Going Solo: Representing Yourself in the South Dakota Courts

A Guide to Understanding

This information was provided by the South Dakota Unified Judicial System.

Introduction

Some day you may find you need to go to court – to settle a dispute with a business or a neighbor, to get a divorce, or collect child support. Many people hire a lawyer to take their case to court. It's a good idea. A lawyer has training and experience – and knows how the system works. Even if you end up representing yourself in court, it's good to start by talking to a lawyer about your problem. Find out if your case is a simple matter or one that could get complicated. Ask what it would cost to hire a lawyer to handle it for you.

Of course, not everyone can afford a lawyer. And others may decide to take their chances and go at it alone. Going solo in the courthouse can be very scary. Especially if everything you know about the law is from watching television. Going to court isn't as simple as they make it seem on TV. That's why the South Dakota Unified Judicial System has published this brochure for you.

In this booklet you will learn how the South Dakota court system works. You will learn the process – step by step. Take it home and read it. It could save you time and headaches later.

Keep in mind that this guide is meant to give you helpful information, not legal advice. Additional helpful information about the court system and its processes is available on the South Dakota Unified Judicial System's website at http://ujs.sd.gov and at the Frequently Asked Questions sections available at each Circuit's webpage which can also be accessed through a link from the UJS homepage.

The South Dakota
Unified Judicial System

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MAKING THE DECISION

Can I go to court without a lawyer?

Yes. You have the right to represent yourself in state courts. In fact, many people in South Dakota go to court without a **lawyer**. Some people can't afford to hire a lawyer. Others decide that they would rather handle their legal problem on their own.

Should I go to court without a lawyer?

That is your decision to make. This guide was developed by the South Dakota Unified Judicial System to help you make that decision. Some cases are fairly simple and can be handled without a lawyer. Others involve complicated procedures and legal issues that require the experience and training of a lawyer. It is a good idea to talk to a lawyer about your case if possible. Whether you decide to hire a lawyer or go to court on your own, it helps to know how the court system works.

Can I get help with my case if I need it?

"Can I get help with my case if I need it?"

Yes. There is a list of services on pages 10 and 11 of this guide that may help you. You might want to take a moment now, before you begin your case, to find out where you can get information or advice.

What if I need extra help because of a disability or language barrier?

Everyone has a right to come to court and participate in the legal system. This includes people who are disabled, people who are hearing or vision impaired, and people who don't speak English. If you or anyone participating in your case needs special arrangements, first contact the Clerk of Court or Circuit Administrator where you filed the case. They should be able to make proper arrangements for a courtroom that is accessible, a sign language interpreter, or a translator. It is important to contact the Clerk of Court or Circuit Administrator just as soon as possible, so they have time to make the arrangements.

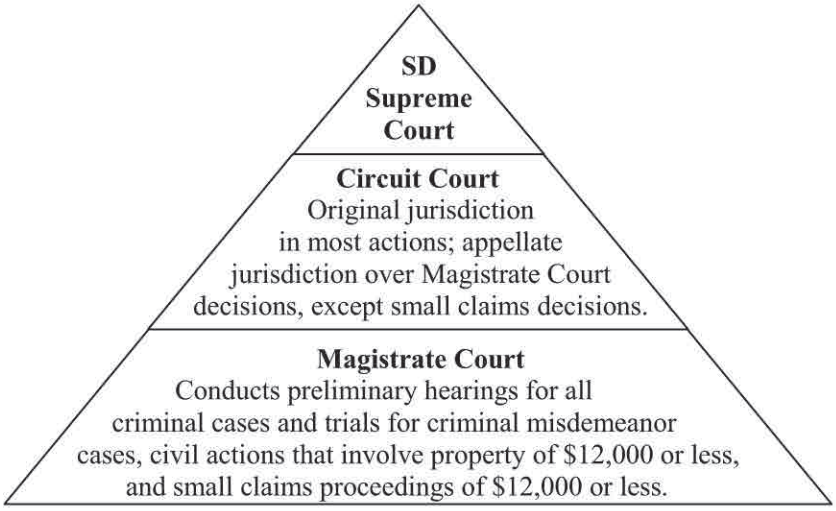
Is there a way to solve my problems without going to court?

It's possible. You may be able to resolve your dispute through **mediation** without filing a lawsuit. Mediation gives people a chance to sit down with a mediator in an informal setting to try and work out their conflicts. The mediator is a trained problem-solver who can help the parties come to an **agreement**. There is a list of court approved mediators on the UJS website at http://ujs.sd.gov.

