

Rosebud Sioux Tribal Court

Rosebud Sioux Indian Reservation

BIA Route 1

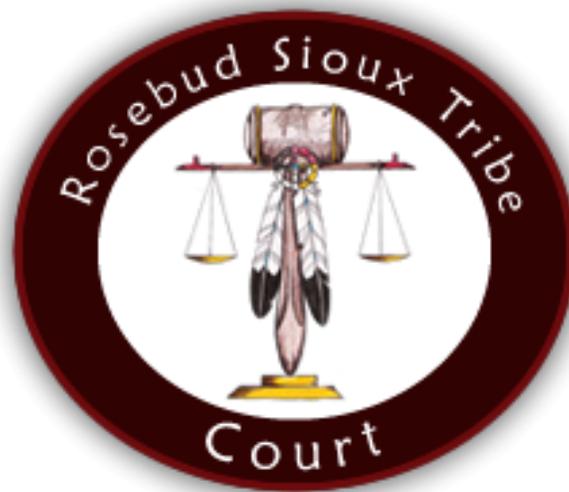
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Pro Se Packet for Orders of Protection

PRO SE PACKET FOR ORDERS OF PROTECTION

This packet will enable you to file a Protection Order in court and to prosecute the action without the assistance of an attorney. If you read all the material in order and follow all instructions you will be able to file and bring your action before the tribal court with confidence.

The packet includes the following information:

1. An informational sheet entitled "How to Represent yourself in Tribal Court". Please read this sheet and use it to prepare your case for trial in your matter. It explains the whole process of court and procedure.
2. A brochure that explains what your cause of action is about and how to prove your case to the court. Please read this sheet and use it to prepare your case for trial.
3. A Petition for Protection Order with instructions attached on how to complete the form.
4. A completed sample "Petition for Protection Order" that will show how the forms you need to fill out should look before you file your papers with the court.

REPRESENTING YOURSELF IN TRIBAL COURT

INTRODUCTION

This page will enable you to find information on how to file an action in court, what to do once your action is filed in court, what you have to do when you go to court and finally forms you can use to file an action in court. Please keep this page for future reference in preparing your case for trial or hearing and to take to court with you.

HOW TO USE THIS DOCUMENT

Before you use any forms, it is very important that you read the following procedure you will need to know in order to present your claim in court. It will explain how to file an action in court, what to do if you are served with a summons and complaint or other pleadings, and how to prove your claim or defend against a claim against you in court. At the end of this page will be a list of forms. Each form contains instructions on when to you use the form, the burden of proof (what you will have to prove in court in order to prevail on your claim) and how to fill out the form or what information you will need to put in/on the form.

WHAT DOES PRO SE MEAN

Pro se in its most basic terms means that you are representing yourself in court without the assistance or presence of an attorney. So it is important that you read this page in its entirety before you proceed. After reading this page, you may decide you need the assistance of an attorney. Also be aware that the opposing party or parties may hire an attorney which would put you at a great disadvantage. An attorney has expertise in law you may not have.

HOW TO START AN ACTION IN COURT

Most actions or claims are started in court by filing a Summons and Complaint with the clerk of court. This would include filing for divorce, paternity, custody, child support, etc. Other actions are started by filing a petition. This would include filing for a name change or guardianship.

WHAT IS A SUMMONS?

A **summons** is a document that is served with the complaint on the opposing party(s). A summons notifies the opposing party that an action in the form of a complaint has been filed against them and that the opposing party must answer in writing to both you and the court that they deny your claims in the complaint. If the opposing party(s) fails to answer your complaint within 30 days after they are served or fails to appear you may seek a default judgment.

WHAT IS A COMPLAINT?

A **complaint** sets out your cause of action or claim against the opposing party(s). A complaint puts the court and the opposing party(s) on notice of what your claim is. If you file a summons and complaint you are called the plaintiff(s). If you receive a summons and complaint you are called the defendant(s).

FILING AND SERVICE FEES.

All courts require a filing fee to file your summons and complaint or petition with the court. There is also a fee to have your summons and complaint served on the opposing party(s). All courts require that your summons and complaint be personally served on the opposing

party(s) by a process server or law enforcement officer. See the informational sheet called *Filing and Service of Court Papers* and a separate packet called *Waiver of Filing and Service Fees*.

