

PROTECTION ORDERS PRO SE GUIDE

This page explains what a protection order is, how to start an action for Protection Order and how to prove your case in court. Please review Title 2, Chapter 3 of the Rosebud Sioux Tribe Law and Order Code.

PURPOSE. The form in this packet is to be used when you have been physically abused by a household member, spouse or former spouse. If you were abused or threatened by someone other than a household member, spouse or former spouse please use the Restraining Order form.

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 and Civil Cover Sheet-Contact Information 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.

The court may or may not grant you an **ex parte protection order** (an order issued without a hearing or notice to the respondent) depending on the circumstances. If the court grants you an ex parte protection order the opposing party can not have any contact or abuse you once the opposing party is served with the order and remains in effect up to the hearing date on your petition.

Filing and service fees. The court will require payment of a filing fee unless waived to file your petition with the court. There is also a fee to have your petition served on the respondent. It is required by law that your petition be personally served on the respondent. This can be by the Court Process Server which will incur a service fee to have them serve your papers. You can file a motion to waive the filing and service fees if you can show you are indigent or don't have the resources to pay the fees. Use the **Motion to Waive Filing and Service Fees** form to ask the court to waive those costs or for a partial waiver. You can also have a tribal member over the age of 18 and not a party to the action serve the respondent with the petition and they may do it free. If you go this route, have the person who serves the court papers on the defendant complete the **Affidavit of Service** form and you must file the affidavit with the court as proof the respondent was served.

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.

HEARING ON THE PROTECTION ORDER

Once the judge reads your Petition and finds grounds for an ex parte protection order the court will issue a show cause order requiring Respondent to appear and show cause why the ex parte protection order should not be extended to a more permanent protection order.

BURDEN OF PROOF. If you file for Protection Order, 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 yourself 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 petitioner have the burden of proving by a preponderance of the evidence the following to the court:

1. That you and Respondent are or were "family or household members". Tribal law defines household member as spouses, persons related by blood or marriage, and other persons jointly residing in the same dwelling unit who are eighteen (18) years of age or older. This would include two people living together in a domestic or sexual relationship.
2. That Respondent abused you. Tribal law defines abuse as inflicting or attempting to inflict physical injury to another. You will want to show the court how you were abused and any injuries occurred as a result. This would include Respondent hitting, pushing, slapping, biting, scratching, or choking you or attempting to do these things to you. You will want to show the court all past incidents of abuse to show a pattern of abusive behavior by Respondent.
3. That it would be in the child(ren)'s best interest that you be awarded custody of them during the duration of any protection order the court may issue. The court's primary concern when awarding custody is the best interest of the child(ren) and not the shortcomings of the parents unless those shortcomings reflect on a party's ability to care for the child(ren). What this means is that the Petitioner and their witnesses need to testify who cares for the child(ren) such as taking them to medical appointments, dealing with their education needs, bathing them, sheltering them, feeding them and generally caring for the children.

If you feel that the child(ren) would be in danger by being in the other party's care you need witnesses and evidence to prove those allegations. 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 Respondent should pay child support. This can be proven by testifying that the Respondent is gainfully employed or that Respondent 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).

5. That Respondent should be evicted from the home or in the alternative, that Respondent should provide you and the children alternative housing. You will also want the court to know of any personal property that needs to be removed by you or Respondent from the home under the supervision of a law enforcement officer.

Once the judge reads your Petition and finds grounds for an ex parte protection order the court the court will issue a show cause order requiring Respondent to appear and show cause why the ex parte protection order should not be extended to a more permanent protection order. There may be a service fee to have the other party personally served with the order to show cause. Check with Tribal Court Clerk.

WHAT DO I DO WHEN I GO TO COURT FOR A TRIAL

The party bringing a petition to the court has the burden of proving their petition by a preponderance of the evidence. The petitioner (the party who brings the petition to the court) presents their evidence first and then respondent 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 petition or objection) and any other person who has personal and relevant knowledge of the facts of your petition or 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.

You must cross examine the opposing party's witnesses to cast doubt on the opposing party's claims, counterclaims or defenses. Cross examination is your chance to ask questions of the opposing party's witnesses. You can only ask questions of the opposing party's 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 respondent presents 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.