



CONTEMPT OF COURT

A Research Guide for a North Dakota State Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts.

The information provided in this research guide ISN'T a complete statement of the law. This information is intended as a starting point for your research into contempt of court in North Dakota state district courts. This information isn't intended for legal advice and can't replace the advice of competent legal counsel licensed to practice law in the state of North Dakota.

The self-represented individual must make all decisions about how to proceed.

References to non-ND Legal Self Help Center resources are included for your convenience only. Including these references doesn't mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the resource. **Use at your own risk.**

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NO CONTEMPT OF COURT FORMS AVAILABLE

The North Dakota Legal Self Help Center and the North Dakota Court System **don't** have forms or instructions available specifically for asking a North Dakota state court to find a party in a civil case in contempt of court.

If you represent yourself, you'll need to create your own legal documents, or retain a lawyer to do so.

The basic steps in the motion process to ask a North Dakota state district court to find a party in a civil case in contempt of court start on Page 7. The steps include the names and general descriptions of many of the legal documents you'll need to create and prepare.

If you're interested in finding an attorney to represent you, go to Page 15 for all of the attorney resources available through the ND Legal Self Help Center.

OVERVIEW OF CONTEMPT OF COURT

What is contempt of court?

In general, contempt of court is disobedience of a court order. [Section 27-10-01.1\(a\) of the North Dakota Century Code](#) defines contempt of court as:

1. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
2. Intentional nonpayment of a sum of money ordered by the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;
3. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a judicial referee or magistrate;
4. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
5. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;
6. Intentional behavior in derogation of any provision of a summons issued pursuant to [Rule 8.4 of the North Dakota Rules of Court](#); or
7. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

Does contempt of court need to happen in front of a judge or judicial referee?

No. Behavior that's considered contempt of court can happen in or out of court.

If the judge or judicial referee didn't see the behavior that the moving party feels is in contempt of an order (*the action did NOT happen in their presence*), the moving party MUST bring a written motion, or application, explaining why they feel the opposing party should be held in contempt by the court. (See Page 7.)

What does the party requesting a contempt of court sanction need to prove?

The party in a civil case who wants a judge or judicial referee to find another party in contempt of court must prove two things:

- That the other party clearly committed contempt of court; and
- That the other party had a willful and inexcusable intent to commit contempt of court.

How is contempt of court punished?

Contempt of court may be punished by remedial or punitive sanctions.

In civil cases, contempt of court is punished with remedial sanctions.

A court can only punish with punitive sanctions when a complaint charging a party with contempt of court is issued by:

1. The state's attorney of a county;
2. The attorney general; or
3. A special prosecutor appointed by the court.

What are remedial sanctions for contempt of court?

A North Dakota state district court may order one or more of the following remedial sanctions:

- Payment of a sum of money sufficient to compensate a party, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt.
- A forfeiture not to exceed two thousand dollars for each day the contempt continues.
- An order designed to ensure compliance with a previous order of the court.
- Imprisonment if the contempt of court is:
 - Intentional nonpayment of a sum of money ordered by the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;
 - Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;
 - Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
 - Intentional refusal to produce a record, document, or other object after being ordered to do so by the court; or
 - Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court;

The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter.

- A sanction other than the sanctions listed above if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

What are punitive sanctions for contempt of court?

Punitive sanctions include a sanction of imprisonment if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court.

A court can only punish with punitive sanctions when a complaint charging a party with contempt of court is issued by:

1. The state's attorney of a county;
2. The attorney general; or
3. A special prosecutor appointed by the court.

What is the process for asking a North Dakota state district court to find that the other party is in contempt of court?

If the behavior happens outside of the immediate view or presence of the court, the party in the case who wants a judge or judicial referee to find the other party in contempt makes a written motion, or application, for the court to issue an order to show cause.

The party making the motion tells the court, in writing, about the specific behavior they believe constitutes contempt of the court's order or judgment. The written motion includes a request for the court to issue an order to show cause.

If the written motion includes sufficient facts and support, the court will issue an order to show cause with a hearing date, time and location. If the written motion doesn't include sufficient facts and support, the court will dismiss the motion and no hearing will be held.

The order to show cause requires the other party to appear at a hearing and prove to the court why they shouldn't be held in contempt of court for the behavior.

At the hearing, both parties will have the opportunity to tell their side of the events.

(See Page 7 for the basic steps in the motion for an order to show cause process.)

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CONTEMPT OF COURT LEGAL RESEARCH RESOURCES

NORTH DAKOTA STATUTES:

(North Dakota statutes are found in the North Dakota Century Code (NDCC). The North Dakota Century Code contains the laws enacted by the North Dakota Legislature. The NDCC is found at www.legis.nd.gov/general-information/north-dakota-century-code.)

Chapter 27-10: Contempts.

www.legis.nd.gov/cencode/t27c10.html

NORTH DAKOTA CASE LAW:

(When the decision of a case is appealed from a North Dakota District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.)

One way to research case law related to contempt of court is to use the print version of the North Dakota Century Code to locate the short summaries of case law after each Section. Case law summaries directly follow the text of the Century Code Section. To view the full text of the opinion, go to www.ndcourts.gov, click on the “Supreme Court Opinions” link and enter the case name or case citation.

You may also research case law by topic at www.ndcourts.gov. Click on the “Supreme Court Opinions” link, the “Topic” link, and narrow your search by clicking on a topic.

NORTH DAKOTA COURT RULES:

(Court rules govern how a dispute makes its way to state court and how the dispute is conducted. All of the court rules are found at www.ndcourts.gov/legal-resources/rules.)

At minimum, review the following:

North Dakota Rules of Civil Procedure: www.ndcourts.gov/legal-resources/rules/ndrcivp.

North Dakota Rules of Court: www.ndcourts.gov/legal-resources/rules/ndrct.

North Dakota Rules of Evidence: www.ndcourts.gov/legal-resources/rules/ndrev.

LAWS CONSTANTLY CHANGE THROUGH LEGISLATION, ADMINISTRATIVE RULES AND RULINGS, AND COURT DECISIONS.

To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law. If you need assistance determining whether specific laws, rules or case law apply to your situation, or determining how they apply to your situation, consult a lawyer licensed to practice in North Dakota who has agreed to represent you.

Only a lawyer who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your circumstances.

LIBRARY RESOURCES: (Not all legal resources are available online.)

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (www.odin.nodak.edu)

If the book is available for interlibrary loan through ODIN, ask the librarian or library staff of your local North Dakota library how to request the book.

Following are a selection of library resources on ODIN that may be of interest to you:

[A Short & Happy Guide to Evidence](#), Sydney Beckman, West Academic Publishing, 2018.

