

PATERNITY, CUSTODY AND CHILD SUPPORT

This page explains how to establish paternity of children and how to defend against a paternity action. Paternity actions determines who the natural father of children is when the children are born out of wedlock (when the parents are not married). It also involves custody, visitation and child support matters.

If your children where born out of wedlock, meaning they were born when the natural parents were not married, and you want custody and child support, you must file for paternity and ask for custody and child support.

HOW TO START A PATERNITY ACTION IN COURT.

Paternity actions for custody and child support are started in court by filing a Summons and Complaint for Paternity, Custody and Child Support with the clerk of court.

What is a Summons? A summons is a document that is served with the complaint on the opposing party(s). A summons notifies the opposing party that an action in the form of a complaint has been filed against them and that the opposing party must answer in writing to both you and the court that they deny your claims in the complaint. If the opposing party(s) fail to answer or appear you may seek a default judgment.

What is a complaint? A complaint sets out your cause of action or claim against the opposing party(s). A complaint puts the court and the opposing party(s) on notice of what your claim is. If you file a summons and complaint you are called the plaintiff(s). If you receive a summons and complaint you are called the defendant(s).

Filing and service fees. All courts require a filing fee to file your summons and complaint or petition with the court. There is also a fee to have your summons and complaint served on the opposing party(s). All courts require that your summons and complaint be personally served on the opposing party(s) by a process server or law enforcement officer. Check with the court staff of where you will be filing your claim and they can advise of any filing and service fees required and whether they can be waived. They can also advise you on whether you can have someone besides a process server or law enforcement officer personally serve the opposing party.

Jurisdiction. In order for a particular court to hear your claim that court must have jurisdiction. First, the court must have jurisdiction over the people involved, that means the court must have jurisdiction over you and the opposing party(s). Second, the court must have jurisdiction over the subject matter of your claim. This means the court has jurisdiction to hear type of claim you filed such as divorce or paternity. In tribal courts, one of the parties should be a tribal member and there must be a connection between your cause of action and the reservation you are filing your action. If you are filing for divorce you must be a resident of the reservation you are filing and one of the parties to the marriage must be a tribal member.

How to file a summons and complaint. A summons and complaint is filed when you take them to the courthouse and file them along with the filing fee with the clerk of courts. When you file

your complaint or petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

What happens if the opposing party fails to Answer. If the opposing party fails to answer your summons and complaint within a specified time after being served with the summons and complaint, you can ask the court for a default judgment.

BURDEN OF PROOF. If you file a claim for Paternity, Custody and Child Support 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).

FATHER'S BURDEN OF PROOF. If the plaintiff is alleging he is the natural father of the children he has the burden of proving by a preponderance of the evidence the following to the court:

1. That you are 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 the defendant was 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 you are the biological father of the child(ren). Such testing cost over \$300.00 and often times is not economically practical. If you have admitted paternity by being named on the child(ren)'s birth certificate or by signing a paternity affidavit then the defendant has the burden of proving that you are not the biological father. If the defendant asks for genetic testing she will be responsible for the initial cost of the test.
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 has no bearing in awarding custody of children 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 her 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).

MOTHER'S BURDEN OF PROOF. If the plaintiff is the mother of the minor children and alleging that a particular man is the natural father of the children, she has 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 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).

WHAT HAPPENS IF YOU ARE SERVED WITH SUMMONS AND COMPLAINT FOR PATERNITY.

This section explains what to do if you are served with a summons and complaint. If you are served with a Summons and Complaint for Paternity you are being sued for Paternity. As a result you must file an Answer with the court and a copy on the plaintiff within the time period prescribed by law if you want to fight against the claim. If you are served with a summons from the Cheyenne River, Sisseton-Wahpeton or the Standing Rock Sioux Tribal Courts you must answer plaintiff's complaint within 20 days or you are in default. If you are served with a summons from the Oglala, Flandreau Santee, Crow Creek, Yankton, Lower Brule or Rosebud Sioux Tribal Courts you must to file an Answer to plaintiff's summons and complaint within 30 days or you are in default. Read the summons and complaint carefully. The summons will tell you how long you have to file an answer from the date you are served with the summons and complaint. The complaint will tell you what the plaintiff(s) claim is against you.