SOUTH DAKOTA JUDICIAL SYSTEM

How is the court system set up in South Dakota?

The court system is like a pyramid. At the bottom of the pyramid are the **Magistrate Courts**, where misdemeanor criminal cases and small claims court cases are heard. Next in the pyramid are the trial courts called **Circuit Courts**. The highest court in the state is the **South Dakota Supreme Court**. If someone loses a case in the circuit court, they can appeal to the South Dakota Supreme Court.



There are two kinds of legal cases: criminal and civil. A **criminal case** is when the state charges a person with a crime. A **civil case** is when someone sues an individual or a business. There are many kinds of civil cases. Some examples of a civil problem that could end up in court are: a divorce, a dispute with a landlord, a boundary disagreement with a neighbor, or a problem with a store that sold you a faulty product. **This guide covers only civil cases.**

Do I file my case where I live?

It depends. You must decide which county or state is right for your case. This is called finding the right **venue**. The case is usually filed where you live or where the action took place, but not always. Where you file your case could affect the outcome especially in divorce and child custody cases. *See* SDCL ch. 15-5 for statutes on venue of actions.

How do I know which kind of court to go to?

That will depend on the type of case and the amount of money involved. If it is a family law matter, like divorce, child support, or custody, your case belongs in Circuit Court. If it is another kind of civil case, you may go to Magistrate Court if the amount of the money involved does not exceed $12,000. If it is more than $12,000, then you need to go to Circuit Court.

BASIC STEPS IN A LAWSUIT

1. **File the Summons and Complaint**. The person starting the case is called the **Petitioner** or **Plaintiff**. That person files a written statement, called the Complaint, telling the court what the case is about. Then they arrange to have the Summons and Complaint delivered to the other side. This is called "service of process."

2. **File the Answer**. The person being sued is either called the **Defendant** or the **Respondent**. That person files a written response telling their side of the story and delivers a copy to the plaintiff. This is called an **Answer**.

3. **Prepare the case**. Both sides have time to gather evidence to prove their case. **Evidence** could include documents, photographs or the testimony of witnesses.

4. **The judge holds a hearing**. This is when both sides appear before the judge to present their evidence to prove their case.

5. **The judge makes a decision**.

FILING THE SUMMONS AND COMPLAINT

Is there a Summons and Complaint form I can use? You may purchase a packet of divorce forms from the Clerk of Court Office for $10 or you may download the forms for free from the SD UJS's webpage at http://ujs.sd.gov/. Forms for service by mail are available at SDCL 15-6-4(j).

Does it cost to file a lawsuit?

Yes. The court will charge a fee to file your case. *See* SDCL 16-2-29, 16-2-45. There are additional fees for copying and/or certifying copies, or issuing subpoenas. There is also a $10.00 charge for a divorce forms packet if obtained from the Clerk of Court office, or you may download divorce forms from the UJS website for free and print them yourself.

How do I make sure I've done everything right?

Take it one step at a time and don't be afraid to ask for help. The courthouse staff cannot give you legal advice about your specific case, but they will answer your questions about court procedure. If you decide that there is too much at stake or your case is too difficult to handle on your own, you can contact a lawyer at any time during the court process.

The following are two examples of common actions that may come before the court:

- ***Angela*** wanted to get a divorce because her husband left her. She went to the Clerk of Court Office to get a "Divorce Packet" which contains most of the forms she needs to fill out to file for divorce. There is a $10 charge for the divorce packet. The Clerk explained that she needed to read the instructions carefully before starting to fill out the forms. She suggested she practice in pencil before making final copies.

- ***Bob*** was sued by his landlord. The landlord filed a Summons and **Complaint** stating that Bob had not paid his rent. The landlord asked the court to force Bob to move out. Bob received a copy of the Complaint and a **Summons** telling how long he had to respond. Bob went to the Clerk of Court Office and was told that he needed to file an **Answer**. If Bob did not file an answer by the deadline, his landlord could have asked the court to rule against him right away. This is a called a **default judgment**. Bob filed an answer stating "A pipe broke in my basement. The landlord told my wife that we should get a plumber to fix it, pay him and deduct it from the rent, so we did. The plumber cost more than the rent so that's why the landlord didn't get a check from us last month." When the pipe broke in Bob's basement, it also damaged a rug. So, Bob filed a counterclaim to ask the court to order his landlord to pay him for it.

