

Current Status of Contempt Law



The Prima Facie Case

- Existence of a valid Judgment
- Obligated party had knowledge of Judgment terms
- Obligated party has not complied

Judgment of Contempt on Financial Obligations

Stage One: Adjudication

- Failure to pay child support payments, medical expenses, college expenses, maintenance payments, debt payments
- When established that the obligated party has not complied with the Judgment, the burden shifts to the obligated party to show good cause for failure to pay.

Judgment of Contempt

- Judgment must have specific findings
- Provisions of original Order/Judgment
- How Order/Judgment was violated
- How contemnor has present ability to pay

Purge Order

Stage Two: How to purge

- Does the contemnor have the ability to purge
- Contemnor must be able to pay before incarceration can be ordered
- Contemnor must have the “keys to the jail”

Other considerations

- Reasonable dispute negates contempt
- Contempt Motion that becomes a Motion to Construe or Reduce to Sum Certain
- Prior reasonable efforts to enforce Judgment (wage withholding order, garnishment)

Other Enforcement Possibilities

- Family Support Division enforcement services
- Lien on real estate
- Garnishment
- Rule 74.07



APPOINTMENT OF COUNSEL

Although not a criminal prosecution, courts are required to determine that the contempt alleged is sufficient gravity to require jail time, the court must advise the defendants of the right to counsel, and if indigent, of the right to have counsel appointed.

State v. Lane

13 SW3d 182 (WD 2010)

Trial court cannot impose actual imprisonment absent

- Appointment of counsel
- Knowing and intelligent waiver, or
- Finding that the defendant was not indigent

General Rule followed in Missouri

A party is entitled to counsel in a civil proceeding if they are indigent and there is a probability that they may be incarcerated

What Lane holds:

A trial court must advise the defendant that s/he is entitled to a *court-appointed attorney*, if s/he is proved to be indigent

Result of failure to make inquiry

Does not prohibit finding of contempt, but the ability of the trial court to issue a warrant of commitment

What constitutes indigency

- Public Defender Guidelines
- Federal Poverty Guidelines
- Includes income for spouse living in house

Carothers v. Carothers

Missouri Supreme Court 2011

- Predetermine that the offense is of insufficient gravity to warrant jail time; or
- Advise the contemnor that s/he has the right to be represented by counsel

Contemnor must be informed

- What is being alleged
- Possible consequences
- Nature of trial proceedings
- What the contemnor is giving up by waiving the right to counsel

- **All must be on the record**

Turner v. Rogers

US Supreme Court June 20, 2011

Three considerations

1. Defendant's ability to pay
2. Is the opposing party represented by counsel
3. Available set of "substitute procedural safeguards:

Procedural safeguards

1. Notice to the defendant that ability to pay is a critical issue
2. Use of a form to elicit relevant financial information
3. Opportunity at hearing to respond to financial issues
4. Express finding by the court that the defendant has the ability to pay

13th Judicial Circuit of Missouri Website Forms

Circuit Court Forms

- **CHILD SUPPORT**
- [Show Cause Order for Child Support](#)
- [Writ of Attachment and Order of Warrant of Commitment](#)

Administrative Order 01-12

- Sheriff's Office shall notify the Clerk's Office that a Warrant of Commitment has been served and that the contemnor is in the custody of the sheriff in the county's jail as early as possible on the first business day following incarceration.
- The contemnor shall be brought before the judge issuing the warrant or if that judge is unavailable, then before any other appropriate judge on the first business day following the incarceration for a return on the Warrant of Commitment.