[Courtroom Evidence Handbook: 2018-2019 Student Edition](#), Steven Goode, Olin Wellborn III, West Academic Publishing, 2018.

[Represent Yourself in Court: How to Prepare & Try a Winning Case](#), Paul Bergman, Sara Berman, NOLO, 2016.

[North Dakota Century Code Annotated](#), Lexis Nexis, Creation Date c1959 – present.

[North Dakota Court Rules Annotated](#), Lexis Nexis, Creation Date c1990 – present.

OTHER LEGAL RESEARCH RESOURCES:

[How to Research a Legal Problem: A Guide for Non-Lawyers](#), American Association of Law Libraries. (www.aallnet.org)

[10 Steps for Presenting Evidence in Court](#) and [How to Gather Technology Abuse Evidence for Court](#), Resource Center on Domestic Violence: Child Protection and Custody (RCDV:CPC) and National Council of Juvenile and Family Court Judges (NCJFCJ). (rcdvcpc.org/resources/self-represented-litigants-series.html)

BASIC COURT PROCESS FOR MOTION FOR AN ORDER TO SHOW CAUSE

CAUTION !!

**Individual Courts May Have a Differently Ordered Process
AND/OR Additional Requirements to the Basic Process!!**

The Motion for an Order to Show Cause process is complicated and highly dependent on the specific circumstances of the alleged contempt of the court order. The information that follows is the basic court process for a Motion for an Order to Show Cause.

HOWEVER, there are many possible variations to the basic process.

Individual state district courts may require the moving party to follow a differently ordered process than the basic process that follows. Individual state district courts may have additional requirements to those that follow.

If you feel you need assistance, consult a lawyer licensed to practice in North Dakota who can agree to represent you.

PARTIES IN A MOTION FOR AN ORDER TO SHOW CAUSE:

Plaintiff: The party (or parties) listed as the Plaintiff in the original civil action.

Defendant: The party (or parties) listed as the Defendant in the original civil action.

Moving party: The party bringing the motion for an order to show cause, in other words, the party who completes and signs the Motion, Brief in Support of Motion, and Affidavit in Support of Motion. The moving party in a motion may be either the Plaintiff or the Defendant.

Opposing party: (Also called the Non-moving party.) The other party (or other parties). In other words, the party or parties who did not bring the motion.

STEP ONE: THE MOVING PARTY CREATES THE DOCUMENTS FOR A MOTION FOR AN ORDER TO SHOW CAUSE

For general information about the motion process in North Dakota civil court actions, Go to www.ndcourts.gov/legal-self-help. Scroll to the "District Court Civil" section.

Carefully review the information and resources on the "Making a Motion" webpage!

Generally, to start a motion for an order to show cause, the moving party files the following documents with the North Dakota state court that granted the judgment or order the moving party wants enforced.

- Motion for an Order to Show Cause;
 - A short, written statement that tells the court and all parties what the moving party is requesting from the court.
- Brief in Support of Motion for an Order to Show Cause;
 - A written document that explains why the party filing the motion should have the motion for an order to show cause granted. A brief takes the relevant laws or rules and applies them to the facts of a particular situation.
- Moving party's Affidavit in Support of Motion for an Order to Show Cause;
 - A written statement of fact about which the moving party has first-hand knowledge. Facts referred to in the brief must also appear in the affidavit.
- Other supporting documents (other affidavits, exhibits, etc.);
- Proposed Order to Show Cause; and
 - A proposed order prepared by the moving party for the judge or judicial referee to date and sign **if** the moving party's motion is approved to move forward to a hearing.
- Confidential Information Form
(www.ndcourts.gov/Media/Default/Legal%20Resources/rules/ndrct/Appendix-H.pdf).

The case number will be the case number of the judgment/order.

The following General-Use forms are available on the "Making a Motion" webpage. (See link above.)

The moving party may find the General-Use motion forms useful as a starting point for creating their own motion documents.

- Motion form;
- Brief in Support of Motion form;
- Affidavit form;
- Caption and Signature form.

Examples of documents can be found in the Legal Services of North Dakota Family Law Manual here: www.legalassist.org/?id=128&page=ND+Family+Law+Manual. The Family Law Manual was created for lawyers in divorce cases.

****An example of a motion for an order to show cause that was filed in a North Dakota state district court civil case is found at the end of this research guide. The moving party may find it of interest as a formatting example.**

(The reference to the Legal Services of North Dakota Family Law Manual and the attached example of a motion are included for your convenience only. Including the reference to the Family Law Manual and motion example does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the Family Law Manual or the motion example. Use at your own risk.)

STEP TWO: THE MOVING PARTY FILES THE MOTION FOR AN ORDER TO SHOW CAUSE DOCUMENTS WITH THE CLERK OF COURT

The original of each of the moving party's motion documents must be filed with the clerk of court in the case for which the moving party is asking for an order to show cause.

- Motion for an Order to Show Cause;
- Brief in Support of Motion for an Order to Show Cause;
- Affidavit in Support of Motion for an Order to Show Cause;
- Other supporting documents;
- Proposed Order to Show Cause;
- Confidential Information Form.

If the moving party lives out of the area, or is unable to take the motion documents to the clerk of court office for filing, the moving party may contact the clerk of court for information on how the clerk's office will accept the documents for filing and payment of the filing fee.

Contact information for clerks of district court by county is available online at www.ndcourts.gov/court-locations.

The moving party may be required to pay a **filing fee**. Confirm the amount, if any, with the clerk of court.

The Filing Fee Waiver Request – District Court/Small Claims Court form set is available at www.ndcourts.gov/legal-self-help/fee-waiver. The completed fee waiver request forms are filed at the same time as the motion.

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STEP THREE: THE JUDGE OR JUDICIAL REFEREE ASSIGNED TO THE CASE REVIEWS THE MOTION DOCUMENTS

The judge or judicial referee assigned to the case reviews the motion documents filed by the moving party.

If the judge or judicial referee decides the moving party's written motion documents contain sufficient facts and support to move forward to a hearing, the judge or judicial referee will issue an order to show cause with a date, time and location of the hearing.

If the moving party's written motion documents **don't** contain sufficient facts and support to move forward, the judge or judicial referee will dismiss the moving party's motion and **no** hearing will be scheduled or held on the moving party's motion.