…. is there someone who can help me with the forms?

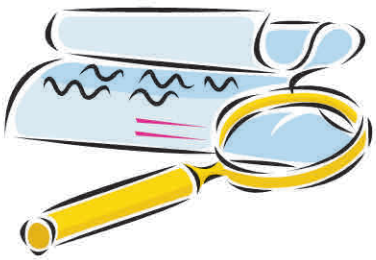
If I have trouble reading, is there someone who can help me with the forms?
Yes, you can ask someone in the Clerk's office to help you or contact your local library. You may also contact the South Dakota Literacy Council at 1-800-484-6690 Code 8585 or (605) 224-8212. You have to tell the person helping you what to write. The person helping you can only write down what **you** say. You can also take the forms home and ask a friend to help you.

How do I notify the other person that I have filed a Summons and Complaint against them? Whenever you file a lawsuit, including a divorce, you have to arrange to have the Summons and Complaint delivered to the other side and provide the court with proof of how, when and where the papers were received. This is called **service of process**. There are several ways that you can legally serve someone. The most common methods are listed below and are addressed in SDCL 15-6-4(a) – (j) and SDCL 15-6-5(a) – (i). *See also* SDCL ch. 15-39 for small claims procedures.

Personal Service: The papers are hand delivered to the defendant or respondent. This is often done by the sheriff's office or, in some larger communities, a private process server. Personal service can also be done by any credible person over the age of eighteen who is not involved in the case. An **Affidavit of Service** form proving that the person received the papers must be filled out and filed at the Clerk's office. See SDCL 15-6-4(g) for proof of service requirements.
Acceptance of Service: If the other side is willing to accept the papers, you can give them a copy, have them sign an Admission of Service form saying that he received them, and file that form with the Clerk.
Service by Publication: This method is used only if the person you're suing lives out of state or you don't know how to locate them. Putting an ad in the newspaper usually does it but it can be a little tricky. Service by publication is explained in greater detail in SDCL 15-9-7 – 15-9-22. A court order is needed before you may serve someone by publication. Proof of such service is described in SDCL 15-6-4(g)(4).

Do I serve the papers the same way when filing an Answer?
You can serve an Answer by mailing it to the person who sued you. You will still need to file an **Affidavit of Mailing Service** with the court showing when and where you sent the papers.

PREPARING FOR THE HEARING



My papers have been filed and served. What do I do to get ready for the hearing? Now is the time to prepare your case. You need to gather the evidence that will help prove your case to the judge. The evidence could be papers, like receipts or bills that you bring to court with you. You could also use witnesses to tell the court what they know about your case. Let's look at how Angela and Bob prepared for their hearing.

Angela received a Divorce Packet from the Clerk of Court. There are specific things that Angela needs to do before the hearing. These are spelled out in the divorce packet and include:

- Filling out a **Financial Affidavit** to help the judge make decisions about dividing property and providing child support and setting alimony. The Court will need copies of financial records, like income tax returns, pay check stubs, monthly bills, deeds to property, bank account statements, and retirement or pension plan statements.
- Filling out a **Stipulation and Settlement Agreement.** This spells out plans to separate assets and debts and the parties' plan to care for the children. It is completed if both parents agree to the terms of the divorce.
- Attending **Parent Education Class**, where required.

Bob needs to figure out what evidence he needs to prove his case. The kinds of things he should consider are:

- The receipt from the plumber or a copy of his cancelled check. The plumber's **testimony** might also be helpful. He could testify that he did the repair and identify the bill.
- **Testimony** from Bob's wife. She can testify that the landlord told her to hire a plumber and deduct the cost from their rent.
- A receipt showing what Bob paid for the rug. If Bob uses receipts or checks as evidence, he should make sure that he has three sets: the original for the court, one copy for the landlord, and one copy to keep for his own records.

If his wife or the plumber is going to testify, Bob needs to write out his questions and go over them with each witness before the hearing. If the plumber does not want to come to court, Bob can get a **subpoena** forcing him to come to court. The Clerk's office can provide Bob with a subpoena form that includes instructions for service. But he should be careful - a witness who doesn't want to testify may hurt his case more than he helps it.

Can I find out what the other side is going to say and bring to the hearing?

It is possible to find out what evidence the other side is going to present through a process called **discovery**. In civil cases, you have the right to get information about witnesses and copies of documents before the hearing. There are complicated rules about what you can get through discovery and strict time limits apply. In South Dakota, discovery rules are generally located at SDCL 15-6-26 through 15-6-37. If you need to use discovery, you may want to talk to a lawyer.

