26° Distrito Judicial
Centro de autoservicio

Documento de Desacato

Este documento es un breve resumen de la ley de desacato de Carolina del Norte. Debería considerar consultar o contratar a un abogado.

Servicios de referencia de abogados:

Servicio de Referencia de Abogados del Condado de Mecklenburg
(704) 375-0120
www.meckbar.org

Servicio de Referencia de Abogados de Carolina del Norte
(800) 662-7660
https://www.ncbar.org/public-resources/lawyer-referral-service/

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¿QUÉ DEBE INCLUIR EN SU MOCIÓN DE DESACATO?

Consejos para presentar una Moción de Desataco

Para prepararse a la hora de presentar una demanda por desacato, necesita tener una copia de su orden actual. Aquí hay algunas instrucciones y una guía paso a paso para decidir si debe presentar una moción por desacato.

Paso 1: Vuelva a leer la orden judicial

Para determinar si la otra parte violó una orden judicial actual, debe volver a leer la orden judicial que cree que violó. Si no tiene una copia, haga una copia de la orden del archivo de la oficina de secretaría. Una vez que haya leído la orden actual, asegúrese de que está alegando una violación de una parte específica de la orden existente. En su moción, deberá incluir una referencia a la parte de la orden violada.

Paso 2: Desacato civil o penal

Decida si quiere perseguir el desacato civil o penal contra la otra parte.

a. **Desacato en la Modalidad Civil:** Elija desacato civil si quiere que el tribunal obligue a la otra parte a seguir la orden existente **y** la otra parte tiene la capacidad de hacerlo **AHORA MISMO**. No elija el desacato civil si la violación ya ha sido completada. Se le pedirá que demuestre el desacato civil por la preponderancia de la prueba.
    i. *Preponderancia de la prueba:* la carga de la prueba se cumple cuando la parte que tiene la carga logra convencer al determinador de hechos (Juez o Jurado) de que existe más de un 50% de posibilidades de que la afirmación sea cierta.

b. **Desacato en la Modalidad Penal:** Elija el desacato penal si quiere que la otra parte sea castigada por violar previamente la orden actual. Se le **pedirá que demuestre** desacato penal *más allá de toda duda razonable.*
    i. *Más allá de toda duda razonable:* Existe cuando un determinador de hechos no puede decir con certeza moral que una persona es culpable, o que existe un hecho particular.

Una vez que haya decidido si quiere perseguir el desacato en la modalidad civil o penal, marque la casilla correspondiente en la parte superior de su moción. Indique el tipo de orden que usted alega que haya sido violada (custodia, manutención de los hijos, etc.) y la fecha en que se emitió la orden original.

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Paso 3: Moción

Incluya una descripción de lo que la otra parte hizo, que violó o que viola la orden judicial actual. **SEA CLARO, SEA ESPECÍFICO. ESCRIBE LEGIBLEMENTE.** Asegúrese de que esté listo/a y sea capaz de comprobar en la corte lo que alegas que hicieron para violar la orden. Incluya las violaciones que quiere que el tribunal considere. Tenga en mente que el tribunal no encontrará a la otra parte en desacato por violaciones que usted no incluyó en su Moción de Desacato.

INSTRUCCIONES PARA RELLENAR LOS FORMULARIOS

PASO 1

Rellena Los Formularios

LISTA DE COMPROBACIÓN

Debe completar los siguientes formularios:

- Acción Civil Interna (hoja principal de portada)
- Moción por Desacato
- Certificado de Servicio
- Orden de Aparecer y Mostrar la Causa
- Notificación de Audiencia
- Certificado de Servicio

Asegúrese de colocar su **número del caso existente** en la esquina superior de la derecha de cada documento. También necesitará una copia de la orden actual para adjuntarla a su moción para que el Juez la consulte. Tenga en cuenta que la moción de desacato debe ser firmada en presencia de un notario público.

PASO 2

Fotocopia de los documentos

Haga tres copias de los documentos. Las copias se pueden hacer (precio a cobrar) en la Oficina de Archivos Civiles, habitación 3342.

