

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you are seeking to adopt someone else's child(ren) by custom and tradition.

FORMS INVOLVED. The form is a **Petition for an Ecagwaya or traditional Adoption**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court.

The **Petition for Ecagwaya or traditional Adoption** form can be used if each child named in the petition as the same natural mother and natural father. If there are other children to be adopted who have only one common natural parent a separate petition should be filed. If all the children to adopted have the same natural parents (mother and father) then one petition needs to be filed. We tried to develop one petition form for children with multiple natural parents (different fathers or different mothers) but the form was too long and confusing to follow.

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 is formally requesting the court to order something and sets out the petitioner's version of the facts. In this case the petitioner is petitioning the court to be allowed to adopt the child(ren). You can use the **Petition for an Ecagwaya or traditional Adoption** form. The forms has the necessary information required by the tribal code to petition the court for adoption. The petitioner will need to prove the allegations in the petition for adoption at the adoption hearing.

How to file a petition. A petition is filed when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When the petition is filed with the clerk, the petitioner will need to sign and date the form in front of the clerk so they can notarize the petitioner(s) signature.

The petitioner(s) can file the petition with the juvenile (Children's Court) division of the Rosebud Sioux Tribal Court which is housed at the Wanbli Wiconi Tipi (Juvenile Detention Center) located on Highway 18 between Rosebud Junction and Soldier Creek.

The petitioner should ask the clerk if you can file multiple petitions involving children with one different natural parent in one case to save on filing fee costs.

Filing and service fees. The court will require payment of a filing fee to file your petition with the court and a service fee to have the petition and notice of hearing served on the natural parents by the court process server. unless it is waived. If paying the fees would be a hardship the petitioner can use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee. Alternatively, the petitioner(s) can opt to use a resident tribal member over the age of 18 and not a party to adoption serve the papers. The person who is not a court process server who serves the papers will need to fill out an **Affidavit of Personal Service** form.

BURDEN OF PROOF. In a typical adoption case the person(s) petitioning for adoption have the burden of proving their claim by a **Clear and Convincing Evidence**. This means that by representing themselves in adoption it is their responsibility to prove their case. Don't expect the judge to prove petitioner(s) case for petitioner(s). Proving something by clear and convincing evidence means proving the allegations in the petition with evidence that is highly and substantially more true than untrue. The petitioner has the burden of proving by clear and convincing evidence the following to the court:

1. Petitioner must show the court that it has jurisdiction over the child(ren) they are seeking to adopt. The court can hear a petition for adoption involving any Indian child whose domicile or actual residence is within the boundaries of the Rosebud Sioux Tribe Reservation or within Indian Country (trust land or communities) of the original boundaries of the reservation or where jurisdiction is conferred on the tribal court by the Federal Indian Child Welfare Act. The petitioner can prove the child is an Indian child with testimony from relatives or their own testimony and by introducing a tribal enrollment card or blood quantum calculation prepared by a tribal enrollment office. The petitioner can prove the child is domiciled on or resides on within the boundaries of the Rosebud Sioux Tribe Reservation with testimony and documents.

2. The child(ren) to be adopted have been in the care of the adoptive parent(s) for two (2) years or more.

3. The natural parents voluntarily placed the child(ren) in the care of the adoptive parents without court involvement.

4. The adoption code requires that the traditional adoption be attested by two reliable witnesses. The code does not say what the witnesses are to attest to. The Petitioner(s) will need to at least have two witnesses that can attest that they know the adoptive family and the adoptive child(ren) and that the child(ren) to be adopted have been in the care of the adoptive parents for two (2) years or more. They can attest to any other information pertinent to the adoption including the adoptive parents ability to care for and provide for the adoptive child(ren).

5. Consent of a child to be adopted is 12 years of age or older is required. The judge will ask such a child if they agree and consent to the adoption.

6. Consent of the child(ren)'s natural parents is required unless one of the following can be proven: (1) the natural parent's parental rights have been terminated by a court; (2) the natural parent has been adjudged by a court of competent jurisdiction to be mentally incompetent or mentally ill; or (3) the natural parent has abandoned their child(ren) for a consecutive period of one year from the date of filing the petition for adoption. (1) and (2) can be proved by introducing certified copies of the judgment for termination of parental rights or of mental incompetence or illness. (3) can be proven by testimony from petitioner(s) and other witnesses that the parent(s) have had no contact with or provided no support (financially or morally) for the child(ren) for a period of year from the date of filing the adoption petition.

