

Rule 309. Contempt**Rule 309.01 Initiation**

(a) Moving Documents-Service; Notice. Contempt proceedings shall be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits. Pursuant to Rule 303.05 an order to show cause may be issued by the court without notice to the alleged contemnor provided the supporting affidavits credibly raise an issue of contempt.

(b) Content of Order to Show Cause or Notice of Motion and Motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion. If proceeding by notice of motion and motion, the motion may seek that relief directly.

The notice of motion and motion or order to show cause shall contain at least the following:

(1) a reference to the specific order or judgment of the court alleged to have been violated and the date of entry or filing of the order or judgment;

(2) a quotation of the specific applicable provisions ordered;

(3) the alleged failures to comply;

(4) notice to the alleged contemnor that his or her ability to pay is a crucial issue in the contempt proceeding and that a Parenting/Financial Disclosure Statement form for submitting ability to pay information is available from the state court website, and this form should be served and filed with the court at or before the contempt hearing; and

(5) a date to appear for a Rule 309.02 hearing no later than 60 days after the issuance of the notice of motion or order to show cause.

(c) Affidavits. The supportive affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, dates and amount of payments, if any.

(Amended effective January 1, 2010; amended effective May 1, 2012; amended effective July 1, 2015.)

Family Court Rules Advisory Committee Commentary*

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement or an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

**Original Advisory Committee Comment-Not kept current.*

Task Force Comment - 1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure. The new language is derived from Second District Local Rule 8.011.

Advisory Committee Comment - 2009 Amendment

Rule 309.01 is amended in 2009 to remove an apparent requirement that any contempt proceeding be commenced by order to show cause. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. See Minnesota Statutes, section 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. See Minnesota Statutes, section 588.04. It is the preferred means to commence a contempt proceeding if there is significant risk that the alleged contemnor is likely not to appear in response to a notice of motion.

Advisory Committee Comment - 2012 Amendment

Rule 309.01 does not require that contempt proceeding be commenced by an order to show cause, even though that is the most common and most direct means of commencing the proceedings. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. See Minnesota Statutes, section 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. See Minnesota Statutes, section 588.04. The order to show cause is still the preferred means to commence a contempt proceeding if there is meaningful risk that the alleged contemnor will not to appear in response to a notice of motion. Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement for notice of an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

The requirement in Rule 309.01(b)(5) that a hearing be held within 60 days of issuance of an order or notice of motion is intended to create the standard rule and to underscore the importance of holding the hearing promptly so that the contempt issues may be resolved. Where exceptional circumstances are found to exist by the court, the hearing may be held later than 60 days from the order or notice, but it should still be heard by the court as promptly as possible.

Rule 309.02 Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to respond to the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary*

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

**Original Advisory Committee Comment-Not kept current.*

Task Force Comment - 1991 Adoption

This rule is derived from existing Rule 8.02 of the Rules of Family Court Procedure.

Rule 309.03 Sentencing

(a) Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or a bench warrant will be issued, an affidavit of noncompliance and request for writ of attachment must be served upon the person of the defaulting party, unless the person is shown to be avoiding service.

(b) Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. A proposed order for writ of attachment shall be submitted to the court by the moving party.

Task Force Comment - 1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure, with the new language added from Second District Rule 8.031.

Rule 309.04 Findings

An order finding contempt must be accompanied by appropriate findings of fact.

(Added effective May 1, 2012.)

Advisory Committee Comment - 2012 Amendment

Rule 309.04 requires findings. Findings are required to permit appellate review of a contempt order. In cases where incarceration is a consequence of a contempt finding, due process may require notice to the alleged contemnor of the right to show inability to pay and findings on that issue. See Turner v. Rogers, 564 U.S. ___, 131 S. Ct. 2507, 180 L. Ed. 2d 254 (2011).