

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

SUPERSEDES

CS 503.5 Administrative Civil Contempt, October 12, 1999

REFERENCES

MCA 40-5-226

Policy

Applicability

The purpose of this section is to provide policy and procedure for situations in which Administrative Civil Contempt is appropriate. Contempt is a willful disregard or disobedience of a public authority. The events constituting Administrative Civil Contempt as provided by section MCA § 40-5-226 (14) are:

- a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;
- b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;
- c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;
- d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or
- e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

Informal contact precedes employer contempt letter

Attempts by the caseworker must be made to resolve the payment delinquency with the payor through informal contact, such as a phone call. At the time of contact the payment delinquency and questions regarding the Order to Withhold Income (OWI) can be discussed. In addition, the payor should be made aware of the consequences of continued noncompliance.

If informal contact fails to produce the payment CS 503.5C Employer Contempt Letter can then be sent to the employer. The letter can be sent only after informal attempts to resolve the payment delinquency has been made and documented in case notes. In addition, a copy of the employer contempt letter must be sent to the Employer Relations Specialist (ERS). For questions regarding whether to send the employer contempt letter consult with regional legal staff.

Employer Relations Specialist

The employer has 20-days to respond to the employer contempt letter. If after 20 days there is no request to make payment arrangements or send the full payment amount due the case can be referred to the ERS. Upon referral the ERS reviews the case to determine appropriate action. If the employer does not comply with requests from the ERS for payment the employer contempt process may begin.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

Procedures

Procedures for Caseworker

1. Upon a determination that at least one of the contempt criteria listed above is met proceeds as follows:
 - a. If the alleged contemnor is a payor under an OWI, proceeds to step 2.
 - b. If the alleged contemnor is not a payor under an OWI, proceeds to step 6.
2. Before pursuing contempt charges against a payor takes action in step 2a and if necessary step 2b.
 - a. Attempts to resolve the matter by informal (telephone) contact with the payor. The contact or series of contacts should explain the requirements of the withholding order; confirm the facts of the case and identify the specific payment delinquency; attempt to persuade the payor to cure the delinquency and to begin withholding income and making payments as ordered; and alert the payor to the consequences of continued noncompliance. If applicable, alerts the ERS to the problem, requesting assistance or intervention as needed.

Thoroughly documents in the system, all contacts and attempted contacts with the payor; documentation should include the date, form, content, and results of each contact. Especially important are any facts demonstrating that the payor knowingly chose to ignore the OWI or the CSED's attempts to discuss the situation.
 - b. If the contacts in step 2a fails to produce the required payment, prepares and sends to the payor by certified mail, return receipt requested (using the restricted delivery option if useful in obtaining service on the proper person at the address), CS 503.5C Employer Contempt Letter, with a copy to the ERS. Monitors for response within 20 calendar days (or a longer period if appropriate to the case).

NOTE:

The letter in this step should be addressed to and served on a person who, in his or her capacity with the payor, has the authority to correct the noncompliance or to initiate a correction. This may be a higher-level person than the person contacted in step 2a. Also, the addressee should be someone who can receive fair warning on behalf of the payor, and who may share in the responsibility for paying any penalties. In questionable cases the caseworker should consult the CSED regional attorney to determine the most appropriate addressee.

- If the payor timely responds and pays or arranges to pay the full amount of the delinquency, monitors for continued compliance. If another delinquency occurs, takes action in step 2a if appropriate and repeat step 2b -- CS-503.5C Employer Contempt Letter is mandatory before proceeding to step 3.
- If the payor does not timely respond, or timely responds but does not make satisfactory arrangements to pay the delinquency, enters a case note documenting the failure, and proceeds to step 3.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

Procedures for Employer Relations Specialist (ERS)

3. Upon receipt of the case referral reviews the case and sends a letter with a time-frame for response to the employer stating the possible consequences of their actions and providing an opportunity to make payment arrangements or pay the full amount due.

If there is no response or action taken by employer to the first letter, sends a final letter with a time-frame for response. If the final letter expires without the employer having made payment arrangements or paid the full amount due notifies the caseworker of the need to subpoena employer payroll records. If efforts in step 3 are unsuccessful proceeds to step 4.

4. Prepares the Affidavit of Necessity for Investigative Subpoena and the Investigative Subpoena Duces Tecum for payroll records. Keeps copies of the affidavit and subpoena for employer file, and submits originals to Administrative Law Judge (ALJ).
 - a. Upon approval and receipt from the ALJ makes two copies, one for the employer file and sends the original subpoena and a copy to the sheriff civil service office in the appropriate county.
 - b. Monitors for return of service from sheriff.
 - c. Once the return of service is received, the employer has 20 days from the date of service to comply with the subpoena duces tecum.

