

## MOTION AND ORDER TO SHOW CAUSE

\*\*\* There is a \$30.00 service fee from the Sheriff's Department to  
serve the paperwork. \*\*\*

**DUE TO THE CHANGING NATURE OF THE LAW, the forms and instructions contained in this packet may become outdated. You should review and research statutes and rules of procedure referenced in the instructions to ensure that the forms are accurate and current.**

IN NO EVENT will the Clerk of Court or anyone contributing to the production of these forms, instructions or guidelines be liable for any indirect or consequential damages resulting from use of the forms or information provided to you.

IF THERE ARE ANY QUESTIONS concerning these forms, or your legal rights, it is strongly recommended that you consult with an attorney.

**USE THESE FORMS AT YOUR OWN RISK. THESE FORMS MAY OR MAY NOT BE APPROPRIATE IN YOUR PARTICULAR CASE. ANY DESIRED OUTCOME FROM THE USE OF THESE FORMS CANNOT BE PREDICTED OR GUARANTEED. IT IS STRONGLY RECOMMENDED THAT YOU SEEK LEGAL ADVICE! NO ONE AT THE JUDICIAL CENTER, CLERK OF COURT'S OFFICE OR JUDGE'S OFFICE, MAY GIVE LEGAL ADVICE OR TELL YOU HOW TO FILL OUT FORMS!**

**PLEASE CAREFULLY READ THE FORMS AND INSTRUCTIONS CONTAINED IN THIS PACKET. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT WITH AN ATTORNEY.**

THESE ARE EDUCATIONAL FORMS AND INSTRUCTIONS DESIGNED TO ASSIST YOU, BUT YOU ARE REPRESENTING YOURSELF. PLEASE REVIEW AND FOLLOW THE DIRECTIONS TO IMPROVE YOUR PERFORMANCE IN YOUR CASE. FAILURE TO READ AND FOLLOW THE INSTRUCTIONS MAY ADVERSELY IMPACT YOUR CLAIM.

**Please read instructions before completing forms!**

**Steps for filing a Motion and Order to Show Cause**

**STEP 1**

**Filling out the documents**

**\*\*\*CHECKLIST\*\*\***

You must complete the following documents:

◆**Motion to Show Cause** (The plaintiff and defendant stay the same through out the entire case. Look on the previous order(s) to see who the plaintiff and defendant are.)

◆**Order to Show Cause with Sheriff's return**

Please note that the last page of the **MOTION** needs to be signed in the presence of a **Notary Public BEFORE coming to the COURTHOUSE!**

◆**SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT (2)-(AOC-G-250)**

**STEP 2**

**Filing the documents**

THERE IS A \$30.00 FEE FOR SERVICE FROM THE SHERIFF'S DEPARTMENT.

- 1) After you have completed the forms, have them notarized (before coming to the courthouse) and make 2 copies.
- 2) Take these documents to the Clerk of Superior Court to be filed.
- 3) Then you will take the Motion and the Orders to the District Court Judges' office (located on the 4th floor of the Union County Judicial Center). A Judge will need to sign the Order to Show Cause, and the Case Manager will set a court date. You will leave your paperwork there with a number where you can be contacted. Once the Judge has reviewed your paperwork someone will call you to pick the paperwork up.
- 4) Once the order has been signed you will need to return to the Judges' Office to pick the papers up.
- 5) You will then take the paperwork to the Clerk of Superior Court's office and pay the \$30.00 fee (cash) for the sheriff if the other party lives in Union County. If the other party resides in another North Carolina County, or in another state, it is still YOUR responsibility to have the other party served with the paperwork.

**STEP 3**

**Service of Process**

North Carolina General Statutes require that you give notice to the defendant about the filing of your motion. This is known as "Service of Process." The correct way to serve the respondent is determined by law. If the documents are not correctly served on the respondent, the court will not hear your case.

You are now ready to serve the documents on the respondent. You must take the paperwork to the Sheriff's Department in the county in which the respondent lives. Union County has a \$30.00 service fee.