STEP FOUR: THE MOVING PARTY SERVES COPIES OF THE ORDER TO SHOW CAUSE AND MOTION DOCUMENTS ON THE OPPOSING PARTY

If the judge or judicial referee issues an order to show cause, the moving party is required to arrange to serve all of the following on the opposing party:

- Copy of the signed and dated Order to Show Cause;
- Copy of the signed and dated Motion for an Order to Show Cause;
- Copy of the signed and dated Brief in Support of Motion for an Order to Show Cause;
- Copy of the signed and dated Affidavit in Support of Motion for an Order to Show Cause; and
- Copy of any supporting documents filed with the court ;

Proof of service is an important step in the legal process. The opposing party must be served with one copy of each of the documents filed with the clerk of court (except the Confidential Information Form). The service rules for motions are in Rule 5 of the North Dakota Rules of Civil Procedure. See Rule 5(b)(3) for service rules for self-represented litigants.

Service information, including blank proof of service forms, is available at www.ndcourts.gov/legal-self-help/service-in-a-civil-action.

See the instructions and forms for "Service After a Civil Action Has Started."

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WHAT TO EXPECT AFTER THE ORDER TO SHOW CAUSE AND COPIES OF THE MOTION DOCUMENTS ARE SERVED

THE OPPOSING PARTY MUST ATTEND THE HEARING!

The opposing party's failure to attend the hearing may result in the opposing party being found in contempt of court.

The opposing party should be prepared to tell their side, challenge the moving party's evidence, and present their own evidence.

THE OPPOSING PARTY MAY ANSWER OR RESPOND IN WRITING TO THE MOTION FOR ORDER TO SHOW CAUSE

Generally, if the moving party has arranged to serve the order to show cause and motion documents by personal delivery or at the opposing party's office, the opposing party has 14* calendar days to serve and file their answer brief and supporting documents.

- The date of service is the date the motion was personally delivered or left at the office.

If the moving party arranged to serve the order to show cause and motion documents by mail or third party commercial carrier, the opposing party has 17* calendar days to serve and file their answer brief and supporting documents.

- The date of service is the date the motion was mailed.

***TO THE OPPOSING PARTY: Be aware that there may not always be 14 or 17 days as outlined above to file and serve an answer to the motion for an order to show cause.**

The exception may be when a hearing has been scheduled before that time period has run. If you, the opposing party, don't have that amount of time, you **MUST** serve and file your answer **before** the hearing date.

If the opposing party doesn't serve and file an answer brief, the court may consider the failure an admission that the moving party's motion has merit. The moving party will still be required to prove they meet the requirements of the laws or rules that apply to the moving party's motion.

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Carefully review the information and resources on the “[Answering a Motion](#)” webpage!

Generally, to answer a motion for an order to show cause, the opposing party files the following documents with the North Dakota state court that granted the judgment or order the moving party wants enforced.

- Answer Brief to Motion for an Order to Show Cause;
 - A written response that explains why the party filing the motion shouldn't have the motion for an order to show cause granted. An answer brief takes the relevant laws or rules and explains how the opposing party's facts listed in the answer brief apply to the situation that led to the motion.
- Opposing Party's Affidavit in Support of Answer Brief to Motion for an Order to Show Cause;
 - A written statement of fact about which the opposing party has first-hand knowledge. Facts referred to in the brief must also appear in the affidavit.
- Other supporting documents (other affidavits, exhibits, etc.); and
- Confidential Information Form
(www.ndcourts.gov/Media/Default/Legal%20Resources/rules/ndrct/Appendix-H.pdf).

The case number will be the case number from the moving party's motion.

The following General-Use forms are available on the “[Answering a Motion](#)” webpage.

The moving party may find the General-Use motion forms useful as a starting point for creating their own motion documents.

- Answer Brief to Motion form;
- Affidavit form;
- Caption and Signature form.

Examples of documents can be found in the Legal Services of North Dakota Family Law Manual here: www.legalassist.org/?id=128&page=ND+Family+Law+Manual. The Family Law Manual was created for lawyers in divorce cases.

*****An example of an answer to motion for an order to show cause that was filed in a North Dakota state district court civil case is found at the end of this research guide. The opposing party may find it of interest as a formatting example.***

- *(The reference to the Legal Services of North Dakota Family Law Manual and the attached example of an answer to motion are included for your convenience only. Including the reference to the Family Law Manual and answer example does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the Family Law Manual or the answer example. Use at your own risk.)*

The opposing party must serve a copy of each of the following answer to motion documents on the moving party:

- Answer Brief to Motion for an Order to Show Cause;
- Opposing Party’s Affidavit in Support of Answer Brief to Motion for an Order to Show Cause; and
- Other supporting documents (other affidavits, exhibits, etc.).

The service rules for answer to motion documents are in Rule 5 of the North Dakota Rules of Civil Procedure. See Rule 5(b)(3) for service rules for self-represented litigants.

Service information, including blank proof of service forms, is available at www.ndcourts.gov/legal-self-help/service-in-a-civil-action.

See the instructions and forms for “Service After a Civil Action Has Started.”

The original of each of the opposing party’s answer to motion documents must be filed with the clerk of court in the case for which the moving party is asking for an order to show cause.

- Answer Brief to Motion for an Order to Show Cause;
- Opposing Party’s Affidavit in Support of Answer Brief to Motion for an Order to Show Cause; and
- Other supporting documents (other affidavits, exhibits, etc.);
- Confidential Information Form; and
- Affidavit of Service showing service of answer to motion documents on moving party.

If the opposing party lives out of the area, or is unable to take the answer to motion documents to the clerk of court office for filing, the opposing party may contact the clerk of court for information on how the clerk’s office will accept the documents for filing and payment of the filing fee.

Contact information for clerks of district court by county is available online at www.ndcourts.gov/court-locations.

The opposing party may be required to pay a **filing fee**. Confirm the amount, if any, with the clerk of court.

The Filing Fee Waiver Request – District Court/Small Claims Court form set is available at www.ndcourts.gov/legal-self-help/fee-waiver. The completed fee waiver request forms are filed at the same time as the motion.

PREPARE FOR THE HEARING!!!

Organize the information, documents, etc., that you think you'll need for the hearing. At a minimum, prepare an outline of your remarks and arguments.

The moving party must prove the statements in their motion documents. The moving party must prove that the opposing party clearly committed contempt of court, **and** prove that the opposing party had a willful and inexcusable intent to commit contempt of court.

The opposing party can challenge the moving party's evidence and statements and present their own evidence.

An Evidence research guide is available at www.ndcourts.gov/legal-self-help. Scroll to the "District Court Civil" section.

CAUTION!!! Preparing a case is often a complex and confusing process. Both parties are held to the same requirements and responsibilities as a lawyer, even if they don't understand the rules or procedures. Both parties will need to conduct additional research to prepare.

BOTH PARTIES MUST ATTEND THE HEARING

REMEMBER:

- If the moving party does not attend the hearing, their motion may be dismissed.
- If the opposing party does not attend the hearing, the judge or judicial referee may think they are admitting to the allegations in the motion and the opposing party may be found in contempt of court.

