

INSTRUCTIONS FOR FILING A PETITION FOR MODIFICATION OF CHILD SUPPORT OBLIGATION

South Dakota allows either the custodial or non-custodial parent to petition for modification of a South Dakota child support order. In limited circumstances, another state's child support order may be modified if registered in South Dakota. Please contact the Division of Child Support or your attorney for more information regarding modification of out-of-state child support orders. **You are the Petitioner and the other parent is the Respondent.**

If the support order was established or last modified: (1) before July 1, 2009; or, (2) more than three years have passed since establishment or modification of the order, you do not have to state any change in circumstances within the petition. If the order was established after July 1, 2009, and is less than three years old, you must state a **substantial** change in circumstances before modification is appropriate.

In any petition for modification, state law provides that the referee and court may consider health insurance coverage, child care expenses, and immediate wage withholding as part of any decision.

Make certain you complete all sections within the petition and financial statement. **The petition must be signed before a notary public. YOU MUST SUBMIT ALL NECESSARY ATTACHMENTS WITH THE PETITION. SEE CHECKLIST ON REVERSE SIDE FOR REQUIRED ATTACHMENTS. FAILURE TO ATTACH THE REQUIRED ATTACHMENTS MAY RESULT IN DELAYS IN THE CHILD SUPPORT ORDER BEING MODIFIED.**

A \$50 filing fee is required to be paid to the Clerk of Courts by the petitioning party. However, the petitioning or moving party is not subject to the \$50 filing fee if he/she is a recipient of assistance benefits pursuant to Title 28 (i.e. Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program, Medicaid, Child Care Assistance, Energy Assistance, etc.). The Petitioner may also file a motion requesting the court to waive the \$50 filing fee by completing and submitting the enclosed Filing Fee Waiver Request form with this petition. If you are not a recipient of Title 28 benefits as indicated above, or if you do not submit the waiver request form, attach a \$50 check or money order payable to the Clerk of Courts. **DO NOT ATTACH CASH.**

Mail your petition, financial statement, and supporting attachments to: **Modification Section, Division of Child Support, 700 Governors Drive, Pierre, SD 57501-2291.** If you have any questions, call the Modification Section at (605)773-4724. A brochure explaining the process is also available at the local office of the Department of Social Services and at the nearest Division of Child Support.

CHECKLIST: THE FOLLOWING MUST BE INCLUDED WITH THE PETITION:

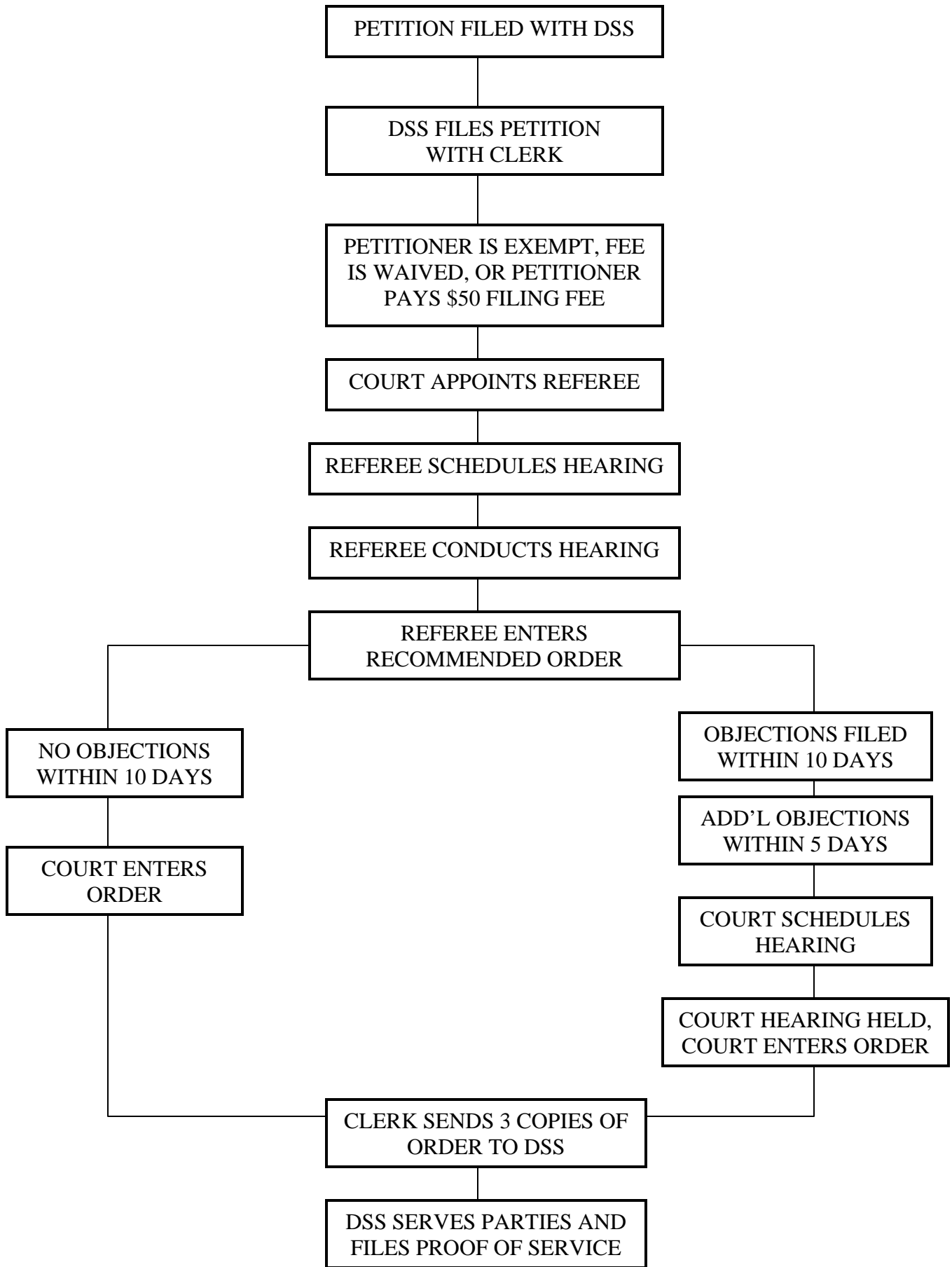
- Both Petitioner and Respondent's name and address.
- Signed and Notarized Petition.
- Signed Financial Statement. (Sign and date the financial statement.)
- Complete copy of your most recent South Dakota Order for Child Support, divorce decree, or judgment, which establishes the support obligation you wish to modify.
- Copy of your most recent pay stubs or other verification of income.
- Your last filed Federal Income Tax Return with all supporting schedules and documents. Include your W-2 if you filed jointly.
- Verification of health insurance coverage for the child(ren), if any. **IF YOU ARE THE PARENT PROVIDING HEALTH INSURANCE COVERAGE, YOU MUST PROVIDE VERIFICATION OF THE COST OF ADDING THE CHILD(REN) TO EXISTING COVERAGE, THE COST OF SELF ONLY COVERAGE AND FAMILY COVERAGE, OR THE COST OF PRIVATE COVERAGE FOR THE CHILD(REN).** Public Health and Title 19 (Medicaid) are not considered adequate coverage.
- Verification of child care expenses for the child(ren), if any, and a copy of your child care assistance certificate if you receive State child care assistance. **IF YOU ARE THE PARENT PAYING FOR CHILD CARE EXPENSES, YOU MUST INCLUDE THE DOCUMENTATION FOR THE COST OF CHILD CARE EXPENSES.**
- A copy of your most recent visitation order, if you are requesting an abatement for visitation or shared parenting cross credit.
- Copy of court order & evidence of payment if claiming deduction for other child support obligations and/or alimony payments.
- A completed UJS/DSS Form 089.
- Completed Filing Fee Waiver Request form, **OR** \$50 check or money order payable to Clerk of Courts.
DO NOT ATTACH CASH.

MODIFICATION OF SUPPORT ORDERS

SDCL 25-7A-22 provides for a process for the custodial parent, non-custodial parent, or an assignee to file a petition to increase or decrease South Dakota support orders based upon a change in circumstances. This process involves the Department of Social Services, referees appointed by the Unified Judicial System, and the Circuit Courts. The steps for the modification process are outlined below.

