

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, 2017; 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, 2017, and is less than three years old, you must state a **substantial** change in circumstances before modification is appropriate. (SDCL 25-7-6.13 and 25-7A-22)

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.**
- **Signatures must be original and cannot be a photo copy.**
- **You must submit all necessary attachments with the Petition. See the Checklist for required attachments. Failure to attach the required attachments or failure to indicate why the attachment is not included will result in the Petition being returned to you.**
- **All pages, including attachments and petition must be printed single sided. If the petition or attachments are printed double sided (front to back), the petition will be returned to you.**
- **Petition and all attachments must be on 8 ½ x 11 size white paper. If on any other size of paper or on colored paper, the petition will be returned to you.**
- **You must use blue or black ink. If you use any other ink color or pencil, the petition will be returned to you.**
- **Please print the information legibly.**

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, Public Welfare and Assistance (i.e. Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program, Medicaid, Child Care Assistance, Energy Assistance, etc.). (SDCL 16-2-29(4)(a)) 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. If you are filing more than one petition, a separate \$50 payment must be attached to each petition. If the payment is made out to an entity other than the Clerk of Court, the petition will be returned to you and will result in a delay in filing.**

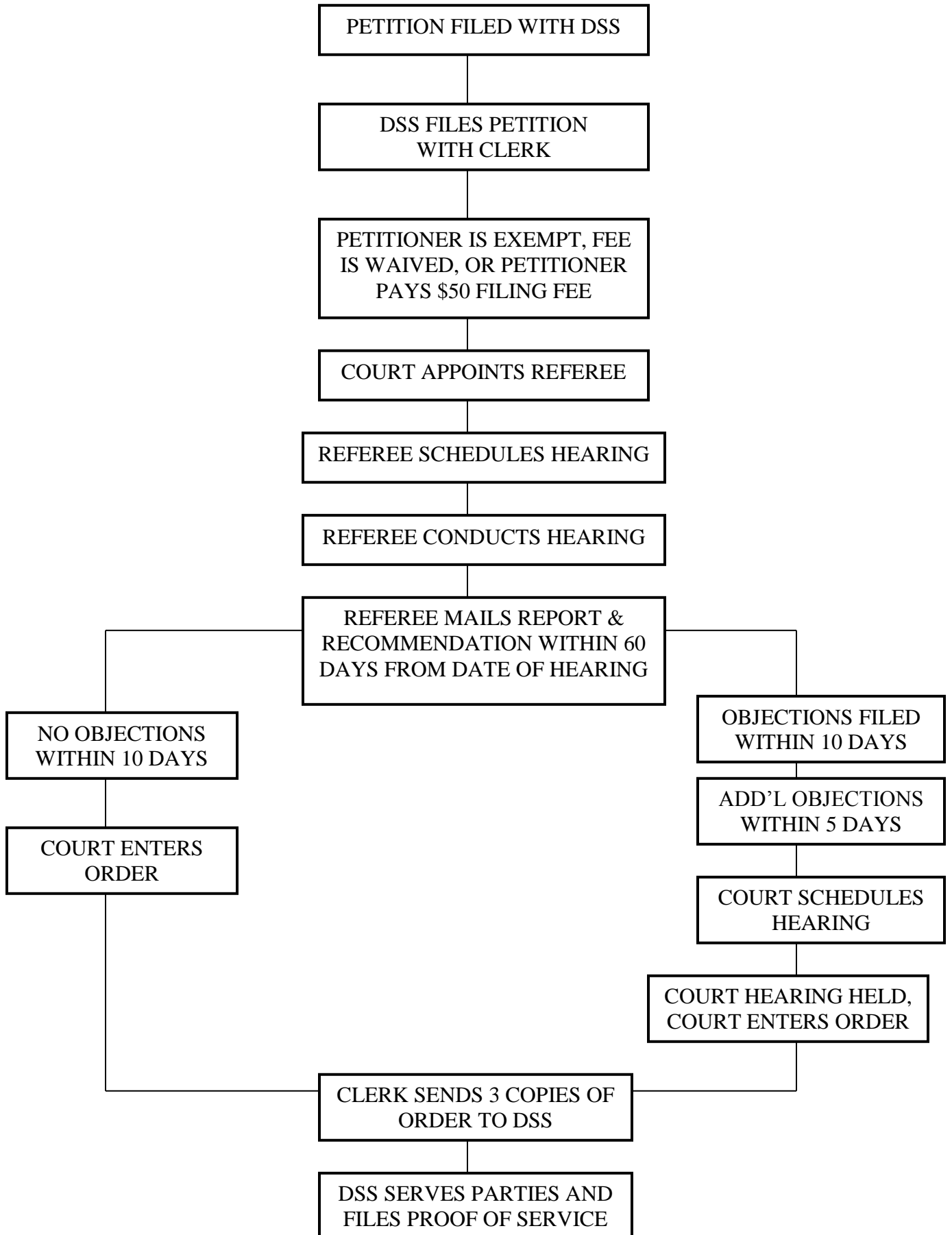
Mail your petition, financial statement, and supporting attachments to: **Modification Section, Division of Child Support, 700 Governors Drive, Pierre, SD 57501-2291.** If you have any questions, call the Modification Section at (605)773-4724. A brochure explaining the process is also available at any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

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. All documents become permanent part of the court file.
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, within 60 days from date of hearing.
7. Any of the parties may file written objections to the referee's report with the Circuit Court within ten (10) days from the date of service (mailing) of the report. A transcript of the referee's hearing is generally required. If a transcript is desired, it **must** be ordered from the referee within ten (10) days of the day the referee mails the report.
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 (07/2017)
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF CHILD SUPPORT