If you cannot appear in person, you can ask the court for permission to attend a hearing by telephone or by some other reliable electronic means.

- **NOTE:** The court is not required to grant this type of request.

The Appear by Phone or Other Electronic Means form set is available at www.ndcourts.gov/legal-self-help. Scroll to the "Miscellaneous" section.

There may be more than one hearing, depending on the specific circumstances of the case. Be prepared for every hearing.

****Arrive Early to the Courthouse on the Date of the Hearing:**

Don't miss your hearing date and time. If you have a serious, unavoidable reason you can't get to court on the date and time scheduled for trial, call the courthouse as soon as you can.

CONDUCT OF THE HEARING:

The judge or judicial referee hears both sides and then decides whether to issue an order finding the opposing party in contempt. Sometimes, the order to show cause is issued at the end of the hearing. Sometimes, the order to show cause is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
 - Each party gives an opening statement. Usually, the moving party goes first.
- The Moving Party Presents Witnesses and Evidence
 - The moving party presents their case first.
 - The opposing party may cross-examine witnesses and object to the moving party's evidence.
- The Opposing Party Presents Witnesses and Evidence
 - The opposing party presents their case after the moving party.
 - The moving party may cross-examine witnesses and object to the opposing party's evidence.
- Closing Arguments
 - Each party gives a closing statement. Usually the opposing party goes first.

The judge or judicial referee of the district court will decide if the moving party proved the grounds for the order to show cause. If the judge or judicial referee decides the moving party proved the grounds for the order to show cause, an order to show cause against the opposing party will be issued.

BEFORE YOU LEAVE THE COURTHOUSE

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

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GENERAL-USE TEMPLATE FORMS

The North Dakota Legal Self Help Center doesn't have forms or instructions available for motions for an order to show cause.

If you decide to represent yourself, you'll need to create your own legal documents, or retain an attorney to do so.

Although the ND Legal Self Help Center doesn't have forms or instructions for motions for an order to show cause, the General-Use motion template forms are available at www.ndcourts.gov/legal-self-help.

- **If you are the Moving Party**, you may find the General-Use motion template forms available at www.ndcourts.gov/legal-self-help/making-a-motion useful as a starting point for creating your own motion for an order to show cause.
- **If you are the Opposing Party**, you may find the General-Use motion template forms available at www.ndcourts.gov/legal-self-help/answering-a-motion useful as a starting point for creating your own answer to a motion for an order to show cause.

Legal Services of North Dakota created a Family Law Manual for lawyers. The Family Law Manual is available at www.legalassist.org/?id=128&page=ND+Family+Law+Manual. There are examples of documents available under the "After Divorce is Final" section. You may find the examples of interest for general formatting purposes.

(The reference to the Legal Services of North Dakota Family Law Manual is for formatting only. Including this reference does not mean the ND Legal Self Help Center endorses, warrants, or accepts responsibility for the content or uses of the Family Law Manual. Use at your own risk.)

You're responsible for the information on the documents you file with the court.

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota.

Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of the action.

You and the lawyer must agree in writing to Limited Legal Representation.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

You aren't required to hire a lawyer to access the state court system. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

Lawyer Resources

If you would like to learn more about finding a lawyer to represent you, go to www.ndcourts.gov/legal-self-help/finding-a-lawyer.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.
- The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is www.sband.org.
- For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by name or location.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called "unbundling") is a way that an lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled. For example:

- You may want a lawyer to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with a lawyer to prepare or review your paperwork, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with a lawyer who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire a lawyer just to make the court appearance for you.

You and the lawyer must agree in writing to Limited Legal Representation.

FORMATTING EXAMPLES OF MOTION AND ANSWER TO MOTION DOCUMENTS

Formatting examples of the motion for an order to show cause documents and answer to motion for an order to show cause documents are found on the following pages. The formatting examples were filed in North Dakota state district court civil cases.

The formatting examples are listed in the following order:

Moving Party Motion Formatting Examples:

Motion for Order to Show Cause

Brief in Support of Motion for Order to Show Cause

Affidavit in Support of Motion for Order to Show Cause

Order to Show Cause (*Proposed*)

Opposing Party Answer to Motion Formatting Examples:

Answer Brief to Motion for Order to Show Cause

Affidavit in Support of Answer Brief to Motion for Order to Show Cause

*The formatting examples are included for general formatting purposes **ONLY**. As a self-represented individual, you must determine how the laws apply to your specific circumstances. You must also write your motion or answer to motion documents so they're accurate for your circumstances and determine if the motion or answer to motion you create is legally sufficient. The ND Legal Self Help Center can't review your motion or answer to motion documents or advise you.*

Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

STATE OF NORTH DAKOTA
COUNTY OF ANYCOUNTY

IN DISTRICT COURT
EAST WEST JUDICIAL DISTRICT

Jane Doe,)
)
Plaintiff,)
)
vs.)
)
Joe Doe,)
)
Defendant.)

Case No. 01-2015-DM-00001

**MOTION FOR ORDER TO SHOW CAUSE
AND FOR ATTORNEY FEES**

1. **COMES NOW THE PLAINTIFF**, Jane Doe, by and through her attorney, April Noname, pursuant to N.D.C.C. Chapter 27-10, and respectfully moves the Court for an Order to Show Cause requiring the Defendant to appear before this Court and to show cause, if any, why he should not be held in contempt for failure to comply with the terms and conditions of the Judgments and Orders in this case, most recently the Second Amended Judgment, issued on December 12, 2019.

2. Specifically, the Defendant was ordered to pay one-half of the unreimbursed medical expenses that are paid on behalf of the children. To date, the Defendant only paid a small portion of his responsibility toward the children's medical bills. Additionally, the Defendant was ordered to pay one-half of daycare related expenses and has failed to do so.

3. The Plaintiff also moves the Court to order the Defendant to be held in contempt, as well as assessed costs and attorney's fees for having to bring this matter before the court.

These motion are based upon all of the pleadings and documents filed herein.

Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

4. Based on the foregoing, the Plaintiff requests an Order of the Court as follows:
- a. That the Defendant be found in contempt of this court with sanctions issued.
 - b. That the Defendant be ordered to comply with the judgment.
 - c. That the Defendant be ordered to reimburse the Plaintiff within a reasonable amount of time for his share of the children’s unreimbursed medical debt.
 - d. That the Defendant be ordered to reimburse the Plaintiff within a reasonable amount of time for his share of the children’s daycare expenses.
 - e. That the Defendant be ordered to pay all costs and attorney’s fees incurred by the Plaintiff in bringing this action; and
 - f. For such other relief as the Court deems just and equitable.

Dated this 25th day of March, 2020.