1. Petition, financial statement, a copy of the court order, and other attachments are filed with the Department of Social Services (DSS).
2. DSS forwards the documents to the clerk of courts in the county where the court order is filed.
3. The Circuit Court judge appoints a referee to conduct a hearing on the petition for modification. **NOTE:** The \$50 filing fee must be made payable to the Clerk of Courts (check or money order only – **DO NOT send cash**) before the Court will appoint a referee to conduct a modification hearing, unless the Petitioner is exempt from, or the court has waived, the filing fee.
4. The referee sends notice to the parties with a scheduled hearing date, and a request for the non-petitioning party to submit financial statement and other information. If the Petitioner does not appear at the hearing, the referee may dismiss the request for modification.
5. The referee conducts a hearing, using the child support guidelines, to determine whether the child support order should be changed. The parties may provide testimony or evidence to the referee for consideration of deviations or other allowable factors.
6. Based upon the findings of the referee, the referee enters a report recommending the amount of the monthly support obligation. This report is filed with the Circuit Court, and a copy is served on the custodial parent, non-custodial parent, and the assignee, if applicable.
7. Any of the parties may file written objections to the referee's report with the Circuit Court within ten (10) days of entry of the referee's report. A transcript of the referee's hearing is generally required. You should contact the referee to order the transcript.
8. If no objections are filed within ten (10) days, the Circuit Court may enter its order. If the Circuit Court modifies the referee's recommended order without a court hearing, either party may file a written objection to that modification with the Circuit Court within ten days of service of the order.
9. If objections are filed within ten (10) days by one of the parties, the other party shall have an additional five (5) days from the date of service of the objections to file additional objections with the court. The Circuit Court then schedules a hearing to consider the objections to the referee's report. After the hearing, the Circuit Court enters an order to adopt the referee's report, modify it, or reject and remand it for further hearing by the referee.
10. After entry of the Circuit Court order, the Department of Social Services serves both parties with a copy of the order by certified mail, and files proof of service with the court.
11. Either party can appeal the Circuit Court order to the South Dakota Supreme Court within thirty (30) days of entry of the circuit court order.

MODIFICATION PROCESS FLOWCHART



DSS-SE-415 (08/2011)
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF CHILD SUPPORT

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

COUNTY OF ORDER _____) _____ JUDICIAL CIRCUIT

_____))

PETITIONER,))

VS))

PETITION FOR
MODIFICATION
OF CHILD SUPPORT

_____))

RESPONDENT,))

INFORMATION ON PETITIONER (Person completing this form):

NAME _____ TELEPHONE # _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Email: _____

LAST KNOWN INFORMATION ON RESPONDENT:

NAME _____ TELEPHONE # _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Email: _____

Petitioner is the (circle one) **parent, guardian, or custodian** of the following child(ren):

_____ and (circle one) **is, was,** or **was not** the spouse of Respondent.

On _____ (date of order), _____ (name of parent) was ordered to pay child support for the above-name child(ren). A copy of the order, judgment, decree or administrative order is attached.

Since the entry of order, judgment, or decree attached hereto, circumstances have substantially changed as follows: You must complete this section if the order for support was entered after July 1, 2009, and is less than three years old. (Please print. Use additional sheets if necessary.)

This petition and accompanying documents will be treated as confidential by the court and will not be available to the public as defined by SDCL 15-15A-2(1)-(3).

In accordance with SDCL 25-7-6.10, I request deviations from the support guidelines for the following reason(s) and will produce evidence at the hearing to prove the claimed deviation(s):

- 1. Income of a new spouse or contributions of a third party.
- 2. Financial condition of either party.
- 3. Education or health care special needs of the children.
- 4. Agreements between parents for extra forms of support.
- 5. Obligation for subsequent children.
- 6. Voluntary and unreasonable act reducing either parent's income.

