

New Regulations Regarding Contempt in IV-D Child Support Cases

Effective January 19, 2017, the federal Department of Health and Human Services (DHHS) adopted a final rule titled [“Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” 81 Federal Register 93492 \(Dec. 20, 2016\)](#). This rule mandates numerous changes to the policies and procedures of state child support enforcement programs, but one change of particular importance to state trial courts involves the use of contempt procedures to enforce child support obligations. According to the Comments to the new rules, the change in the federal regulations regarding the use of contempt is intended to ensure that the “constitutional principles articulated in [Turner v. Rogers, 564 U.S. 431 \(2011\)](#)[addressing the rights of obligors in child support contempt proceedings], are carried out in the child support program, that child support case outcomes are just and comport with due process, and that enforcement proceedings are cost-effective and in the best interest of the child.” [81 FR at 93532](#).

Federal Direction to State Enforcement Programs

The new federal rule amends [45 CFR 303.6](#) to require all state enforcement programs to develop guidelines for the use of civil contempt as an enforcement mechanism in child support cases. The Comment to the new rule focuses on the US Supreme Court decision in [Turner v. Rogers](#) as justification for clarifying the need to better protect the due process rights of obligors in contempt proceedings. The Comment states:

“As the U.S. Supreme Court stated in [Turner](#), a noncustodial parent’s ability to pay constitutes the critical question in a civil contempt case. ... Contempt is an important tool for collection of child support when used in appropriate cases where evidence exists that the noncustodial parent has the income and assets to pay the ordered monthly support obligations, but willfully fails to do so, and the purge amounts or conditions are within the noncustodial parent’s ability to pay or meet. The [Turner](#) opinion provides the child support program with a guide for conducting fundamentally fair and constitutionally acceptable proceedings.”

[81 FR at 93532](#).

Effective January 19, 2017, [45 C.F.R. 303.6\(c\)\(4\)](#) requires that all state child support offices establish guidelines for the use of civil contempt in IV-D cases. The guidelines must:

“include requirements that the IV–D agency:

(i) Screen the case for information regarding the noncustodial parent’s ability to pay or otherwise comply with the order;

(ii) Provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and

(iii) Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action."

North Carolina Response to the New Regulation

The North Carolina Child Support Enforcement Agency has complied with the new federal mandate by adopting the following guidelines, published in the Child Support Services Manual found on the website of the NC Department of Health and Human Services, <https://www2.ncdhhs.gov/info/olm/manuals/dss/cse/man/> :

[GUIDELINES FOR USE OF CIVIL CONTEMPT IN IV-D CASES](#)

"The federal Office of Child Support Enforcement (OCSE) has stated: "Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice." Prior to considering the use of contempt proceedings in a delinquent case, CSS caseworkers should consider the use of administrative enforcement remedies. If a repayment plan can be negotiated successfully, this approach can be considered as a cost savings to the CSS agency.

...

If caseworkers determine other enforcement remedies to be inadequate, then prior to initiating a contempt proceeding in court, they must screen the case for information regarding the NCP's [NCP is the noncustodial parent] ability to pay (or otherwise comply with the order, if appropriate). This review of the case is important because the NCP's ability to pay will be a critical issue at the contempt hearing, since the court must find that the NCP has the ability to comply with the underlying order before holding the NCP in civil contempt. Caseworkers must share the results of this review with the IV-D attorney, so that the IV-D attorney can present this information to the court, either if the court requests it or as is otherwise appropriate.

Alternatively, if the results of the review indicate that the amount of the current court-ordered obligation may no longer be consistent with the NCP's ability to pay, caseworkers should consider whether modification of the order might be appropriate.

Prior to a civil contempt hearing, the NCP must also be given notice that his/her ability to pay will be a critical question at the hearing. This notice is included in the Order To Appear And Show Cause (DSS-4663). However, if a county does not use the DSS-4663, then the county must ensure that this notice is provided to the NCP. “

Show Cause Orders

As I said in my earlier blog post [“No Contempt by Default.”](#) North Carolina law allows a show cause order to be issued to initiate a contempt proceeding only upon the establishment of probable cause that the obligor is in contempt of court. The information the state guidelines now require child support enforcement to obtain should provide the court with the information necessary to determine whether the party seeking the show cause order has the evidence necessary to support a contempt order. See *a/so* On The Civil Side blog post [“Contempt: Establishing Ability to Pay.”](#)