

INSTRUCTIONS APPLICATION FOR TEMPORARY RESTRAINING ORDERS (NON-DOMESTIC VIOLENCE)

Coming to Court to resolve your dispute is about balance. Balance is a traditional Lakota concept. When you file a petition seeking a Temporary Restraining Order you ask the Court to enter an Order after hearing only one side of the story. This upsets the balance. Therefore, the Court can only enter these orders in exceptional circumstances and on particular conditions.

PLEASE READ THESE INSTRUCTIONS CAREFULLY AND FOLLOW THEM. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN YOUR PETITION BEING DENIED, OR BEING DELAYED UNTIL A HEARING.

CLERKS ARE NOT PERMITTED TO GIVE LEGAL ADVICE, BUT UPON REQUEST THEY WILL PROVIDE A LIST OF ATTORNEYS AND LAY ADVOCATES LICENSED TO PRACTICE IN THE CHEYENNE RIVER SIOUX TRIBAL COURT. YOU ARE STRONGLY ADVISED TO SEEK LEGAL ADVICE BEFORE YOU FILE YOUR PETITION.

THE COURT WILL NOT GRANT A WAIVER OF A FILING FEE, EXCEPT IN THE MOST EXTREME CASES, OR FOR THE ELDERLY.

1. The Court can enter a Temporary Restraining Order prior to hearing **ONLY** if “it clearly appears from specific facts shown by [Sworn Statement] that *immediate and irreparable injury, loss, or damage* will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and (2) the applicant’s attorney [or the applicant, if the applicant filed without an attorney or lay advocate] certifies to the court in writing the efforts, if any which have been made to give the notice and the reasons supporting the claim that notice should not be required.” Cheyenne River Sioux Tribe Rule of Civil Procedure No. 65(b) – Emphasis added.

Therefore, the Petitioner *must* persuade the Court that immediate and irreparable harm will occur unless the Court enters a Temporary Restraining Order prior to Hearing, and that the Petitioner has taken all reasonable efforts that can be safely and reasonably taken prior to filing for emergency temporary relief, or else the Court must wait until hearing before entering any Order.

2. All facts alleged must be based on the first-hand knowledge of the person making the sworn statement, however supporting affidavits made by persons other than the Petitioner may be submitted in support of the petition.
3. The Specific harm must be stated
4. The Law concerning Temporary Restraining Order is a part of the larger civil law, and generally assumes that a Party seeking emergency relief will also file a Petition seeking long term equitable relief (an Injunction) or a Complaint seeking money damages, (a Judgment). Logically, it is appropriate to file for both immediate emergency relief, and long term relief at the same time is likely to save the cost of a second filing fee, and to simplify service of process so that the Court can proceed more quickly.
5. Cheyenne River Sioux Tribal Rules of Civil Procedure No. 65(c) and 65.1 require a Petitioner to post security to repay the Respondent if the Temporary Restraining Order entered prior to Hearing, may result in a monetary loss to the Respondent. This security may need to be posted prior to issue of a Temporary Restraining Order. A Clerk will contact you if the Court decides that the Temporary Restraining Order shall issue, but only if security is posted.

CHEYENNE RIVER SIOUX TRIBAL COURT)
 CHEYENNE RIVER SIOUX TRIBE : §
 CHEYENNE RIVER INDIAN RESERVATION)

IN SUPERIOR COURT
(CIVIL COURT)
 Eagle Butte, South Dakota

 Petitioner,
 VS.

 Respondent,

**PETITION FOR
 RESTRAINING ORDER**

CASE No. _____

COMES NOW, _____, Petitioner, in the above entitled action,
(Petitioner, Print Name)
 and under oath or affirmation and under penalty of perjury, executes this Petition and verifies
 that he / she believes all statements made herein to be true.

1. That the Petitioner will suffer irreparable harm unless the Court enters a
 Temporary Restraining Order prior to Hearing, because:

2. That the Petitioner resides at: _____
(Petitioner Physical Address, City, State)
 and receives mail at: _____
(Petitioner Mailing Address, PO Box, Street, City, State, Zip Code)

3. That the Respondent resides at: _____
(Respondent Physical Address, City, State)
 and receives mail at: _____
(Respondent Mailing Address, PO Box, Street, City, State, Zip Code)
(If the Respondent's address is not known, state that it is not known)

4. The Court has jurisdiction over the subject matter jurisdiction and parties to
 this action because the following facts establish the Tribe's connection to the
 case:

(Petitioner) Vs. _____ Case No. _____
(Respondent)

Wherefore, the Plaintiff respectfully requests that this Court:

For such other and further relief as the Court deems just and necessary to prevent irreparable harm.

The Court cannot Order Temporary Relief prior to Hearing, unless the Petition for Temporary Relief is supported by sworn statements that support a finding of a need for Temporary Relief.

The Court will need to schedule a Hearing within Ten (10) days to determine what requested relief is supported by the testimony and evidence presented at hearing.

If the Court, upon reading the Complaint and this Petition, determines that a Temporary Restraining Order, although necessary to prevent irreparable harm to the Petitioner, may damage the Respondent, then Cheyenne River Rule of Civil Procedure No. 65(c) requires that the Petitioner post a cash bond or other appropriate security before any Temporary Restraining Order is issued.

The Petitioner understands this requirement and is ready to post a cash bond in an amount determined appropriate by the Court as required by Cheyenne River Rule of Civil Procedure No. 65(c).

Dated this _____ day of _____, 20_____
(Day) (Month) (year)

Petitioner (Signature, in front of Notary or Clerk)

Subscribed and Sworn to before me on this _____ day of _____ 20_____
(Day) (Month) (Year)

(SEAL)

NOTARY PUBLIC or Court Clerk

My Commission Expires: _____

INFORMATION SHEET

PLAINTIFF

NAME(s): _____

MAILING ADDRESS: _____

PHYSICAL ADDRESS: _____

TELEPHONE #'s (Home) _____

(Cell) _____

(Work) _____

ADDITIONAL INFO: _____

DEFENDANT

NAME(s): _____

MAILING ADDRESS: _____

PHYSICAL ADDRESS: _____

TELEPHONE #'s (Home) _____

(Cell) _____

(Work) _____

ADDITIONAL INFO: _____
