

SMALL CLAIMS PROCEDURE IN TRIBAL COURT

What is Small Claims Court. Please review Title 8 Chapter 9 of the Rosebud Sioux Tribe Law and Order Code. Small Claims is heard in civil court. Small Claims allows litigants to resolve a claim for money damages of \$2,000 or less. It provides the parties with an informal, fast, efficient and economical way to resolve the claim. Small Claims is more informal, less time consuming and less costly than civil suit that could take many months, if not longer, to resolve.

However there is jurisdictional limitations to filing a Small Claim. The claim cannot exceed \$2,000 in damages or debt owed. And the claim can only involve a contract or tort violation. A contract entails a promise to do something for a promise. This would include any money owed for a bad debt or for a bad check. A tort is when a the defendant's actions cause injury or harm to the plaintiff. It would include damage to property or person of \$2,000 or less. For example, money damages caused by negligence in an automobile accident or money damages from an assault.

How to Start a Small Claims Action. A small claims action is started when the plaintiff files a Plaintiff's Statement of Small Claims. Use the **Plaintiff's Statement of Small Claims** form to file a small claims action. You must file the Plaintiff's Statement of Small Claims with the civil clerk of courts and pay the necessary filing fee before the claim is officially filed with the court. The clerk will have the court process server serve a copy of the Plaintiff's Statement of Small Claims and a notice of hearing on the defendant. There will be a filing service fee incurred unless waived.

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 defendant. It is required by law that your Statement of Claim be personally served on the defendant. 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 defendant 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 defendant 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. 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.

Service on the Defendant. If the plaintiff files a small claims action the defendant will be served with the Plaintiff's Statement of Small Claims and a notice of hearing. The defendant does not file an answer as is required in a non-small claims suit in civil court. But if the

defendant has an setoff or counterclaim against the plaintiff the defendant will need to file a Defendant's Setoff or Counterclaim with the court.

Defendant's Setoff or Counterclaim. If you have been served with a Plaintiff's Statement of Small Claims and you have a setoff or counterclaim in the matter you must file with the court a setoff or counterclaim within 30 days of being served with the Plaintiff's Statement of Small Claims. Failure to do so could result in you not being able to raise a setoff or counterclaim at the trial. A setoff is an admission that you owe the plaintiff money but that the defendant also owes you money you want subtracted from what you owe. A counterclaim is like the plaintiff's statement of small claims in that it sets out defendant's claim for money damages against the plaintiff. The court clerk will have the Defendant's Setoff or Counterclaim served on the plaintiff.

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

The party bringing any claim, setoff or counterclaim has the burden of proving their claim or counterclaim 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 plaintiff will have prove their claim for damages by a preponderance of the evidence and the defendant will have to prove any setoff or counterclaim they have pleaded by a preponderance of the evidence. This means the plaintiff will have to prove they were damaged or were owed money and the plaintiff will have to prove the specific dollar amount of damages they have suffered. The defendant will have to prove any setoff or counterclaim and the specific dollar amount they are seeking as damages.

The plaintiff (the party who brings the first claim to court) presents their evidence first and then the defendant 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.

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 plaintiff presents their case first. Then the defendant 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.