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 Rosebud Sioux tribal courts, one of the parties should be a tribal member and there must be a connection between your cause of action and the Rosebud Indian Reservation.

STATUTE OF LIMITATIONS.

Rosebud Sioux Tribe has a **statute of limitations**. Simply put, a statute of limitations means that you must bring or file your action or complaint in court within a specified time period from the time your action accrued. If you fail to bring your cause of action within the time period prescribed by law and the defendant(s) raises the defense of statute of limitations your claim will be barred. Your cause of action must be brought within 2 years after your cause of action accrues. For example, you are in a car accident on January 1, 2003 and you file your claim in a jurisdiction with a one year statute of limitation on January 20, 2005 your claim could be barred or dismissed with prejudice. If your cause of action is against the tribe, you must bring that cause of action within 1 year after it accrues or it could be barred.

PETITION. A PETITION IS DIFFERENT FROM A COMPLAINT

If you file a petition you are called the Petitioner. If there is an opposing party(s) they are called the Respondent. A petition is typically filed in Guardianship, Name Change, Probate and Adoption matters.

HOW TO FILE A SUMMONS AND COMPLAINT

A summons and complaint is filed when you take them to the courthouse and file them along with the filing fee with the clerk of courts. When you file your complaint or petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

WHAT HAPPENS IF THE OPPOSING PARTY FAILS TO ANSWER

If the opposing party fails to answer your summons and complaint within 30 days after being served with the summons and complaint, you can ask the court for a default judgment. See the separate packet called *Default Judgment*.

ORDER TO SHOW CAUSE

You can file for a **Motion for Order to Show Cause** when the court has ordered the opposing party to do or not to do something and the opposing party has failed to comply with the court order. If the opposing party has failed to pay child support you can file a **Motion for Order to Show Cause for Failure to Pay Child Support form**. If the opposing party is denying you custody or visitation as ordered use the **Motion for Order to Show Cause for Failure to Give Custody or Abide by Visitation Forms**.

WARNING

You can only file for a **Motion for Order to Show Cause** if the court has already ordered that the other party do or not do something. You do not have to file a new action. If there has not been an action filed in court or the court has not ordered something you may have to file a new action with a summons and complaint or a petition.

File your Motion for Order to Show Cause with the court that issued the order in your matter. 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 defendant to appear and show cause why they should not be held in contempt of court for failure to comply with the court order. There may be a service fee to have the other party personally served with the order to show cause. Check with the clerk. At the hearing the burden shifts the opposing party to prove by a **preponderance of the evidence** that an order does not exist, that they did not have knowledge of the order, that they do not have the ability to comply with the court order, or that they did not willfully disobey the order. If they are not able to do so the court should find them in contempt.

WHAT HAPPENS IF YOU ARE SERVED WITH SUMMONS AND COMPLAINT

This section explains what to do if you are served with a summons and complaint.

If you are served with a summons and complaint you are being sued for some reason. As a result you must file an Answer with the court and a copy on the plaintiff within 30 days or you are in default. Read the summons and complaint carefully. Other actions, such as eviction actions, have a much shorter time period to answer(7 days). The **summons** will tell you how long you have to file an answer from the date you are served with the summons and complaint. The **complaint** will tell you what the plaintiff(s) claim is against you.

WHAT IS AN ANSWER

An **Answer** is a pleading where the defendant(s) responds to the plaintiff(s) complaint. You can answer the plaintiff(s) complaint by denying and/or admitting to any parts or all of plaintiff(s) allegations in the complaint. If you have any affirmative defenses to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction(meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress(you were forced or threatened to do something you did not want to do), estoppel (meaning the other party cannot complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited to long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).

What happens if you fail to Answer plaintiff(s) summons and complaint within time period prescribed by law?

If you fail to Answer plaintiff(s) complaint within 30 days of the date of service you are in default and the plaintiff(s) may seek a **default judgment** against you. This means that if you fail to answer the plaintiff may be awarded what they ask for in their complaint and you cannot object or present your side of the issue. **Warning.** You must answer plaintiff's complaint within a specified period of time. If you fail to do so a default judgment could be entered against you.

