

## **ORDER TO SHOW CAUSE FOR FAILURE TO PAY CHILD SUPPORT PRO SE GUIDE**

If the court has ordered a party to do something, such as paying child support, and that party has failed to obey that order by not paying child support, the other party can file a Motion for Order to Show Cause and an affidavit to hold the non-paying party to be held in contempt of court until they comply with the court order to pay child support.

**WARNING.** You can only file for a **Motion for Order to Show Cause** with these forms if the court has already ordered that the other party to pay monthly child support. You do not have to file a new action. If there has not been an action filed in court for child support or the court has not ordered monthly child support you may have to file a new action with a summons and complaint for paternity or divorce.

**What is an Order to Show Cause for Failure to Pay Child Support.** An order to show cause for failure to pay child support commands the other party previously ordered to pay child support to appear in court to cause why they should not be held in contempt of court for failure to abide by the support order. If the court finds the other party in contempt of court the court can order that party to purge their contempt by paying the child support and any past due amounts or to make payments until caught up on their obligation. If the other party fails to purge their contempt they can be jailed until they purge their contempt by paying the child support obligation and any past due amounts.

**How to file your Order to Show Cause and Affidavit.** File the order to show cause for failure to pay child support and affidavit with the clerk of civil court. You will need to sign the affidavit in front of notary public at the court house when you file the motion and affidavit. There may be a service fee to have the other party personally served with the order to show cause. Use the **Motion to Waive Filing and Service Fees** form to request the service fee be waived if payment would create a hardship.

**BURDEN OF PROOF.** The moving party has the burden of showing the following to the court in your affidavit for **Motion for Order to Show Cause for Failure to Pay Child Support**:

1. That a child support order has been issued by the Rosebud Sioux Tribal Court.
2. That the other party had knowledge of the child support order.
3. That the other party has the ability to comply with the child support order.
4. That the other party willfully disobeyed the child support order.

In a typical civil case a party has the burden of proving a 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).

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 opposing party to show cause why they should not be held in contempt of court for failing to pay child support as ordered by proving 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.

**File your Motion for Order to Show Cause and affidavit** with the clerk of courts. You must sign the affidavit in front of a notary public. You must do this in front of a notary public. Most RST Court Clerks are notaries. There may be a service fee to have the other party personally served with the order to show cause. Check with your Tribal Court

## **WHAT DOES CONTEMPT MEAN AND WHAT ARE THE CONSEQUENCES**

When party is held in contempt of court means that party disobeyed a court order. The court can jail a party held in contempt until that party complies with the court order. Or the court can sentence a party to jail time and/or a fine. The court could suspend the jail and fine on the condition that the party purge their contempt by following the court order. If the party fails to purge your contempt the court will reimpose the suspended jail time and fine.

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

If you are served with an **Order to Show Cause**, the opposing party or the court is attempting to have you found in **Contempt of Court for Failure to Pay Child Support** as ordered by the court.

If you are served with an **Order to Show Cause** 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. 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.

**OPPOSING PARTY'S BURDEN OF PROOF.** The opposing party or moving party has the established the following to the court in their affidavit for Motion for Order to Show Cause:

1. That an order has been issued by the Rosebud Sioux Tribal Court.
2. That the you had knowledge of the child support order.

3. That the you has the ability to comply with the child support order.
4. That the you willfully disobeyed the child support order.

At the hearing the burden shifts to you to show cause why you should not be held in contempt of court for failing to pay child support as ordered by proving by a preponderance of the evidence that an order does not exist, that you did not have knowledge of the order, that you do not have the ability to comply with the court order, or that you did not willfully disobey the order. If you are not able to do so the court could found that you are in **contempt of court**. If you are found in contempt the court can sentence you jail and/or a fine. The court could suspend the jail and fine on the condition that you purge your contempt by following the court order. If you fail to purge your contempt the court will reimpose the suspended jail time and fine.

