

ENFORCING A SUPPORT ORDER
Civil Contempt in Child Support Cases

CS 504.5

SUPERSEDES

[New Section]

REFERENCES

Turner v. Rogers, 564 U.S. 431 (2011); 45 CFR 302.31(a)(3)303.4, 303.5, 303.6 and 303.8

Introduction

The U.S. Supreme Court decided Turner v. Rogers in 2011. That case determined how states may adequately provide due process to individuals in cases where a contempt of court is alleged for the non-payment of child support obligations. While the 14th Amendment of the U.S. Constitution requires the appointment of attorneys to indigents in actions that could result in incarceration, the Court determined that automatic appointments were not necessary if a state provided

“alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the court order.”

Because Turner v. Rogers was decided on the basis of the U.S. Constitution’s Fourteenth Amendment, any non-compliant state laws are vitiated.

Civil contempt is a remedial situation designed to bring an obligated parent into compliance with a court order. According to the federal Office of Child Support Enforcement, “[c]ivil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice.”

Policy

This section contains the procedures for caseworkers to use when evaluating whether or not a case should be referred to CSED attorneys for civil contempt proceedings. CSED attorneys have the duty to determine whether or not contempt proceedings will be initiated by the CSED.

Under Turner v. Rogers, contempt actions are only appropriate in instances where an obligated parent has the actual ability to pay the monthly child support obligation, but fails to do so. Contempt is not an appropriate remedy where an obligated parent is unemployed because of layoff or industry slow-down; chronic alcoholism or drug abuse; or in cases of disability or prolonged incarceration periods.

Contempt is applicable in cases where the CSED can establish that the obligated parent has a regular income source, such as self-employment income, trust income, or other assets sufficient to pay the child support obligation.

REQUIRED CONDITIONS FOR CONTEMPT PROCEEDINGS

A contempt of court action is possible only when the following conditions are met:

- 1) There is a support order issued by the District Court, or an administrative support order abstracted with the court in accordance with MCA § 40-5-227, or the order of another state registered for enforcement in accordance with MCA §40-5-1056.
- 2) The petition/motion/notice seeking to establish the support obligation was personally served on the obligor.

ENFORCING A SUPPORT ORDER
Civil Contempt in Child Support Cases

CS 504.5

- 3) The support obligation has been calculated using the obligor's actual income, and that income level has been at least maintained since the order was entered.
- 4) The obligor had actual notice that the support order was entered by the tribunal.
- 5) The obligor is located and can be served with an order to show cause.
- 6) There is proof of income, in the form of pay stubs, tax returns, or other financial information. For example, in the case of a self-employed obligor, loan applications submitted to banks for financing may provide evidence of ability to pay.

PROCEDURES

Procedure for Caseworker

1. Identifies a case appropriate for referral for a contempt of court proceeding by assembling the documentation and evidence to prove that the case satisfies the required conditions for contempt proceedings (see Required Conditions, POLICY).

Procedures for Staff Attorney

2. Reviews case and assembled documentation to determine whether or not a contempt proceeding is advisable. If proceedings are not advisable, documents with a case note explaining the decision. If additional proof is needed, documents with a case note. Returns case to caseworker.
3. If contempt is appropriate, mails "Notice of Possible Contempt" document to obligor, along with a Financial Affidavit. The Notice provides the obligor with notice that his or her ability to pay child support is the critical issue in a contempt proceeding. The Notice also offers the obligor an opportunity to meet with the CSED attorney either in person or by telephone to discuss resolution of the matter without court intervention, and answer questions regarding the possible proceeding.
4. Following the provision of Notice and opportunity for meeting, the CSED attorney makes a final decision to proceed or not with a contempt proceeding. If the proceeding is appropriate, drafts verified "Motion for Order to Show Cause" incorporating the specific facts of the case, and an "Order to Show Cause" for the Court's review to schedule a hearing on the Motion.
5. Prepares and presents case before the Court.
6. Prepares a proposed Order for the Court. The proposed Order must include express findings of fact which document the obligor's actual earnings and income; the subsistence needs of the obligor; the purge amount the obligor must pay to avoid incarceration; the obligor has the actual means to pay the purge amount from his or her current income or assets; and a reasonable period of time to pay the purge amount.
7. If the obligor fails to appear for the show cause hearing, prepares a "Warrant for Arrest" for the Court's review. The Warrant is directed to the Sheriff for the purpose of detaining and holding the obligor for a hearing on the "Order to Show Cause." The Court must schedule a hearing as soon as possible following notification by the Sheriff that the obligor has been detained.

ENFORCING A SUPPORT ORDER

Civil Contempt in Child Support Cases

CS 504.5

8. If the obligor purges his contempt, returns the case to caseworker. If the obligor fails to purge, prepares "Affidavit for Attachment" and proposed "Warrant for Arrest" for the Court's review. The Warrant is directed to the Sheriff for the purpose of detaining and holding the obligor until the contempt is purged. The CSED attorney must schedule periodic hearing to determine if the obligor's ability to purge the contempt has changed. There is no time limit on how long an obligor can refuse to purge contempt.