Child Support Bench Book:

Indirect Civil Contempt for Failure to Pay Child Support

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I. INTRODUCTION

Indirect Civil Contempt is an enforcement remedy used when a party fails to comply with a court order. "Indirect" means that the failure to comply with an order of the court happened outside of the presence of the court. It is a remedy sometimes used when a noncustodial parent fails to pay court ordered child support. Contempt is a remedy only available in equitable proceedings. It is generally used to coerce, not to punish, someone who has willfully failed or refused to abide by an order made for the benefit of another person. When contempt is used only for coercion and not punishment, it may be resolved by compliance with the order, payment of a reasonable purge fee, or any other remedy the court deems appropriate.

Contempt actions may be used for other kinds of orders, but this document will cover only contempt for failure to pay child support.

A. Legal Authority

Oklahoma Constitution

- Art. II, § 19, Trial by jury
- Art. II, § 25, Contempt – Definition – Jury trial – hearing

Oklahoma Statutes

- 12 O.S. § 68, Appearance Bond – Right to Enforce
- 21 O.S. §§ 4 – 6, Two Types of Crimes, Definition of Felony, and Definition of Misdemeanor
- 21 O.S. § 565, Definition of Direct Contempt and Indirect Contempt
- 21 O.S. § 566, Punishment for Contempt – Failure to Comply Child Support and Other Orders
- 21 O.S. § 566.1, Indirect Contempt for Failure to Comply with Order for Child Support, Child Support Arrears, or Other Support
- 21 O.S. § 567, Indirect Contempts – Notice – Trial by Jury – Appearance Bond
- 43 O.S. § 139.1, Revocation, Suspension, Nonissuance or Nonrenewal of License for Noncompliance with Support Order
- 43 O.S. § 140, Problem-Solving Court Program
- 56 O.S. § 240.10, Requirement of Child Support Obligor's to Maintain Gainful Employment – Underemployed Defined – Notice to Obligor

District Court Rules

- Rule 8.3, Indirect Contempt for Failure to Pay Child Support – Purge Fee
- Rule 29, Indigent Defendant in Civil Contempt Action – Right to Counsel – Attorney Fees

Caselaw

- *Turner v. Rogers*, 564 U.S. ____, 131 S.Ct. 2507 (2011).
- *Hicks v. Feiock*, 485 U.S. 624, 108 S.Ct. 1423 (1988).
- *Walker v. McLain*, 768 F.2d 1181.
- *Clark v. Most Worshipful St. John's Grand Lodge of Ancient Free and Accepted Masons of Oklahoma*, 181 P.2d 229, 1947 OK 84.
- *Davis v. Davis*, 739 P.2d 1029, 1987 OK CIV APP 41.
- *Henry v. Schmidt*, 91 P.3d 651, 2004 OK 34.
- *Whillock v. Whillock*, 550 P.2d 558, 1976 OK 51.

II. OVERVIEW OF CONTEMPT ACTION

A. *Prima Facie* Case & Burden of Proof

Per Oklahoma Statute, indirect contempt is the "willful disobedience of any process or order lawfully issued or made by [the] court…."[1]

Oklahoma law requires the establishment of the following facts in order to make a *prima facie* case for contempt:

1. An obligation to pay child support through an order of district or administrative court has been established;
2. The obligor knew or should have known an order for support was in place; and
3. The obligor failed to pay court ordered child support payments.[2]

If the court finds that the State or obligee has met their burden of proof by clear and convincing evidence,[3] the court may impose a sentence or purge conditions on the obligor.

B. Purpose

Indirect civil contempt can be used to either punish the obligor or coerce compliance with purge conditions.[4] The court in *Henry v. Schmidt* further explained the purpose of indirect civil contempt, stating that "punishment for indirect contempt may be remedial to coerce the defendant's behavior, or it may be penal to punish the defendant for disobedient or disorderly behavior… [I]f the purpose is to coerce the defendant to comply with a court order, purge may be properly allowed and sometimes statutorily required."[5]

When pursuing a contempt, however, the obligee should be cognizant of the constitutional protections afforded the obligor. Because loss of liberty is potentially at risk, the obligor

[1] 21 O.S. § 565.
[2] *See* 21 O.S. § 566.1.
[3] *Clark v. Most Worshipful St. John's Grand Lodge of Ancient Free and Accepted Masons of Okla*., 181 P.2d 229, 1947 OK 84.
[4] *Id.*
[5] *Henry v. Schmidt*, 91 P.3d 651, 654, 2004 OK 34.

must be given the opportunity to obtain counsel or be appointed counsel when indigent. The obligor is also entitled to other due process protections, including:

- Right to jury trial (petit jury) or bench trial;[6]
- Right to present witnesses and cross-examine witnesses called by the other side; and
- Any other constitutional rights attaching to a misdemeanor action.[7]

C. Sentencing

The result of most contempt actions in child support cases is the setting of purge conditions under which the obligor agrees to pay ongoing support, if applicable, and a monthly amount on the past due support. If the obligor complies with the purge conditions, the obligor will never face jail time and eventually the contempt will be purged.

If the obligor fails to comply with the purge conditions, the court may sentence the obligor to no more than six months in the county jail and/or impose a fine not to exceed $500.

