

ENFORCING VISITATION WITH AN ORDER TO SHOW CAUSE FOR DENYING VISITATION SE GUIDE

If the court has ordered a party to do something, such as obeying a visitation order, and that party has failed to obey that order by denying the other party visitation as ordered by the court, the other party can file a Motion for Order to Show Cause.

WARNING. You can only file for a **Motion for Order to Show Cause for Failure to Obey Visitation Order** if the court has already ordered that you receive visitation. 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 visitation you may have to file a new action with a summons and complaint Paternity and Custody or for Divorce.

How to file your Order to Show Cause and Affidavit. File the order to show cause for failure to abide by the visitation order 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.

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**:

1. That visitation has been ordered by the Rosebud Sioux Tribal Court.
2. That the other party had knowledge of the visitation order.
3. That the other party has the ability to comply with the visitation order.
4. That the other party willfully disobeyed the visitation 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 abide by the visitation order..

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 abide by the visitation 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 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 the defendant to appear and show cause why they should not be held in contempt of court for failure to comply with the court visitation order. There may be a service fee to have the other party personally served with the order to show cause. 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 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 ordered visitation. 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 abide by the visitation order.

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 visitation order. 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 ordered visitation.

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

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

At the hearing the burden shifts to you to prove 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).