

## **NAME CHANGE OF CHILDREN IN TRIBAL COURT**

This page explains what a name change is and how to go about it. This page includes name changes for minor children.

### **HOW TO FILE A PETITION FOR NAME CHANGE**

A person can petition a court to have the name(s) of their minor child(ren) changed to another name. A person can request a change of their or their child(ren)'s first, middle or last name.

**What is a petition.** A petition is a document similar to a complaint except it does not require an answer from the respondent. It is a document where the petitioner formally requesting the court to order something and sets out the petitioner's version of the facts.

**How to file a petition.** A petition is filed when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When you file your petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

**Filing and service fees.** The court will require payment of a filing fee unless waived to file your petition with the court. Use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee.

Once you file your petition for name change the court clerk will schedule a hearing on your petition for name change . Notices will be sent to all interested persons (next of kin) of the adult or minor children. The court may require that you publish the notice of hearing in the Todd Country Tribune for 4 consecutive weeks before the hearing at your own expense (the newspaper will charge you for publishing the notice of hearing). You will need to bring an affidavit of publication to the hearing to prove to the court that notice of hearing was in fact published in the newspaper. You must get the affidavit of publication from the newspaper.

**Jurisdiction.** Petitioner must show the court that it has jurisdiction over the child(ren) the petitioner is seeking to change the name of. The child(ren) and the parent(s) of the child(ren) should have resided on the on Rosebud Sioux Tribal land for more than the past six (6) continuous months. If the child(ren) is a member or eligible for membership of the tribe where petitioner is filing the name change, the court will find that it has jurisdiction. If one or both parents are members of the tribe, the court will probably find that it has jurisdiction.

### **NAME CHANGE HEARING**

Any interested party (next of kin) may appear after receiving notice. An interested party may object to the name change. Any interested party can present evidence at the trial regarding their objection.

**BURDEN OF PROOF.** If a party files a Petition for Name Change of Minor Children, they have the burden of proving that claim in court. In a typical civil case a party has the burden of

proving their claim by a **preponderance of the evidence**. 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 court may require that a party prove their Petition by clear and convincing evidence (evidence that is both clear and convincing to the court). 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. The petitioner has the burden of proving by a preponderance of the evidence the following to the court:

1. Petitioner must also show the court that their request for name change for the child(ren) is for a legitimate purpose. This means that petitioner cannot change their child(ren)'s name for any illegal or fraudulent reasons. If petitioner is seeking to change their child(ren)'s name to avoid child support or visitation or custody or to only alienate the child(ren) from their other parent or the other parent's family the court will not grant their request for a name change. If petitioner is seeking to change their child(ren)'s name to their grandfather's name, for example, to honor your grandfather's memory or wishes, the court may grant your request.

2. If the other natural parent consents to the child(ren)'s name change or fails to appear at the hearing, the court will more than likely grant your child(ren)'s name change unless the court finds that the request is for an illegal or fraudulent purpose or it is intended to alienate the child(ren) from their other parent or the other parent's family.

3. If either natural parent appears at the hearing and object to the child(ren)'s name change, the court will look at a list of factors in determining whether to change the child(ren)'s name. These factors would include (1) misconduct by the other parent; (2) failure of the other parent to support the child; (3) failure of the other parent to maintain contact with the child; (4) the length of time the child(ren) has used the name you want changed; (5) whether the last name you want changed is different from the non-custodial parent; and (6) whether a particular name will contribute to the estrangement of the child(ren) from the non-custodial parent who wants to foster and preserve the parental relationship (meaning that by changing the name of the child(ren) would distance the child from the non-custodial parent). The court will also look to any traditional practices of your tribe in the naming of children and any other factors you can present to the court.

## **WHAT DO I DO WHEN I GO TO COURT FOR A HEARING ON YOUR PETITION**

The party bringing a petition for name change of minor children has the burden of proving their petition by a preponderance of the evidence. The petitioner (the party who brought the petition before the court) presents their evidence first and then any interested party who objects to the petition presents their evidence to the court.