- Once sentenced, the obligor can pay a *purge fee* set by the court and avoid jail time and the fine.
- If the obligor is sentenced to jail, the obligor can pay the full purge fee to be released.
- If the obligor cannot pay the full purge fee, the obligee may negotiate a partial purge fee with the obligor. If the parties reach an agreement, the obligee requests the court to release the obligor and approve a new payment agreement. The obligor will still have to make any scheduled court appearances and comply with the payment agreement.

D. Court Liaison Program

Contempt can also be used to coerce or compel participation in Child Support Services's (CSS) Court Liaison Program (CLP) if the obligor has a case open with CSS. Depending on local resources, Court Liaisons are available on a county-by-county basis, and the way the court uses the CLP differs depending on the way the judge chooses to integrate the CLP into the process.

E. Is Contempt a Good Remedy?

Because there is a possibility of loss of liberty, this remedy may only be attempted once for any given time period; if the initial action is unsuccessful, another cannot be filed for the same time period.

[6] Okla. Const. Art. II, §§ 19 and 25.
[7] 21 O.S. § 566.

Before filing an action for indirect civil contempt, it is advisable to also take into account the obligor's ability to pay, as the success of the action turns on this question. There are two distinct questions to consider based on the information available:

1. *Did* the obligor have the ability to pay during the contempt period?
2. *Does* the obligor have the present ability to pay in order to purge?

While the obligee is legally able to file a contempt action if he or she can make a *prima facie* case, it may not be effective if the obligor lacked the ability to pay during the contempt time period or presently lacks the ability to purge.

Depending on the circumstances, it may be advisable to attempt another enforcement remedy first and defer a contempt action until later, when there is more evidence of ability to pay. Examples of such remedies may include a notice of intent to revoke license(s) or a hearing on assets, as appropriate.

When the obligor can show he or she did not have the ability to pay during the contempt time period, the obligor should not be found guilty of contempt because the failure to pay was not *willful*. A case for contempt is very weak if the obligor received Temporary Assistance for Needy Families (TANF) and/or Supplemental Security Income (SSI) benefits or was incarcerated without income or assets during the time period.

When the obligor does not have the present ability to purge, incarceration is not appropriate because it would be punitive instead of merely coercive.

III. SCREENING PROCESS

A. Review & Research

Prior to filing a contempt action, the obligee should gather information about the obligor including, but not limited to:

- Address,
- Asset information,
- Credit applications, and
- Other cases pending involving the obligor, including criminal actions and civil lawsuits, bonds posted, and pauper's affidavits.

This will serve to determine whether contempt is the right action to take on this particular case. More information may be gained through the use of discovery served on the obligor after the citation for contempt is issued.

B. Assessing Case against Obligor

Next, the obligee should use the information gathered to assess the obligor's *ability* to pay support. The purpose of this assessment is to determine if there is enough information to

move forward with a contempt action; that is, whether the obligor's failure to pay during the contempt time period was willful and whether the obligor has the present ability to pay support or a purge fee.

After reviewing all available information as described above, determine if contempt is appropriate. In circumstances where the likelihood of obtaining increased support as a result of the contempt action is low, the obligee's resources may be better spent pursuing alternative remedies.

Contempt is likely not an appropriate remedy when:

- There is evidence the obligor is disabled and cannot work (state or federal disability benefits, disability insurance payments, medical documentation);
- The obligor has been in jail or prison with no income or assets during the entire period when the past support was due; or
- The obligor has received means-tested government benefits (TANF/SSI) during the entire period when the past support was due.

IV. COURT PREPARATION

A. Pleadings

To initiate contempt proceedings, generally the obligee files the following pleadings:

- Application for Contempt Citation that includes an allegation of all elements for prima facie case
    - Existence of order
    - Failure to pay as ordered
    - Allegation that failure to pay was willful
    - Amount required to purge contempt
    - May also include a request for a determination of total amount due and payment plan on past due support
- Citation for Contempt
    - Gives respondent a date and time certain to appear and defend against allegations
    - In remedial proceedings, includes an amount respondent can pay to purge the contempt citation and avoid further court proceedings

B. Service of Process

Once the contempt pleading packet is filed, it is served upon the obligor per 12 O.S. §§ 2004 and 2005.1.

The obligor must be served personally, by certified mail, or by Acknowledgment for Receipt with contempt pleadings, unless the obligor's attorney agrees to accept service. Proper

service for contempt actions means either the obligor was served in person or signed for certified mail (depending on the judge's requirements).

Practice Tip: If the obligor has not been served before the hearing, a copy may be sent by regular mail to the obligor to encourage voluntary appearance. Notice to the obligor by regular mail is not proof of service and therefore cannot be a basis for a bench warrant for failure to appear.

Practice Tip: If the obligor is not served but appears, the obligee should give the obligor a copy of the pleading packet, if available. It is also advisable to document the obligor's voluntary appearance in some way. This may be done by:

- Completing the Acknowledgement of Receipt, Waiver of Service and Entry of Appearance document and having the obligor sign, or
- Asking the court to note the obligor's voluntary appearance in the record or memorialize it in some other way.

If the Acknowledgement of Receipt, Waiver of Service and Entry of Appearance document is signed, file it with the court if possible. If not, the obligee's attorney should retain the document in the file.

If the pleading packet is not available at the hearing, the obligee should mail it to the obligor after the court date.

V. COURT PROCEEDINGS

A. Arraignment

The purpose of the arraignment is for the judge to explain the proceedings to the obligor and advise the obligor of his/her rights. These rights include the right to counsel, including appointed counsel if the obligor is indigent, and the right to a jury or non-jury trial.