WHEREFORE, THE MOVANT PRAYS THE COURT AS FOLLOWS:

1. That an Order to Show Cause be issued directing the Respondent to appear before the Court and Show Cause why the respondent should be found in civil and/or criminal contempt of Court for violation of the Order regarding visitation as alleged
2. That the Court enforce the Order
3. That \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Print name of Movant

\_\_\_\_\_  
Address/Telephone

\_\_\_\_\_, being duly sworn, deposes and says that I am the Movant in the foregoing action, that I have read the foregoing MOTION TO SHOW CAUSE and am familiar with the contents thereof, that same is true of my own knowledge except as to those matters as may therein be alleged upon information and belief as to those matters, I believe them to be true.

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_ My Commission

Expires: \_\_\_\_\_  
(Notary Public)

STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
      CVD      

\_\_\_\_\_  
(Type or Print Plaintiff's name)

VS

ORDER TO SHOW CAUSE  
AND APPEAR

\_\_\_\_\_)  
(Type or Print Defendant's name)

To: \_\_\_\_\_

Address: \_\_\_\_\_

YOU ARE HEREBY ORDERED to APPEAR and SHOW CAUSE why you should not be found in civil and/or criminal contempt for violation of an Order of the Court as alleged in the petitioner's Motion in the Cause before the Judge presiding in the assigned Civil Courtroom, as follows:

YOU SHALL APPEAR at \_\_\_\_\_, \_\_\_ am \_\_\_ pm on \_\_\_\_\_, 20\_\_\_\_, at the Union County Judicial Center 400 North Main Street, Monroe, NC COURTROOM \_\_\_\_\_.

The Party is seeking ENFORCEMENT of an Order regarding \_\_\_\_\_ visitation \_\_\_\_\_ custody and PUNISHMENT FOR CONTEMPT for your violation of that Order.

**YOUR FAILURE TO APPEAR AFTER YOU HAVE BEEN SERVED WILL NOT DELAY THE HEARING OR ENTRY OF AN ORDER WHICH MAY AWARD THE RELIEF SOUGHT.**

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
DISTRICT COURT JUDGE

RETURN OF SERVICE BY SHERIFF

This is to certify that the undersigned Sheriff's Office of \_\_\_\_\_ County has this date served this ORDER together with the Motion in the Cause by personally delivering to each person named below a copy of the same:

\_\_\_\_\_  
Date Served Name of Person Personally Served

This is to certify that the above named person(s) cannot be found by a diligent effort because

\_\_\_\_\_  
Date Received Name of Sheriff

\_\_\_\_\_  
Date Returned Deputy Making Return

**STATE OF NORTH CAROLINA**

File No.

\_\_\_\_\_ County

In The General Court Of Justice

Name And Address Of Plaintiff

**SERVICEMEMBERS CIVIL RELIEF ACT  
AFFIDAVIT**

**VERSUS**

Name And Address Of Defendant

50 U.S.C. 3901 to 4043

**NOTE:** This form is not for use in Chapter 45 Foreclosure actions.

**AFFIDAVIT**

**I, the undersigned Affiant, under penalty of perjury declare the following to be true:**

1. As of the current date: (check one of the following)

- a. the defendant named above is in military service.\*
- b. the defendant named above is **not** in military service.\*
- c. I am unable to determine whether the defendant named above is in military service.\*

2. (check one or more of the following)

- a. I  have  have not used the Servicemembers Civil Relief Act Website (<https://www.dmdc.osd.mil/appj/skra/>) to determine the defendant's military status.  The results from my use of that website are attached.

**(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. DoD security certificates were automatically added to the computers of all Judicial Branch users, such that these users should not expect security alerts to appear with this website after July of 2015. As of December 14, 2015, the Servicemembers Civil Relief Act Website includes the following advice: "Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser.")**

- b. The following facts support my statement as to the defendant's military service: (State how you know the defendant is not in the military. Be specific.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**\*NOTE:** The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>	Date
Date	Signature Of Affiant
Signature Of Person Authorized To Administer Oaths	Name Of Affiant (type or print)
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate	
<b>SEAL</b> <input type="checkbox"/> Notary                   Date My Commission Expires	

**NOTE TO COURT:** Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

## Information About Servicemembers Civil Relief Act Affidavits

### 1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

### 2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

### 3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

### 4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

### 5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).