

Instructions for Summons Form With Children

A Summons tells your spouse that you are filing for a divorce. It also tells your spouse that if he or she does not file a written Answer to your Complaint, the court may give you everything you ask for in your Complaint. Serving and filing a Summons is required even if you and your spouse agree to the divorce. You must serve your spouse with a copy of the Summons and Complaint in order to begin a divorce action.

- Complete the top portion of the Summons. (NOTE: The top portion of each form is called the “caption” and the information will be the same on every form you fill out.)
 - Fill in the name of the county in which you are filing for divorce. This must be the county in which either you or your spouse live.
 - Fill in the name of the Judicial Circuit that the county in which you are filing for divorce is located. (Ex. First, Second, Third, etc.) If you do not know, contact the Clerk of Courts in your county.
 - Fill in your full legal name where it says “Plaintiff” and your spouse's name where it says “Defendant.”
 - When you file your papers, the Clerk of Court will assign a case number which you will insert in the space following “DIV.” For example, if your case number is 011234, your form should show DIV.: 01-1234. This case number should appear on all your papers.
- You must date and sign the Summons at the bottom. You must also include your address and telephone number. You must also attach a copy of the South Dakota Visitation Guidelines to each copy of the Summons.
- Make at least 2 photocopies of the signed Summons; one for you and one to be served on your spouse.
- Take the original completed Summons and Complaint (see Instructions for Complaint Form) to the Clerk of Court and tell the Clerk you are filing for divorce. You must fill out a Civil Case Filing Statement (Two Party Cases).
- There is a filing fee that you must pay in order to begin your divorce. If you cannot afford the fees, see Instructions for Affidavit of Indigency (Waiver of Filing Fees and Order).
- A copy of the Summons and Complaint must be given to your spouse in person. This is called service of process and is required before the court has jurisdiction to hear your case.
- You must also provide the entire pro se packet to the defendant.
- It is very important that you read and follow the Temporary Restraining Order that becomes automatic when you file for divorce. Both parties are required to obey the Temporary Restraining Order. Violation of any of these terms could subject you to penalties and delay your divorce. Read it carefully.

STATE OF SOUTH DAKOTA)
)
) :SS
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>_____, Defendant</p>	<p>DIV _____</p> <p style="text-align: center;">SUMMONS (WITH CHILDREN)</p>
---	--

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint of the Plaintiff, a copy of which is herewith served upon you, and to serve the undersigned a copy of your Answer or other proper response within thirty (30) days from the date of the service of the Summons upon you, exclusive of the day of service.

IF YOU FAIL TO DO SO, judgment by default may be taken against you for the relief demanded in the Complaint 60 days after service of this Summons and Complaint.

NOTICE OF TEMPORARY RESTRAINING PROVISIONS

South Dakota law provides that upon the filing and service of the Summons and Complaint on the Defendant, a Temporary Restraining Order shall be in effect against both parties until the final decree is entered or until further order of the court.

TEMPORARY RESTRAINING ORDER

BY ORDER OF COURT, YOU AND YOUR SPOUSE ARE:

- (1) Restrained from transferring, encumbering, concealing or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the Court, except as may be necessary in the usual course of business or for the necessities of life. You are to notify the other party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the temporary restraining Order is in effect;
- (2) Restrained from molesting or disturbing the peace of the other party; and
- (3) Restrained from removing any minor child of the parties from the state without the written consent of the other party or an order of the court.

INITIAL CUSTODY ORDER

Pursuant to SDCL 25-4A-11 et seq., upon service of this Summons the attached visitation guidelines become an Order of this Court. Any minor children of this marriage shall remain in the custody of the parent who has been the primary caregiver for the minor children for the majority of time in the 30 days preceding the filing of this Summons and Complaint, unless the parties otherwise agree. The guidelines are subject to any provisions established by a South Dakota Court in a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, as bond condition arising out of a criminal case, and an order in any other proceeding affecting child custody or support.

The attached guidelines shall apply and continue in effect unless the parties agree or the Court otherwise orders. The imposition of these standard guidelines create no presumption as to who shall be awarded custody at any hearing. An agreement by the parties for visitation other than the standard guidelines must be in writing, signed by both parties, and filed with the Court.

If either party objects to this initial custody order, the Court shall order a hearing which shall be held not later than 30 days after the date of the objection. The Court shall then issue its temporary custody and visitation order after considering the best interest of the child(ren) consistent with the provisions of SDCL 25-4-45.

IF EITHER SPOUSE VIOLATES ANY OF THESE PROVISIONS, THAT SPOUSE MAY BE IN CONTEMPT OF COURT.

Dated this _____ day of _____, 20____.

Plaintiff's Signature

Print or Type Name

Street Address

City, State, Zip

Telephone Number