

# Katie Johnson PLLC

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## **DIVORCE PROCESS – INFORMATION SHEET**

The process for a divorce and custody case is fairly complicated if either party contests an Order or Stipulation and Agreement. The procedure for initiating a divorce case/custody case is as follows:

- Prepare a Summons and Complaint
  - Client (Plaintiff) will sign the Complaint under oath
- File the Summons and Complaint with the Court and obtain a file number
- Send copies of the Summons and Complaint to the local law enforcement officer or a process server for service on the Defendant
- In lieu of service, the Defendant can also sign an Admission of Service which means they are admitting they received copies of the Summons and Complaint.

The Defendant has 30 days to answer the Complaint. If Defendant fails to file and serve an Answer, they will be considered in default.

In divorce cases, after 60 days we would be able to ask the Judge for a default judgment and decree of divorce.

If the person contests the divorce, then we have to set it for a hearing and we can schedule a hearing for a temporary order in the case.

At that hearing we generally ask for a home study to be conducted in the case. The Home study process is completed by a neutral third party who submits a recommendation to the Judge. This party would meet with everyone involved with the child/children to determine what the best interests of the child/children are according to the Fuerstenburg Factors and State Law.

The following are considerations taken into account by the Home Study Investigator when preparing a Home Study:

- Consider the fitness of the parents, both mental and physical health, the capacity and disposition to provide the child/children with protection, food, clothing, medical care and other basic needs, the ability to give the child/children love, affection, guidance, education and to impact the family's religion or creed
- Willingness to maturely encourage and provide frequent and meaningful contact between the child and the other parent,
- The commitment to prepare the child/children for responsible adulthood
- To ensure that the child/children experience a fulfilling childhood and exemplary modeling so that the child/children witnesses first hand what it means to be a good parent, loving spouse, and responsible citizen
- The stability factors in the homes, including the following:
  - The relationship and interaction of the child with the parents, stepparents, siblings and extended families;
  - The child's adjustment to home, school and community
  - The parent with whom the child has formed a closer attachment, as attachment between parent and child is an important developmental phenomena and breaking a healthy attachment can cause detriment; and
  - Continuity, because when a child has been in one custodial setting for a long time pursuant to Court Order or by agreement, a Court ought to be reluctant to make a change if only a theoretical or slight advantage for the child might be gained. Otherwise, the child's sense of sustainment and belonging may be

unnecessarily impaired. In these circumstances, the Court should discern a distinct need to remove a child from one setting and a reason to place the child in a new one.

- Primary Caretaker: Determining which parent invested predominant time, care and consistency in raising the child. It is evidenced in such matters as:
  - Spending time with the child
  - Preparing meals
  - Playing
  - Attending to medical care
  - Choosing clothing
  - Involvement in school
  - Attending the child's extracurricular activities
  - Reading to the child
  - Preparing birthday parties
  - Knowing the pediatrician
  - Consistent disciplining
  - Arranging transportation
  - Providing appropriate clothing
- Child/Children's preference (which is used for older children over 12 years of age generally)
- Harmful parent misconduct (such as abuse or substance abuse)
- Separating siblings
- Substantial change in circumstances

In the event we cannot reach an agreement between the parties, we will set the case for Trial. In Lincoln County, for example, the time frame can be up to two months or more to obtain a trial date once the Court Administrator is contacted to schedule the trial. When an agreement cannot be reached, the resolution isn't a simple and quick process.

If the parties can reach an agreement as far and custody and visitation and in divorce cases, a property and debt division settlement, then we would commence to prepare a Stipulation and Agreement for both party to review, and if agreeable, both parties would sign. The document would then be submitted to the Court for approval.

At this time in Lincoln County all parties involved in custody, visitation and divorce cases where minor children are involved, are required to complete the SMILE Program (Start Making It Livable For Everyone). I have provided information regarding the class offered in Minnehaha County.

Finally, I have attached a copy of the South Dakota Parenting Guidelines for your review.

If you have questions regarding the information contained in this document, please let me know. Thank you.

KATIE JOHNSON, PLLC

*/s/ Katie Johnson*