Depending on the way the court handles the docket, the judge may or may not explain the rights to the obligor. If the judge does not explain the rights, the obligee's attorney may wish to review the "Acknowledgment of Notice of Rights in Civil Contempt Action" with the obligor to be sure he/she understands the proceedings and his/her rights. The obligor signs the acknowledgment and it is filed in the court file, unless the court orders otherwise. Having this document signed builds the record showing that obligor received all due process notifications, and may make the case easier to defend on appeal, if necessary.

If CSS has an open case and the case is assigned to an office with a Court Liaison, the obligor may be ordered to participate in the Court Liaison Program (CLP) if eligible. The obligor may be ordered to participate in the CLP at any stage of the contempt process.

The following is a general overview of the process in most counties. The way the docket is handled is up to the specific judge, so there may be some differences depending on where the action is filed. However, these are the basic steps of the process.

- The obligor should be advised of his/her right to counsel and asked if he/she wants an attorney. The obligor should request appointment of counsel if he or she cannot afford private counsel. If the obligor requests counsel, the case should not proceed until the court rules on the issue.
- The obligor may plead "not guilty" and ask for a jury or non-jury trial. In these cases, a trial date is set. Usually the court allows the obligor to remain out of custody pending trial, but may require an appearance bond be posted. If the obligor fails to appear, the bond may be disbursed to the obligee to apply to the child support arrearage. (See: Motion and Order to Disburse Bond in the forms section of this material.) The court may also require a jury fee to be paid if the obligor requests a jury trial.
- The obligor may waive his/her rights, ask to plead guilty, and agree to purge conditions.
    - In these cases, the parties will work out the purge conditions and complete the Judgment on Child Support Contempt Citation. Be sure the obligor understands the order and signs it indicating his/her understanding and agreement to the terms.
    - Some counties may also complete the "Waiver of Rights on Civil Contempt Action" and have the obligor sign it. The signed document is filed with the court.
    - The order is entered and the obligor is given a date to come back for a review of compliance with the purge conditions.
    - Depending on the terms of the order and the court's procedure, the obligor may not be required to appear for subsequent hearings or reviews if the payments are made as agreed. This may be governed by the request of the parties or by local practice.

B. Bench Warrant

Sometimes an obligor may be formally excused from appearing in court, for example:

- Based on the terms of the prior order,
- A continuance is signed prior to the hearing date, or
- Obligor is paying as ordered per a "pay or appear" order.

If the obligor is not excused from appearing and fails to appear either for arraignment or any other hearing for which he or she has been ordered to reappear, the obligee may request a bench warrant (See the forms section) for failure to appear when there is proper service.

Once the court authorizes a bench warrant, prepare the following documents:

- Order Authorizing Bench Warrant, depending on local practice, and
- Bench Warrant.

The completed documents are usually served by the sheriff. The process varies from county to county.

The court sets an appearance bond amount, usually either a standard bond amount used in that county or the purge amount requested in the "Citation for Contempt." Usually the bond is set as a "cash only bond." The bench warrant may state both a bond amount and also the purge amount to satisfy the contempt. The bond amount is generally set in accordance with local court practice.

If the obligor is picked up on the bench warrant and does not pay the appearance bond or purge fee amount, the court usually arranges to have the obligor brought before the judge. If this does not occur, a court date should be set for the obligor's appearance. At the appearance, the court may:

- Order the obligor to remain in custody pending trial;
- Release the obligor on his/her own recognizance; or
- Approve the parties' agreement for a lower cash bond for release.

If the obligor is picked up on the bench warrant and pays the appearance bond or purge fee, the obligee may file a Motion to Disburse Bond or Purge Fee and request the fee be paid to obligee to satisfy the child support obligation. If a cash bond was posted by someone other than the obligor, that person may need to sign paperwork with the Court Clerk to consent to have the bond applied to the child support obligation or the court may set the matter for hearing.

C. Trial

1. Burden of Proof

Oklahoma law requires the establishment of the following facts in order to make a *prima facie* case for contempt. The obligee has the burden to prove by clear and convincing evidence the following elements:

1. The order was made, filed, and served on the obligor or the obligor's attorney, or
2. The obligor had actual knowledge of the existence of the order, or
3. The order was granted by default after prior due process notice to the obligor, or
4. The obligor was present in court at the time the order was pronounced; and
5. Noncompliance with the order.

Once the obligee has made a *prima facie* case, the obligee's attorney may request a:

- Finding of guilt for willful failure to pay child support or judgment payments,
- Judgment for past due support, and
- License revocation/probation order, when appropriate.

The obligor must show that the failure to pay was not *willful* in order to be found not guilty of contempt.

2. Defenses at Trial

Once the obligee's attorney has established the elements, the burden shifts to the obligor to prove that the obligor's failure to pay was not willful. These are the most common defenses to a contempt citation:

- The obligor shows he/she is not the person who owes the child support;
- The obligor shows he/she paid the child support alleged to have been unpaid; or
- The obligor alleges the failure to pay was not willful:
    - The obligor shows he/she has a mental or physical health problem that prevents him/her from working.
    - The obligor provides other proof that he/she has been unable to work for the period for which the past child support was due.

