

Your Superhero Toolbelt:

Using the Civil Contempt Process to Enforce Child Support

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What is civil contempt?

- An action to enforce a court's order.
- Unlike criminal nonsupport, there is no Missouri statute regarding civil contempt for failure to pay child support.
- Federal Rules of Civil Procedure (FRCP) Rule 70: a party that fails to comply with a judgment by a court can be charged with contempt and subsequently penalized.
- RSMO 210.843(3) "Willful failure to obey any judgment or order of the court entered pursuant to this section is a civil contempt of court."
- RSMO 476.120: "Punishment for contempt. – Punishment for contempt may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court."

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What is civil contempt?

- The purpose of a civil contempt order is to compel a party to comply with the relief granted by the court. *Emmons v. Emmons* 310 S.W.3d 718, 722 (Mo.Ct.App.2010) The movant must prove the contemnor:
 - Had an obligation to perform or refrain from an action as required by a court order
 - Intentionally or willfully failed to meet the court ordered obligation
- The party found in contempt has two options:
 - Purge the contempt by complying with the court order, which then makes the case moot
 - Appeal, but not until judgment is final until
 - The contemnor is incarcerated, or;
 - the trial court takes evidence as to whether the contempt has been purged and then reissues a warrant of commitment.
 - *Carothers v. Carothers*, 337 S.W.3d 21 (Mo. Banc 2011)

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What is civil contempt?

The movant must prove the alleged contemnor had an obligation to perform an action and failed to meet the obligation.

The alleged contemnor then has the burden of proving the failure to act was not due to his/her own intentional and contumacious conduct.

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Who do we represent?

RSMO 454.513 – Our client is the State of Missouri, Department of Social Services, Family Support Division.

Generally, the noncustodial parent believes we represent the custodial parent.

Opposing counsel still, at times, needs to be reminded of this.

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What the result?

- Unlike other civil penalties, the contemnor can be incarcerated.
- The contemnor is punished only for so long as they refuse to perform the required action of the court. In our cases, that is to make a payment towards the alleged child support arrearage.

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Caselaw:

- *Turner v. Rogers*, 465 U.S. 431 (2011) – There is no constitutional right to counsel in a civil contempt case, but there must be adequate safeguards in place to ensure due process. As a result, 45 CFR 303.6(c)(4) was updated to require state child support agencies establish procedures to ensure that the case has been screened to determine whether the facts support a finding that a parent has the present ability to pay or comply with the support order **prior to filing** the contempt.

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Caselaw:

- *State of Missouri v. Terry Lane*, 313 W.W. 3d 182 – The Missouri Court of Appeals, Western District held that the court cannot “impose incarceration absent either (1) appointment of counsel; (2) Lane’s knowing and intelligent waiver to the right of counsel; or (3) a finding that Lane is not indigent.” In a footnote, the court also stated that because there is no public defender to determine indigency in a civil contempt proceeding, the court has the obligation to inquire when the defendant claims indigence.

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Caselaw:

- *Rust v. Rust*, 680 S.W. 3d 563 (2023) – Reaffirmed that “a determination of indigency for purposes of counsel appointment does not, as a matter of law, establish good cause under section 568.040.3 for a parent not to provide adequate support.”

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What does this all mean?

The defendant/respondent must be made aware they have a right to counsel and that, if indigent, counsel will be appointed.

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Putting this into action:

Upon the Motion for Contempt, the court enters an order for the non-compliant party to appear and show cause as to why the court's order was not followed. This Order to Show Cause must be served upon the party at least 7 days prior to the hearing. (Check local court rules – Jackson County is 10 days)

The State must prove that the Respondent failed to comply with the order and now has the present ability to purge the alleged contempt.

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Putting this into action:

Purging may not mean making payments as originally ordered.

- Based on current circumstances, Respondent can be ordered to pay more or less than current support amount due.
- The court's order in the contempt action does not modify the child support order.

The Respondent/Payor is able to present defenses such as indigency or inability to pay, disability, etc.

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Putting this into action:

If the Court enters a Judgment of Contempt, there must be findings that the Respondent has the present ability to pay (purge the contempt) and must then also include the present ability to pay in the order. *Lyons v. Sloop, 40 S.W. 3d 1 (Mo. App. 2001)*

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Reality of Contempt:

We deal primarily with pro se litigants. They are not indigent, but they generally cannot afford counsel.