You may also need to file a counterclaim with your answer

A **counterclaim** is like the plaintiff(s) complaint in that it sets out your cause of action against the plaintiff(s). You must file a counterclaim on any claim you have against the plaintiff(s) if it arises out of the same transaction or occurrence raised in the plaintiff(s) complaint. Failure to do so could result in the court barring your claim. If you have a separate claim against the plaintiff(s) you do not have to counterclaim and can start a new action against the plaintiff(s) by filing your own summons and complaint.

HOW TO FILE AN ANSWER

You must file an Answer to plaintiff(s) summons and complaint by filing the original with the court and by mailing a copy to the plaintiff(s) or opposing party or their attorney and filling out the Certificate of Service on the Answer form.

WHAT HAPPENS IF YOU ARE SERVED WITH A NOTICE OF HEARING OR A PETITION

If you are served with a **Notice of Hearing or a Petition** (e.g. Petition for Guardianship or Name Change) 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.

HOW TO FILE YOUR OBJECTION

File the original **Objection** with the court and mail a copy to the opposing party. Remember you do not have to file an objection. You must appear at the hearing and object.

WHAT HAPPENS IF YOU ARE SERVED WITH AN ORDER TO SHOW CAUSE

If you are served with an **Order to Show Cause** either through the mail, notice in the newspaper or by a process server, you do not have to file an answer or counterclaim. But you need to appear at the scheduled hearing and voice your objection. If you fail to appear at the hearing the court may order a bench warrant for your arrest and you may have been deemed to have waived your right to object later.

You can also file an **Answering Affidavit** in writing. But you still need to appear at the scheduled hearing. If you are found in contempt of court after the show cause hearing, the court can compel you to obey its orders. The court can jail and fine you until you do comply with the court order or the court may suspend the jail and fine on the condition you comply with the court order.

HOW TO FILE YOUR ANSWERING AFFIDAVIT

File the original Affidavit with the court and mail a copy to the opposing party. Remember you do not have to file an Answering Affidavit. You must appear at the hearing and object.

WHAT HAPPENS IF DEFENDANT FILES A COUNTERCLAIM WITH THEIR ANSWER

This section explains what to do if you receive a counterclaim in the defendant's answer. You should read defendant's answer carefully. It will tell you what parts of your complaint the defendant admits and what parts defendant denies. The **Answer** will tell you if the defendant is filing a counterclaim against you. If the answer contains a **Counterclaim** you must reply to the counterclaim. As a result **you must file a Reply** with the court and a copy to the plaintiff within 20 days after service you are in default to defendant's counterclaim.

WHAT IS A REPLY

A Reply is your answer to the defendant's counterclaim. This means you must admit or deny each of the defendant's allegations in the counterclaim. If you have any **affirmative defenses** to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party can complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).

WHAT HAPPENS IF YOU FAIL TO REPLY TO DEFENDANT'S COUNTERCLAIM WITHIN TIME PERIOD PRESCRIBED BY LAW?

If you fail to Reply to defendant's counterclaim within 20 you are **in default** and the defendant may seek a **default judgment** against you. This means that if you fail to reply to the defendant's counterclaim the defendant may be awarded what they ask for in their counterclaim and you cannot object or present your side of the issue. **Warning You** must reply to defendant's counterclaim within a specified period of time. If you fail to do so a default judgment could be entered against you.

HOW TO FILE A REPLY

You must file a Reply to the defendant's counterclaim by filing the original with the court and mailing a copy to the defendant or their attorney and filling out the Certificate of Service on the Reply form.

WHAT DO YOU DO WHEN YOU GO TO COURT

This section explains what to do when you go to court on your claim.

CERTIFICATE OF READINESS FOR TRIAL

Rosebud Sioux Tribal court requires that one of the parties file with the court a **certificate of readiness for trial**. The court will schedule your trial or hearing if all responsive pleadings have been filed, necessary discovery is complete, sufficient time has elapsed to afford all parties an opportunity to prepare for trial, the case is either for jury or court trial, whether there is a possibility for settlement and whether a pretrial conference is requested to dispose of pretrial motions or other pertinent matters. If the opposing party files a Certificate of Readiness for Trial and you feel the case is not ready for trial you must object in writing within 10 days after you are served with the certificate of readiness for trial.