3. Finding of Not Guilty

If the court finds the obligor not guilty, the Judgment on Child Support Contempt Citation is entered stating the obligor was found *not* to be in contempt. Even if the obligor is found not guilty, the obligee may request that the court enter judgment for any past due child support. The obligee may also request orders regarding license revocation, payment plan, and/or referral into the Court Liaison program, as appropriate.

4. Finding of Guilt

If the court finds the obligor guilty after a hearing, the Judgment on Child Support Contempt Citation is entered setting forth the findings and orders of the court.

5. Plea Agreement

The obligor may waive his/her right to trial and enter into a plea agreement. If the court finds the obligor guilty based on a plea agreement, the court generally sets a future sentencing date in the Judgment on Child Support Contempt Citation.

D. Evidentiary Hearing on Ability to Purge[8]

If the obligor is subject to incarceration or a fine, at this hearing or at a future hearing, and whether upon the request of the obligee or on the court's own motion, the court must set a purge fee. After a guilty or *nolo contendere* plea has been entered or a finding of guilt has been made by the court, the court must set a purge fee. The obligee's attorney offers evidence or elicits information from the obligor or witnesses regarding obligor's present ability to pay a purge fee. The obligee then requests a purge fee be set in accordance with the evidence.

[8] While there is no appellate precedent requiring this step, the Oklahoma Supreme Court has granted a request for extraordinary relief in at least one case. In *Davis v. Honorable James B. Croy*, #110,144 (Ok.Supr.Ct. 2011), the obligor was sentenced and a purge fee was set. After writ proceedings were filed, the Supreme Court assumed jurisdiction and directed the trial court to "conduct an evidentiary hearing … upon [obligor's] ability to pay."

VI. JUDGMENT ON CHILD SUPPORT CONTEMPT CITATION

The Judgment on Child Support Contempt Citation includes:

- A statement of compliance with obligor's rights;
- Findings of the court regarding ability to pay;
- Purge provisions under District Court Rule 8.3;
- A future sentencing date or the sentence currently pronounced by the court;
- A judgment for the full amount owed and payment plan on the judgment; and
- A license revocation/probation order when the State's Attorney requests it.

Generally, the obligor must sign the Judgment on Child Support Contempt Citation, unless the court waives his/her signature.

VII. SENTENCING

Sentencing is the stage of the proceeding when the court determines if the obligor should be imprisoned, or if some other measure will compel compliance with the purge conditions. This may occur immediately following the trial, or later if the obligor does not substantially meet the terms of the purge conditions contained in the Judgment on Child Support Contempt Citation.

- The obligor may face imprisonment for up to six months in the county jail and/or be fined an amount not to exceed $500 for the underlying contempt. The judge decides the length of the obligor's sentence and the purge amount.
- The court may choose to sentence the obligor, but stay execution of the sentence and set another date in the future. Execution of sentence may be stayed indefinitely so long as the obligor complies with the purge conditions.
- The court may choose not to impose sentence on the obligor, but instead may set another date in the future for sentencing. Sentencing may be continued this way many times as a means to monitor payments and compliance with other purge conditions.
- The court may choose to sentence the obligor and execute the sentence immediately. When the court orders imprisonment, the court must set purge conditions. The obligee should request an evidentiary hearing at sentencing regarding obligor's ability to pay a purge fee and comply with other purge conditions. After the evidentiary hearing, the purge fee and other purge conditions may be set in accordance with the evidence. The purge fee may be less than the full amount due under the contempt citation. District Court Rule 8.3 provides guidance as to how the court should set a purge fee.

When a judge orders the obligor to serve a set number of days in jail and sets a purge fee, the following may occur:

- If the obligor serves the full sentence or pays the ordered purge fee, the court finds the contempt has been purged. The contempt action is concluded and no further hearings should be set. If the obligor has paid a cash bond or purge fee, the obligee may file a Motion to Disburse Bond or Purge Fee; or

- If the obligor is imprisoned, the court may release the obligor prior to serving the full sentence if both parties make a subsequent agreement which must be in writing and approved by the court. The agreement may include:
    - a lower purge amount than originally set,
    - an amended payment plan on the arrears,
    - participation in the CLP, or
    - future compliance with previous purge conditions.

After an obligor is incarcerated, the obligee may be contacted by the obligor and/or family to negotiate an early release. These requests should be reviewed by the obligee's attorney to see if the offer is appropriate under the facts of that particular case. Pursuant to District Court Rule 8.3, the court will determine if the partial purge conditions are acceptable. If the obligor is released early, he/she can be ordered to return to court to review future compliance.

Once the obligor has satisfied the purge conditions, either party can request an order releasing the obligor from any further proceedings under that contempt. The court may require that all court costs be paid before an order of release is entered.

VIII. APPEALS

Any party may appeal the results of the trial to the Oklahoma Supreme Court.

IX. SUBSEQUENT CONTEMPTS

Once the obligor has been found either guilty or not guilty of contempt, the obligor may never be cited for contempt for the same time periods in the future, even if the delinquent support remains unpaid for that period. When filing a subsequent contempt after the first contempt was completed, the subsequent contempt must be for a different time period.

A future contempt may be filed for the same period only when the contempt has been withdrawn prior to trial or entry of a plea. Any order dismissing the contempt on the request of the obligee should be "without prejudice to refiling" to ensure the right to refile the contempt is preserved.

