

How to Win Without a Lawyer

Show Cause Procedure

Use Your Jail Power

Your Jail Power

Send people to jail if they won't play "fair".

This is your power to enforce legal rights!

You may *need* this power to force bad actors to obey the rules so you can get justice in court.

If your opponent or a witness refuses to obey a court order or fails to follow the rules of court, you have power to *force them to do so ... if you follow the step-by-step process explained in this class.*

If your opponents or others defy judges' orders or ignore the rules of procedure and rules of evidence, you *must* exercise this power to get justice.

This is *your* duty. A judge will not help until you move the court to enter the proper orders *in the proper sequence*.

This class shows you how to move the court to enter orders that *force bad actors to obey the law!*

Good news for good people.

Bad news for bad actors.

You have the right to send bad actors to jail!

Hopefully, you will use what you've learned in other classes in this amazing course to get justice *without sending anyone to jail!*

But!

If your opponent or a non-party witness (like a bank officer or phone company employee) refuses to obey a court order or fails to do what the rules of court require, *follow the steps in this class to get an order sending them to jail where they can stew behind bars until they decide to obey the law!*

Enforcing law is what courts are for, after all!

Without power to require judges to enforce law in your favor, going to court would be a waste of time and money, because bad actors are all-too common in our court system, and justice is impossible if bad actors are permitted to get away with deceitful law-evading practices.

Know how to use this power.

This is your right!

Read on!

The first step when someone disobeys a court order, fails to show up for a noticed hearing or deposition, refuses to provide documents or other things listed in a subpoena, or otherwise violates the rules of court is to file a Motion to Show Cause.

This is the *first* step in a "step-by-step process".

Follow the process step-by-step.

Do not file a Motion for Contempt until you file and get a favorable order on your Motion to Show Cause.

Show cause motions take various forms depending on the "bad act" you want the judge to fix. However, the fundamental idea is the same no matter why you need the court to order someone to "show cause".

It is always used to get the court to force someone to do something, or stop doing something. Either that someone disobeyed a rule of court, disobeyed a court order, or committed a crime that caused you damage (like lying under oath, i.e., committing perjury).

Here are some common issues requiring the show cause process.

Failure to Obey a Subpoena

A common purpose for filing a show cause motion is failure or refusal of non-party witnesses to appear for a hearing or deposition in response to a court-issued subpoena. A *duces tecum* subpoena (discussed elsewhere in this course) orders witnesses to bring documents or other things with them when they appear (*duces tecum* meaning simply "bring with you"). If they do not show or do not bring what the subpoena requires, you need to file a Motion to Show Cause why they should not be held in contempt.

You, as a *pro se* litigant, cannot issue a subpoena, but you can get your local court clerk to issue a subpoena for you upon proper request [Consult local rules for this procedure.] A subpoena issued by a court clerk carries the same power as a subpoena issued by a judge, i.e., it is a "court order" with power of the court to imprison people who refuse to obey.

Suppose you schedule the deposition of a non-party (say a bank

officer), serve the non-party with the clerk's subpoena *duces tecum* identifying the place and time for appearing along with a list of specific documents the non-party witness is to bring, notice your opponent of the time and place set for the deposition and, when the time arrives, your non-party witness fails to show. Clearly, the non-party witness has disobeyed a court order, i.e., the subpoena *duces tecum*.

Can you file a motion for contempt?

Not yet.

Proper procedure is to file and serve a Motion to Show Cause, set it for hearing, serve a "Notice of Hearing" (explained in the Motions class elsewhere in this course) on the non-party witness and your opponent, attend the hearing to explain to the judge that you are entitled to interview the witness and examine the listed documents and that the non-party witness failed or refused to appear after being duly served with timely notice.

Failure to Attend

The same applies when you make arrangements with your opponent (or his or her lawyer) to obtain his or her testimony at a deposition by serving a "Notice of Taking Deposition" or at an evidentiary hearing by serving a "Notice of Hearing" after clearing the date/time with your opponent or his or her lawyer.

If your opponent fails to show, you first politely try to find out why and, if your polite attempt hits a stone wall (as such attempts often do these days), file your Motion to Show Cause, set it for hearing, and attend the hearing to explain to the judge you are entitled to obtain your opponent's testimony and that your opponent failed or refused to appear after being duly served with timely noticed.

Failure to Respond to Lawful Discovery

A third common necessity is when an opponent or non-party witness fails or refuses to respond to lawful discovery (e.g., interrogatories, request for production, subpoena, etc.) within the time required by the rules.

The process is the same as above.