NOTE:

Based on previous dealings with the employer the ERS may suggest the caseworker consult regional legal staff for an opinion on how to proceed.

5. If the employer produces the required payroll documents, audits the documents and creates an audit findings packet.
 - Sends the audit findings packet by certified mail to the employer
 - Sends a copy to the caseworker
 - Retains a copy for the employer file
 - a. If it is determined that the employer owes money, the employer has 20 days to submit payment in full or make payment arrangements with the ERS.
 - b. If the employer does not comply with the subpoena, notifies the caseworker and recommends next course of action:
 - Caseworker notifies the regional legal staff for other possible legal avenues prior to a contempt hearing
 - Contempt hearing

Procedures for Caseworker/ERS

There is a division of labor based upon the type of Administrative Civil Contempt being pursued. The caseworker is responsible for Administrative Civil Contempt in a. through d. below. However number e., Failure of payor to comply with an OWI, requires the caseworker *and* ERS to coordinate their efforts.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

6. Prepares CS 503.5A Application and Affidavit for Order to Show Cause. General guidelines for documenting contempt types are as follows:

- a. Disobedience of order
- b. Failure to appear at hearing or for genetic testing, after subpoena issued
- c. Failure to produce evidence at hearing, after subpoena duces tecum issued
- d. Failure to comply with discovery requests
- e. Failure of payor to comply with an OWI

When failure of payor to comply with an OWI Income applies, language should include a specific reference to the Employer Contempt Letter sent in step 2b.

The Application and Affidavit for Order to Show Cause can include more than one alleged act of contempt. It should also include facts about each separate allegation of contempt and any additional supporting evidence or information.

NOTE:

The Application and Affidavit for Order to Show Cause is located on regional share drives. It should be thoroughly reviewed to ensure that only information relevant to the case is included.

7. Upon notification of the Notice of Employer Contempt the caseworker and the ERS coordinate efforts in the collection of exhibits and the witness list. Includes ERS as a witness at the hearing.
8. Numbers and attaches all exhibits to the original application and affidavit, and makes a copy of the exhibit and the form for the case file.
9. Prepares a proposed CS 503.5B Contempt Citation and Order to Show Cause according to the instructions below. Also, makes a copy for the case file.
 - If the alleged contemnor is the obligor's payor, enters the name of the entity (business or organization).
 - Completes the name and address portion on the Certificate of Mailing.
 - If the alleged contemnor is the obligor's payor, (1) enters the name of the person upon whom the citation and order will be served, with the person's relationship to the entity, and the service address (for example, Jane Smith, Director, ABC Corporation, 123 Main Street), and (2) includes the ERS in the certificate of mailing.
 - In questionable cases consult the CSED regional attorney to identify a person authorized to receive or accept service on behalf of the payor. The person is generally an officer, director, manager, registered agent, or other person of similar responsibility. See MCA § 25-20-Rule 4D for an exhaustive list.

NOTE:

If the alleged contemnor is served by sheriff or civil process server instead of by certified mail, revise the language of the certificate of mailing to delete any reference to the alleged contemnor.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

10. Mails the original Application and Affidavit for Order to Show Cause together with the original, proposed CS 503.5C Contempt Citation and Order to Show Cause to the Office of the Administrative Law Judge (OALJ). At the same time, advises the OALJ of the caseworker's telephone number for the hearing and of any dates the caseworker is not available during the time the hearing will be scheduled, see step 13. Enters the associated case note and monitors for a response from the OALJ within 20 days.

Procedure for Hearings Assistant

11. Upon receipt of the documents, enters the associated case note. Then forwards the Application and Affidavit for Order to Show Cause to the Administrative Law Judge (ALJ) for review and determination.

Procedure for Administrative Law Judge

12. Reviews the Application and Affidavit for Order to Show Cause. If sufficient cause exists, grants the application; issues the proposed Contempt Citation and Order to Show Cause by signing the same and returning it to the Hearing Assistant for further processing. If sufficient cause does not exist writes "denied" across the face of the proposed citation and order, and returns the package to the Hearings Assistant for further processing.

Procedure for Hearings Assistant

13. If the order was issued, schedules the hearing (at least 45 days in the future) and enters the appropriate case note. Attaches a copy of the instructions explaining a telephone hearing to the back of the order. Makes a file copy and returns the original issued Contempt Citation and Order to Show Cause to the caseworker.

If the order was denied, makes a file copy of the proposed citation and order, enters the appropriate case note, and returns the original to the caseworker.

