

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form is to be used by an interested party to the estate being probated if there is cause for removal of the Administrator.

**FORMS INVOLVED.** The first form is a **Motion for Order to Show Cause Why the Administrator Should Not be Removed**. The second form is an **Affidavit in Support of Motion for Order to Show Cause Why the Administrator Should Not be Removed** that you need to attach to the Motion. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court.

**Removal of Administrator.** The Court can order the Administrator to show cause why the Administrator should not be removed for failure, neglect or improper performance of duties in administering the estate if good cause is shown. If there is cause for removal of the Administrator use the **Motion for Order to Show Cause Why the Administrator Should Not be Removed** form.

**BURDEN OF PROOF.** In a typical civil case a party has the burden of proving a 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). You will need to prove this with credible evidence. You will not prevail in your motion if you make only accusations without any proof or evidence. You as the moving party have the burden of showing the following to the court in your affidavit for **Motion for Order to Show Cause**:

1. That the Administrator failed, neglected or improperly performed his or her of duties administering the estate. Please refer to Duties and Powers of the Administrator in the Probate in Tribal Court Guide and Title 1 Chapter 1 Section 5 (1-1-5) of the RST Probate Code to determine if the Administrator failed, neglected or improperly performed his or her duties.

Once the judge reads your Motion and Affidavit and finds grounds for a show cause hearing the court will issue a show cause order requiring the opposing party to appear and show cause why they should not be held in contempt of court for failure to pay child support.

At the hearing the burden shifts the Administrator to show cause why they should not be removed.

**File your Motion for Order to Show Cause and affidavit** with the clerk of courts. Once the judge reads your Motion and Affidavit and finds grounds for a show cause hearing the court will issue a show cause order requiring the Administrator to appear and show cause why he or she should not be removed as Administrator of the estate.

**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 decedent.
- (2) on this line insert your name as the petitioner.
- (3) insert the Administrator of the estate's name.
- (4) on this line insert the day.
- (5) on this line insert the month.
- (6) on this line insert the year.
- (7) on this line insert your name by signing.

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

IN CIVIL COURT

<p>IN RE THE ESTATE OF:</p> <p>(1) _____ _____,</p> <p style="text-align: center;">Decedent.</p>	<p style="text-align: center;">DOCKET _____</p> <p style="text-align: center;">MOTION FOR ORDER TO SHOW CAUSE WHY THE ADMINISTRATOR SHOULD NOT BE REMOVED</p>
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Comes now (2) \_\_\_\_\_ and moves this Court for the issuance of an order for (3) \_\_\_\_\_, the Administrator of the above-named decedent's estate, to show cause why he or she should not be removed as Administrator. In support of this motion is an attached affidavit incorporated into this motion as if fully set out herein.

Wherefore, the undersigned prays this court to issue an order for the Administrator of the above-named decedent's estate to show cause why he or she should not be removed as Administrator.

Dated this (4) \_\_\_\_\_ day of (5) \_\_\_\_\_, (6) \_\_\_\_\_.

(7) \_\_\_\_\_  
Interested Party

Instructions for filling out the affidavit:

(1) on this line insert the name of the decedent.

(2) on this line insert your name.

(4) on this line explain how the Administrator failed, neglected or improperly performed his or her of duties administering the estate. Please refer to Duties and Powers of the Administrator in the Probate in Tribal Court Guide and Title 1 Chapter 1 Section 5 (1-1-5) of the RST Probate Code to determine if the Administrator failed, neglected or improperly performed his or her duties.

(5) on this line insert the day.

(6) on this line insert the month.

(7) on this line insert the year.

(8) on this line insert your name by signing. You must do this in front of a notary public. Most RST Court Clerks are notaries.



