

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This packet includes a **Motion for Change of Custody** and is to be used when the court has ordered and awarded child custody to the opposing party and you want the court to change custody to you. For example, if you feel you should now have custody of your children, you can ask the court to modify its order to reflect a change of custody.

FORMS INVOLVED. The form is a **Motion for Change of Custody**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. Remember you need to mail a copy to the opposing party and fill out the certificate of service showing that you did mail a copy of the motion to the opposing party.

BURDEN OF PROOF. If you file a Motion for Change of 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). You as the moving party have the burden of showing the following to the court:

If there was an agreement between the parties, the person seeking modification (the moving party) only has to show the court that modification would be in the best interest of child(ren).

If the issues of custody and visitation were contested and the court made these decisions after a trial then the person seeking modification must show two (2) things in order for the court to modify a custody or visitation order. First, the moving party must show that there has been substantial and material change of circumstances since the order was entered. Second, the moving party must also show that modification would be in the best interest of the child(ren).

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.

A history of denying you visitation may be grounds to modify custody. You should probably file an order to show cause for failure to obey the visitation order form every time you are denied custody so the court has knowledge of this history.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form. You can print this page in its entirety or you can scroll down to the Motion form and if you scroll down farther you will

find the affidavit. There will be a blank screen between these instructions and the forms and between the forms so keep scrolling or just copy this page in its entirety.

Instructions for filling out the motion:

- (1) on this line insert the name of the tribal court. For example, if you are filing this claim on the Rosebud reservation you would insert Rosebud Sioux on this line.
- (2) on this line insert the name of the reservation where the court is located.
- (3) on this line insert the community where the court is located in which you are filing these forms.
- (4) on this line insert the name of the plaintiff from the order you are seeking to modify.
- (5) on this line insert the name of the defendant from the order you are seeking to modify.
- (6) insert your name
- (7) insert the date of the order you want to have modified.
- (8) insert the reasons you want the prior order modified. Look at the burden of proof section above to see whether you need to show a substantial and material change of circumstances or what is in the best interest of the child(ren) or both.
- (9) on this line insert the day.
- (10) on this line insert the month.
- (11) on this line insert the year.
- (12) on this line insert your name by signing.

(1) _____ TRIBAL COURT)
(2) _____ RESERVATION)SS
(3) _____, SOUTH DAKOTA)

IN CIVIL COURT

(4) _____

DOCKET _____

PLAINTIFF(S)

MOTION FOR CHANGE OF
CUSTODY

VS

(5) _____

DEFENDANT(S)

Comes now (6) _____ and moves this Court to modify its order herein as follows:

1. That on (7) _____, this Court entered a child custody order and is contained in the court file herein.

2. That I move this court for a change of custody for the following reasons:

(8) _____

_____.

Wherefore, the undersigned prays this court to issue an order:

- A. Modifying its previous order as prayed for;
- B. Setting this matter for hearing;
- C. For any other relief the court finds just and equitable.

Dated this (9) _____ day of (10) _____, (11) _____.

(12) _____
Plaintiff/Defendant

CERTIFICATE OF SERVICE

I, (6) _____ am the undersigned and certify that I mailed a true and correct copy of this Motion to Modify upon plaintiff/defendant by first class mail at _____ (the other party's address).

Dated this (9) ____ day of (10) _____, (11) _____.

(12) _____
Plaintiff/Defendant