I also request that the following factors be considered in this modification proceeding:

- 1. Abatement of support for visitation purposes. (SDCL 25-7-6.14) (**Attach copy of visitation order**)
- 2. Cross Credit for shared parental responsibility. (SDCL 25-7-6.27) (**Attach copy of visitation order**)
- 3. Allocation of travel costs for visitation. (SDCL 25-7-6.15) (**Attach verification of costs, if available**)
- 4. Health insurance coverage for the child(ren). (SDCL 25-7-6.16) (**Attach verification of coverage and cost**)
- 5. Child care costs due to employment, job search, training, or education. (SDCL 25-7-6.18) (**Attach verification of costs**)
- 6. Second job income be excluded. (SDCL 25-7-6.22)

Wherefore, Petitioner requests the following relief:

1. Respondent be required to appear and answer in this proceeding;
2. The Court modify the support obligation as determined by the Court after the hearing taking into consideration the deviations and other factors identified in this petition; and
3. The Court grant other relief as deemed just and equitable.

VERIFICATION

STATE OF _____)
) SS
 COUNTY OF _____)

_____, being first duly sworn, on oath, deposes and states that he/she is the Petitioner in the foregoing Petition; he/she has read the Petition and knows the contents thereof; and, the same is true of his/her own knowledge, except to matters which are stated upon information or belief, and as to those matter he/she believes them to be true.

Note: A person who signs this document knowing the information to be false or untrue, in whole or in part, is guilty of perjury – a Class 5 Felony punishable by imprisonment of not more than five years and a fine of not more than \$10,000.

PETITIONER

Subscribed and sworn to before me this _____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

Seal

Attachments:

1. Signed financial statement
2. Latest order, judgment, or decree establishing child support
3. Most recent paycheck stub and most recent federal tax return with supporting schedules
4. Verification of health insurance costs, if any
5. Verification of child care expenses, if any, and a copy of your child care certificate if you receive State child care assistance
6. Most recent visitation order if requesting an abatement of child support or cross credit for shared parental responsibility

INFORMATION REGARDING PARENTS OF CHILD(REN)

The biological / adoptive parents of the child(ren) listed below in this proceeding are:

Father: Name _____
Address (if known) _____
City, State, Zip _____
Phone Number _____

Mother: Name _____
Address (if known) _____
City, State, Zip _____
Phone Number _____

1. Child Name _____
Date of Birth: _____

Is there a current order for child support for this child? Yes No

If there is not a current order for child support, please answer the following:

Was the child born during marriage of the father and mother? Yes No

If yes, date of marriage: _____

If no, was an Acknowledgment of Paternity or Paternity Affidavit signed? Yes (attach affidavit) No

Was genetic testing done showing 99% or higher probability of paternity? Yes (attach report) No

Was paternity established by court order? Yes (attach order) No

2. Child Name _____
Date of Birth: _____

Is there a current order for child support for this child? Yes No

If there is not a current order for child support, please answer the following:

Was the child born during marriage of the father and mother? Yes No

If yes, date of marriage: _____

If no, was an Acknowledgment of Paternity or Paternity Affidavit signed? Yes (attach affidavit) No

Was genetic testing done showing 99% or higher probability of paternity? Yes (attach report) No

Was paternity established by court order? Yes (attach order) No

3. Child Name _____
Date of Birth: _____

Is there a current order for child support for this child? Yes No

If there is not a current order for child support, please answer the following:

Was the child born during marriage of the father and mother? Yes No

If yes, date of marriage: _____

If no, was an Acknowledgment of Paternity or Paternity Affidavit signed? Yes (attach affidavit) No

Was genetic testing done showing 99% or higher probability of paternity? Yes (attach report) No

Was paternity established by court order? Yes (attach order) No

4. Child Name _____
Date of Birth: _____

Is there a current order for child support for this child? Yes No

If there is not a current order for child support, please answer the following:

Was the child born during marriage of the father and mother? Yes No

If yes, date of marriage: _____

If no, was an Acknowledgment of Paternity or Paternity Affidavit signed? Yes (attach affidavit) No

Was genetic testing done showing 99% or higher probability of paternity? Yes (attach report) No

Was paternity established by court order? Yes (attach order) No

DSS-SE-415A (08/2011)

STATE OF SOUTH DAKOTA)
IN THE MATTER OF THE CHILD)
SUPPORT OBLIGATION OF) SS
_____)

FINANCIAL STATEMENT

DCS #: _____

Please answer every question or state not applicable if the question does not pertain to your financial situation. If you need more space to answer a question, please attach additional sheets if necessary to fully answer any item. Be sure to attach a copy of your most recent paycheck stub and your last filed Federal Income Tax Return. Include your W-2 if you file jointly. Be sure to date and sign the financial statement after completion.

