

Rule 10-1-602. Orders to show cause.

Intent:

To describe the process for requesting an order to show cause.

Applicability:

This rule shall apply to the Sixth District Court.

Statement of the Rule:

(1) Motion. A party who seeks to enforce an order or a judgment of a court against an opposing party may file an ex parte motion for an order to show cause. The motion must be filed with the same court and in the same case in which that order or judgment was entered. The motion shall be made only on an ex parte basis, and the procedures of Rule 7 of the Utah Rules of Civil Procedure shall not apply.

(2) Affidavit. The motion for an order to show cause must be accompanied by at least one supporting affidavit. Each supporting affidavit must be based on personal knowledge and must set forth admissible facts and not mere conclusions. At least one supporting affidavit must state the title and date of entry of the order or judgment which the moving party seeks to enforce.

(3) Order. The motion for an order to show cause must be accompanied by the proposed order to show cause, which shall:

(3)(A) state the title and date of entry of the order or judgment which the moving party seeks to enforce;

(3)(B) specify the relief sought by the moving party;

(3)(C) order the opposing party to make a first appearance in court at a specific date, time and place and, then and there, to explain why or whether the opposing party acted or failed to act in compliance with such order or judgment;

(3)(D) order the opposing party to appear personally or through legal counsel at the first appearance;

(3)(E) state that no written response to the motion and order to show cause is required;

(3)(F) state that the first appearance shall not be the evidentiary hearing, but shall be for the purpose of determining

(3)(F)(i) whether the opposing party contests the allegations made by the moving party,

(3)(F)(ii) whether an evidentiary hearing is necessary,

(3)(F)(iii) the specific issues to be resolved through an evidentiary hearing, and (iv) the estimated length of any such evidentiary hearing; and

(3)(G) state whether the moving party has requested that the opposing party be held in contempt and, if such a request has been made, recite that the sanctions for contempt may include, but are not limited to, a fine of \$1000 or less and a jail commitment of 30 days or less.

(4) Service. If the court grants the motion and issues an order to show cause, the moving party must have the order, the motion and all supporting affidavits served upon the opposing party. Service shall be made in the manner prescribed for service of a summons and complaint, unless the moving party shows good cause for service to be made by mailing or delivery to the opposing party's counsel of record and the court so orders. The date of the opposing party's first appearance on the order to show cause may not be sooner than five days after service thereof, unless

(4)(A) the motion requests an earlier first appearance date,

(4)(B) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the first appearance is not held sooner than five days after service of the order to show cause, and

(4)(C) the court agrees to an earlier first appearance date.

(5) First Appearance. The opposing party's first appearance on the order to show cause, at the date, time and place stated therein, shall not be the evidentiary hearing. At the first appearance, the court shall determine

(5)(A) whether the opposing party contests the allegations made by the moving party,

(5)(B) whether an evidentiary hearing is necessary,

(5)(C) the specific issues to be resolved through an evidentiary hearing, and

(5)(D) the estimated length of any such evidentiary hearing. The court may order the parties to file memoranda on legal issues before the evidentiary hearing. If the opposing

party does not contest the allegations made by the moving party, the court may proceed at the first appearance as the circumstances require.

(6) Evidentiary Hearing. At the evidentiary hearing on a contested order to show cause, the moving party shall bear the burden of proof on all allegations which are made in support of the order.

(7) Limitations. An order to show cause may not be requested in order to obtain an original order or judgment; for example, an order to show cause may not be used to obtain a temporary restraining order or to establish temporary orders in a divorce case. This rule shall apply only in civil actions, and shall not be applied to orders to show cause in criminal actions. This rule does not apply to an order to show cause issued by a court on its own initiative.