Procedures for Caseworker

14. Upon receiving a Contempt Citation and Order to Show Cause signed by the ALJ, completes, signs, and dates the certificate of mailing at the end of the document. Makes the appropriate number of copies and mails them as indicated in the certificate of mailing; enters the associated case note. Retains the original in the case file. Makes sure a copy of the Application and Affidavit for Order to Show Cause, and a copy of each exhibit, is attached to all copies of the order before mailing.

Service: When imposing a fine, such as employer contempt prepares CS 401.3C Sheriff's Praeceptum and forwards the original praecipe together with the original and one copy of CS 503.5B Contempt Citation and Order to Show Cause to the sheriff or civil process server, retains a copy of the completed package in the case file.

When it is appropriate to serve the alleged contemnor by mail it must be by certified mail. *In this situation, the certificate of mailing does not include the alleged contemnor.*

Upon return of Service from Sheriff or civil process server the original Contempt Citation and Order to Show Cause should be retained in case file.

15. Monitors for proof of service of the citation and order. When proof of service upon the alleged contemnor is received, enters the associated case note, sends the original proof of service to the OALJ as an additional exhibit, and retains a copy in the case file. Prepares the CSED case and participates in the contempt hearing.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

Procedure for Administrative Law Judge

16. Conducts the hearing and enters the appropriate case note. Issue a decision and order ruling on the alleged contempt. Delivers the decision and order to the Hearings Assistant.

In the case of a payor found to be in contempt, includes in the decision and order a provision that the payor may purge the contempt and the associated penalty by making the required payment by a future date certain.

Procedure for Hearings Assistant

17. Mails copies of the decision and order to all parties and, if the case involves a payor, the ERS; file the original in the hearing file; enters the associated case note.

Procedures for Caseworker

18. Upon receipt of the hearing decision and order from the OALJ, reviews the determination and takes appropriate action in 18a, 18b, or 18c below:
 - a. If the hearing decision and order finds the obligor's payor in contempt, monitors for action by the payor.
 - i. If the payor makes the required payment by the date specified in the decision and order, sends a letter to the payor confirming the contempt has been purged, with a copy to the ERS; enters a case note, and proceeds to monitor for continued compliance.

Note:

The ERS is available to assist with actions in this step to determine or secure the compliance of the payor.

Important:

Once the payor purges the contempt, any subsequent failure to comply with the income withholding order constitutes a new act of contempt. To proceed against the payor based on the new contempt the CSED must begin again at step 2.

- ii. If the payor does not make the required payment by the date specified in the decision and order, informs the ERS and proceeds as follows:
 - A. Contacts the payor and
 - informs the payor he is not abiding by the terms of the decision and order
 - explains that if the problem is not corrected immediately the CSED may be forced to pursue additional action against the payor
 - documents all contacts with the payor
 - B. If the payor complies, proceeds as in step 18a(i) above.
 - C. If the payor does not comply, consults with the CSED staff attorney to determine whether to proceed with further action against the payor. Further action may include penalty collection (by warrant for distraint), other "indirect" actions to enforce withholding (such as administrative license suspension), or action in district court.

ENFORCING A SUPPORT ORDER

Administrative Civil Contempt

CS 503.5

NOTE:

Enforcement of Penalties. In cases of payor contempt, the CSED's primary goal is to obtain compliance with income withholding requirements, not to collect penalties. However, in extreme situations the CSED will take penalty collection action in step 18a(ii)(C) above to compel pending and future compliance. In determining whether penalty collection is appropriate in a particular case the caseworker and the CSED attorney must consider (1) whether other, non-punitive methods for obtaining compliance have been exhausted, (2) whether the collection action is likely to have a persuasive effect, and (3) if so, whether this effect will be beneficial to the overall enforcement of the income withholding case.

- b. If the alleged contemnor is not the obligor's payor, and the hearing decision and order finds the alleged contemnor in contempt, consults with the CSED staff attorney regarding available enforcement or penalty collection options.
 - c. If the hearing decision and order does not find the alleged contemnor in contempt, proceeds to monitor or enforce the case according to the terms of the order.
19. If contacted by the obligor at any time concerning the status of the obligor's support obligation when the payor fails to timely withhold or pay income explains that the failure does not relieve the obligor of the obligation to pay support and that arrears will accrue for each month the CSED does not receive payment of the obligor's ordered amount.

If the obligor claims the payor has withheld income from the obligor but not paid it to the CSED, further informs the obligor of his or her right to initiate a separate civil action against the payor to recover the amount. The applicable statute, MCA§40-5-909(8)(c) is given below.

"The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department."