April Ncname

April Noname/ID#0000
LAWYERS & LAWYERS
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Anytown, Anystate 00000
(701) 000-0000
anoname@kmail.com
ATTORNEY FOR PLAINTIFF

STATE OF NORTH DAKOTA
COUNTY OF ANYCOUNTY

IN DISTRICT COURT
EAST WEST JUDICIAL DISTRICT

Jane Doe,)
)
Plaintiff,)
)
vs.)
)
Joe Doe,)
)
Defendant.)

Case No. 01-2015-DM-00001

**BRIEF IN SUPPORT OF MOTION FOR ORDER
TO SHOW CAUSE AND FOR ATTORNEY FEES**

[#1] Plaintiff submits this Brief in Support of her Motion for the issuance of an Order to Show Cause.

FACTS

[#2] An interim order was issued by this court on July 15, 2015, requiring the Defendant to pay for one-half of daycare expenses. A divorce judgment was issued by this court on December 12, 2015, ordering Defendant to pay for one-half of all unreimbursed medical expenses related to the parties three (3) minor children. This court additionally issued an Amended Judgment on December 12, 2017, and a Second Amended Judgment on December 12, 2019. Each amended judgment required the Defendant to pay for one-half of all unreimbursed medical expenses for the children.

[#3] The affidavit of Jane Doe that has been filed with this Brief demonstrates the Defendant’s disregard and contempt for this court’s authority and directives within the multiple Judgments and Orders that have been issued by this court. Specifically, the Defendant has failed to reimburse Plaintiff for his court ordered share of the children’s unreimbursed medical

bills and daycare expenses. The Defendant’s statements made to the Plaintiff regarding his unwillingness to reimburse his share of the children’s medical expenses reflect his willful disregard for the divorce judgment.

LAW AND ARGUMENT

[#4] The Defendant has not followed the divorce judgment and interim order in this case.

Under N.D.C.C. § 27-10-01.1(1)(c), “contempt of court” is defined as:

Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court officer including a referee or magistrate;

A court of records of this state may impose a remedial or punitive sanction for contempt of court under this chapter. N.D.C.C. § 27-10-01.2(1).

[#5] When imposing contempt under N.D.C.C. chapter 27-10, a court must first consider whether a remedial or punitive sanction is applicable, and then apply the appropriate procedures for imposing the sanction. Millang v. Hahn, 582 N.W.2d 665, 667 (N.D. 1998), citing Endersbe v. Endersbe, 555 N.W.2d 580, 582 (N.D. 1996).

[#6] North Dakota Century Code § 27-10-01.4(1) provides remedial sanctions that may be imposed and states as follows:

- a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
- b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;

Brief in Support of Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

- c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
- d. An order designed to ensure compliance with a previous order of the court; or
- e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

[7] In this case, the Defendant has intentionally disobeyed the interim order and multiple judgments issued by the Court. Defendant's conduct in failing to abide by the terms of the divorce judgment constitutes contempt of court and he should be punished accordingly. The Defendant should not only be ordered to immediately comply with the divorce judgment, he should also be responsible for costs and attorney fees Plaintiff has incurred because of the Defendant's contempt.

CONCLUSION

[#8] Because the Defendant had notice of the terms of the interim order and divorce judgment, the Plaintiff submits there is no legal justification for the Defendant's failure to comply with the terms of the divorce judgment. Therefore, the Plaintiff asks this Court to issue an Order to Show Cause to the Defendant granting the relief requested in the Plaintiff's motion.

Dated this 25th day of March, 2020.

April Nname

April Noname/ID#0000
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Anytown, Anystate 00000
(701) 000-0000
anoname@gmail.com
ATTORNEY FOR PLAINTIFF

STATE OF NORTH DAKOTA
COUNTY OF ANYCOUNTY

IN DISTRICT COURT
EAST WEST JUDICIAL DISTRICT

Jane Doe,)
)
Plaintiff,)
)
vs.)
)
Joe Doe,)
)
Defendant.)

Case No. 01-2015-DM-00001

**AFFIDAVIT OF JANE DOE IN SUPPORT
OF MOTION FOR ORDER TO SHOW CAUSE**

Jane Doe states as follows:

1. I am the Plaintiff in the above-captioned matter and I reside at 1111 Anywhere Street, Anytown, Anystate 00000, with my three minor children: A.A.D., B.E.D., and C.I.D. I am employed with the Anyemployer Company.
2. The Defendant in this matter, Joe Doe, resides at 0000 Anywhere Street, Anytown, Anystate 00000. I do not know where Joe Doe is employed.
3. I make this affidavit in support of my Motion for Order to Show Cause and the statements herein are based upon my own personal knowledge and belief.
4. My divorce from Joe Doe was final from this Court on December 12, 2015. Since that time, there have been two amended judgments entered, one on December 12, 2017, and a Second Amended Judgment on December 12, 2019.
5. Pursuant to the Judgment, Joe Doe was ordered to reimburse me for one-half of all unreimbursed medical expenses that are paid on behalf of our children.

Affidavit in Support of Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

6. Pursuant to the Amended Judgment, dated December 12, 2017, Joe Doe was ordered to reimburse me for one-half of all daycare costs incurred for our children. Joe Doe has never reimbursed me for this amount.

7. I have sent copies of the bills to Joe Doe on numerous occasions regarding the medical expenses. I have included examples of such notices as *Exhibit #1*. I have hand delivered copies, emailed, and mailed copies of the notices. Joe Doe continues to come up with excuses as to why he should not be responsible for the medical expenses and does not pay me.

8. At this time, half of the outstanding medical bills for which Joe Doe has not reimbursed me total \$7,303.28. *See Exhibit #2*. The total includes the following:

2015.....	\$ 660.08
2016.....	\$ 222.02
2017.....	\$2,218.22
2018.....	\$1,219.87
2019.....	\$2,650.00
2020 (to date).....	<u>\$ 333.09</u>
Total Amount Owing.....	\$7,303.28

9. On February 4, 2020, I sent Joe Doe a letter requesting payment for unreimbursed medical expenses. *See Exhibit #3*.

10. Joe Doe has refused to pay for any part of the children’s daycare expenses. He currently owes me \$1,765.00 for his half of daycare expenses. *See Exhibit #4*. His refusal to pay daycare expenses is a reflection of his attitude on reimbursing me one-half for the daycare expenses.

11. The issue of unreimbursed medical and daycare expenses has been ongoing issues. In 2018, I hired Octavis Spentz to address the issue of unreimbursed medical expenses and all of this was brought to Joe Doe’s attention. He still refused to make any payments. *See Exhibit #5*.