Después de hacer las copias, lleve el original y las tres copias al **Departamento de Archivos Civiles, habitación 3725** para ser sellado y archivado.

PASO 3

Solicitar al Juez que firme la orden de comparecencia y mostrar la causa

- Determine qué juez está asignado a su caso.
- Lleve su documento completado y la orden propuesta a la sala 8150 y colóquelo en la cesta de entrega ("*drop off*") fuera de la sala.

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- Sin embargo, si el Juez Smith es el juez asignado, lleve el documento a la sala 6350 y colóquelo en la canasta de entrega ("*Drop Off*") fuera de la sala.

- Regrese 24 horas después a la sala y recupere el documento en la canasta de recogidas ("*Pick up*").
  - **¡Compruebe que el juez haya firmado su propuesta de orden!**

PASO 4

Fecha de la Audiencia

Después de recoger la orden firmada y propuesta, vaya a la **Oficina del Administrador del Tribunal de Familia, Sala 3520** para obtener una fecha de audiencia.

PASO 5

Servicio

Envíe una copia de la Moción de Desacato y de la Orden de Comparecer y Mostrar Causa, O pague al Sheriff **$30.00** para entregar personalmente estos documentos a la parte que presenta oposición. Si decide enviar los documentos por correo, presente un Certificado de Servicio completo en la Secretaría, habitación 3725.

PASO 6

Notificación de la Audiencia

Presente la Notificación de la Audiencia con secretaría, habitación 3725. Anote lo siguiente aquí:

- Fecha de Audiencia
- Hora
- Número de la sala del tribunal

Lo recibió de la Oficina del Administrador del Tribunal de Familia.

PASO 7

Asistencia

Asegúrese de asistir a todos los eventos de la corte a tiempo y vístase apropiadamente (como si fuera a una entrevista de trabajo). Esto es muy importante.

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STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

Name And Address Of Plaintiff 1

Name And Address Of Plaintiff 2

DOMESTIC CIVIL ACTION COVER SHEET

☐ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

VERSUS

Jury Demanded In Pleading? ☐ No ☐ Yes

Name Of Defendant 1

Summons Submitted ☐ Yes ☐ No

Name Of Defendant 2

Summons Submitted ☐ Yes ☐ No

Counsel for
☐ All Plaintiffs ☐ All Defendants ☐ Only *(List party(ies) represented)*

Name And Address Of Attorney Or Party, If Not Represented *(complete for initial appearance or change of address)*

Telephone No.

Cell Telephone No.

NC Attorney Bar No.

Attorney E-Mail Address

☐ Initial Appearance in Case ☐ Change of Address

Name Of Firm

FAX No.

TYPE OF PLEADING

(check all that apply)

- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Answer/Reply (ANSW-Response)
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Contemp (CNTP) *Assess Motions Fee*
- ☐ Continue (CNTN) *Assess Motions Fee*
- ☐ Compel (CMPL) *Assess Motions Fee*
- ☐ Counterclaim vs. (CTCL) *Assess Counterclaim Costs*
- ☐ Extend Time For An Answer (MEOT-Response) *Assess Motion Fee*
- ☐ Modification Of Alimony (MALI) *Assess Motions Fee*
- ☐ Modification Of Custody (MCUS) *Assess Motions Fee*
- ☐ Modification Of Support in non-IV-D cases (MSUP) *Assess Motions Fee*
- ☐ Modification Of Visitation (MVIS) *Assess Motions Fee*
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA) *Assess Motions Fee*
- ☐ Santions (SANC) *Assess Motions Fee*
- ☐ Show Cause (SHOW) *Assess Motions Fee*
- ☐ Transfer (TRFR) Assess Motion Fee
- ☐ Vacate/Modify Judgment or Order (VCMD) *Assess Motions Fee*
- ☐ Other (OTHR): *(Use codes from Motions Coversheet AOC-CV-752 or specify)*

