerk of court. A notary public can usually be found at the bank and sometimes at the courthouse.**
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**WARNING: By signing your name, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be charged with a crime for not telling the truth.**

- Make at least two photocopies of the signed Complaint with Minor Children; one for you and one to be served on your spouse. The original copy must be filed with the Clerk of Courts.

**SMILE PROGRAM:**

Ask the Clerk of Courts whether you are required to attend a parenting class, a SMILE class or other such class prior to the Judge signing a final Judgment and Decree of Divorce. At this time, the parties must both attend the SMILE class in the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Judicial Circuits before a divorce is granted.

STATE OF SOUTH DAKOTA )  
 :SS  
 COUNTY OF \_\_\_\_\_)

IN CIRCUIT COURT  
 \_\_\_\_\_ JUDICIAL CIRCUIT

_____, Plaintiff,  vs.  _____, Defendant	DIV _____  <b>COMPLAINT WITH MINOR CHILDREN</b>
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1. Plaintiff's full legal name is \_\_\_\_\_ and his/her date of birth is \_\_\_\_\_.
2. Plaintiff is a resident of \_\_\_\_\_ County, State of \_\_\_\_\_.
3. Defendant's full legal name is \_\_\_\_\_ and his/her date of birth is \_\_\_\_\_.
4. Defendant is a resident of \_\_\_\_\_ County, State of \_\_\_\_\_.
5. Plaintiff and Defendant were married on \_\_\_\_\_ (date) in \_\_\_\_\_ (city and state). If the parties are living apart, the date upon which they began to do so is \_\_\_\_\_.
6. Is Plaintiff an active duty member of the armed forces? Yes \_\_\_\_\_  
No \_\_\_\_\_  
  
Is Defendant an active duty member of the armed forces? Yes \_\_\_\_\_  
No \_\_\_\_\_
7. Irreconcilable differences have arisen between the Plaintiff and Defendant which necessitates the dissolution of the marriage. Alternatively further grounds for dissolution of marriage exist under SDCL 25-4-2, subsection:  
\_\_\_\_ (1) Adultery;  
\_\_\_\_ (2) Extreme cruelty;  
\_\_\_\_ (3) Willful desertion;  
\_\_\_\_ (4) Willful neglect;  
\_\_\_\_ (5) Habitual intemperance; or  
\_\_\_\_ (6) Conviction of felony.

8. We have \_\_\_\_\_ minor child(ren) which have been born to or adopted by the parties. The Wife is / is not (*circle one*) pregnant. If the Wife is pregnant, her due date is \_\_\_\_\_.

9. Those minor children's names and dates of birth are:

_____	_____
_____	_____
_____	_____
_____	_____

10. During the past five years the children have lived with the following persons at the times and places indicated below:

<u>Name of Person Living With</u>	<u>County/State</u>	<u>Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. There have / have not (*circle one*) been prior court proceedings regarding the custody of the children. If so, that action took place in \_\_\_\_\_ County, \_\_\_\_\_ State in the year \_\_\_\_\_. **Attach all orders regarding custody of minor children.**

12. Other than the parties, no one has ever had legal custody of any of these children except \_\_\_\_\_ (*if not applicable, write "none"*). **Attach all orders regarding custody of minor children.**

13. In regards to custody, the Plaintiff alleges: (*Check one of the following*)

- Both parties are fit and proper persons to share the joint legal custody of the child(ren) or children, with Plaintiff / Defendant (*circle one*) having primary physical custody, subject to reasonable visitation rights with Plaintiff / Defendant (*circle one*); or

Plaintiff / Defendant (*circle one*) is the fit and proper persons to have sole legal and physical custody of the minor child(ren), subject to visitation with the Plaintiff / Defendant (*circle one*) as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; or

Both parties are fit and proper persons to share the joint legal and physical custody of the minor child(ren), with the parents sharing the duties and responsibilities of parenting the child(ren), the child(ren) residing no less than 180 nights per calendar year in each parent's home and the parents dividing the expenses of the child(ren) in proportion to their incomes; or

Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

14. Plaintiff requests that an order for child support be established. Yes \_\_\_\_\_  
No \_\_\_\_\_ (Even if the Plaintiff is the non-custodial parent, he/she can still request that a child support order be entered).
15. Plaintiff requests that the Plaintiff / Defendant (*circle one*) be ordered to provide health insurance for the minor child(ren) with the uncovered medical expenses, including the premium attributable to the minor child(ren), being allocated between the parties in proportion to their incomes. Yes \_\_\_\_\_ No \_\_\_\_\_
16. Plaintiff requests that the daycare expenses of the minor child(ren) be allocated between the parties. Yes \_\_\_\_\_ No \_\_\_\_\_
17. The parties have accumulated property and debts during the course of the marriage which must be equitably divided. Yes \_\_\_\_\_ No \_\_\_\_\_
18. Plaintiff seeks spousal support (alimony). Yes \_\_\_\_\_ No \_\_\_\_\_

**WHEREFORE,** Plaintiff prays for Judgment as follows:

1. For a Judgment and Decree of Divorce dissolving the marriage of the parties;
2. For an equitable division of the marital property and debts;
3. That Plaintiff's / Defendant's (*circle one*) last name be restored to:  
\_\_\_\_\_. Date of birth: \_\_\_\_\_;
4. That custody and visitation of the minor child(ren) be established as set forth above;

5. That an order for child support be established, if requested above;
6. That health insurance for the minor child(ren) be addressed, if requested above;
7. That daycare expenses for the minor child(ren) be allocated between the parties, if requested above;
8. For alimony, if requested above; and
9. For such other and further relief as may be equitable and just.

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

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

\_\_\_\_\_  
Print Plaintiff's name

\_\_\_\_\_  
Mailing Address

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

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

### VERIFICATION

STATE OF SOUTH DAKOTA            )  
  ): SS  
COUNTY OF \_\_\_\_\_         )

Plaintiff, being first duly sworn, deposes and states that he or she verifies the facts expressed within the Complaint with Minor Children are true.

Dated \_\_\_\_\_, 20\_\_\_\_\_.

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public/Clerk of Courts

If Notary, my commission expires: \_\_\_\_\_

(SEAL)