

## **MODIFICATION OR CHANGE OF CHILD CUSTODY ORDERS IN TRIBAL COURT**

This page will explain how to go about moving the court for a modification of a prior existing child custody order to reflect a change of custody. It also explains what to do if you are served with a Motion to Modify.

**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.

### **HOW TO FILE YOUR MOTION**

You must file your motion for change of custody by filing the original with the court and by mailing a copy to the opposing party or their attorney and filling out the Certificate of Service on the form. The clerk will find a hearing date and send notice of hearing to all parties.

**BURDEN OF PROOF.** The moving party has the burden of proving that claim in court. In a typical civil case the moving party has the burden of proving their 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 has the burden of showing the following to the court:

If there was a stipulated agreement between the parties regarding custody, the person seeking modification (the moving party) only has to show the court that the change of custody 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 a change of custody 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.

## **WHAT HAPPENS IF YOU ARE SERVED WITH A MOTION FOR CHANGE OF CUSTODY**

If you receive a motion in the mail from the opposing party, the opposing party is requesting the court to modify a custody order and that the court should change custody. The court will typically set the motion for hearing. At the hearing you can contest or fight the opposing party's motion. Again, you need to appear at the scheduled hearing and voice your objection. 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 can also file an Answering Affidavit in writing. But you still need to appear at the scheduled hearing.

### **Forms:**

- 1. Motion for Modification/Change of Custody**
- 2. Answering Affidavit to Motion for Modification**