

## **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 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. If the opposing party has not been found in contempt of court for failure to pay child support and has failed to pay child support use the Order to Show Cause for Failure to Pay Child Support form.

**FORMS INVOLVED.** The first form is a **Motion for Order to Show Cause for Failure to Purge Prior Contempt** . 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 court. You will need to sign the affidavit in front of a notary public.

**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. 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 of contempt.
- (2) on this line insert the name of the defendant from the court order of contempt.
- (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**

**IN CIVIL COURT**

**ROSEBUD, SOUTH DAKOTA )**

(1) \_\_\_\_\_

PLAINTIFF(S)

VS

(2) \_\_\_\_\_

DEFENDANT(S)

DOCKET \_\_\_\_\_

MOTION FOR ORDER TO  
SHOW CAUSE FOR  
FAILURE TO PURGE PRIOR  
CONTEMPT OF COURT

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 purge their prior contempt and for a bench warrant for their arrest. 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 failing to purge their prior contempt and why sanctions should not be imposed by the court including reimposing any suspended jail time and for a bench warrant for their arrest. The undersigned further prays that the court issue a bench warrant for the arrest of (4)\_\_\_\_\_.

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 of contempt.
- (2) on this line insert the name of the defendant from the court order of contempt.
- (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 date the court found the opposing party in contempt of court for not paying current child support.
- (10) insert the months the opposing party has failed to pay child support. If you don't know ask the clerk.
- (11) insert the amount of money the opposing party has failed to pay and is owing for child support.
- (12) insert anything else you think the court should know about this matter.
- (13) on this line insert the day.
- (14) on this line insert the month.
- (15) on this line insert the year.
- (16) 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 on (9) \_\_\_\_\_ this court found (5) \_\_\_\_\_ in contempt  
of court for failing to pay current child support and ordered him/her to purge their contempt.

3. That (5) \_\_\_\_\_ was aware of the contempt 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  
(10) \_\_\_\_\_  
\_\_\_\_\_ and is in arrears in the amount of \$(11) \_\_\_\_\_.

5. That (5) \_\_\_\_\_ has failed to pay child support arrearages per month as  
ordered by the court.

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 the contempt order.

8. That (12) \_\_\_\_\_

\_\_\_\_\_.

9. That (12) \_\_\_\_\_

\_\_\_\_\_.

10. That the Court issue a bench warrant for the arrest of (5) \_\_\_\_\_ for failure to purge their contempt.

Dated this (13) \_\_\_\_ day of (14) \_\_\_\_\_, (15) \_\_\_\_\_.

(16) \_\_\_\_\_  
Plaintiff/Defendant

Sworn and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(SEAL)