CLAIMS FOR RELIEF FOR:

(check all that apply)

- ☐ Alimony (ALIM)
- ☐ Annulment (ANUL)
- ☐ Child Support (CSUP)
- ☐ Custody (CUST)
- ☐ Divorce (DIVR)
- ☐ Divorce From Bed And Board (DIVB)
- ☐ Domestic Violence (DOME)
- ☐ Equitable Distribution (EQUD)
- ☐ Medical Coverage (MEDC)
- ☐ Paternity (PATR)
- ☐ Possession Of Personal Property (POPP)
- ☐ Post Separation Support (PSSU)
- ☐ Reimbursement For Public Assistance (RPPA)
- ☐ Visitation (VIST)
- ☐ Other: *(specify and list separately)*

Date

Signature Of Attorney/Party

NOTE: *All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include a Domestic (AOC-CV-750) Motions (AOC-CV-752) or Court Action (AOC-CV-753) cover sheet.*

STATE OF NORTH CAROLINA

Mecklenburg County

In The General Court Of Justice
District Court Division
Family Court

Name Of Plaintiff	File No.
VERSUS	**MOTION FOR CONTEMPT**
Name Of Defendant	REQUESTING AN ORDER TO SHOW CAUSE FOR FAILURE TO COMPLY WITH _____ ORDER ISSUED ON _____ ☐ **criminal** or ☐ **civil contempt** (MUST CHECK ONE)
Name, Address, and Telephone of *Plaintiff*	Name, Address, and Telephone of *Defendant*

The undersigned, a party in the above-entitled action, moves the Court to require the ☐**Plaintiff** ☐**Defendant** to appear and show cause why he/she should be in ☐ **criminal** or ☐ **civil** contempt for failing to comply with a prior order of this court issued on _____ A COPY OF THIS ORDER IS ATTACHED.

Describe why the Court should issue an Order to Show Cause (Be specific about what the party was required to do and how they failed to comply with the court's Order.)

1. Plaintiff/Defendant (*circle one*) specifically failed to comply with the order as follows:

   List which part of the Order was violated _____ (*insert paragraph number of the order*) says:

   _____

   _____

   _____

   _____

   On _____ (*date or dates of the violation*) Plaintiff/Defendant (*circle one*) failed to comply with this paragraph of the order by: (*describe how the other party violated this part of the order*)

   _____

   _____

   _____

   _____

   _____

   _____

   _____

   _____

2. Next Violation (*if necessary*):

List which part of the Order was violated _____ (*insert paragraph number of the order*) says:

_____
_____
_____
_____
_____

On _____ (*date or dates of the violation*) Plaintiff/Defendant (*circle one*) failed to comply with this part of the order by: (*describe how the other party violated this part of the order*)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(*You may attach additional sheets if necessary*)

I am informed and believe that the responding party has the means to comply with the order.
(*Attach a copy of the order to this form.)*
I want the Court to issue an order which requires the Respondent to appear and to show cause, if any, why he/she should not be held in civil or criminal contempt for his/her failure to comply with the Court's order.

VERIFICATION SWORN AND SUBSCRIBED TO BEFORE ME	The Movant, being duly sworn, deposes and says that he/she is a party in the above-entitled action, that he/she has read the foregoing document and knows the contents thereof, that the same are true of his/her own knowledge, except as to those matters and things stated upon belief, and as to those matters and things, he/she believes them to be true.
Date:	*Signature Of Person Making Motion*
Signature of Notary	☐Plaintiff ☐Defendant
My commission Expires:	

CERTIFICATE OF SERVICE (*IF SERVED BY MAIL*)

I hereby certify that a copy of this Order to Appear and Show Cause has been served on the opposing party/counsel in the following manner:

☐ By depositing a copy in the U.S. Mail in a property addressed, postpaid envelope to:

_____

_____

_____

Date:	☐ Plaintiff ☐ Defendant

SHERIFF'S AFFIDAVIT (*IF SERVED BY SHERIFF*)

I certify that this Order to Appear and Show Cause was received and served as follows:

Date Served:	Responding Party:

☐ By delivering to the Responding Party named above a copy of this order

☐ By leaving a copy of this order at the dwelling house or usual place of abode of the Responding Party named above with a person of suitable age and discretion then residing therein.