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

COUNTY OF ORDER _____) _____ JUDICIAL CIRCUIT

_____))

PETITIONER,) PETITION FOR

VS) MODIFICATION

) OF CHILD SUPPORT

_____))

RESPONDENT,)

INFORMATION ON PETITIONER (Person completing this form):

NAME _____ TELEPHONE # _____

RESIDENTIAL ADDRESS _____

CITY _____ STATE _____ ZIP _____

COUNTRY _____ EMAIL _____

MAILING ADDRESS (if different than Residential Address): _____

LAST KNOWN INFORMATION ON RESPONDENT:

NAME _____ TELEPHONE # _____

RESIDENTIAL ADDRESS _____

CITY _____ STATE _____ ZIP _____

COUNTRY _____ EMAIL _____

MAILING ADDRESS (if different than Residential Address): _____

Address current as of (month, year): _____

I am the (select one) custodial parent, non-custodial parent, or guardian of the child(ren) involved in this proceeding.

On _____ (date of order), _____ (name of parent) was ordered to pay child support. A copy of the order, judgment, decree or administrative order, including the stipulation and agreement, is attached.

The accompanying financial 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). Please note that the other party to this action is not considered 'the public' and may have access to this information.

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, 2017, and is less than three years old. (Please print. Use additional sheets if necessary.)

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**)

I request 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

Sworn to and subscribed this _____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

Seal

CHECKLIST (This form must be included with Petition)

The following list of attachments **MUST** be attached with the Petition for Modification along with this form. If not attached, the Petition will be returned to you. Petition and all attachments must be on 8 1/2 x 11 size white paper. If on any other size of paper or colored paper, the petition will be returned to you.

1. Signed and Notarized Petition – DSS-SE-415
2. Both Petition and Respondent’s name and address. Please note that if a protection order exists, your address may still be released to the non-petitioning party during modification proceedings. Please include a copy of the protection order, if applicable.
3. Signed and Dated Financial Statement – DSS-SE-415A. Failure to include or sign and date will result in the Petition being returned to you.
4. Complete copy of your most recent South Dakota Order for Child Support; divorce decree, including stipulation and agreement; or judgment, which establishes the support obligation you wish to modify.
5. Information Regarding Parents of Child(ren) form
6. A completed UJS/DSS Form 089.
7. Completed Filing Fee Waiver Request form, **OR \$50 check or money order** payable to Clerk of Courts. **DO NOT ATTACH CASH. If you are filing more than one petition, a separate \$50 payment must be attached to each petition. If the payment is made out to an entity other than the Clerk of Court, the petition will be returned to you and will result in a delay in filing.** If neither a \$50 check or money order or completed Filing Fee Waiver Request are attached, please indicate which Title 28 benefits you are receiving. If you are receiving benefits from a State other than South Dakota, verification must be attached.

<input type="checkbox"/> Temporary Assistance to Needy Families	<input type="checkbox"/> Medicaid
<input type="checkbox"/> Supplemental Nutrition Assistance Program	<input type="checkbox"/> Child Care Assistance
<input type="checkbox"/> Energy Assistance	<input type="checkbox"/> SSI/SSDI
<input type="checkbox"/> Other: _____	

The following list of attachments **MUST** be attached. If not attached, you **MUST** indicate why the attachment is not included. Failure to include or indicate why will result in the Petition being returned to you.

1. Copy of your most recent pay stubs or other verification of income. If you are not submitting this information, please explain why: _____

2. Copy of your last filed Federal Income Tax Return with all supporting schedules and documents. Include your W-2. If you are self-employed, please provide the most recent 3 years of tax returns. If you are not submitting this information, please explain why: _____

3. 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).** Title 19 (Medicaid) is not considered adequate coverage. If you are not submitting this information, please indicate why:
 - I’m not the parent providing health insurance coverage.
 - I’m the parent providing health insurance coverage. Verification is not included because: _____

4. 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.**
- No child care expenses are incurred.
 - Child care expenses are incurred. Verification is not included because: _____
-
5. A copy of your most recent visitation order, if you are requesting an abatement for visitation or shared parenting cross credit.
- There is no court order for visitation.
 - There is a court order for visitation. A copy is not included because: _____
-
6. Copy of court order and evidence of payment if claiming deduction for other child support obligations and/or alimony payments.
- I do not have another child support obligation.
 - I do not have a court order for alimony/spousal support.
 - I do have another child support obligation. A copy of the order is not included because: _____
 - I do have a court order for alimony/spousal support. A copy of the order is not included because: _____
-
7. Is a protection order for domestic violence or any other order that prohibits release of information involving the parties in effect? Yes No Unknown **If yes, please attach a copy of the order.**
8. Do you need interpreter services? Yes No
If yes, specify what type of service you require (language type, sign, etc) _____
-

I certify that the above information is true and accurate to the best of my knowledge.

Signature

Date

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

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 a copy of your last filed Federal Income Tax Return, including a copy of your W-2. Be sure to date and sign the financial statement after completion.

PERSONAL INFORMATION

Name: _____ Birthdate: _____
Address: _____ Phone: Home: () _____
City, State, Zip: _____ Work: () _____
Cell: () _____

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? No Yes
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 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 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

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 INDIGENT WAIVER OF \$50 FILING FEE FOR THE MODIFICATION OF A FINAL CHILD SUPPORT, CHILD CUSTODY, PARENTING TIME, OR SPOUSAL SUPPORT ORDER
--------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I _____ come before the court to make a PETITION to modify an existing 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 order was entered into on: Date _____

The existing 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** deduction 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.

Dated this ____ day of _____, 20__.

X _____, Petitioner

____ APPROVED _____ DENIED

ATTEST:

BY THE COURT:

CLERK OF COURTS/DEPUTY
(SEAL)

CIRCUIT COURT JUDGE