In a typical civil case a party has the burden of proving a 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).

### **ORDER TO SHOW CAUSE FOR FAILURE TO PURGE CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT**

If the court has ordered the opposing party to pay you monthly child support and the opposing party has been to court and the court has found the other party in contempt for failure to pay and has given them a chance to purge their contempt.

**What is an Order to Show Cause for Failure to Purge a Prior Contempt for Failure to Pay Child Support.** An order to show cause for failure to purge prior a contempt for failure to pay child support commands the other party previously found in contempt of court for failure to pay child support to appear in court to cause why they should not be found in contempt of court and why further sanctions should not be levied for failure to purge their prior contempt for failure to pay child support. If the other party fails to purge their contempt they can be jailed until they purge their contempt by paying the child support obligation and any past due amounts.

**How to file your Order to Show Cause and Affidavit.** File the order to show cause for failure to purge contempt for failure to pay child support and affidavit with the clerk of civil court. You will need to sign the affidavit in front of notary public at the court house when you file the motion and affidavit. There will be a service fee to have the other party personally served with the order to show cause unless you ask that the service fee be waived by using the **How to file your Order to Show Cause and Affidavit**. File the order to show cause for failure to pay child support and affidavit with the clerk of civil court. You will need to sign the affidavit in front of notary public at the court house when you file the motion and affidavit. There may be a service fee to have the other party personally served with the order to show cause. Us the **Motion to Waive Filing and Service Fees** form to request the service fee be waived if payment would create a hardship.

**BURDEN OF PROOF.** 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 a contempt order for failure to pay child support has been issued by the Rosebud Sioux Tribal Court.
2. That the other party had knowledge of the contempt order.
3. That the other party has the ability to purge their contempt.
4. That the other party willfully failed to purge their contempt by failing to obey the contempt order of the court.

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).

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 purge their prior contempt for not paying child support.

At the hearing the burden shifts the opposing party to show cause why they should not be held in contempt of court for failing to pay child support as ordered by proving by a preponderance of the evidence that a contempt order does not exist, that they did not have knowledge of the contempt order, that they do not have the ability to purge their contempt, or that they did not willfully disobey the contempt order. If they are not able to do so the court should find them in contempt for failure to purge their prior contempt. The court should levy sanctions against the opposing party including reimposing any jail time that was suspended in the first contempt order.

**File your Motion for Order to Show Cause and affidavit** with the clerk of courts. You will need to sign the affidavit in front of a notary public. There may be a service fee to have the other party personally served with the order to show cause. Check with the Court.

#### **WHAT HAPPENS IF YOU ARE SERVED WITH AN ORDER TO SHOW CAUSE FOR FAILURE TO PURGE CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT.**

If you are served with an **Order to Show Cause**, the opposing party or the court is attempting to have you found in **Contempt of Court for Failure to Purge Contempt to pay Child Support** as ordered by the court.

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. 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.

**OPPOSING PARTY'S BURDEN OF PROOF.** The opposing party or moving party has the established the following to the court in their affidavit for Motion for Order to Show Cause:

1. That a contempt order for failure to pay child support has been issued by the Rosebud Sioux Tribal Court.
2. That you had knowledge of the contempt order.
3. That you has the ability to purge their contempt.
4. That you willfully failed to purge their contempt by failing to obey the contempt.

At the hearing the burden shifts to you to show cause why you should not be held in contempt of court for failing to purge your prior contempt for failure to pay child support as ordered by proving by a preponderance of the evidence that an order does not exist, that you did not have knowledge of the order, that you do not have the ability to comply with the court order, or that you did not willfully disobey the order. If you are not able to do so the court could find that you are in **contempt of court**. If you are found in contempt the court can sentence you jail and/or a fine. The court could suspend the jail and fine on the condition that you purge your contempt by following the court order. If you fail to purge your contempt the court will reimpose the suspended jail time and fine.

In a typical civil case a party has the burden of proving a 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).