Affidavit in Support of Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

12. Through all of this, the only payment Joe Doe has ever made to me is a payment for \$66.00 on January 4, 2016. I marked that amount as paid in *Exhibit #2* and have not included that in the total owed in paragraph eight.

13. I believe Joe Doe feels as though he is not responsible for half of these expenses because he pays child support pursuant to the North Dakota Child Support Guidelines. I have had a lot of communication with Joe Doe that illustrates this. For example, he refers to child support as “welfare,” and claims I am stealing from him. He also became very angry with me in 2019 because I wouldn’t use the money from “one week of 52 weeks” of child support to buy our daughter running shoes and gear. Attached are examples of such statements as *Exhibit #6*.

14. For all the reasons stated herein, I am asking for an order to Show Cause against Joe Doe. I am also respectfully requesting that if Joe Doe is found in contempt of court, that he also be ordered to pay my attorney’s fees and costs that I’ve incurred for having to bring this action.

15. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Affidavit is true and correct.

Signed on this 25th day of March, 2020, in Anytown, Anycounty County, North Dakota, United States of America.

Jane Doe

Jane Doe
1111 Anywhere Street
Anytown, Anystate 00000
(701) 123-4567
JDoe@email.com

Order to Show Cause Formatting Example – Use at Your Own Risk

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF ANYCOUNTY

EAST WEST JUDICIAL DISTRICT

Jane Doe,)	
)	Case No. 01-2015-DM-00001
Plaintiff,)	
)	
vs.)	ORDER TO SHOW CAUSE
)	
Joe Doe,)	
)	
Defendant.)	

TO: THE ABOVE-NAMED DEFENDANT, JOE DOE, 0000 ANYWHERE STREET, ANYTOWN, ANYSTATE 00000:

[#1] The motion of Jane Doe for an order requiring you to show cause as to why you should not immediately pay any monetary obligations as detailed in the judgments and orders or be found in contempt of court for failure to comply came before the court for consideration. After reviewing the motion and being otherwise fully advised, the court finds that you have not paid your share of monetary obligations as outlined in the judgments and orders.

[#2] **YOU ARE HEREBY ORDERED TO APPEAR** before the Court on the 27th day of April, 2020, at 10 a.m. before the Honorable Judge Jennifer Smith, Judge of District Court, Anycounty County Courthouse, 213 Anystreet, Anytown, North Dakota, to show cause why you have not complied with the monetary and child related provisions as detailed in the divorce judgment and why you should not be found in contempt of court.

IT IS SO ORDERED.

BY THE COURT:

Judge Jennifer Smith
Judge of the District Court

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This example is provided for general formatting purposes ONLY. You may be required to create a proposed Order to Show Cause for the judge or judicial referee to sign. As a self-represented individual, you must determine how the laws apply to your specific circumstances. You must also write your proposed order and determine if the proposed order you create is legally sufficient. The ND Legal Self Help Center can't review your proposed order or advise you.

STATE OF NORTH DAKOTA
COUNTY OF ANYCOUNTY

IN DISTRICT COURT
EAST WEST JUDICIAL DISTRICT

Dox Glean,)
)
Plaintiff,)
)
vs.)
)
Dora Smeath,)
)
Defendant.)

Case No. 01-2014-DM-0001

**ANSWER BRIEF TO DEFENDANT’S MOTION
FOR ORDER TO SHOW CAUSE**

FACTS

[¶1] Plaintiff, Dox Glean (“Dox”), and Defendant, Dora Smeath (“Dora”), are the biological parents of S.O.G., born 2011. In April 2014, Dox initiated this action to establish primary residential responsibility and a parenting plan for S.O.G. In October 2014, a Judgment was entered which provided Dox with primary residential responsibility for S.O.G., and provided Dora with reasonable supervised parenting time. The supervised parenting time was to occur twice monthly at Visitation Place in Notown, North Dakota.

[¶2] In 2015, motions were filed by both Dora and Dox regarding residential responsibility and parenting time for S.O.G. In July 2016, an Amended Judgment was entered in this matter, which changed the location of Dora’s supervised visitation from Visitation Place in Notown, North Dakota, to Kid’s Place in Sotown, North Dakota.

[¶3] In October 2017, Dora again filed a motion to modify the parenting plan. Dox and Dora came to an agreement and each signed a stipulation. In December 2017, an Amended

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Judgment was approved by the Court. Pursuant to the Amended Judgment, Dox remained the parent with primary residential responsibility. Dora was allowed unsupervised parenting time and a parenting time schedule was established in the Amended Judgment. Dora was allocated six unsupervised weekends of parenting time from December, 2017, through May, 2018. Additionally, if Dora successfully completed the unsupervised parenting time and completed the Parent Class, she was allocated three weeks of summer parenting time with S.O.G. Dora completed the class and provided proof of completion of the Parent Class.

[¶14] The Second Amended Judgment specifically conditioned the three summer weeks of parenting time upon Dora completing the parenting class and completing six continuous months of parenting time on the weekend. The Second Amended Judgment states “Specifically, there must be six months of no missed visits in order for the week long summer visits to be exercised.” See Second Amended Judgment, Doc ID #22 at ¶ 12. The Second Amended Judgment further states, “If either obligation set forth in paragraph 6 or 7 above is not met, Defendant shall have only one weekend of parenting time until six continuous months of parenting time have been exercised.” Id. at ¶ 13. The Second Amended judgment also states “If Defendant is more than fifteen (15) minutes late for exchanges without communicating with the other parent, the parenting time shall be forfeited for that weekend.” Id. at ¶ 15.

[¶15] Dora successfully completed her parenting time with S.O.G. in December 2018, January 2019, February 2019, March 2019, and May 2019. However, Dora did not successfully complete her parenting time with S.O.G. in April 2019. Dox arrived with S.O.G. at the Sotown Police Department on April 22, 2019, to exchange S.O.G. Dora did not appear. Officer Jones of

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the Sotown Police Department contacted Dora at approximately 9:15 a.m. to see when she was going to arrive for the exchange. See Defendant’s Exhibit A. Dora informed Officer Jones that she would not be there as she believed the exchange time was 5:00 p.m. See Defendant’s Exhibit A.

[¶16] Because of this, Dox informed Dora in writing on June 1, 2019, that she was not in compliance with the Second Amended Judgment and, therefore, the parenting time of three weeks in the summer was forfeited until Dora successfully completed her parenting time of six weekend visits with S.O.G. See Defendant’s Exhibit A. Dox provided Katie with a parenting time schedule for another six consecutive weekends. See Defendant’s Exhibit A.