PERSONAL INFORMATION

Name: _____ Birthdate: _____
Address: _____ Driver License #: _____
_____ Phone: Home: () _____
Current Marital Status: _____ Work: () _____
Bank Name: _____ Other _____
Address: _____

EMPLOYMENT INFORMATION

Employer: _____ Dates employed: From: _____
Employer Address: _____ To: _____
Employer's Phone #: _____ Occupation: _____
Rate of Pay: \$ _____ per _____ hours worked per week: _____ Tips: \$ _____ per _____

GROSS MONTHLY INCOME

1. \$ _____ Salary, Wages, Tips, Commissions, Bonus or Other Designations
2. \$ _____ Gain or profit from a business or profession (self-employment)
3. \$ _____ Pension, retirement, disability, veterans, social security or insurance payments
4. \$ _____ Interest, dividends, rentals, royalties or other gain
5. \$ _____ Gain from sale, trade or conversion of capital assets
6. \$ _____ Unemployment insurance and workers compensation benefits
7. \$ _____ Benefit in lieu of compensation including, but not limited to, military pay allowances
8. \$ _____ Other income (including Spousal Support received). Explain _____
9. \$ _____ **TOTAL GROSS MONTHLY INCOME** (add lines 1 through 8).

HEALTH INSURANCE INFORMATION

Do you have health care insurance available for dependents? Yes No
If you provide health care insurance (medical, optometric, dental or orthodontic, or counseling costs) for your child(ren) please complete the following:

Name of the Health Care Insurance Company: _____
Address of the Health Care Insurance Company: _____

Policy Number of the policy: _____ Total monthly cost of the insurance: _____

Persons covered under the policy of insurance: _____

If you can identify the exact amount of the premium each month that is solely for the child(ren) in this matter, please specify that amount. \$ _____

Cost of insurance for single (self only) coverage: \$ _____

Please attach to this page verification of health insurance coverage and cost of the health insurance coverage. You must provide verification of the cost of adding the child(ren) to existing coverage, the cost of self only coverage and family coverage, or the cost of private coverage for the child(ren).

CHILD CARE (DAYCARE) COSTS

Child care costs may be considered in computing the monthly child support obligation provided that the costs are incurred as a result of employment of either parent, job search of either parent, or the training or education of either parent necessary to obtain a job or enhance earning potential. Please complete the following for only those children that the support obligation will pertain to and **attach verification of child care expenses**. If this information is not provided, there may be no allocation of child care expenses in computing the support obligation.

Name and address of child care provider: _____

The name of the child(ren) for whom child care is provided: _____

How many hours per week is child care being provided? _____

Cost of Child Care: Monthly: \$_____ Weekly: \$_____ Hourly: \$_____

List the costs, per month, of the child care expenses incurred for the past six months: _____

Do you receive any state assistance for child care? No Yes If yes, attach copy of child care certificate.

Do you claim the Federal Child Care Tax Credit? No Yes

ASSET INFORMATION

List assets, value and location (include vehicles, boats, hunting/fishing gear, sporting goods, real estate, depository accounts (with name, address and account number of each), cash value of insurance policies, jewelry, securities, and any other property of any kind. If any property has a balance owed against it, show full value of property without regard to this balance; list debt/balance separately).

Description & Location of Item	Market Value	Debt/Balance Owed

OTHER INFORMATION

Do you make payments on any other child support orders for children other than those involved in this proceeding? No Yes

If yes, attach a copy of the court order and evidence of payments. If not attached, the referee will not consider.

Do you make payments for spousal support? No Yes

If yes, attach a copy of the court order and evidence of payments. If not attached, the referee will not consider.