What is an Answer. An Answer is a pleading where the defendant(s) responds to the plaintiff(s) complaint. You can answer the plaintiff(s) complaint by denying and/or admitting to any parts or all of plaintiff(s) allegations in the complaint. If you have any affirmative defenses to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party cannot complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).

What happens if you fail to Answer plaintiff(s) summons and complaint within time period prescribed by law. If you fail to Answer plaintiff(s) complaint within the time period prescribed by law (either 20 or 30 days of the date of service depending on what jurisdiction you are being sued) you are in default and the plaintiff(s) may seek a default judgment against you. This means that if you fail to answer the plaintiff may be awarded what they ask for in their complaint and you cannot object or present your side of the issue. **Warning.** You must answer plaintiff's complaint within a specified period of time. If you fail to do so a default judgment could be entered against you.

You may also need to file a counterclaim with your answer. A counterclaim is like the plaintiff(s) complaint in that it sets out your cause of action against the plaintiff(s). You must file a counterclaim on any claim you have against the plaintiff(s) if it arises out of the same transaction or occurrence raised in the plaintiff(s) complaint. Failure to do so could result in the court barring your claim. If you have a separate claim against the plaintiff(s) you do not have to counterclaim and can start a new action against the plaintiff(s) by filing your own summons and complaint. If you want custody of the children you must counterclaim for custody and child support.

How to file an Answer and/or Counterclaim . You must file an Answer to plaintiff(s) summons and complaint by filing the original with the court and by mailing a copy to the plaintiff(s) or opposing party or their attorney.

YOUR BURDEN OF PROOF. If you file a counterclaim you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your counterclaim 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 defendant have

the burden of proving by a preponderance of the evidence the following to the court:

FATHER DEFENDANT'S BURDEN OF PROOF. The defendant has the burden of proving by a preponderance of the evidence the following to the court if the defendant counterclaims:

1. You must prove any allegations in your counterclaim.
2. That you are the biological and natural father of the child(ren). More than likely you will not have to prove that you are the natural father since they are being sued for paternity. 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 the defendant was 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 you are the biological father of the child(ren). Such testing cost over \$300.00 and often times is not economically practical. If you have admitted paternity by being named on the child(ren)'s birth certificate or by signing a paternity affidavit then the defendant has the burden of proving that you are not the biological father. If the defendant asks for genetic testing she will be responsible for the initial cost of the test.
3. 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.
4. That the plaintiff or opposing party 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 her 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).

MOTHER DEFENDANT'S BURDEN OF PROOF. You as the defendant has the burden of proving by a preponderance of the evidence the following to the court if the mother counterclaims:

1. You must prove any allegations in your counterclaim. You can look at the Burden of Proof section of the form above.
2. That the plaintiff 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.

3. 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.

4. That the plaintiff or opposing party 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).

Forms:

- 1. Complaint for Paternity, Child Support and Custody (For Mother)**
- 2. Complaint for Paternity, Child Support and Custody (For Alleged Father)**
- 3. Paternity Answer (Denying You Are the Father)**
- 4. Paternity Answer (You Are Denying Plaintiff is the Father)**
- 5. Paternity Answer and Counterclaim (Father Not Denying Paternity and wants to Counterclaim for custody and child support)**
- 6. Paternity Answer and Counterclaim (Mother not Denying Plaintiff is the Father and Wants to Counterclaim for custody and child support)**
- 7. Reply**
- 8. Motion for Interim Custody and Child Support (To be used only if you or the opposing party has filed for Paternity)**
- 9. Motion for Waiver of Filing and Service Fees**