

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when the court has ordered the opposing party to pay you monthly child support and the opposing party has not been paying or is late paying. If there is no child support order you need to file for it by using the Paternity forms. If you have already gone 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 use the **Failure to Purge Contempt Child Support forms**.

FORMS INVOLVED. 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 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. 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 support order has been issued by the 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. 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. 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 defendant to appear and show cause why they should not be held in contempt of court for failure to comply with the court order. 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.

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:

- (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

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 pay child support. 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 for failure to pay child support and why sanctions should not be imposed by the court court to force (4) _____ to comply with the child support 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 child support order was signed by the judge
- (5) insert the other party's name
- (6) insert the total amount of child support the other party is ordered to pay per month.
- (7) insert the day of each month the order says the other party is to pay child support.
- (8) insert the date that child support was to begin.
- (9) insert the months the opposing party has failed to pay child support. If you don't know ask the clerk.
- (10) insert the amount of money the opposing party has failed to pay and is owing for child support.
- (11) insert anything else you think the court should know about this matter.
- (12) on this line insert the day.
- (13) on this line insert the month.
- (14) on this line insert the year.
- (15) on this line insert your name by signing. You must do this in front of a notary public. Most RST Court Clerks are notaries.

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

IN CIVIL COURT

(1) _____

DOCKET _____

PLAINTIFF(S)

AFFIDAVIT IN SUPPORT OF
MOTION FOR ORDER TO
SHOW CAUSE

VS

(2) _____

DEFENDANT(S)

(3) _____, being first duly sworn and upon oath, states and
deposes as follows:

1. That on (4) _____ this court entered an order that ordered (5) _____
to pay child support to me in the amount of \$(6) _____ per month, to be paid on the (7) _____
of each month beginning on (8) _____.

2. That (5) _____ was aware of the order as (s)he was served with the child
support order as evidenced by the court file and that (s)he was present in court when the order
was rendered.

3. That (5) _____ has failed to pay child support for the following months
(9) _____
_____ and is in arrears in the amount of (10)\$ _____.

4. That (5) _____ is either gainfully employed or capable of gainful
employment.

5. That (5) _____ has no physical or mental disabilities that prevents
him/her from being gainfully employed.

6. That (5) _____ has property (s)he can convert to cash to apply to
the child support arrearages.

7. That (5) _____ has willfully disobeyed this child support order.

8. That (11) _____

_____.

9. That (11) _____

Dated this (12) ____ day of (13) _____, (14) _____.

(15) _____
Plaintiff/Defendant

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

Notary Public
My commission expires:
(SEAL)