7. If both natural parents consent to the adoption or fail to appear at the hearing and object, the

court will more than likely grant the adoption unless the court finds that the natural parents are deceased and left a will nominating another person guardian, the court will normally follow the deceased parents wishes if it is in the child(ren)'s best interest.

8. If either natural parent or both appear at the hearing and object to the adoption, the petitioner must show the court that the natural parent(s) either (1) had their parental rights terminated by a court; or (2) has been adjudged by a court of competent jurisdiction to be mentally incompetent or mentally ill; or (3) has abandoned their child(ren) for a consecutive period of one year from the date of filing the Petition for Adoption. (1) and (2) can be proved by introducing certified copies of the judgment for termination of parental rights or of mental incompetence or illness. (3) can be proven by testimony from petitioner(s) and other witnesses that the parent(s) have had no contact with or provided no support (financially or morally) for the child(ren) for a period of year from the date of filing the adoption petition.

How to Prove Abandonment by a Parent. The petitioner can prove the natural parent abandoned the child with testimony of witnesses that the parent(s) have had no contact with the child(ren) or provided no financial or moral support for the child(ren) for a period in excess of one year. Some courts have held that a parent who has mailed their children a birthday or Christmas card or gift has not abandoned their children. Other courts have held that this is abandonment. Regular contact by telephone, letters or in person contact would not constitute abandonment. Providing financial support by a parent would not constitute abandonment.

9. The court will order a Social Service Agency (either Tribal, BIA or State) to investigate the petition. The agency may prepare a home study to determine if the adoptive parent(s) and their home are suitable for adopting the child(ren) in named in the petition.

10. The judge must satisfy themselves that it would be in the child's interest to be adopted.

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. You can print this page in its entirety or you can scroll down to the petition form and if you scroll down farther you will find the affidavit of consent form. There will be a blank screen between these instructions and the forms and between the forms so keep scrolling or just copy this page in its entirety.

FILE THE ADOPTION PETITION AND ANY AFFIDAVIT OF CONSENT WITH THE CLERK OF COURTS OF THE TRIBAL COURT WHERE YOU ARE FILING YOUR PETITION. No summons is required. The clerk will send notices to all interested relatives so it is important that you list all immediate relatives and their correct address. If not the clerk will have to publish notice in a local newspaper and you will be responsible for the cost of such publication.

Instructions for filling out the Petition:

(1) on this line insert the name of each child you are seeking to adopt and their date of birth (DOB).

(2) on this line insert your name and your spouses (if the spouse is also adopting the child(ren)) name as Petitioners who are seeking to adopt the children named in the petition.

Instructions for lines (3)-(6): There are two (2) separate numbered paragraphs for lines (3)-(6) if there are two (2) petitioners who want to adopt the child(ren). If there is only one petitioner leave the second set of (3)-(6) lines blank.

(3) on this line insert each petitioner's name.

(4) on this line insert where each petitioner resides. This would be a physical location of where your home is located.

(5) on this line insert the address where each petitioner receives their mail.

(6) on this line indicate the race of each petitioner. Also indicate any tribal membership.

Instructions for lines (7)-(11): There are several separate numbered paragraphs that contain lines (7)-(11). If there is more than one child who all have the same natural (biological) mother and father that the petitioners want to adopt. If there is only one child being adopted leave the rest of the subsequent numbered paragraphs with (7)-(11) lines blank.

(7) insert the name of each child you wish to adopt.

(8) insert each child's name as it appears on their birth record.

(9) on this line insert where each child you wish to adopt resides. This would be a physical location of where each child's home is located.

(10) on this line insert the address where each child you want to adopt receives their mail.

(11) on this line indicate the race of each child you wish to adopt. Also indicate any tribal membership.

Instructions for lines (12)-(26):

(12) insert the minor child(ren)'s natural (biological) mother's name as it appears on the birth certificate of each minor child.

(13) on this line insert where the natural (biological) mother of the child(ren) you wish to adopt resides. This would be a physical location of where the child(ren)'s natural (biological) mother's home is located.

(14) on this line insert the address where the child(ren)'s natural (biological) mother receives her mail.

(15) on this line indicate the race of the natural (biological) mother of the child(ren) you wish to adopt. Also indicate any tribal membership.