[¶17] Dora has now filed a Motion for Order to Show Cause to hold Dox in contempt of court, requesting an award of attorney’s fees, and requesting an award of sanctions. While Dora’s motion and brief do not indicate what sanctions are being requested, Dora’s affidavit indicates she is requesting cost of travel and makeup parenting time. Dox objects to Dora’s motion to find him in contempt of court and for an award to Dora of sanctions and attorney’s fees, based on the following Law and Argument.

LAW AND ARGUMENT

[¶18] The North Dakota Supreme Court has held “In a civil contempt proceeding under N.D.C.C. ch. 27-10, a complainant must clearly and satisfactorily show that the alleged contempt has been committed. In order to warrant a remedial sanction for contempt, there must be a willful and inexcusable intent to violate a court order.” Berg v. Berg, 2000 ND 37, ¶ 10, 606 N.W.2d 903 (internal citations omitted). In this case, it is Dora who has not complied

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with the terms of the Amended Judgment in order to exercise her three weeks of summer parenting time with S.O.G. This is shown through the affidavits of Dox Glean, and his wife, Mae Glean, and the incorporated exhibits. Further, the history regarding Dora's path from primary residential responsibility for S.O.G. to supervised parenting time with S.O.G., to unsupervised parenting time with S.O.G., is one of the primary reasons the Second Amended Judgment was formulated in the fashion that it was. As show by the Affidavit of Dox Glean, Dora has a history of failing to follow through and failing to read or comply with court ordered directives. It is also shown in the Affidavit of Dox Glean that it was a big step for him to agree to unsupervised parenting time, and it came with stipulations. In the past and moving forward, Dox has nothing but S.O.G.'s best interests in mind. Under the facts presented to the court, Dox should not be held in contempt of court.

[¶19] North Dakota law defines contempt of court as follows:

- a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
- b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;
- c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;
- d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
- e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;
- f. Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or
- g. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

N.D.C.C. § 27-10-01.1(1)(a-g).

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[¶10] Based upon the facts in this case, as set forth in the affidavits of Dox Glean and Mae Glean, mention must be made of the frivolous nature of Dora’s claim of contempt. In order to be found guilty of contempt of court, the accused must have unintentionally violated one of the seven provisions outlined in N.D.C.C. § 27-10-01.1(1)(a-g). A careful examination of the statutory definition of contempt of court as applied to the facts in this case will show beyond any doubt that Dox is not guilty of contempt as alleged by Dora.

[¶11] It is first necessary to note that Dora has not identified which subsection of the contempt of court statute Dox has allegedly violated. Since Dora has not specifically identified which section of the code has been violated, it is reasonable to presume that she does not truly believe the Dox has violated any of the provisions of N.D.C.C. § 27-10-01.1. A careful review of each provision of this section will confirm this presumption is correct.

[¶12] Based upon a reading of the plain language of the definition of contempt of court, it does not appear that Dox has violated any of the provisions outlined under North Dakota law. Further, Dora has not alleged that Dox has violated any of these sections, which would form the basis for a motion of contempt of court. The only subsection which may apply to Dora’s allegations of contempt is subsection N.D.C.C. § 27-10-01.1(1)(c) which provides that one may be held in contempt of court for intentional disobedience of the authority, process, or order of a court.

[¶11] First, Dora has not alleged that Dox violated this subsection in either her moving papers or in her affidavit. Second, as shown by the affidavits of Dox Glean and Mae Glean and the incorporated exhibits, Dora is the party who violated the Amended Judgment by failing to

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successfully complete six consecutive months of weekend parenting time with S.O.G. to entitle her to exercise her parenting time of three weeks during the summer school break as outlined in the Second Amended Judgment. In order for Dox to have intentionally violated the Second Amended Judgment, Dora would have had to successfully complete her six consecutive months of parenting time, which she has not done. Dox has not denied Dora any of the weekend parenting time, and if he had done so, intentionally, that likely would have constituted contempt of court. Therefore, Dox has not intentionally violated the Second Amended Judgment and should not be found in contempt of court.

[¶14] Based upon the above law and argument, it is clear that Dora's motion requesting Dox be held in contempt of court for violating a court order is frivolous. In order for Dox to be in contempt of court, he must have violated the Second Amended Judgment, which is essentially the order of the court. In this case, Dora violated the terms of the Second Amended Judgment, not Dox, and Dox should not be held in contempt of court for Dora's error. There is a complete absence of actual facts or law that a reasonable person would have thought a court would render judgment in Dora's favor. As a result, pursuant to the provisions of N.D.C.C. § 28-26-01, Dox requests that the court make a finding that Dora's claim for relief is frivolous, and award Dox reasonable actual and statutory costs, including reasonable attorney's fees, for responding to Dora's motion for contempt.

CONCLUSIONS

[¶14] Based upon the facts in this case, Dox is not guilty of contempt of court as defined in N.D.C.C. § 27-10-01.1(1). Dox has not violated the Second Amended Judgment as it relates to

Answer to Motion for Order to Show Cause Formatting Example – Use at Your Own Risk

the week-long parenting time between Dora and S.O.G. In fact, pursuant to the terms of the Second Amended Judgment, Dora violated the provisions and that is the reason the week-long parenting time is not being honored by Dox. Dora admit in her affidavit that she missed the pick-up time for the April 2019 weekend parenting time with S.O.G. as listed in the Second Amended Judgment. In fact, given Dora’s admission that she did not comply with the Second Amended Judgment, Dox believes that the motion for contempt is devoid of any factual or legal basis and that it should be found to be frivolous and Dox should be awarded his reasonable actual and statutory costs, including reasonable attorney’s fees.

Dated this 25th day of July, 2019.

June Name/ID#0000
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ATTORNEY FOR PLAINTIFF

Affidavit in Support of Answer Brief to Motion Formatting Example – Use at Your Own Risk

STATE OF NORTH DAKOTA
COUNTY OF ANYCOUNTY

IN DISTRICT COURT
EAST WEST JUDICIAL DISTRICT

Dox Glean,)
)
Plaintiff,)
)
vs.)
)
Dora Smeath,)
)
Defendant.)

Case No. 01-2014-DM-0001

**AFFIDAVIT OF DOX GLEAN IN SUPPORT OF
ANSWER BRIEF TO DEFENDANT'S MOTION FOR
ORDER TO SHOW CAUSE**

Dox Glean states as follows:

1. I am the Plaintiff in the above-entitled matter and make this affidavit in response to Defendant's Motion for Order to Show Cause.
2. I am the father of S.O.G., born 2011.
3. A Judgment was entered in October 2014 which provided me with primary residential responsibility of S.O.G., subject to Defendant's ("Dora") reasonable supervised parenting time. Dora's supervised parenting time was to occur twice monthly at Visitation Place in Notown, North Dakota. My request for primary residential responsibility and the requirement that Dora's parenting time be supervised was due in part to Dora's abuse of prescription medication and marijuana, Dora not providing a stable home for S.O.G., the individuals Dora were introducing to S.O.G., Dora's inability to maintain employment, financial stability for S.O.G., the inability of Dora to maintain telephone contact with me and S.O.G., the denial of my parenting time, and a concern for S.O.G.'s health. Specifically, with regards to S.O.G.'s health, S.O.G. was

Affidavit in Support of Answer Brief to Motion Formatting Example – Use at Your Own Risk

hospitalized with a severe abscess in his mouth, which required teeth extraction through surgery, crowns on his remaining teeth, and filings before he was three years old.

