

1 ~~Rule 10-1-501. Orders to show cause.~~

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3 ~~Intent:~~

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

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6 ~~Applicability:~~

7 ~~This rule shall apply to the Fifth District Court.~~

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9 ~~Statement of the Rule:~~

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

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

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

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

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

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

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

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

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

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

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

45 ~~(3)(F)(iii) the specific issues to be resolved through an evidentiary hearing, and~~

46 ~~(3)(F)(iv) the estimated length of any such evidentiary hearing; and~~

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

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

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

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

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

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

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

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

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

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81 ~~(5)(D) the estimated length of any such evidentiary hearing. The court may order the~~
82 ~~parties to file memoranda on legal issues before the evidentiary hearing. If the opposing~~
83 ~~party does not contest the allegations made by the moving party, the court may proceed~~
84 ~~at the first appearance as the circumstances require.~~

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

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90 ~~(7) **Limitations.** An order to show cause may not be requested in order to obtain an original~~91 ~~order or judgment; for example, an order to show cause may not be used to obtain a temporary~~92 ~~restraining order or to establish temporary orders in a divorce case. This rule shall apply only in~~93 ~~civil actions, and shall not be applied to orders to show cause in criminal actions. This rule does~~94 ~~not apply to an order to show cause issued by a court on its own initiative.~~