

## **INSTRUCTIONS FOR FILLING OUT FORM**

**PURPOSE.** This form is to be used when the court has ordered that you show cause why should not be held in contempt of court for denying the opposing party custody of your minor child(ren) in accordance with the court order.

**FORMS INVOLVED.** The form is an **Answering Affidavit to Motion for Order to Show Cause for Denying the Opposing Party Custody**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate 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. You can also file an Answering Affidavit in writing. But you still need to appear at the scheduled hearing.

**How to file your Answering Affidavit.** File the original Answering Affidavit with the court and mail a copy to the opposing party. Remember you do not have to file an Answering Affidavit. You must appear at the hearing and object.

**OPPOSING PARTY'S BURDEN OF PROOF.** The opposing or 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 order has been issued by the court where you are filing your motion.
2. That you had knowledge of the child custody order.
3. That you had the ability to comply with the custody order.
4. That you willfully disobeyed the custody 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 you in contempt. 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).

**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. You can print this page in its entirety or you can scroll down to the Motion form and if you scroll down farther you will find the affidavit. There will be a blank screen between these instructions and the forms and between the forms so keep scrolling or just copy this page in its entirety.

Instructions for filling out the affidavit:

- (1) on this line insert the name of the tribal court. For example, if you are filing this claim on the Rosebud reservation you would insert Rosebud Sioux on this line.
- (2) on this line insert the name of the reservation where the court is located.
- (3) on this line insert the community where the court is located in which you are filing these forms.
- (4) on this line insert the name of the plaintiff from the court order.
- (5) on this line insert the name of the defendant from the court order.
- (6) on this line insert your name.
- (7) insert the date the order was signed by the judge
- (8) insert the name of the parent who was given custody by the court.
- (9) insert “was” if you were served with the order or insert “was not” if you were not served with the order and had no knowledge of the order.
- (10) explain how you have complied with the court order. Provide dates, times and details. See the Burden of Proof Section above for your defenses.
- (11) list any affirmative defenses you may have. If you have any affirmative defenses to the opposing party’s Motion for Order to Show Cause you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses at the Show Cause hearing you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party can complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).
- (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.



\_\_\_\_\_  
\_\_\_\_\_.

AFFIRMATIVE DEFENSES

As and for affirmative defenses to the Order to Show Cause, I allege:

1.(11)\_\_\_\_\_  
\_\_\_\_\_.

2.(11)\_\_\_\_\_  
\_\_\_\_\_.

3.(11)\_\_\_\_\_  
\_\_\_\_\_.

Wherefore, the opposing party's motion for order to show cause should be dismissed.

Dated this (12)\_\_\_\_ day of (13)\_\_\_\_\_, (14)\_\_\_\_\_.

(15)\_\_\_\_\_  
Plaintiff/Defendant  
(Sign your name here)

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

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

CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ I served a true and correct copy of the forgoing Affidavit upon the opposing party by depositing said copy in the United States Mail addressed to the opposing party's last address at \_\_\_\_\_  
\_\_\_\_\_.

Dated this (12)\_\_\_\_ day of (13)\_\_\_\_\_, (14)\_\_\_\_\_.

(15)\_\_\_\_\_  
(Sign you name here)  
Plaintiff/Defendant