(16) indicate whether the natural (biological) mother consents to the adoption by inserting either "consents to the adoption and his affidavit of consent is attached to the petition" or "does not consent". If this a step-parent adoption and the natural mother is the spouse of the petitioner insert "this is a step-parent adoption and her Consent to Step-Parent Adoption form is attached".

(17) Explain in detail why the natural (biological) mother's consent is not necessary by alleging facts that support petitioner's contention that consent is not necessary. The grounds for proving consent is not necessary include a parent whose parental rights have been terminated by a court; or a parent who has been adjudged by a court of competent jurisdiction to be mentally incompetent or mentally ill; or a parent who has abandoned their child(ren) for a consecutive period of one year from the date of filing the Petition for Adoption. Please see the burden proof section above. Be prepared to prove consent is not necessary when you go to court.

(18) insert the minor child(ren)'s natural and biological father's name as it appears on the birth certificate of each minor child.

(19) on this line insert where the natural (biological) father of the child(ren) you wish to adopt

resides. This would be a physical location of where the child(ren)'s natural (biological) father's home is located.

(20) on this line insert the address where the child(ren)'s natural (biological) father receives his mail.

(21) on this line indicate the race of the natural (biological) father of the child(ren) you wish to adopt. Also indicate any tribal membership.

(22) indicate whether the natural (biological) father consents to the adoption by inserting either "consents to the adoption and his affidavit of consent is attached to the petition" or "does not consent". If this a step-parent adoption and the natural father is the spouse of the petitioner insert "this is a step-parent adoption and his Consent to Step-Parent Adoption form is attached".

(23) Explain in detail why the natural (biological) father's consent is not necessary by alleging facts that support petitioner's contention that consent is not necessary. The grounds for proving consent is not necessary include a parent whose parental rights have been terminated by a court; or a parent who has been adjudged by a court of competent jurisdiction to be mentally incompetent or mentally ill; or a parent who has abandoned their child(ren) for a consecutive period of one year from the date of filing the Petition for Adoption. Please see the burden proof section above. Be prepared to prove consent is not necessary when you go to court.

(24) give a full description and statement of value of all property owned or possessed by each child you are seeking to adopt. Please list and value any personal and real property owned or possessed by each child being adopted including any government benefits each child receives on a monthly basis (for example monthly social security benefits). If there is none insert "none".

(25) on this line insert the day.

(26) on this line insert the month.

(27) on this line insert the year.

(28) on this line insert your name by signing. Only date and sign the verification in front of a notary public who will then notarize the petition.

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

IN CHILDREN'S COURT

DOCKET _____

IN RE THE MATTER OF THE ADOPTION OF:

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

PETITION FOR ECAGWAYA
OR TRADITIONAL ADOPTION

Comes now (2) _____, petitioner(s) and petitions this Court as follows:

1. That first petitioner's name is (3) _____, residing in (4) _____ with a mailing address of (5) _____ and whose race is (6) _____.

1. That second petitioner's name, if there is one, is (3) _____, residing in (4) _____ with a mailing address of (5) _____ and whose race is (6) _____.

3. That the petitioner(s) wishes to adopt by tradition and custom the following child(ren):

a. (7) _____ has an address of (8) _____ was born on (9) _____ resides at (10) _____ whose race is (11) _____.

b. (7) _____ has an address of (8) _____ was born on (9) _____ resides at (10) _____ whose race is (11) _____.

c. (7) _____ has an address of (8) _____
_____ was born on (9) _____ resides at (10) _____
_____ whose race is (11) _____.

d. (7) _____ has an address of (8) _____
_____ was born on (9) _____ resides at (10) _____
_____ whose race is (11) _____.

e. (7) _____ has an address of (8) _____
_____ was born on (9) _____ resides at (10) _____
_____ whose race is (11) _____.

3. The above named minor child(ren) has been in the Petitioner'(s) care for more than two years.

4. That above minor child(ren)'s mother's name is (12) _____
and resides in (13) _____ with a mailing address of (14) _____
_____, and her race is (15) _____.

5. That the child(ren)'s natural mother (16) _____.

6. That the child(ren)'s natural mother's consent is not necessary because: (17) _____

_____.

7. That above minor child(ren)'s father's name is (18) _____
and resides in (19) _____ with a mailing address of (20) _____
_____, his race is (21) _____.

6. That the child(ren)'s natural father (22) _____.