Do you make contributions to an IRS qualified retirement plan not exceeding 10% of gross income? No Yes

If yes, attach documentation showing the amount being contributed.

I declare and affirm under the penalties of perjury that the information contained herein has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Note: A person who signs this document knowing the information to be false or untrue, in whole or in part, is guilty of perjury – a Class 5 Felony punishable by imprisonment of not more than five years and a fine of not more than \$10,000.

Signature of person completing this Financial Statement is required.

Signature Date

STATE OF SOUTH DAKOTA COUNTY OF _____ _____ Plaintiff, vs. _____ Defendant	IN CIRCUIT COURT _____ JUDICIAL CIRCUIT CASE FILE NO: _____ APPLICATION FOR WAIVER OF \$50 FILING FEE FOR THE MODIFICATION OF A FINAL CHILD SUPPORT, CHILD CUSTODY, VISITATION, OR SPOUSAL SUPPORT ORDER
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Please fill out application completely and accurately. If you don't, it may be denied.

Petitioners who are of limited income and cannot afford the \$50 filing fee may seek a waiver by making a COMPLETE DISCLOSURE OF ALL INCOME, ASSETS AND LIABILITIES.

I _____ come before the court to make a PETITION to modify an existing child support order; however, I am unable to pay the required \$50 filing fee. Therefore, I respectfully request that the court waive the filing fee for this modification.

The existing child support order was entered into on: Date _____

The existing child support order was last modified on: Date _____

I (DO) (DO NOT) HAVE A LAWYER/ Lawyer's Name: _____

- (1) My address is: _____
- (2) My telephone number is: _____, My date of birth is: ____/____/____
- (3) I am (check one) _____ EMPLOYED _____ UNEMPLOYED _____ SELF EMPLOYED
- (4) (If employed), my **weekly** take home pay is: \$ _____.
- (5) Retirement, disability, or insurance benefits: \$ _____ per _____.
- (6) My total income before deductions for year _____ was: \$ _____
- (7) My total income **after** deductions for year _____ was: \$ _____
- (8) Including myself, I have the following number of dependants: _____.
- (9) The following amounts accurately represent my assets and liabilities:

I. ASSETS (things I own or am buying)

- a. CASH (on hand or in banks).....\$ _____
- b. ACCOUNTS and NOTES RECEIVABLE (IOU's and other money payable to me).....\$ _____
- c. INVESTMENTS (stocks, bonds, savings bonds, etc.).....\$ _____
- d. REAL ESTATE (house, land, tribal lease land, rental property, etc.).....\$ _____
- e. AUTOMOBILE (S) make, model & year:.....\$ _____
- f. HOUSEHOLD GOODS (furniture, appliances, TV, stereo, etc.).....\$ _____
- g. OTHER PERSONAL PROPERTY (tools, sports equipment, etc.).....\$ _____
- h. ANY OTHER ASSETS (anything else I could sell or borrow money on).....\$ _____

II. LIABILITIES (money that I owe)

- a. My regular monthly expenses are: (housing utilities, food, etc.).....\$ _____
- b. LOANS: I owe _____ this amount.....\$ _____
- I owe _____ this amount.....\$ _____
- I owe _____ this amount.....\$ _____

III. ANTICIPATED INCOME (money or property you are expecting)

- a. Total monies or income from the sale of house or land, alimony, gifts inheritance, allotments, Trust funds, lease money, etc.....\$ _____

(10) I affirm the above information is correct and accurate to the best of my knowledge and fully understand any misrepresentation or misleading of fact will subject me to the penalty of perjury.

Note: A person who signs this document knowing the information to be false or untrue, in whole or in part, is guilty of perjury – a Class 5 Felony punishable by imprisonment of not more than five years and a fine of not more than \$10,000.

Dated this ___ day of _____, 20 ____ X _____, Petitioner

_____ APPROVED _____ DENIED

ATTEST:

BY THE COURT:

CLERK OF COURT/DEPUTY
(SEAL)

CIRCUIT COURT JUDGE

**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 remaining copies with the clerk of court's office.

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)).