If you have any questions about Civil Contempt, contact:

Elizabeth.Wilson@okdhs.org

APPENDICES

Appendix A

Pleadings

NOTICE OF YOUR RIGHTS IN CIVIL CONTEMPT ACTIONS

The attached legal papers are **VERY IMPORTANT!**

YOU MUST APPEAR in DISTRICT COURT on _____ at _____ __.m. TO PROTECT YOUR RIGHTS!

If you do not come to this hearing, a Bench Warrant may be issued for your arrest.

[Party's name] (Petitioner) is telling the court that you had the ability to pay your child support but did not. Based on Oklahoma law, if you could have paid but did not, the court could sentence you to 6 months in jail and make you pay a $500 fine.

The petitioner has to show the court the following things before the court can find you guilty:

1. A court has ordered you to pay child support;
2. You knew about the order or knew there was a hearing to set an order and you did not appear; and
3. You did not pay your child support as ordered.

If the petitioner can prove these things, you will have a chance to tell the court why you did not pay. The court will consider evidence of your inability to pay. If you can prove that you did not pay because you did not have the ability to pay, the court may find you not guilty.

Because you could possibly go to jail, you have certain rights during this proceeding:

- Right to an attorney. If you cannot afford an attorney, you can ask the court to give you an attorney without cost. If you want to hire an attorney, you should hire the attorney before the court date.
- Right to a jury trial.
- Right to a trial to the judge.
- Right to present evidence to support your case.
- Right to call witnesses and question any witnesses.
- Right to waive a trial and an attorney and make payment arrangements.

YOU MUST APPEAR AT THE DATE AND TIME ABOVE TO PROTECT YOUR RIGHTS! Bring any information you have about your ability to pay child support. If you are working, please bring information about your employer, including a paystub.

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

APPLICATION FOR CONTEMPT CITATION
FOR FAILURE TO PAY CHILD SUPPORT

_____ (Petitioner) appears through counsel and offers the following in support of the application.

1. Attached and incorporated as Exhibit A is the "Notice of Your Rights in Civil Contempt Actions."

2. Petitioner alleges:

   a. _____ is the obligor and was ordered to pay child support or judgment payments pursuant to a valid child support order.

   b. _____ owes a total child support and/or cash medical support balance of $, plus statutory interest, plus amounts accruing to the date of trial or any order entered in this matter.

   ☐ The obligor has failed to comply with the order of the Court for the time period from through in the amount of $, plus amounts unpaid through the date of the trial.

   ☐ The obligor was previously ordered to pay $ per month towards a judgment for past due support. Obligor has failed to make the judgment payments in the total amount of $ as ordered by the Court during the time period from through .

   c. In order to purge this contempt and avoid coming to court, the obligor must:
   ☐ pay $.
   ☐ show proof that you have enrolled the child(ren) in health care coverage.
   ☐ pay court costs in the amount determined by the court.

d. ☐ The obligor has willfully failed to obtain health insurance for the minor child as previously ordered by the court. In order to purge this contempt and avoid coming to court, the obligor must show proof that the child(ren) are enrolled in health care coverage.

e. The obligor's failure to pay or otherwise comply with the order of the court is willful.

3. Pursuant to 43 O.S. § 139.1(C)(1) if the court finds evidence presented at the hearing that obligor is in noncompliance with an order for support, the court shall suspend or revoke the license of the obligor or place the obligor on probation.

WHEREFORE, Petitioner requests the Court order the obligor to appear at a date and time certain and show cause why obligor should not be punished for indirect contempt of court; why an order should not be granted determining the unpaid balances including any amounts accruing to date of trial; why an order for revocation of the obligor's licenses should not be entered; that obligor must provide proof of health care coverage for the child(ren) (if applicable); why the obligor should not be ordered to pay the costs associated with this matter; and for such other relief the Court deems just and equitable.

VERIFICATION

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct, to the best of my knowledge and belief, according to the information provided.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

SUBPOENA DUCES TECUM

STATE OF OKLAHOMA TO: _____

You are commanded to appear before Judge _____at the _____County Courthouse, _____on _____at _____. You are commanded to bring with you the following documents and stay until you are excused by the court.

- All documents relating to your payment of child support in the above styled and numbered case;
- All payroll stubs since you were ordered to pay child support;
- Copies of all bills for the last six months for your utilities, housing, food and insurance;
- All titles, deeds and other records for any real property or motor vehicles that you own;
- Evidence of your disability (if applicable);
- Any licenses or permits that have been issued by the State of Oklahoma, including your driver's license;
- If you were ordered to provide health insurance, evidence of enrollment of the minor child(ren) in health insurance and payment of premiums for all periods since the court order was entered.

You must obey under penalty of law.

Dated: _____

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

CITATION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT AND ORDER FOR SHOW CAUSE HEARING

THE STATE OF OKLAHOMA TO: _____

It appears from the Application for Contempt Citation of _____, Petitioner that you have willfully disobeyed the orders of this Court in the above styled and numbered case.

YOU ARE ORDERED to appear in person at the _____County Courthouse, _____, _____, before Judge _____on _____at _____a.m./p.m. to show cause why you should not be punished for indirect contempt of court and why your licenses should not be revoked.

In order to purge this contempt and avoid coming to court, the obligor must:

- ☐ pay $.
- ☐ show proof that you have enrolled the child(ren) in health care coverage.
- ☐ pay court costs in the amount determined by the court.