BURDEN OF PROOF

If you filed a claim or counterclaim 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 yourself 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).

If something requires a different level of prove than by a **preponderance of the evidence** the instruction page to each form will indicate what level of proof you will need to show the court.

HOW TO PROVE YOUR CASE BY A PREPONDERANCE OF THE EVIDENCE

There are several ways of proving your case in court. The best way is through live testimony of witnesses. This would include you (you are your own best witness) and any other person who has personal 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. You may want to check with your jurisdiction to see if the court issues subpoenas and if there is a fee for having it served. Once you and your witnesses testify on your behalf the opposing party can cross examine you and your witness.

This means that they can ask you and your witnesses questions.

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.

MOTIONS

This section explains what a motion is. There are pretrial motions (motions before a trial) and post-trial motions (motions after the trial).

WHAT IS A MOTION?

A motion is a written or oral request asking the court to rule on a matter. A motion can only be entertained by the court after an action has been commenced in court.

PRETRIAL MOTIONS

There are a variety of pretrial motions. These would include motions to dismiss, motions for continuances, etc.

POST TRIAL MOTIONS

The most common motions after trial are motions for order to show cause, motions for change of custody or child support.

HOW TO FILE A MOTION

File the original with the court and a copy to the opposing party or their attorney and certify that you did send a copy by using a certificate of service which is found at the end of each form requiring a certificate of proof that you mailed a copy to the opposing party.

MOTIONS FOR CONTINUANCE

If for some reason you cannot appear for your hearing you must file a Motion for Continuance well in advance of the hearing date. The court will either continue your case or will reject your motion and the hearing will go on as scheduled. The court will grant you a continuance only for good cause. This would include serious illness, death in the family, etc. The court will normally deny your request for any other reason.

INSTRUCTIONS FOR FILLING OUT THE PROTECTION ORDER FORM

This page explains what a protection order is, how to start and action for Protection Order and how to prove your case in court.

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.

HOW TO FILE YOUR PETITION FOR PROTECTION ORDER

You can file your petition order with the tribal court where you or the opposing party lives. The forms below will allow you to do so. The court may or may not grant you an **ex parte protection order** (an order issued without a hearing or notice to the opposing party) 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.

HEARING ON THE PROTECTION ORDER

Once the judge reads your Petition and finds grounds for an ex parte protection order the court will issue a show cause order requiring defendant to appear and show cause why the ex parte protection order should not be extended to a more permanent protection order. There may be a service fee to have the other party personally served with the order to show cause. Check with your Tribal Court.

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/plaintiff have the burden of proving by a preponderance of the evidence the following to the court:

1. That you and defendant 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 defendant 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 defendant 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 defendant.

3. That it would be in the child(ren)'s best interest that you be awarded custody of them. The courts primary concern when awarding custody is the best interest of the child(ren) and not the shortcomings of the parents. What this means is that you and your witnesses need to testify who cares for the child(ren) such as bathing, cleaning for, sheltering, feeding and generally caring for the children. 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. If the defendant committed domestic abuse on or in front of the children, this would be relevant to custody.

4. That the defendant should pay child support. This can be proven by testifying that the defendant is gainfully employed or that defendant 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 defendant should be evicted from the home or in the alternative, that defendant 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 defendant from the home under the supervision of a law enforcement officer.

Once the judge reads your Petition and finds grounds for and ex parte protection order the court will issue a show cause order requiring the defendant to appear and show cause why the ex parte protection order should not be extended to a more permanent protection order.