4. In 2015, Dora left Notown, North Dakota, with S.O.G., which necessitated me filing a motion with the court for the return of S.O.G. Dora also filed a motion on the same date for an Ex Parte Interim Order with regard to S.O.G. In July 2016, an Amended Judgment was entered in this matter, which altered only the location of Dora's supervised visitation from Visitation Place in Notown, North Dakota, to Kid's Place in Sotown, North Dakota.

5. In October 2017, Dora again filed a motion to modify the parenting plan. Dora and I came to an agreement and signed a stipulation. In December 2017, a Second Amended Judgment was approved by the court. Pursuant to the Second Amended Judgment, I remained the parent with primary residential responsibility. Dora was allowed unsupervised parenting time and a parenting schedule was put in the Second Amended Judgment. Dora was allocated parenting time of six unsupervised weekends from December 2017, through May 2018. Additionally, if Dora successfully completed the Parent Class, she was allocated parenting time of three weeks in the summer. Dora completed the class and provided proof of completion of the Parent Class.

6. The Second Amended Judgment specifically conditioned Dora's parenting time for three weeks in the summer upon Dora completing the Parent Class and completing six continuous months of weekend parenting time. Dora was not supposed to miss any of the monthly weekend parenting time to trigger the parenting time of three weeks in the summer. If Dora did not complete parenting time of continuous six weekends, then she had to start over and

Affidavit in Support of Answer Brief to Motion Formatting Example – Use at Your Own Risk

complete parenting time of six continuous weekends prior to being entitled to the three weeks of parenting time in the summer. Finally, the Second Amended Judgment states that Dora forfeits her parenting time if she is more than 15 minutes late for a visit.

7. Dora successfully completed her visitation with S.O.G. in December 2018, January 2019, February 2019, March 2019, and May 2019. However, Dora did not successfully complete her visitation with S.O.G. in April 2019. The Second Amended Judgment provided that Dora was to have parenting time with S.O.G. the weekend of April 22, 2019, through April 24, 2019. Her parenting time was to commence at 9:00 a.m. on April 22 and end at 5:00 p.m. on April 24. On the morning of April 22, 2019, I traveled to the Sotown Police Department, which is where Dora and I exchange S.O.G. I was met by Officer Jones of the Sotown Police Department to assist with the exchange. See Defendant's Exhibit A. At 9:15 a.m., I told Officer Jones I would be willing to wait until 9:20 a.m. for Dora to arrive. Officer Jones contacted Dora by telephone and I was advised that Dora would not be arriving as she thought the pickup time was 5:00 p.m. See Defendant's Exhibit A. I went home with S.O.G.

8. The Second Amended Judgment indicates that Dora is supposed to contact me if she is going to be late for an exchange. Prior to Dora contacting me on April 22, 2019, after Officer Jones contacted her, Dora had not contacted me since April 9, 2019. See Plaintiff's Exhibit 1 (phone call history) and Exhibit 2 (missed calls and times from Dora). As the phone records indicate, Dora did not contact me to confirm or discuss the pickup time for S.O.G. Additionally, Dora did not send me a text message or try to communicate with me in any other manner regarding her parenting time with S.O.G. the weekend of April 22, 2019. See Plaintiff's Exhibit 3

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(text message from Dora). Dora spoke with S.O.G. through my wife’s cell phone during the April 9, 2019, through April 22, 2019, timeframe.

9. Because both S.O.G. and Dora were very upset about the missed visit, my wife, Mae Glean, went to the Sotown Police Department to speak with Dora. After speaking with Dora, we did allow Dora to come to our residence to see S.O.G. While at our residence, we allowed Dora to take S.O.G. for the night, for S.O.G.’s benefit. I informed Dora that I was under no obligation to allow her to see S.O.G., but I did not want to deprive S.O.G. of her time with Dora. It was made very clear to S.O.G. that us allowing her to take S.O.G. overnight was not a makeup visit.

10. Dora indicates in her affidavit that her tardiness was a mistake. Dora also stated that she has never been late for a visit. Dora did not mention that she missed a supervised visit with S.O.G. on August 20, 2017. See Plaintiff Exhibit 4. Dora told the staff at Kid’s Place that she thought the visit was the following weekend. See Plaintiff’s Exhibit 4. This is a recurring theme with Dora and one of the reasons that the Second Amended Judgment had specific visitation dates and time outlined. This does not only occur without regard to S.O.G., but with other aspects of Dora’s life as well. See Plaintiff’s Exhibit 5 (Letter from Dora to Honorable Smith explaining why she missed her court date in 2015). There were no hearings scheduled in June, July, or August with regard to custody of S.O.G. See Odyssey entries in case number 01-2014-DM-0001.

11. I do have concerns about S.O.G. when she is with Dora. Dora was charged with Disobedience of a Judicial Order in 2016 in Whatcounty District Court, case number 60-DM-

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0001, for taking S.O.G. from supervised visitation at Kid’s Place. See Plaintiff’s Exhibit 6. With all of the issues that have arisen over the years, I have little trust in Dora, and her failure to read the Second Amended Judgment and follow the schedule does not help mend the trust.

12. On June 1, 2019, I wrote Dora a letter informing her that she had not completed the six months of weekend visits successfully and, therefore, it was my understanding under the Second Amended Judgment that she would need to start her six months of weekend visitations over before she would be allowed the three weeks of summer parenting time. See Defendant’s Exhibit A. My attorney was then served with a Motion for Order to Show Cause to hold me in contempt of court.

13. I do not believe that I am in violation of North Dakota law regarding contempt of court. I have complied with the terms of the Second Amended Judgment. Dora has not complied with the terms of the Second Amended Judgment and now wants the court to hold me in contempt for her mistakes. I believe this motion for contempt and Dora’s claim for relief is frivolous and am requesting that the court order Dora to reimburse me for my legal fees and costs of defending against the motion.

14. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Affidavit is true and correct.

Signed on this 25th day of July, 2019, in Anytown, Anycounty County, North Dakota,
U.S.A.

Dox Glean

Dox Glean

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