Dated: _____

_____
JUDGE OF THE DISTRICT COURT

FAILURE TO APPEAR SHALL RESULT IN A BENCH WARRANT BEING ISSUED FOR YOUR ARREST.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]

[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

JUDGMENT ON CHILD SUPPORT CONTEMPT CITATION

On _____, the application for contempt citation for non-payment of child support in the above matter comes on for hearing before the court for:

☐ Arraignment ☐ Plea ☐ Amended Plea ☐ Jury Trial ☐ Non-Jury Trial

The custodial person/obligee is: _____, and

- ☐ appears pro se, or
- ☐ appears and is represented by counsel _____, or ☐ appears not.
- ☐ appears not and is represented by counsel_____,
- ☐ appears not, having previously signed this order.

The non-custodial parent/obligor is: _____, and

- ☐ appears pro se, or
- ☐ appears and is represented by _____, or
- ☐ appears not and has executed and filed sufficient Entry of Appearance & Waiver, or
- ☐ appears not, having previously signed this order.

☐ Other persons appear: _____
_____.

1. This Court has jurisdiction over the subject matter and the parties. The non-custodial parent/obligor has been properly served with an Application for Contempt Citation and has been given notice and opportunity to be heard.

The Court, upon hearing the testimony and evidence presented, and any agreements of the parties, and being fully advised, **FINDS, ORDERS, AND DECREES as follows:**

2. The obligor has been advised of his/her rights, including the right to counsel and the right to a jury trial, the right to have the moving party bring witnesses into court to prove by clear and

convincing evidence that s/he had the ability to pay and willfully failed to pay child support as ordered by the court, the right to present evidence and call witnesses, and the right to question any witnesses called by other parties concerning the charge of willfully failing to pay child support as previously ordered by the court for the time period from _____ through _____.

☐ The obligor knowingly and voluntarily waives the right to a jury trial and either knowingly and voluntarily waives his/her right to counsel or has consulted with counsel. The obligor enters a plea of ☐ guilty. ☐ no contest. The court accepts obligor's plea and finds him/her guilty of indirect contempt of court for failure to pay child support.

☐ The obligor is found ☐ guilty ☐ not guilty of indirect contempt of court for failure to pay child support after ☐ a trial before the court. ☐ a jury trial.

The obligor has read and understands the provisions of this order, the terms of the purge plan, and the payment arrangements set out below.

3. **Sentencing:**

☐ The court sentences the obligor to _____ months in the county jail and orders that the sentence be executed immediately. Obligor shall remain in the county jail until s/he complies with the purge conditions set forth in this order, serves the full sentence, or until further order of the court.

☐ The court does not impose sentence at this time so long as obligor complies with the purge conditions set forth in this order. Further hearing is set below.

☐ Sentencing is continued to _____ for obligor to provide information regarding his/her ability to purge the finding of guilt of indirect contempt of court.

☐ The court sentences the obligor to pay a fine in the amount of $_____.
☐ Fine to be paid in full, on or before _____.
☐ Obligor is ordered to contact the Court Clerk's Office by the following date to make payment arrangements: _____.

☐ Other: _____
_____
_____

4. **Purge Conditions:**

The court heard evidence regarding obligor's current ability to purge his/her guilt. The purge conditions are set in accordance with the evidence of obligor's ability to pay.

Obligor shall purge his/her guilt in the following manner pursuant to Rule 8.3 of the Rules for the District Courts:

☐ Compliance with the current support and judgment payments as set out below until the amount of $_____ in past support plus interest has been paid in full. Payments shall be applied first to current support due in the month payment is received, then to past support accrued during the contempt time period.

☐ Payment in full of the judgment amount of $_____ by lump sum due on or before _____.

☐ Payment of a lump sum of $_____ on or before _____ and monthly payments as set out below until paid in full or further order.

☐ Other: _____
_____
_____.

If obligor fails to comply with the payment plan and is sentenced, the court will set an amended purge fee based on obligor's ability to pay at sentencing hearing.

5. **Compliance Review:**

Obligor is ordered to reappear on _____ at _____.m. for a review of compliance with the purge conditions. "Compliance" means payment in full for each month is received by the Oklahoma Central Support Registry by the last day of the month the payment is due. Failure to comply with the purge conditions may result in sentencing and execution of sentence.

Reappearance for Hearing: The obligor shall reappear for any subsequent hearings which are scheduled without further notice, and failure to appear will result in a Bench Warrant being issued for the obligor's arrest, unless the hearing is continued or canceled by agreement.

Notice of any subsequent hearings in this matter shall be mailed by regular mail to the address provided in this order or to the last known address.

☐ 6. The obligor is ordered to obtain employment for salary, income or wages sufficient to pay the child support obligation(s).

☐ 7. **Court Liaison Program.** The obligor is ordered into the Child Support Services (CSS) Court Liaison Program pursuant to 21 O.S. § 566.1. The obligor is ordered to contact the Court Liaison and work with the Court Liaison to obtain gainful employment. The Court Liaison will report back to the court whether the obligor is complying with this requirement.

8. **Current Support:** Obligor has a duty to provide support for the minor child(ren) who is/are the subject of this action. Obligor is ordered to pay child support of $_____ per month per prior court order.

9. **Judgment for Past Due Child Support.**

Judgment is confirmed for past due child support against the Obligor in the amount of:

Type of Judgment	Amount	From	Through
a. Balance of Previous Judgment(s)	$		
b. Unpaid Child Support Since Last Judgment	$		
c. Cash Medical Support	$		
d. Ongoing Medical Support	$		
e. Other: _____	$		
f. TOTAL JUDGMENT:	**$**		

This judgment does not include any unreimbursed medical and child care expenses that have not been reduced to judgment and the obligor's liability for these expenses, if any, is not addressed by this proceeding and is subject to later determination by an appropriate tribunal.