- We must educate about the process to be effective
- We must make it clear we represent the State and not either party
- Parties come to us with:
 - *Lack of knowledge of the legal process*
 - *Lack of knowledge of the child support system*
 - *Different educational levels*
 - *Possible substance abuse issues*
 - *Possible mental health issues*
 - *Trauma*
 - *Fear*
 - *Anger*
 - *Relationship issues within the family*

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Procedural Justice

A case should receive the same treatment no matter which attorney in the office picks up the file. The office should have policies and procedures in place to ensure:

- *The process is fair*
- *Parties are treated with respect and with the same approach, whether represented or pro se*
- *Candor to the tribunal – if the party has presented relevant information to you in discussions, you may not present that information as the attorney for the state, but it would be appropriate to advise the court that Respondent has indicated they have evidence to present. The court then knows to inquire.*
- *Parties are far more accepting of the outcome, even if it is undesirable, when they feel their story was heard. This can impact compliance.*

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Jackson County

Each circuit/county will need to work with the court to find the best manner to utilize the civil contempt process.

In Jackson County, our civil contempt docket has changed dramatically over the years.

Jackson County had the first child support diversion program in the nation. Over the past decade, we have gradually added the diversion principles into our contempt docket.

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Jackson County

What do we do with the new enforcement referral?

- Send a “demand letter” and request contact.
 1. If PPS responds, attempt to enter into a voluntary pay agreement OR send to Connections to Success for help with employment (and other issues). After 6 months of consecutive payments, end the referral.
 2. If PPS fails to contact us OR fails to work the Connections to Success program, review case again and file the Motion for Contempt, if appropriate.

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Jackson County

If we determine legal action is appropriate:

1. File the Motion for Contempt
2. Court Issues Order to Show Cause
3. We use special process server or sheriff to serve Respondent (PPS)
4. Appear at court date:
 1. Try to enter into voluntary pay agreement (monitor for 6 months of consecutive payments and then dismiss if successful)
 2. Send to Connections to Success for help with employment/other issues
 3. Gather relevant information

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Jackson County

What if they don't appear for the hearing?

- First failure to appear is a Writ of Attachment – bond set at \$100 cash only (RSMO 491.170)
- Subsequent failures to appear are Warrants for Failure to Appear (bench warrants) with bonds set in increments of \$250 for each additional failure to appear.

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Jackson County

When to we have a trial?

If we are unable to generate payments on the case within a reasonable time, we request a trial date. If the PPS/Respondent has requested appointed counsel and claimed indigency, the court must hear evidence as to indigency and determine whether to appoint counsel.

At trial, we present our evidence.

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Evidence

- Pay Record *RSMO 454.539*—*A copy of records of payments to and disbursements by the payment center, including but not limited to the records maintained in the automated child support system, or a circuit clerk, including but not limited to copies produced by electronic or optically scanned means, whether certified by the division, circuit clerk or an employee of the payment center, shall be admissible without further proof or foundation in any judicial or administrative proceeding as proof of credits and payments made to or by the payment center or circuit clerk. Records include, but are not limited to, records maintained in the automated child support system.*
- Testimony of PRS
- Testimony of PPS
- Responses to Discovery (tax returns, pay stubs, etc.)

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Result

If the court holds the respondent in contempt, they will enter a judgment of contempt sentencing the respondent to incarceration in the county jail until purged, but will stay that judgment upon monthly payment of an amount ordered by the court. Typically based upon the current amount due, the arrears owed, whether the case is arrears only, etc.

The court can use other conditions aside from payment for the stay of execution. For example, have ordered the PPS to fully participate in and comply with the Connections to Success Program until the next court date, or bring in a list of all jobs applied for between court dates, etc.

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Result

Periodic court dates are scheduled to monitor compliance with the Judgment of Contempt terms.

We generally set aside the judgment and dismiss after six months of consecutive payments.

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What does this mean for you?

Consider the usefulness of civil contempt. In the past, attorneys from many jurisdictions have indicated their judges will not use this method of enforcement. It may be worth having conversations as judges retire and new judges join the bench. It may be worth having conversations with judges who have been there a long time, they may change their opinion with some additional information and discussion.

There have been many changes over the years regarding the philosophy of prosecution, enforcement, etc. There may be shifts within your jurisdiction too.

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QUESTIONS?

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