**How to present your Evidence to the Court.** There are several ways of presenting your evidence and case in court. The best way is through live testimony of witnesses. This would include you (you need to testify to your claim) and any other person who has personal and relevant knowledge of the facts of your claim. It is your responsibility to get your witnesses to court and to ask them questions about their knowledge of the facts. In order to compel or force

your witnesses to testify at your trial or hearing you may need to subpoena each of your witnesses well before the trial or hearing or hearing date (Use the **Motion to Subpoena Witnesses** form to request the court to issue a subpoena to compel a witness to appear at your trial or hearing if they won't voluntarily appear). You can also subpoena a person or witnesses to bring evidence such as documents to your hearing or trial (Use the **Motion to Subpoena a Person to Bring Evidence to Court** form to request the court to issue a subpoena to compel a person to appear at your trial or hearing and bring specified evidence with them if they won't voluntarily appear). Once you and your witnesses testify the opposing party can cross examine you and your witness. This means that they can ask you and your witnesses questions.

It will be your responsibility to directly ask questions (direct examination) of your witnesses and to get your evidence introduced into the record. You can only ask questions during direct examination. Do not attempt to make statements or comments when you ask questioning witnesses. Your witnesses should be asked who they are, what they know and how they know it or anything they might have observed. Like cross examination you should prepare your questions for each of your witnesses well before the trial and take notes of any strong points testified to that you can use in your closing arguments to the Court.

It will also be your responsibility to get objects and other physical evidence, such as documents, introduced into the record. You do this by laying the foundation for the admissibility of the evidence by questioning the person you subpoenaed to bring the objects or pieces of evidence you want introduced into evidence. Ask the Court to mark the evidence as an Exhibit. Then you must ask this person who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession and if the evidence are documents then you must ask if the documents are kept in the ordinary course of business. Then you must ask the Court to have the evidence introduced and accepted as evidence. Only evidence accepted by the Court after it is ruled admissible will be seen or considered by the Court.

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You must cross examine any interested party or their witnesses to cast doubt on the interested party's objections. Cross examination is your chance to ask questions of the interested party's witnesses. You can only ask questions of the interested party or their witnesses during cross examination. Do not attempt to make statements or to testify during cross examination of another witness, the Court will shut you off from doing so.

**Be courteous in Court.** When you go to court the judge will control the proceedings. The petitioner presents their case first. Then the any interested party may object and can present their side of the case. Do not interrupt the other side when they are testifying unless you have an objection. Both sides will have an opportunity to cross examine the other party and their witnesses. Be courteous to the other side. If you disrupt the proceedings the judge could hold you in contempt and throw you in jail.

## **WHAT DO I DO AFTER THE NAME CHANGE**

If the petition is granted and a name change is ordered, the Petitioner will need to obtain a two (2) certified copy of the court order. Keep one copy for your records and mail a copy to the office of Vital Records in the state where the child was born to have your birth record amended to reflect the name change. The state may require a fee to amend your birth record.

If the child's original birth certificate is from South Dakota (if you were born in South Dakota), you will need to submit a certified copy of the Order for Name Change along with \$8.00 for each birth record of each child over the age one (1) years old you need amended by check or money order payable to the Department of Health, Office of Vital Records, to the following address:

Office of Vital Records  
South Dakota Department of Health  
207 E. Missouri Ave., Suite 1A  
Pierre, SD 57501

If any of the children were born in a different state, you need to contact the vital records office of that state to determine the process and applicable fee to amend your birth certificate.

Once you receive the amended birth record you will need to take further steps to change each child's name on official documents. An Order granting a Name Change will not automatically change a name on other official documents. You will need to take additional steps to change the name on each child's birth certificate upon receipt of the Order granting your name change. Further, extra steps will need to be taken to change the child(ren)'s name on their Social Security Card, Driver's License, Tribal Enrollment, etc.