There may be a service fee to have the other party personally served with the order to show cause. Check with the Tribal Court Clerk

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 defendant is enrolled in a federally recognized tribe leave this line blank. If defendant is not enrolled in any tribe insert "not".
- (9) Insert the name of the defendant's tribe or if defendant is not enrolled in any tribe please indicate.
- (10) Insert "within" if defendant lives on a reservation or insert "outside" if defendant lives outside the reservation where you are filing this complaint.
- (11) Insert the name of the reservation defendant currently resides or leave blank if defendant does not live on a reservation.
- (12) Insert defendant's mailing address if you know what it is otherwise insert "unknown".
- (13) Insert your relationship to defendant. If related explain how. If you are or were married to defendant explain it. If you and defendant 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 defendant was arrested. Explain why the abuse was not reported if that is the case.

- (20) Explain who owns the household you and defendant lived together in. If it is a housing rental explain in whose name the house is rented.
- (21) Explain where you and defendant 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 defendant is employed, unemployed, or going to school.
- (27) Explain why you feel that defendant will continue to abuse you and why you are in immediate and present danger of further abuse by defendant.
- (28) Insert "plaintiff" if you left the household and have personal property in the house. insert "defendant" if defendant 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.

Sample Form

Below is a completed sample of a Petition for Order of Protection. This is what your Petition should look like when you are ready to file it with the court. Please refer to the sample if you are having difficulty filling your Petition out.

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

IN CIVIL COURT

(1)Jane Doe,
Plaintiff

DOCKET # _____

VS

PETITION FOR ORDERS
OF PROTECTION

(2)John Doe,
Defendant.

Comes now (3)Jane Doe (“Plaintiff”) and for her complaint against the Defendant, states and alleges as follows:

1. That Plaintiff is (4)_____ an enrolled member of Rosebud Sioux Tribe, and is presently residing (5) within _____ the exterior boundaries of the (6)Rosebud Indian Reservation _____. Plaintiff’s address is (7)P.O. Box 222, Rosebud, SD 57570 _____.

2. That Defendant is (8)_____ an enrolled member of the (9)Rosebud Sioux Tribe _____, presently residing (10)within _____ the exterior boundaries of the (11)Rosebud Indian Reservation _____. Defendant’s address is (12)P.O. Box 690 Parmalee, SD 57566 _____.

3. That plaintiff and defendant are defined as “household members” because they (13)lived together for 10 years in a domestic relationship and have 4 children together _____.

4. That on (14)June 25, 2006 at approximately (15)10:00 p.m. defendant abused plaintiff by (16)we got into a verbal argument and he accused me of all sorts of things. Defendant then grabbed me by the neck and choked me down until I almost passed out. He then grabbed me by the hair and swung me into the wall. He then kicked me several times in the stomach and ribs. After this he punched me 3 or 4 times in the face with his fists. I tried to leave the house but he wouldn’t let me. I tried to call the police or my mom but he pulled the phone out of the wall and smashed it against the wall. My 3 children were present and witnessed the whole ordeal and they are traumatized by it. Defendant was very intoxicated. When he passed out I grabbed the kids and left. We went to my mother’s place. He called over to my mom’s and threatened all of us. _____

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

6. That as a result of defendant's abuse the plaintiff suffered injuries that included (18)cracked ribs and internal bleeding. I had marks and bruises on my neck. It is still stiff and sore. I also had marks and bruises on my face where he punched me.

7. That this incident (19)was reported to the police. They interviewed me at my mom's. They later arrested defendant and took him to jail. I was able to move back into our home. Defendant is charged with domestic abuse in criminal court

8. That plaintiff and defendant resided together in a house in (20)that we rent from SWA corporation. The rental agreement is in my name. Defendant's name is not on the rental agreement except as an occupant not a renter.

9. That the current living situation of the parties is (21)I am living in the SWA rental house. I think defendant is living with his mother or sister in St. Francis.

10. That Plaintiff and defendant are the parents to the following child(ren):

a. (22)Joe Doe DOB: (23)1/26/96 and is in the physical custody of (24)Jane Doe.

b. (22)Susan Doe DOB: (23)11/12/97 and is in the physical custody of (24)my mother Judith Yellow.

c. (22)Candice Doe DOB: (23)10/24/99 and is in the physical custody of (24)Jane Doe.

