

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form 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.

**FORMS INVOLVED.** The first form is a **Civil Court Filing Statement-Contact Information** you need to fill out (there are no instructions for this form as it is self-explanatory). The second form is a **Petition for Orders of Protection**. You will need to fill in the necessary information with the help of the instructions below and file the forms with the clerk of the RST Tribal Court.

**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.

**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 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 petitioner/Petitioner have the burden of proving by a preponderance of the evidence the following to the court:

1. That you and Respondent 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 that may be issued by the court. 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.



**CIVIL COURT FILING STATEMENT-CONTACT INFORMATION**

**PLAINTIFF/PETITIONER:**

**A. Full Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
**Physical Address or Direction to Residence:** \_\_\_\_\_

**Contact Numbers:**

**Cell:** \_\_\_\_\_ **Home:** \_\_\_\_\_ **Work:** \_\_\_\_\_

**Employed? Yes No Place of Employment:** \_\_\_\_\_

**DEFENDANT/RESPONDENT:**

**A. Full Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
**Physical Address or Direction to Residence:** \_\_\_\_\_

**Contact Numbers:**

**Cell:** \_\_\_\_\_ **Home:** \_\_\_\_\_ **Work:** \_\_\_\_\_

**Employed? Yes No Place of Employment:** \_\_\_\_\_

**Age:** \_\_\_\_\_ **Height:** \_\_\_\_\_ **Weight:** \_\_\_\_\_ **Color of Hair:** \_\_\_\_\_

**Length:** \_\_\_\_\_

**Type/Location/Color/Description of Residence:** \_\_\_\_\_

**Make/Model/Color Year of Vehicle:** \_\_\_\_\_

**Other Description or Information that can Aid in Serving Papers on the Defendant:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Instructions for filling out the petition:

- (1) on this line insert your name.
- (2) on this line insert the name of the person you are seeking a protection order against.
- (3) on this line insert your name.
- (4) if you are an enrolled member of a federally recognized tribe leave this blank. If you are not enrolled in any tribe insert “not”.
- (5) insert “within” if you live on a reservation or insert “outside” if you live outside the reservation where you are filing this complaint.
- (6) insert the name of the reservation you currently reside or leave blank if you do not live on a reservation.
- (7) insert your mailing address.
- (8) if Respondent is enrolled in a federally recognized tribe leave this line blank. If Respondent is not enrolled in any tribe insert “not”.
- (9) insert the name of the Respondent’s tribe or if Respondent is not enrolled in any tribe please indicate.
- (10) insert “within” if Respondent lives on a reservation or insert “outside” if Respondent lives outside the reservation where you are filing this complaint.
- (11) insert the name of the reservation Respondent currently resides or leave blank if Respondent does not live on a reservation.
- (12) insert Respondent’s mailing address if you know what it is otherwise insert “unknown”.
- (13) insert your relationship to Respondent. If related explain how. If you are or were married to Respondent explain it. If you and Respondent lived together in the same house in a domestic lifestyle explain it. See burden of proof section above for definition of a “household member”.
- (14) insert the date the abuse occurred.
- (15) insert the approximate time the abuse occurred.
- (16) explain in detail how you were abused.
- (17) insert the community in which you were abused.
- (18) explain any injuries you suffered as a result of the abuse.
- (19) insert whether this incident was reported to law enforcement, if law enforcement investigated, and whether Respondent was arrested. Explain why the abuse was not reported if that is the case.
- (20) explain who owns the household you and Respondent lived together in. If it is a housing rental explain in whose name the house is rented.
- (21) explain where you and Respondent are now living.
- (22) insert each child’s name as it appears on their birth record.
- (23) insert each child’s correct date of birth (DOB).
- (24) insert the name of the person who has physical custody of the child.
- (25) insert whether you are employed, unemployed, or going to school.
- (26) insert whether Respondent is employed, unemployed, or going to school.
- (27) explain why you feel that Respondent will continue to abuse you and why you are in immediate and present danger of further abuse by Respondent. Give dates and descriptions of

any other incidents of domestic abuse the Respondent committed against you.

(28) insert "Petitioner" if you left the household and have personal property in the house. insert "Respondent" if Respondent left the household and has personal property in the house.

(29) on this line insert the day.

(30) on this line insert the month.

(31) on this line insert the year.

(32) on this line insert your name by signing.



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. That the abuse took place in the community of (17)\_\_\_\_\_ located on the Rosebud Sioux Indian reservation.

6. That as a result of Respondent's abuse the Petitioner suffered injuries that included (18)\_\_\_\_\_  
\_\_\_\_\_  
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7. That this incident (19)\_\_\_\_\_  
\_\_\_\_\_.

8. That Petitioner and Respondent resided together in a house in (20)\_\_\_\_\_  
\_\_\_\_\_.

9. That the current living situation of the parties is (21)\_\_\_\_\_  
\_\_\_\_\_.

10. That Petitioner and Respondent are the parents to the following child(ren):

a. (22)\_\_\_\_\_ DOB: (23)\_\_\_\_\_ and is in the physical custody of (24)\_\_\_\_\_.

b. (22)\_\_\_\_\_ DOB: (23)\_\_\_\_\_ and is in the physical custody of (24)\_\_\_\_\_.

c. (22)\_\_\_\_\_ DOB: (23)\_\_\_\_\_ and is in the physical custody of (24)\_\_\_\_\_.

d. (22)\_\_\_\_\_ DOB: (23)\_\_\_\_\_ and is in the physical custody of (24)\_\_\_\_\_.



e. (22) \_\_\_\_\_ DOB: (23) \_\_\_\_\_ and is in the physical custody of  
(24) \_\_\_\_\_.

f. (22) \_\_\_\_\_ DOB: (23) \_\_\_\_\_ and is in the physical custody of  
(24) \_\_\_\_\_.

g. (22) \_\_\_\_\_ DOB: (23) \_\_\_\_\_ and is in the physical custody of  
(24) \_\_\_\_\_.

h. (22) \_\_\_\_\_ DOB: (23) \_\_\_\_\_ and is in the physical custody of  
(24) \_\_\_\_\_.

11. That Petitioner is (25) \_\_\_\_\_  
\_\_\_\_\_.

12. That Respondent is (26) \_\_\_\_\_  
\_\_\_\_\_.

13. That Petitioner believes that Respondent will continue to abuse Petitioner because  
(27) \_\_\_\_\_  
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\_\_\_\_\_ and  
that as a result Petitioner feels she is in immediate and present danger of abuse by Respondent.

14. That (28) \_\_\_\_\_ still has personal property in the household.

WHEREFORE, Petitioner prays that this Court order that

A. This court has jurisdiction over the parties and subject matter herein;



(3) \_\_\_\_\_, being first duly sworn on oath, state and depose that he/she is the Petitioner in the foregoing Petition, that she has duly executed said Complaint after reading the same, he/she knows the content thereof to be true to her own knowledge, except those matters stated to be on information and belief, which matters he/she believes to be true.

Dated this (29) \_\_\_\_ day of (30) \_\_\_\_\_, (31) \_\_\_\_\_.

(32) \_\_\_\_\_  
Petitioner

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(SEAL)