

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. The forms in this packet are to be used when the court has ordered that custody of your child(ren) be given to the opposing party and you are to receive either reasonable visitation or visitation spelled out in the order and the opposing party has refused to either give you reasonable visitation or denying you visitation. A history of denying you visitation may be grounds to modify custody. You should probably file an order to show cause for failure to obey the visitation order form every time you are denied visitation so the court has knowledge of this history.

FORMS INVOLVED. The forms in this packet are a **Motion and Affidavit for Order to Show Cause for Failure to Obey the Visitation Order**. The first form is a **Motion for Order to Show Cause**. The second form is an **Affidavit** that you need to attach to the Motion. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court.

How to file your Motion for 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. 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 child custody and visitation order has been issued by the Rosebud Sioux Tribal Court.
2. That the other party had knowledge of the child custody and 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.

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 give you visitation. There may be a service fee to have the other party personally served with the order to show cause. Check with your Tribal Court. At the hearing the burden shifts the opposing party to prove by a preponderance of the evidence that a visitation order does not exist, that they did not have knowledge of the order, that they do not have the ability to comply with the visitation order, or that they did not willfully disobey the visitation order. If they are not able to do so the court should find them in contempt.

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).

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.

Instructions for filling out the motion for order to show cause:

- (1) on this line insert the name of the plaintiff from the court order.
- (2) on this line insert the name of the defendant from the court order.
- (3) on this line insert your name.
- (4) insert the other party's name.
- (5) on this line insert the day.
- (6) on this line insert the month.
- (7) on this line insert the year.
- (8) on this line insert your name by signing.

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

IN CIVIL COURT

(1) _____

DOCKET _____

PLAINTIFF(S)

MOTION FOR ORDER TO
SHOW CAUSE FOR
FAILURE TO OBEY
VISITATION ORDER

VS

(2) _____

DEFENDANT(S)

Comes now (3) _____ and moves this Court for the issuance of an order for (4) _____ to show cause why (s)he should not be held in contempt of court and sanctioned (including being jailed) for failure to obey the visitation order, herein. In support of this motion is an attached affidavit incorporated into this motion as if fully set out herein.

Wherefore, the undersigned prays this court to issue an order for (4) _____ to show cause why they should not be held in contempt of court and why sanctions should not be imposed by the court to force (4) _____ to comply with the visitation order.

Dated this (5) _____ day of (6) _____, (7) _____.

(8) _____
Plaintiff/Defendant

Instructions for filling out the affidavit:

- (1) on this line insert the name of the plaintiff from the court order.
- (2) on this line insert the name of the defendant from the court order.
- (3) on this line insert your name.
- (4) insert the date the visitation order was signed by the judge
- (5) insert the other party's name
- (6) explain how the opposing party denied you your visitation rights. Provide dates, times and details.
- (7) on this line insert the day.
- (8) on this line insert the month.
- (9) on this line insert the year.
- (10) on this line insert your name by signing.

Dated this (7)____ day of (8)_____, (9)_____.

(10)_____
Plaintiff/Defendant

Sworn and subscribed to before me this _____ day of _____, _____.

Notary Public
My commission expires:
(SEAL)