Can I try to settle my case before the hearing?

Absolutely. Many cases settle out of court without a hearing. For example: Bob's case might be just a simple misunderstanding and could be settled with a phone call to his landlord or the landlord's lawyer. He might also want to use a mediator to help Bob and his landlord reach a **settlement** or an **agreement**.

In Angela's case, it will be better for everyone if they can agree on the parenting plan before the hearing. If the parents can't agree on how the children will be cared for, what arrangements will be made for custody and visitation, the Circuit Court Judge may appoint a mediator. *See* SDCL 25-4-56 through 25-4-62. The mediator will sit down with both parents in an informal setting and try to help them resolve some or all of their differences in caring for the children. A list of court approved mediators can be found on the UJS website at http://ujs.sd.gov or you may ask a circuit court administrator for a list in that circuit. These mediators do charge a fee for their services and the parties can agree on how to pay for this service.

THE HEARING

How do I get a hearing? Will the court just schedule one?

Ask the clerk of the court where your case was filed whether you need to request a hearing or whether the court will schedule one on its own. In most Magistrate and small claims court cases, the court will send both sides a **notice of hearing** telling them when and where the hearing will take place. In Circuit Court cases, the hearing will be scheduled only upon request. In that case, it's up to you to contact the Clerk of Court's office to request that a hearing be scheduled. Then, you must send out a notice to the other side telling them the time and date of the hearing.

I've never been to court. What should I expect?

Each court is a little different. Some courts use formal rooms like the ones you see on television. But some hearings may be held in a small room or the judge's office, called the judge's chambers. In general, this is what you can expect to see at your hearing.

Magistrate Court	Circuit Court
• Magistrate Judge or Clerk • May be less formal setting • Court reporter and/or taped recording of proceeding • Clerk of Court, who keeps track of official court file	• Judge in robe on bench • More formal • Court reporter and/or taped recording of proceeding • Clerk of Court, who keeps track of official court file

What will happen at the hearing?

That will also depend on the kind of court and the judge. The chart below describes what you can usually expect to happen in each of these kinds of courtrooms.

Magistrate Court: The judge will probably start off by asking you to tell the court what your case is about. It will also be up to you to question your witnesses and present your evidence. The judge will probably ask questions and each side has the right to question the other's witnesses.
Circuit Court: There are strict rules for presenting evidence and questioning witnesses in Circuit Court. You will be expected to know what those rules are and follow them. The other side may be represented by a lawyer. In cases tried without a jury, the judge decides the case. In cases tried before a jury, the judge rules on what evidence may be considered by jurors in reaching their verdict. The judge also instructs the jury on points of law pertaining to the case.

When will the judge decide my case?

The judge may make a decision at the hearing. But often judges will take additional time to consider the evidence and the law before deciding.

7 Tips

when representing yourself in court

1. Make a good impression.	If you dress nicely, it tells the judge that you respect the courtroom and care about your case.
2. Be respectful.	Be respectful to everyone in court, including the other side – and don't argue with the judge. Try to stay calm.
3. Know what to ask.	You can ask court officials for information about the process and what type of information to put on the forms. But remember, court employees cannot tell you what to write on the forms or what to say at the hearing.
4. Arrive early.	Arrive early. Most judges like to start on time. But some cases take longer than expected, so be prepared to wait.
5. Tell your story.	Tell the judge in a few brief sentences what your case is about and how you plan to prove the facts of your case. Lawyers call this an **opening statement**.
6. Come prepared.	Bring the original document and at least **two copies** of any evidence you plan to present. Write out the questions you plan to ask and go over them with your witnesses before the hearing.
7. Use a lawyer if you need help.	Most important of all, you can use a lawyer if you need help. You may start this case on your own, but later realize that you need the help of an attorney. You can hire an attorney at any time during the court process.

MAKE AN INFORMED CHOICE

The South Dakota Unified Judicial System hopes this guide gives you a better idea of how the court system works. If you ever decide to go to court, you'll know the basic steps. You can decide whether to hire a lawyer or do it on your own. You also understand the risks you are taking if you go to court without a lawyer. Some cases go well with a "do-it-yourself" approach. Some don't. Keep in mind some cases are better left to a trained professional – if you can possibly afford it. Just be smart. Decide what is best for you.