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 plaintiff is (25) is unemployed and going to school full time at SGU

12. That defendant is (26) employed at the Rosebud Casino

13. That plaintiff believes that defendant will continue to abuse plaintiff because (27) This has been going on since we have been together. He has physically abused me many times in the past. He has kicked, choked and punched me on a regular basis. Defendant has threatened to kill me and to harm the children. I fear that he will carry out these threats judged on his past behavior _____ and that as a result plaintiff feels she is in immediate and present danger of abuse by defendant.

14. That (28) defendant _____ still has personal property in the household.

WHEREFORE, Plaintiff prays that this Court order that

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

B. Plaintiff be granted an Ex Parte Order of Protection immediately enjoining and restraining defendant from abusing, threatening to abuse plaintiff and to have no form of contact or communication with plaintiff and that copies of said order be served upon defendant and the appropriate law enforcement officials.

C. A hearing in this matter be set within the time limits set out in the applicable tribal code and notice of said hearing and the Ex Parte Order of Protection be served upon defendant.

D. After hearing plaintiff be granted a permanent protection order against defendant for as long as allowable under tribal law.

E. The Plaintiff be granted temporary custody of the child(ren).

F. The Defendant pay a reasonable amount of child support.

G. Award exclusive possession of the parties' home to plaintiff or in the alternative that defendant be ordered to provide alternative housing for plaintiff.

H. Defendant be evicted from the parties residence and be restrained from going to the house where plaintiff lives.

I. That either party may remove their personal belongings from the household under the supervision of a police or law enforcement officer.

J. Defendant be restrained from having any form of communication or contact with plaintiff, her residence, place of employment or school.

F. That the Defendant reimburse the Plaintiff for the fees she incurred in this matter.

G. For any other relief the Court deems just and equitable.

Dated this (29)29th day of (30)July, (31)2006.

(32)Jane Doe _____
Plaintiff

VERIFICATION

Rosebud Indian Reservation)
)SS
Rosebud, South Dakota)

(3)Jane Doe _____, being first duly sworn on oath, state and depose that he/she is the plaintiff 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)29th day of (30)July, (31)2006.

(32) Jane Doe _____
Plaintiff

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public
My commission expires:
(SEAL)

Actual Form

The next pages contain an actual blank form for you to print and fill out using the instructions given above and the sample form as a guide

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

IN CIVIL COURT

(1)_____

DOCKET_____

PLAINTIFF(S)

PETITION FOR ORDERS
OF PROTECTION

VS

(2)_____

DEFENDANT(S)

Comes now (3)_____ (“Plaintiff”) and for her complaint against the Defendant, states and alleges as follows:

1. That Plaintiff is (4)_____ an enrolled member of Rosebud Sioux Tribe, and is presently residing (5)_____ the exterior boundaries of the (6)_____. Plaintiff’s address is (7)_____.

2. That Defendant is (8)_____ an enrolled member of the (9)_____, presently residing (10)_____ the exterior boundaries of the (11)_____. Defendant’s address is (12)_____.

3. That plaintiff and defendant are defined as “household members” because they (13)_____
_____.

4. That on (14)_____ at approximately (15)_____ defendant abused plaintiff by (16)_____

_____.

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

6. That as a result of defendant's abuse the plaintiff suffered injuries that included (18)_____

_____.

7. That this incident (19)_____

_____.

8. That plaintiff and defendant resided together in a house in (20)_____
_____.

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

_____.

10. That Plaintiff and defendant 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

Dated this (29)____ day of (30)_____, (31)_____.

(32)_____
 Plaintiff

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public
My commission expires:
(SEAL)

Information Sheet

Plaintiff

Docket # _____

Vs

Defendant

PLAINTIFF INFORMATION

Address: _____

City: _____

Home Phone: _____

Cell Phone: _____

Place of Employment: _____

Work Phone: _____

Directions to residence: _____

DEFENDANT INFORMATION

Age: _____ Height: _____ Weight: _____ Hair Color: _____

Other description or information to help identify or find the defendant :

Address: _____

City: _____

Home Phone: _____

Cell Phone: _____

Place of Employment: _____

Work Phone: _____

Directions to residence: _____

Type of House: _____ Color of House: _____ House # _____

Type of Vehicle: _____ Year: _____ Color: _____