

INTERIM CUSTODY IN TRIBAL COURT

PURPOSE. This form is to be used when you or the opposing party has filed for either Paternity or Divorce and you feel the child(ren) involved are in danger by the custody of the other party and you want custody of the children until the court decides which party gets permanent custody. Do not use this form unless you or the opposing party has filed for Paternity or Divorce. See these forms if you want to file for Paternity or Divorce.

BURDEN OF PROOF. If you file a Motion for Interim Custody, you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your claim by a preponderance of the evidence. This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). The moving party have the burden of showing the following to the court:

1. That it would be in the child(ren)'s best interest that you be awarded interim (until the court can hear your Paternity or Divorce trial) custody of them. The courts primary concern when awarding custody is the best interest of the child(ren) and not the shortcomings of the parents. What this means is that you and your witnesses need to testify who cares for the child(ren) such as bathing, cleaning for, sheltering, feeding and generally caring for the children. Evidence or testimony of alleged immoral conduct of the opposing party is not relevant unless it has a direct bearing or effects the best interest of the child(ren). For example, if the opposing party abuses alcohol this would not be relevant unless you can show that the opposing party neglected or abused the child(ren) while abusing alcohol.

WHAT HAPPENS IF YOU ARE SERVED WITH A MOTION

If you receive a motion in the mail from the opposing party, the opposing party is requesting the court to grant them interim custody of the children until the court awards permanent custody. The court will typically set the motion for hearing. At the hearing you can contest or fight the opposing party's motion for interim custody. Again, you need to appear at the scheduled hearing and voice your objection. **See the Burden of Proof Section above.** If you fail to appear at the hearing the court may order a bench warrant for your arrest and you may have been deemed to have waived your right to object later. You must appear at the scheduled hearing and show the court why you should be given interim custody of the children and the moving party should not be given interim custody.

Forms:

1. Motion for Interim Custody