

INSTRUCTIONS

Petition to Establish Grandparent Visitation

Confederated Salish & Kootenai Tribal Court

**THE FOLLOWING INFORMATION IS NOT LEGAL ADVICE AND
CANNOT REPLACE THE ADVICE OF A LAWYER OR ADVOCATE.**

These instructions provide legal information and resources only. Legal advice depends on the specific circumstances of each situation. The information contained in this document is not guaranteed to be up to date. The information cannot replace the advice of an attorney or advocate licensed to practice law. **If you choose to represent yourself, you are bound by the same rules and procedures as an attorney or advocate.**

Instructions have been developed to assist you with processing the **Petition to Establish Grandparent Visitation** case. Read the instructions first to determine which forms you may need, based on your personal circumstances, as it may not be necessary to complete all forms listed below.

GENERAL INFORMATION

- ◆ **For additional information**, please review CSKT Laws Codified (2013) and other applicable laws and ordinances at <https://csktribes.org/judicial/cskt-laws-codified>.
- ◆ **Tribal Court Forms** can be found at <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.
- ◆ **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-406-444-3636 or by email at mtlawlibrary@mt.gov.
- ◆ **CSKT Tribal Defender’s Office Civil Division** offers legal assistance to Tribal members in certain civil matters. To find out if you qualify, call (406) 275-2897. <https://csktribes.org/judicial/tribal-defenders>
- ◆ **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

- ◆ The Minor child(ren) must be a resident or be present at the time of the commencement of the proceeding on the Flathead Indian Reservation.
- ◆ CSKT Laws Codified recognizes that “Elders are very important and highly respected within our tribal structure. They are the caretakers of our rich culture and traditions. Therefore, the Confederated Salish and Kootenai Tribes in recognition which to emphasize elder’s rights and protection by making them a part of our laws.” CSKT Laws Codified, § 3-1-109(1).
- ◆ A grandparent, the great grandparents, or any other person defined by law or custom of the Tribes if it is the best interest of the grandchild(ren) may be eligible to petition the court for grandchild(ren) visitation rights in the following circumstances under CSKT Laws Codified, § 3-1-109(3)(c):

1. The parents of the child(ren) are divorced, legally separated or no longer in a relationship;
 2. An action for divorce or separate maintenance has been commenced by one of the parents of the child(ren); or
 3. The parent of the child(ren), who is the child of the grandparent, has died.
- ◆ If the child is the subject of an abuse and neglect case pursuant to CSKT Laws Codified, § 3-2-101, et. seq., then the grandparent(s) or great-grandparent(s) can file a **Notice to Intervene** pursuant to CSKT Laws Codified, §3-2-606 in the proceeding.
 - ◆ A grandparent or great-grandparent of a child might not be eligible to obtain visitation rights if the following circumstances exist pursuant to CSKT Laws Codified, §3-1-109:
 1. If parental rights of the child’s parents have been terminated and the child has been placed for adoption with a person other than the child’s stepparent or grandparent.
 - ◆ For additional information, please review CSKT Laws Codified.

COMMON TERMS

- ⇒ **Petitioner:** The person filing the Petition with the Court.
- ⇒ **Respondent:** The person served a Petition to Establish Grandparent Visitation who must respond to the allegations of the Petition in order to have his/her desires considered.
- ⇒ **Parenting Plan:** This term includes both parenting time and decision-making responsibilities regarding the children. The Court no longer refers to “custody and visitation” but uses parenting time and decision-making responsibilities instead.
- ⇒ **Service of Process:** The official means by which a party is notified that a document has been filed against him/her and provided a copy of the document and a description of the person’s rights and obligations as a party to the case.
- ⇒ **Diligent Efforts:** Efforts to locate an individual to complete personal service; including contacting friends, family, business associates; completing an internet search; and attempting personal service by a process server, police department or sheriff’s office.
- ⇒ **Hearing Date:** The date that the Petitioner and Respondent must appear in Court.
- ⇒ **Mediation:** A confidential process whereby a trained neutral third-party assists disputing parties to reach their own solution.

<p><i>If you do not understand this information, please contact an attorney or advocate.</i></p>
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FEES

A filing fee is required when filing a **Petition to Establish Grandparent Visitation**. Please check with the <http://csktcourt.org> by clicking on the “FEE SCHEDULE” tab to determine what the current fee schedule is for filing Petitions. If you cannot afford the filing fees, you may ask the Tribal Court Clerk to apply for a **Fee Waiver [TCF 0008]** and the Court will determine if you qualify.

FORMS

Please note that the forms referenced in these Instructions are available at <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.

- [TCF 0031] DR-Grandparent Visitation-Establish-PETITION
- [TCF 0032] DR-Grandparent Visitation-Proposed Grandparent Visitation
- [TCF 0008] DR-Application for Waiver of Fees
- [TCF 0005] CV-Waiver and Acceptance of Service
- [TCF 0033] DR-Grandparent Visitation-Establish-RESPONSE
- [TCF 0009] DR-Request for Hearing

STEPS TO FILING YOUR CASE

Step 1: Complete Forms

Selecting these instructions indicates that you are planning on filing a **Petition for Grandparent Visitation**. Make sure that you make a copy of all the forms you file with the Court for your own records.