File a Motion to Show Cause, set your motion for hearing, then attend the hearing and explain to the judge why you are entitled to the requested discovery and that your opponent either failed altogether or failed to respond in good faith according to the rules.

If the discovery is interrogatories, file Motion for Better Answers to Interrogatories, set your motion for hearing (after clearing with your opponent or opposing counsel), attend the hearing, explain why you are entitled to better answers and that your opponent failed or refused to answer under oath within the time required by the rules. If this fails, file a Motion to Show Cause and set it for hearing.

If the discovery is request for production, file a Motion to Compel Production, set your motion for hearing (again, after clearing with your opponent), attend the hearing, explain why you are entitled to see the documents or things requested and that your opponent failed or refused to produce within the time required by the rules. If this fails, file a Motion to Show Cause and set it for hearing.

NOTE: The foregoing is explained in more detail in the class on Compelling Discovery.

Lying Under Oath (Perjury)

If your opponent or a witness lies under oath or files a verified (i.e.,

sworn) paper containing false statements (e.g., interrogatories), that person is guilty of perjury *if the false statement is "material", i.e., it affects or could affect the outcome of your case.*

File a Motion to Show Cause.

For this process to succeed, the statement must

1. Be false,
2. Be known to be false when made,
3. Materially and adversely affect your rights, and
4. Be proven by admissible evidence.

Proof may be in the form of an official transcript of a hearing or deposition where the witness was sworn, supported by external evidence the statement was false, known to be false, and material to the outcome of your case.

When this happens (It happens far more often than most people make an issue of it, as they should.) the procedure in this class should be followed to the letter, because lying under oath undermines your constitutional right to due process and utterly prevents you from getting justice.

If proper show cause procedure is presented to the court and the perjurer continues asserting false statements under oath, your work should result in a contempt order followed by a bench warrant, arrest, and incarceration (i.e., jail) ... not to mention possible favorable sanctions striking the perjurer's pleadings or immediately granting judgment in your favor.

To obtain the court's assistance in show cause proceedings, it's essential you be able to *prove* the bad actor had "actual notice" of

your motion and the time and place where the bad actor is required to appear before the judge to "show cause" why he or she should not be held in contempt.

Otherwise, bad actors will claim they didn't know about any motion or where and when they were supposed to appear before the judge, i.e., they will claim they never received "actual notice" and try to wiggle out of their problem. That's how bad actors behave! They wiggle!

You can control bad actors, *IF* you follow the steps in this class.

The idea of show cause proceedings is to *enforce* behavior by those who refuse to behave as the law requires. Show cause proceedings always involve people who tend to lie, cheat, evade, and do all they can to avoid acting in good faith. In most cases they are hiding something! The process set out in this class can force them to stop hiding. It is an essential tool in your arsenal.

The key to your success is being able to prove to the judge that the bad actor *knew* about your Motion to Show Cause and *knew* he or she was noticed to appear in court to show cause why he or she should not be held in contempt.

Certified mail is not good enough!

Regular mail will be a total waste of time and money!

The very best way to serve bad actors with show cause motions and notices of hearing (or, for that matter, with any other papers you need to *prove* were received by bad actors) is to use your local sheriff department's service of process deputies who file sworn affidavits with the court stating when and where the bad actors were served.

If your case is in federal court, the best service will be with a U.S. Marshal who'll file a sworn affidavit stating when and where the bad actor was served.

Another, less certain method, is to use a *certified* process server, however this is recommended only when no other method of service is available to you

Since show cause proceedings move toward holding a bad actor in contempt of court and ultimately locking them up (if they don't sooner agree to behave), the judge in your case will demand *proof* the bad actor had "actual notice" of your motion and notice of hearing alerting him or her to the severe consequences that will result from failure to appear and *show cause* why they should not be held in contempt.

This is critical. Do not fail to follow this process!

Sworn proof of service of your motion *and notice of hearing* creates a duty in the bad actor to respond accordingly or pay the consequences.

Absent creation of that duty and its subsequent breach, it is unlikely the court will do anything more than grant bad actors a chance to correct what was done (or not done) and give you a black eye for not being able to prove "actual notice" of the motion *and notice of hearing*.

Don't waste the court's time or your own.

Make absolutely *certain* the bad actor you wish to control has "actual notice" of your motion and notice of hearing.

The object of a "show cause" hearing is to obtain an Order requiring the defaulting party to do something ... or, if they refuse, to put them

in jail.

If a "show cause order" is granted (signed and filed with the clerk) the action required by that order *must be done ... or contempt proceedings follow*.