Legal Terms

Affidavit of Indigency – a sworn statement used to determine if someone meets the income guidelines so that they are not required to pay court fees

Agreement – an oral or written promise to do something

Answer – The defendant's written response to allegations in the case

Certificate of Service – Form filed with the Clerk's office stating that the opposing party in a lawsuit received the papers filed in the case

Circuit Court – Original jurisdiction in most actions, appellate jurisdiction over Magistrate Court decisions, except small claims decisions. South Dakota's 66 counties are divided into 7 circuits

Civil Case – an action brought by a person, company, or other entity to protect some right or to help recover money or property from another person or company

Complaint – (civil) written statements by the plaintiff setting forth the claims against the defendant

Counterclaim – a claim filed by the Defendant or Respondent in a legal action

Criminal Case - a criminal lawsuit filed by the State of South Dakota against a defendant for violation of a criminal law

Default – failure to act, appear or perform an act or obligation that is legally required

Default Judgment – when a party who has been sued fails to answer, either the Clerk or the court may enter a judgment by default against that party

Defendant – the person against whom a civil lawsuit is brought. In divorce cases, the person against whom the divorce is being filed

Discovery – a pretrial proceeding where a party to an action may be informed of the facts known by other parties or witnesses

Divorce Packet - a packet of forms and instructions developed by the South Dakota Unified Judicial System to assist persons filing for divorce

Evidence – any presented proof, which may be established by witnesses, testimony, records, documents, etc.

Interrogatory – a written question or set of questions submitted (with the court's permission) by one party to a civil suit to the opposing party on any matter relevant to the case

Lawyer – a person licensed and authorized to practice law, conduct lawsuits, or give legal advice

Magistrate Court – may hear small claims and uncontested civil cases and minor misdemeanor criminal cases

Mediation – a method of solving problems without going to court

Notice of Hearing – an official notice telling the parties when and where a hearing is scheduled

Opening Statement – summary of the case and the evidence that will be presented given at the beginning of the trial

Petitioner – in a civil case, the person or other entity who files a claim against another person; may be called Plaintiff depending on type of action (see Plaintiff)

Plaintiff – in a civil case, the person or other entity who files a claim against another person. In divorces, this is the person who files or starts the divorce

Respondent – the person against whom a civil lawsuit is being brought; may be called Defendant depending on type of action (see Defendant)

Restitution – a payment made by a defendant to a victim for monetary losses suffered by the victim as a result of the defendant's conduct

SDCL - South Dakota Codified Laws - these are the laws of South Dakota. Copies can be found in public libraries or on the web at http://legis.sd.gov/statutes

Service of Process – legal methods of delivering the papers to the other side in a lawsuit and proving to the court (by filing an affidavit of service or a certificate of service) that they were received

Settlement – an oral or written promise to resolve a problem, usually entered into before going to court

Subpoena – a written legal notice requiring a person to appear in court and give testimony or produce documentary evidence

Summons – a writ notifying the person named that an action has been filed against the person

Testimony – a solemn statement made under oath

Venue – The specific county, city or geographical area in which a court has jurisdiction

South Dakota Supreme Court – South Dakota's highest court where five Supreme Court Justices hear appeals of circuit court decisions and interpret the laws and constitutions of South Dakota and the United States

RESOURCES AVAILABLE

For Mediation Services:

A list of court-approved mediators is maintained on the UJS website at http://ujs.sd.gov.

For Parenting Coordinator Services:

A list of approved parenting coordinators is maintained on the UJS website at http://ujs.sd.gov.

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

Contact the USD School of Law Legal Form Help Line Toll Free at 1-855-784-0004.

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.
160 Second St.
P.O. Box 727
Mission, SD 57555

Phone: (605) 856-4444
Toll Free: 1-800-658-2297

Dakota Plains Legal Services
528 Kansas City St.
P.O. Box 1500
Rapid City, SD 57708

Phone: (605) 342-7171

East River Legal Services
335 North Main Ave., Suite 300
Sioux Falls, SD 57102

Phone: (605) 336-9230
Toll Free: 1-800-952-3015

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.
816 6th St.
PO Box 495
Rapid City, SD 57709

Phone: (605) 791-4147
Or Visit: www.helpsouthdakota.com

RESOURCES AVAILABLE (Continued)

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: http://www.sdbar.org/new/public/resources.html. These are private practitioners who will charge for their services.

State Bar of South Dakota
Toll Free: 1-800-952-2333

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

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