

## **INSTRUCTIONS FOR FILLING OUT FORM**

**PURPOSE.** This form is to be used when you have given birth to your child(ren) out of wedlock and you are asking the court to declare the defendant to be the natural and biological father of the child(ren), you are seeking custody and child support from the defendant. If the child(ren) were born when you were legally married and you are still legally married then you need to file for divorce by using the divorce form.

**FORMS INVOLVED.** The first form after the instructions is a **Summons** which may be required. The second form is the **Complaint**. You will need to fill in the necessary information with the help of the instructions below and file the forms with the appropriate court. If you are filing your claim in the Flandreau Santee, Rosebud, or Lower Brule Sioux Tribal Courts or state court you must prepare your own summons and file them both with the clerk of courts. If you are filing your claim in the Oglala, Crow Creek, Cheyenne River, Standing Rock, Yankton, or Sisseton Sioux Tribal Courts skip the summons form and do not fill out because once you file your complaint with the court the clerk will issue a summons to the defendant(s).

**MOTHER'S BURDEN OF PROOF.** If you filed a claim 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 plaintiff have the burden of proving by a preponderance of the evidence the following to the court:

1. That the defendant is the biological and natural father of the child(ren). You will need to testify that at the time of conception of the child(ren) that you were engaged in a sexual relationship with the defendant and that you were not having sexual relationships with anyone else. You can also bring witnesses to testify to this and that you were living with the defendant at the time of conception. Genetic or DNA testing (done by testing the blood of you, the defendant and the children) can conclusively tell if the defendant is the biological father of the child(ren). Such testing cost over \$300.00 and often times is not economically practical. If the defendant has admitted paternity by being named on the child(ren)'s birth certificate or by signing a paternity affidavit then he has the burden of proving he is not the biological father. If the defendant asks for genetic testing he will be responsible for the initial cost of the test. If it shows that the defendant is not the biological father the court may order you to pay for a portion or all of the costs of the testing.

2. That it would be in the child(ren)'s best interest that you be awarded 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.

3. That the defendant should pay child support. This can be proven by testifying that the defendant is gainfully employed or that defendant has no mental or physical disabilities that keep him from becoming gainfully employment. In awarding child support, the court will look at the circumstances of both parties and the children. Be prepared to testify and introduce testimony about your circumstances and any special needs of the child(ren).

**INSTRUCTIONS FOR FILLING OUT THE FORM.** To fill out this form follow these instructions. The number below is the number on the form where the information for that number needs to be inserted. You can print this page in its entirety or you can scroll down to the summons form and then scroll down father to find the complaint. 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 Summons:

**You do not have to use this form and scroll directly down to the complaint instructions if you are filing your action in the Cheyenne River, Oglala, Crow Creek, Standing Rock, Yankton or Sisseton-Wahpeton Sioux Tribal Courts .**

(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 your name.

(5) on this line insert the name of the alleged biological father of the child(ren) involved.

(6) on this line insert the name of the tribe where the court you are filing in is located.

(7) on this line insert your name.

(8) on this line insert your entire mailing address.

(9) if you are filing your complaint in the Cheyenne River Sioux Tribal Court insert “twenty (20)”.

If you are filing your complaint in the Flandreau Santee, Lower Brule or Rosebud Sioux Tribal Courts insert “thirty (30)”.

(10) on this line insert the day.

(11) on this line insert the month.

(12) on this line insert the year.

(13) on this line insert your name by signing.

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

IN CIVIL COURT

(4) \_\_\_\_\_

DOCKET \_\_\_\_\_

PLAINTIFF(S)

VS

SUMMONS

(5) \_\_\_\_\_

DEFENDANT(S)

THE (6) \_\_\_\_\_ TRIBE TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to answer the Complaint of the Plaintiff(s) in the above entitled action, a copy of the Complaint is attached hereto and is hereby served upon you, and to serve a copy of your answer to the Complaint on the Plaintiff, (7) \_\_\_\_\_, at the address of (8) \_\_\_\_\_, within (9) \_\_\_\_\_ (\_\_\_\_) days after service of the Summons upon you; exclusive of the day of such service; and in the case of you failure to Answer the Plaintiff's Complaint within that time, judgment may be rendered against you as requested in the Complaint.

Dated this (10) \_\_\_\_\_ day of (11) \_\_\_\_\_, (12) \_\_\_\_\_.