Only in the rarest circumstance would a Motion to Show Cause result in an immediate Order finding someone in contempt of court and directing a bailiff or other officer to haul that person off to the jailhouse!

Typically what happens at the hearing (if the bad actor shows up) is for the judge to order the person to explain why they failed, refused, or ignored, etc.

If that person gives a reasonable excuse, the judge will typically give them a set number of days to cure the problem. Expect something like 10 days or perhaps more, depending on what the problem was.

If, after hearing testimony and arguments of counsel, the judge signs an formal Order to Show Cause, the person against whom that order is directed is now in jeopardy of being held in contempt if the show cause order is not obeyed *stricly to the letter!*

Now the game changes!

We are no longer dealing with merely ignoring a subpoena, failure to attend a hearing or deposition, or refusal to respond in good faith to discovery.

The bad actor is now under a direct court order!

Failure or refusal to obey *this* order will most assuredly result in an order finding that person in contempt of court!

They may not go directly to jail, since in most cases they will be

given yet one more bite at the proverbial apple before the judge takes the extreme step of putting them behind bars, but only a fool would disobey an Order to Show Cause that contains language warning the bad actor that jail time will follow if the order is not obeyed pursuant to its precise terms!

This is serious business!

At this point the former issue has been laid to rest. The court already decided the person now under its Order to Show Cause *should have done what was not done!* The previous issue will not be revisited. The bad actor either does what is now ordered or *be held in contempt and possibly jailed for failure to so.*

Judges are human.

Judges do not react well when orders are ignored.

Judges are proud of their power.

Judges will do whatever they must to see that their orders are obeyed!

If that means sending someone to jail, they only need to pick up their pen, sign the order, and off goes the bad actor for a comfy vacation behind cold iron bars!

If bad actors with "actual notice" of a motion and notice of hearing fail to show for the hearing, judges will almost certainly issue an order finding that person in contempt!

Otherwise, show cause hearings will not normally result in more than an Order to Show Cause that usually does little more than require an explanation why the bad actor failed to do what was previously required.

The reason for this laxity is that the "next step" will not go well for anyone who refuses to obey the show cause order precisely as the order requires.

If the bad actor appears for the hearing and fails to give a reasonable explanation for his or her failure to obey, the judge will probably make a verbal order typically giving the bad actor a certain number of days to comply.

However, if this happens you should move the court to enter a *written order filed with the clerk!*

Bad actors, being what they are, may later claim they didn't "understand" what the judge said at the hearing, and judges have so many cases on their calendar it's extremely unlikely any judge can remember what was said or done at a hearing several weeks earlier.

A written order is needed. Be sure to move the court to enter one if the court doesn't write one without being moved to do so.

If the judge gives you a *certified* copy of the written order then and there, put that *certified* order in your briefcase, take it home, make a copy for your files, and *have the certified copy served on the bad actor so "actual notice" is given.*

If the judge will not give you a *certified* copy but agrees to sign a written order to be filed with the clerk, go to the clerk's office to get a *certified* copy, put it in your briefcase, take it home, make a copy for your files, and *have the certified copy served on the bad actor so "actual notice" is given.*

Notice that the bad actor needs to receive a *certified* copy of the order, and the process server (deputy or Marshal preferably) needs to file a affidavit of service stating it was a *certified* copy that was

served along with stating when and where it was served on the bad actor.

The order should require the bad actor to re-appear before the court at a stated time to satisfy the terms of the order.

If the bad actor appears for the subsequent hearing and satisfies the judge her or she has done what was required, you have your remedy, and nothing more is needed. The process succeeded.

If, on the other hand, the bad actor fails or refuses to attend the subsequent hearing, an order finding him or her in contempt may issue immediately along with a bench warrant for his or her immediate arrest and incarceration.

If the bad actor fails to appear for the subsequent hearing, or the judge fails to issue an order finding him or her in contempt, you should file a Motion for Contempt stating *why* the court should issue an order finding the bad actor in contempt.

This is similar to a Motion to Reconsider in that your Motion for Contempt should spell out the law and facts, explaining *why* the bad actor should be held in contempt, seeking to have the court do what should already have been done!

The judge *should have entered the order already!*

If the judge will not enter the order, you need to make the record clear for possible appeal. Doing so requires this additional motion that should include all that you will want the appellate court to know if the judge refuses to grant your motion.

You *do* want the bad actor to be compelled to obey, don't you?

You *do* want to win your case, don't you?

File the motion!

If it upsets the judge, oh well.

Justice sometimes must be fought for tooth and nail.

