

## GETTING FOREIGN ORDERS RECOGNIZED IN YOUR TRIBAL COURT

**PURPOSE.** This form is to be used when you have received an order from another jurisdiction such as state court or another tribal court and you want that order recognized and enforced in Rosebud Sioux Tribal Court. Please review Title Four Chapter Two Section 9 (4-2-9) of the Rosebud Sioux Tribe Law and Order Code.

**FORMS INVOLVED.** The form is a Petition to Recognize Foreign Judgment. You will need to fill in the necessary information with help from the instructions below, attach a certified copy of the Foreign Order you want recognized to the Petition and then file the forms with the Rosebud Sioux Tribal clerk courts.

You can obtain a certified copy of the foreign order by contacting the clerk of courts of the court that issued the foreign order. There may be a small fee. Make sure that it is a certified copy of the order. Merely attaching a copy to the Petition will not work. Make sure that it is a certified copy.

**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.

You must attach a certified copy of the Foreign Order you want recognized to the 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 Rosebud Sioux Tribal Court to hear your claim the court must have jurisdiction. First, the court must have jurisdiction over the party you seeking to have the order recognized and enforced against. This means the opposing party must reside on the reservation and be a tribal member.

**BURDEN OF PROOF.** If a party files a Petition to Recognize a Foreign Judgment 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 have the burden of proving by a preponderance of the evidence the following to the court:

1. That there is an existing foreign court order either from a state court or another tribal court. You must get a certified copy of the foreign order. This means that the copy you attach to the Petition must be stamped and certified by the clerk of court from the court where the order was issued. Do not attach a copy of the order that merely has a copy of the clerk's certification. This will prove to the court where you are seeking recognition that the order is real and not a fake.
2. That the order was obtained fairly and with the requisites of due process. This means the opposing partying was served with notice and had an opportunity to be heard on the matter. The foreign order that you attach to the petition will state that the issuing court had jurisdiction, whether the opposing party was served with notice of hearing and whether the opposing party did in fact appear at the hearing and was heard before the foreign court issued the order. If you can afford it, you can order a transcript of the hearing from the foreign court who entered the order you want recognized.
3. If the foreign court did not have jurisdiction over the opposing party or the matter before the court or if the opposing party was not given proper notice the court probably will not recognize the order.
4. That the foreign was not obtained by fraud.
5. Whether a court will recognize a foreign order may also depend on the type of order you are seeking to have recognized. The court may recognize a foreign court's order or judgment in any child custody or domestic relations case, in any case where the jurisdiction issuing the order/judgment also grants comity to orders/judgments of the RST courts, in other cases if exceptional circumstances warrant it and any order authorized to be recognized pursuant 25 U.S.C. 1911 or 25 U.S.C. 1919. The court will be more willing to recognize a foreign order dealing with domestic relations, such as custody or child support, than a money judgment so long as all the requisites of due process described above have been adhered to.

## **HOW TO DEFEND AGAINST A PETITION TO RECOGNIZE FOREIGN ORDER**

If you are served with a Notice of Hearing or a Petition for Recognition of Foreign Order either through the mail, notice in the newspaper or by a process server, you do not have to file an answer or counterclaim. But if you object to the petition you need to appear at the scheduled hearing and voice your objection. If you fail to do so you waive your right to object later. You

can also file an objection in writing. But you still should appear at the scheduled hearing.

What are your objections? You can object to recognition if the foreign order was not obtained fairly or with the requisites of due process. This means that you did not receive notice of the hearing when the order was issued or that the court issuing the order did not have jurisdiction over you or the matter contained in the order. You may also be to argue to the court that even if the court had jurisdiction and you were given notice, that it would be bad public policy for your tribe to recognize the foreign order. Refer to the party attempting to recognize the foreign order's burden of proof above.

## **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.