10. **Interest**.

☐ Determination of the amount of interest owed through the date of this order is reserved.

☐ Statutory interest is owed in the amount of $_____ through _____.

11. **Judgment Payment:** Beginning _____, the obligor shall pay $_____ per month on the child support judgment until it and accrued interest are paid in full, or until further order. This payment supersedes any previously ordered judgment payments and is the total amount to be paid each month on the past due support. If current support stops for any reason, the obligor shall continue to pay the total amount in paragraph 12 until all arrearages, judgments and interest are paid in full. This payment plan:

☐ does not exceed 36 months.

☐ does exceed 36 months because imposition of such a payment schedule would be unjust, inequitable, unreasonable, inappropriate under the circumstances, and/or not in the best interests of the children involved.

12. **Total monthly payment:**

Current child support:	$_____
Cash Medical support:	$_____
Judgment payment:	$_____
Total:	**$**_____

☐ 13. Regarding obligor's licenses, the Court finds and Orders:

☐ **Probation**. The obligor is not in compliance with an order for support as defined in Title 43 O.S. Section 139.1. The Obligor is placed on probation as to any license defined by Title 43 O.S. Section 139.1. Probation is conditioned upon full compliance with the terms and payment plan in this order. If at the completion of the probationary period the obligor has failed to fully comply with the order, the licenses of the obligor shall be automatically suspended or revoked without further hearing. Full compliance is defined as full payments, including both current support and judgment payments, each and every month until the obligor is current in his/her support obligation, or until further order of this Court. The obligee may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license;

☐ **Reinstatement of Licenses and Order of Probation**. The Court finds that the obligor is now in compliance with the payment plan or the noncustodial parent is participating in a problem-solving court program under Section 140 of Title 43 or Section 240.10 of Title 56. The obligor's previously revoked licenses are hereby ordered reinstated, and the obligor is placed on probation in accordance with the terms as set forth above.

☐ **Non-Issuance, Non-Renewal, or Revocation**. The Court finds that the obligor is not in compliance with an Order for Support as defined in Title 43 O.S. Section 139.1; therefore, the obligor's licenses (including driver's license) are hereby REVOKED.

☐ **Currently Revoked**. The Court finds that the obligor's licenses have already been revoked for noncompliance with an order for support. That revocation remains in effect pending compliance with the payment plan and further order of the Court.

Upon receipt of this order, the licensing board shall implement the order as defined by 43 O.S. § 139.1(F). The licensing board has no jurisdiction to modify, reverse, vacate, or stay this order of probation, suspension, or revocation.

14. **Reporting Employment:** The obligor shall notify the obligee in writing within ten (10) days of any of the following: (1) terminating or leaving employment; (2) beginning new employment; or (3) changing employment. The obligor shall provide the name, address and telephone number of any places of employment. The term employment shall include work as a contractor/subcontractor, or any other activity which obligor engages in for money, profit, or

compensation in-kind, or otherwise.

15. **Address of Record for Service of Process:** Title 43 O.S. § 112A requires all parties and custodians to keep the Central Case Registry informed of a current address of record for service of process in support, visitation and custody actions. The following applies to the obligor and any custodian subject to this order. Any changes in the address of record, employer, or health insurance shall be provided in writing to the Central Case Registry within thirty (30) days of the change. The address is:

Central Case Registry
P.O. Box 528805
Oklahoma City, Oklahoma 73152-8805.

The last address of record may be disclosed to a party or custodian upon request in accordance with CSS rules.

The following is the obligor's current address of record:
_____
_____

The following is the custodial person's current address of record:
_____
_____

16. **Income Assignment**. An immediate income assignment is ordered pursuant to 12 O.S. § 1171.3(G)(1). A portion of obligor's monthly or other periodic income shall be assigned in an amount sufficient to ensure payment of the monthly support obligation, including any arrearage and judgment payments. The assignment is effective immediately. Obligor remains responsible for making payments directly through the Centralized Support Registry in any month when an income assignment is not in effect or does not pay the full amount due under this order.

17. **Where to make payments:** Child support and judgment payments shall be made payable to the Oklahoma Department of Human Services and mailed to: Oklahoma Centralized Support Registry, P.O. Box 268849, Oklahoma City, OK 73126-8849, with the child support case number: @fgn@, on the face of the payment. Payments may also be paid electronically through the State of Oklahoma Web Pay System or at PaySite Kiosk Locations. PaySite Kiosk locations can be found at http://paysitekiosklocator.com/.

18. **Court Costs and fees**:

☐ The obligor shall pay court costs and fees as determined by the Court Clerk of this County. Obligor is ordered to contact the Court Clerk's Office by the following date: _____ to determine costs and fees and make payment arrangements.

☐ The obligor shall pay court costs in the amount of $_____ on or before _____.

☐ Pursuant to District Court Rule 29, the obligor was previously appointed counsel in this case. On this date, the court finds the obligor has the ability to pay for counsel. The obligor is ordered to pay applicable counsel fees to the Court Clerk's office.

☐ 19. **Other:** _____

_____

_____

_____

_____

_____

_____

IT IS SO ORDERED.