(13) \_\_\_\_\_  
Plaintiff

Instructions for filling out the Complaint:

- (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 your name.
- (5) on this line insert the name of the alleged biological father of the child(ren) involved.
- (6) on this line insert your name.
- (7) if you are an enrolled member of a federally recognized tribe leave this blank. If you are not enrolled in any tribe insert "not".
- (8) insert the name of your tribe or if you are not enrolled in any tribe please indicate.
- (9) insert "within" if you live on a reservation or insert "outside" if you live outside the reservation where you are filing this complaint.
- (10) insert the name of the reservation you currently reside or leave blank if you do not live on a reservation.
- (11) insert your mailing address.
- (12) if defendant is enrolled in a federally recognized tribe leave this line blank. If defendant is not enrolled in any tribe insert "not".
- (13) insert the name of the defendant's tribe or if defendant is not enrolled in any tribe please indicate.
- (14) insert "within" if defendant lives on a reservation or insert "outside" if defendant lives outside the reservation where you are filing this complaint.
- (15) insert the name of the reservation defendant currently resides or leave blank if defendant does not live on a reservation.
- (16) insert defendant's mailing address if you know what it is otherwise insert "unknown".
- (17) insert each child's name as it appears on their birth record.
- (18) insert each child's correct date of birth (DOB).
- (19) insert the city, county and state where each child was born.
- (20) if defendant has not admitted paternity insert "not" otherwise leave this line blank.
- (21) if defendant is named as the father of the child(ren) on the child(ren)'s birth certificate leave this line blank or if defendant is not named as the father insert "not".
- (22) on this line insert the day.
- (23) on this line insert the month.
- (24) on this line insert the year.
- (25) on this line insert your name by signing.

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

IN CIVIL COURT

(4) \_\_\_\_\_

DOCKET \_\_\_\_\_

PLAINTIFF(S)

COMPLAINT FOR PATERNITY,  
CUSTODY AND CHILD  
SUPPORT

VS

(5) \_\_\_\_\_

DEFENDANT(S)

Comes now (6) \_\_\_\_\_ (“Plaintiff”) and for her complaint against the Defendant, states and alleges as follows:

1. That Plaintiff is (7) \_\_\_\_\_ an enrolled member of (8) \_\_\_\_\_, and is presently residing (9) \_\_\_\_\_ the exterior boundaries of the (10) \_\_\_\_\_. Plaintiff’s address is (11) \_\_\_\_\_.

2. That Defendant is (12) \_\_\_\_\_ an enrolled member of the (13) \_\_\_\_\_, presently residing (14) \_\_\_\_\_ the exterior boundaries of the (15) \_\_\_\_\_. Defendant’s address is (16) \_\_\_\_\_.

3. That Plaintiff gave birth to the following child(ren) out of wedlock:

a. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

b. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

c. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

d. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

e. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

f. (17) \_\_\_\_\_ DOB:(18) \_\_\_\_\_ at(19) \_\_\_\_\_

g. (17)\_\_\_\_\_ DOB:(18)\_\_\_\_\_ at(19)\_\_\_\_\_

h. (17)\_\_\_\_\_ DOB:(18)\_\_\_\_\_ at(19)\_\_\_\_\_

4. That at the time of the conception of said child(ren) the Plaintiff was having sexual relations with the Defendant to the exclusion of all others.

5. That the Defendant is the natural father of said minor child(ren) and has (20)\_\_\_\_\_ admitted paternity and is (21)\_\_\_\_\_ named as the father on the child(ren)'s birth certificate.

6. That Plaintiff is the child(ren)'s primary caretaker and has had the care custody and control of the child(ren), and it is in the child(ren)'s best interest that the care, custody, and control be awarded to Plaintiff.

7. That the Defendant is an able-bodied person capable of paying child support to the Plaintiff in an amount deemed reasonable by the Court.

WHEREFORE, Plaintiff prays that this Court order that

A. This court has jurisdiction over the parties and subject matter herein;

B. The Defendant be declared the natural and biological father of the above named minor child(ren).

C. The Plaintiff be granted custody of the child(ren).

D. The Defendant pay a reasonable amount of child support.

E. That the State(s) of each child's birth amend the birth record of each child to reflect that the defendant is the natural and biological father of the child if does not so reflect.

F. That the Defendant reimburse the Plaintiff for the fees she incurred in this matter.

G. For any other relief the Court deems just and equitable.

Dated this (22)\_\_\_\_\_ day of (23)\_\_\_\_\_, (24)\_\_\_\_\_.

(25)\_\_\_\_\_  
Plaintiff