Name and Address of person with whom copies left:

_____

_____

_____

☐ The Responding Party WAS NOT served for the following reason:

_____

_____

Date Received:	Name of Sheriff:
	County:
Date of Return	Deputy Sheriff Making Return:

STATE OF NORTH CAROLINA Mecklenburg County	In The General Court of Justice District Court Division
Plaintiff:	File No
VERSUS	**ORDER TO APPEAR AND SHOW CAUSE**
Defendant:	**Assigned Judge:**_____

TO THE RESPONDING PARTY (☐PLAINTIFF ☐DEFENDANT) NAMED ABOVE:

Name and address of person to be served:

_____

_____

_____

YOU ARE HEREBY ORDERED TO APPEAR AND SHOW CAUSE why you should not be found in ☐**civil** or ☐**criminal** contempt for violating an order of the Court as alleged in the Motion for Order to Show Cause, **a copy of which is attached.** You are hereby ordered to appear at the date, time, and place set out below to show cause, if any, why the Court should not hold you in either civil or criminal contempt.

Your failure to appear as ordered may result in the issuance of an **Order for Arrest** or you being jailed for further contempt of court.

Date	Time	Courtroom

If the Court finds you in civil contempt, you may be committed to jail for as long as such civil contempt continues. If the Court finds you in criminal contempt, you may be fined up to $500, imprisoned for up to 30 days, or both.

This the _____ day of _____, 20 _____.

_____

District Court Judge

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

CASE NUMBER _____

_____

_____
PLAINTIFF

VS.

NOTICE OF HEARING

_____

_____
DEFENDANT

.....

To: _____
Plaintiff / Defendant

YOU ARE HEREBY NOTIFIED that the presiding judge will hear plaintiff's/defendant's claim for relief on _____ (day of week), _____ (date), 20 ___, beginning at _____ o'clock _____ m (or as soon thereafter as this matter can be heard) in Courtroom No. _____, which is located in Mecklenburg County Courthouse, 832 E. 4th Street, Charlotte, NC.

The plaintiff / defendant is seeking _____ (state relief you are seeking).

***If** this case involves child support, the Presiding Judge requires that the attached Affidavit of Financial Standing be completed and filed with the Clerk of Superior Court and served on the opposing party either with the responsive pleading or by the Wednesday preceding the first week of the domestic term in which the case is scheduled for hearing, whichever is earlier. The affidavit must be fully and completely filled out, sworn to, and notarized before filing.

You are required to attach to the Affidavit and bring to the hearing true and accurate copies of the documents listed on page three (3) of the Financial Affidavit.

FAILURE TO APPEAR ONCE YOU HAVE BEEN SERVED WILL NOT DELAY THE ENTRY OF AN ORDER THAT MAY AWARD THE RELIEF SOUGHT.

_____
Attorney for ☐ Plaintiff ☐ Defendant

_____
Date

_____
Address

_____
Phone

(Attach Sheriff's Return or Certificate of Service)

Form CCF- 30

August 2000

CERTIFICATE OF SERVICE

I hereby certify that I have served this Motion for Contempt and Notice of Hearing on the Plaintiff / Defendant (*Circle One*) by delivering a copy of this Motion for Order to Show Cause, Domestic Civil Action Cover Sheet and Notice of Hearing to the US Postal Service, in an envelope with postage paid, addressed to the Plaintiff / Defendant (*Circle One*) as follows: (*insert name and address of the Plaintiff or Defendant below*)

_____
Name

_____
Address

_____
Town, State, Zip Code

This the _____ day of _____, _____.
(*date*) (*month*) (*year*)

_____
(*Plaintiff / Defendant sign your name here*)