

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This packet is to be used when the court has ordered and awarded child custody and you want the court to change custody from the opposing party to you.

FORMS INVOLVED. The form in this packet is a **Motion for Change of Custody**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. Remember you need to mail a copy to the opposing party and fill out the certificate of service showing that you did mail a copy of the motion to the opposing party.

How to file a Motion for Change of Custody. You must file your Motion for Change of Custody by filing the original with the court and by mailing a copy to the opposing party if they are not represented by legal counsel or to their attorney if the opposing party is represented. The clerk will find a hearing date and send notice of hearing to all parties.

BURDEN OF PROOF. If you file a Motion for Modification, 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). You as the moving party have the burden of showing the following to the court:

If there was an agreement between the parties on custody, the person seeking modification (the moving party) only has to show the court that modification would be in the best interest of child(ren).

If the issues of custody and visitation were contested and the court made these decisions after a trial then the person seeking modification must show two (2) things in order for the court to modify a custody or visitation order. First, the moving party must show that there has been substantial and material change of circumstances since the order was entered. Second, the moving party must also show that modification would be in the best interest of the child(ren).

That it would be in the child(ren)'s best interest that you be awarded custody of them. 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 plaintiff 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.

A history of denying you visitation may be grounds to modify custody. You should probably file an order to show cause for failure to obey the visitation order form every time you are denied custody so the court has knowledge of this history.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert the name of the plaintiff from the order you are seeking to modify.
- (2) on this line insert the name of the defendant from the order you are seeking to modify.
- (3) insert your name
- (4) insert the date of the order you want to have modified.
- (5) insert the reasons you want the prior order modified. Look at the burden of proof section above to see whether you need to show a substantial and material change of circumstances or what is in the best interest of the child(ren) or both.
- (6) on this line insert the day.
- (7) on this line insert the month.
- (8) on this line insert the year.
- (9) on this line insert your name by signing.
- (10) on this line insert where you mailed your motion for change of custody. It will be either the opposing party if they are not representing by legal counsel or to their attorney if the opposing party is represented.

**ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD, SOUTH DAKOTA)**

IN CIVIL COURT

(1) _____

DOCKET _____

PLAINTIFF(S)

MOTION FOR CHANGE
OF CUSTODY

VS

(2) _____

DEFENDANT(S)

Comes now (3) _____ and moves this Court to modify its custody order herein as follows:

1. That on (4) _____, this Court entered an order of child custody and is contained in the court file herein.

2. That I move this court to modify its custody order and to grant me custody of the children for the following reasons:

(5) _____

_____.

3. That the opposing party is an able-bodied person capable of paying child support in an amount deemed reasonable by the Court.

Wherefore, the undersigned prays this court to issue an order:

A. Modifying its previous custody order to grant me physical and legal custody of the children as prayed for;

B. Requiring the opposing party pay a reasonable amount of child support to be determined by the Court.

C. Setting this matter for hearing;

D. For any other relief the court finds just and equitable.

Dated this (6)_____ day of (7)_____, (8)_____.

(9)_____
 Plaintiff/Defendant

CERTIFICATE OF SERVICE

Te undersigned certifies that I mailed a true and correct copy of this Motion for Change of Custody upon the opposing party or their attorney by first class mail at (10)_____

Dated this (6)_____ day of (7)_____, (8)_____.

(9)_____
 Plaintiff/Defendant