Judges are human, as already stated. Some are timid (believe it or not). Many are simply afraid to exercise their awesome power (it *is* awesome when it comes to unlimited contempt power).

Move the court!

Set a hearing for your Motion for Contempt and *serve* your motion along with its Notice of Hearing as outlined above. (Motions and setting hearings explained in the class on motions and hearings).

The same principle applies here that applied to your Motion to Show Cause and the necessity of being able to prove to the judge that your bad actor has "actual knowledge" of your new motion and notice of hearing.

Make certain the affidavit of service clearly states what was served, on whom, when, and where ... and that the affidavit is in the court file before the hearing.

The bad actor is now in a bad place.

If the bad actor fails to appear at the hearing on your Motion for Contempt after receiving "actual notice" and an affidavit of same being in the court file, the judge *may* still give him or her a chance to cure.

Yep!

Taking away someone's liberty is serious business indeed!

So, judges will give people every possible chance to avoid sending someone to jail for contempt.

If the bad actor does appear for hearing on your Motion for Contempt, the judge will in all likelihood give the same chance to cure.

The chance to cure could be an additional day or two, perhaps more, but now the fire is burning hot, and most judges will not hesitate to find the bad actor in contempt of court if this final order is not obeyed to the letter and on time!

If the judge refuses to follow through when you have made the record show clearly that you are entitled as a matter of law to entry of a contempt order and its powerful consequence to enforce your right to obtain justice from the court (in spite of bad actors trying to evade the law) it's time for you to file a Notice of Appeal and start studying the class on appeals in this course along with familiarizing yourself with the official appellate forms and rules that control the courts in your jurisdiction.

This probably will not be necessary, since the judge will probably issue a bench warrant in almost all cases at this stage of the show cause proceedings.

If the court issues a bench warrant, your bad actor will be arrested and taken to the local jail where he or she can decide to remain behind bars or do what should have been done in the first place.

I was required to follow this procedure with a man who refused to give certain information at a deposition. He was asked to list certain of his assets and took an angry threatening stance, refusing to say another word. I warned him, of course, as you should also do if this happens to you. Always be polite and respectful, especially when a court reporter is writing everything down so your words will be impossible to take back if you lose your cool.

This man foolishly thought he was above the law or that the law would not require him to list the assets he was determined to keep from me.

So, after following the somewhat tedious and time-consuming steps explained above, a hearing was set giving this man one last chance.

He failed to appear for the subsequent hearing!

I remember the judge picking up the phone, calling the sheriff's office, and sending the man to jail.

The man then was required to decide if he would rather list the assets he previously tried to hide rather than spend additional time behind bars!

Understand that jail time for contempt is at the discretion of judges and will be enforced, so long as it is reasonable under the circumstances. A bad actor could be released after a few hours if he or she complies with the court's contempt order, or a very foolish bad actor could sit in jail eating white bread cheese sandwiches and drinking black coffee for a very, very long time ... depending on how the judge feels that day.

Far too many young lives were sacrificed on bloody battlefields to purchase your right to get justice in our courts, so if sending someone to jail for a few hours (or days) is required to secure for you the benefit of the laws of justice in this nation, then the foregoing is how you go about it.

As stated above but repeated here to emphasize and set your mind at ease, it is unlikely anyone will be sent to jail as a result of your motions until the bad actor has been given a "reasonable" period of time to cure the issue preventing you from getting justice.

Go along with this graciously.

Do *not* get angry if a judge gives your bad actor multiple chances to cure.

Remain calm.

Proceed as stated above, step-by-step, patiently.

The wheels of justice grind slowly, *but they grind surely if you are patient and follow the proper steps in order!*

Too many *pro se* litigants lose heart, grow weary, or end up being afraid to use their legal power to obtain the justice they deserve.

Indeed, far too many licensed lawyers drop the ball when it comes to pressing the court to get justice for their clients when the opposing party or a non-party witness refuses to follow the rules. After all, the lawyers' lives go on no matter whether they fight tooth-and-nail for you and offend judges they must come before throughout their careers or simply let things slide, confident most of their clients won't know what *could* have been done to win for them or what *should* have been done to win.

This is sad commentary on the legal profession (of which I've been a member for more than a third of a century), however it is also a *warning for you!*

Faint heart never won fair lady, as the old saying goes.

Faint heart also seldom wins in court!

Fight for your justice!

Nobody will hand it to you on a silver platter.

It's not a judge's job to fight for you. The judge's job is merely to enforce the rules of court. Never believe otherwise. Never hope for

help. You might get it, but more likely you won't.

Legal proceedings are axe fights.

Show cause is your axe!



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