The following caption needs to be completed on all forms filed:

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE
FLATHEAD RESERVATION, PABLO, MONTANA

<p>IN THE MATTER OF:</p> <p>_____</p> <p>Minor Child(ren).</p> <p>UPON THE PETITION OF:</p> <p>_____ Petitioner(s)</p> <p>AND CONCERNING:</p> <p>_____</p> <p>Respondent(s)</p>	<p>Cause No. _____</p> <p style="text-align: center;"><i>Insert Name of Form</i></p>
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- [TCF 0031] **Petition to Establish Grandparent Visitation**
 - **Petitioner must complete all applicable sections on the form.**
 - Petitioner must sign this form in the presence of a Court Clerk or Notary Public.
- [TCF 0032] **Proposed Grandparent Visitation**

The purpose of this Pleading Affidavit is for the parties to state the visitation being requested. It is important to provide details, for example, including times, days or dates, means of transporting the children and any other details specific to address your visitation.

 - **Complete all sections of this form.**

- You must provide a copy of the **Proposed Grandparent Visitation** to the party who has legal custody of the child or the party with parental responsibilities as determined by the Court.
- Complete the Certificate of Service portion. The purpose of the Certificate of Service is to notify the Court when and how you provided copies of the Proposal to all parties in the case. This is very important, because the Court must have knowledge that all parties involved are aware of the Proposal prior to any Court action being taken.
- Petitioner must file this Proposed Grandparent Visitation with the Petition.

Step 2: File Papers with the Court

Provide the Court with the documents completed as described in Step 1 above and pay the filing fee. You will receive the Civil Summons. You may receive a hearing date from the clerk at the time of filing your paperwork or you may need to contact the clerk later to obtain the hearing date.

Step 3: Serve the Petition, Other Documents, and Summons

It is important that you have the other party served as quickly as possible. When you file your Petition, the Court will provide you with a signed **Summons [TCF 0004]** to serve the other party (Respondent) with a blank **Return of Service**.

SERVICE OPTIONS

☐ Waiver and Acceptance of Service

- This is the easiest way to serve the other party. However, the other party must be willing to accept the Petition and other required pleadings to use this method.
- Have the other party complete the form **Waiver and Acceptance of Service [TCF 0005]**. Make sure the other party signs and dates the Waiver and Acceptance of Service before a Court Clerk or Notary Public.
- File the signed original with the Court.

☐ Personal Service: Rule 9(1), CSKT Rules of Practice

- Select the law enforcement department, a private process server, or someone you know over the age of 18 who is not involved in this case and who knows the rules of service to serve Respondent.
- Provide the process server with the Petition, the Summons and other required pleadings.
- The process server will need to return the completed Return of Service attached to the Summons to the Court for filing or return it to you to bring and file with the Court.

☐ Service by Mail— Rule 9(2), CSKT Rules of Practice

- If, after diligent search and inquiry, the Respondent cannot be personally served and you know Respondent's address, then process may be served by mail.

- Service by mail shall be by restricted certified mail with return receipt requested.
- The Respondent MUST sign the return receipt.
- All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering of a default judgment and shall be supported by affidavit from the Petitioner.
- The Respondent must receive all documents filed with the Court and the **Summons**, at least 15 days before the time set for the hearing.
- Petitioner must file with the Court an **[TCF 0025] Affidavit of Due Diligence and Proof of Service by Mail** which shall include the original return receipt signed by the Respondent, a description of the documents served on the Respondent, and a statement that a diligent search and inquiry was made in an effort to serve the Respondent personally.
- If the address of the Respondent is unknown, you must publish the Notice of Hearing in the newspaper. Service by Publication instructions are below.

☐ Service by Publication— Rule 9(3), CSKT Rules of Practice

- You must make diligent efforts to locate the other party before selecting this option for service. Service by publication is an option of last resort and should only be pursued if all other methods to serve the other party have failed.
- Service by publication requires a long process of filing more documents with the Court and may include additional expenses required by the newspapers you are ordered to publish notice in. The following forms include more details of the requirements for service by publication.
 - ☐ **[TCF 0026] Affidavit of Due Diligence & Requesting Service by Publication** to be completed by Petitioner.
 - ☐ **[TCF 0028] Summons for Service by Publication** to be issued by the Clerk of Court.
 - ☐ **[TCF 0029] Proof of Service by Publication** to be filed with the Court.
- After receiving the Affidavit, the Clerk of Court will issue a Summons by Publication authorizing service by publication which shall be valid for 40 days from the date of issuance, and thereafter void. Then, you will be able to proceed with service by publication.
- Note that at the time of trial or entering of default judgment, Petitioner shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.

Step 4: Respondent(s) File a Response

Respondent(s) may file a response to the Petition. A filing fee may be required. The purpose of the response is for the Respondent to state in writing if he/she agrees or disagrees with the information identified in the Petition and mail a copy to the other party. All fees paid are non-refundable.

- [TCF 0033] Response to Petition to Establish Grandparent Visitation**
 - Complete all sections of this form and make sure all issues are addressed.
- [TCF 0032] Proposed Grandparent Visitation**
 - If applicable, complete all sections of this form and make sure all issues are addressed.
- Respondent(s) must file the original copies with the Court and mail copies to Petitioner(s).

Step 5: Scheduling Order & Hearing

- You will follow the timelines and requirements of the **Scheduling Order** issued by the Court.
- If the Court sets the case for a hearing, the Court may order the parties submit and exchange **Pretrial Statements [TCF 0007]** as explained in the **Scheduling Order** before the hearing and at the hearing both parties will have the opportunity to appear and address the Court.
- The Court may order the parties to seek mediation and report the results of the mediation back to the Court within a number of days of the Order.
- The Judge will review all documents filed, testimony and evidence presented at the hearing and enter an Order addressing the issues before the Court.
- Preparing for the Hearing**
 - Have available your stamped copies of the papers you filed with the Court.
 - Dress like you were going to an important job interview.
 - Be prepared to explain your position and answer any questions the judge might have.
 - Address the Court and staff respectfully.

If you do not understand this information, please contact an attorney or advocate.