_____

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

_____	_____
Custodial Parent (Signature)	Noncustodial Parent (Signature)
_____	_____
(Printed name)	(Printed name)
_____	_____
Attorney For Custodial Person OBA#	Attorney For Noncustodial Parent OBA#
_____	_____
_____	_____
_____	_____

CERTIFICATE OF SERVICE

On or before _____, I hereby certify that a true and correct copy of this document was:

☐ Hand Delivered to the ☐ Obligor ☐ Custodial Person ☐Attorney(s)
☐ Mailed with sufficient postage prepaid thereon to the verified address of record for the following parties: ☐ Obligor ☐ Custodial Person
☐ Mailed with sufficient postage prepaid to the attorney for the:
☐ Obligor ☐ Custodial Person at the address listed above
☐ Mailed with sufficient postage prepaid to the following parties:

Obligor at _____.

Custodial Person at _____.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

WAIVER OF RIGHTS ON CIVIL CONTEMPT CITATION

I, _____, the party alleged to be in contempt to the Citation for Contempt, appear:

☐ pro se
☐ represented by counsel _____

and by my signature below acknowledge the following:

1. The judge has advised me of the elements of the Citation for Contempt as follows:

I have been charged with CIVIL INDIRECT CONTEMPT OF COURT pursuant to 43 O.S. 137 and 21 O.S. 566.1. I understand that if I am found guilty, I could be sentenced to serve up to six (6) months in county jail, unless I purge the finding of guilt by paying a purge amount set by the court. I could also be ordered to pay a fine up to the amount of $500.

2. I, _____, acknowledge that I have been advised of the following rights available during these proceedings:

a. Right to a trial by jury or by the judge;
b. Right to have a record of proceedings made;
c. If proceeding pro se, the right to have the representation of an attorney, including the right to a court-appointed attorney if I am unable to afford to hire an attorney;
d. Right to bring witnesses to testify on my own behalf;
e. Right to confront and cross-examine any witnesses who testify against me; and
f. Right to have Petitioner prove by clear and convincing evidence that the elements of the contempt citation have been met.

By signing below, I acknowledge that I have been thoroughly advised and understand the above rights. I waive (give up) each of the rights above and wish to proceed with entering a plea to the above charge.

_____

Signature

_____

Printed Name

BENCH WARRANT – CIVIL
IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

TO THE SHERIFF OF _____COUNTY OR ANY PEACE OFFICER OF THE STATE OF OKLAHOMA: TO BE SERVED DAY OR NIGHT, GREETINGS:

YOU ARE HEREBY COMMANDED to bring forth:

Name: _____
DOB: _____
SSN: _____
Alias: _____
Sex_____
Race: _____
Height: _____
Weight: _____lbs
Eyes: _____
Hair: _____
Identifying Marks: _____

Home Address: _____

Work Address: _____
Other:

To appear before Judge , Room of the District Court of _____County, to answer for a contempt of said Court for failing to appear on after being duly summoned. Should Court not be in session, then he/she should be detained in lieu of **$ cash bond or two sureties, no O.R.** for appearance on the next regular Court day for the Judge.

ISSUED _____.

Prepared and requested by:

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

_____
JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

OFFICER'S RETURN

This warrant received on _____by _____.

Person named was taken before the Judge on _____; or
Person named posted bond and was ordered to report to Judge on _____ or
Person named was placed in jail on _____; Or
Person not found in _____ County.

By _____
Peace Officer

Person named was taken before the Judge on _____; or
Person named posted bond and was ordered to report to Judge on _____ or
Person named was placed in jail on _____; or
Person not found in _____ County. Warrant returned to Court on _____

SHERIFF

By _____
DEPUTY SHERIFF

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

MOTION TO RECALL WARRANT

_____, Petitioner appears through counsel, moves the Court to order a recall of the civil warrant issued on in the above-captioned matter for the reason that .

WHEREFORE, premises considered, Petitioner requests the Court order a recall of the civil warrant previously issued in this matter.

Date: _____.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

ORDER RECALLING WARRANT

NOW on _____, the Court being fully advised in the premises issues the following order:

The civil warrant issued on in the above-captioned matter is hereby ordered recalled, and notice of recall is ordered prepared and given to the Sheriff of County.

☐ shall appear on _____, _____, at _____ a.m. before the undersigned Judge in the County Courthouse, Room , .

Dated: _____.

_____
JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

MOTION TO DISBURSE BOND OR PURGE FEE

_____, Petitioner appears through counsel and pursuant to 12 O.S. §68 moves the court to order the Court Clerk to disburse the bond or purge fee to _____ and in support thereof alleges:

_____, was ordered previously to pay a cash bond or purge fee in the amount of $, which was paid into court on .

WHEREFORE, Petitioner prays the court order the Court Clerk to disburse the cash bond or purge fee to _____, and for such other relief which may be just and equitable.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

ORDER TO DISBURSE BOND OR PURGE FEE

NOW ON _____, the above Motion comes on for consideration. The Court finds the motion should be granted, and hereby orders the Court Clerk of _____County to pay to _____ the bond or purge fee of $ paid by _____on _____. The Court Clerk is directed to submit payment to _____.

_____
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

This is to certify that on _____ a true and correct copy of the above and foregoing _____ was deposited in the U.S. Mail, postage prepaid, and addressed to _____.

_____

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF OKLAHOMA

	)	Dist. Ct. No. _____
_____,	)	
Petitioner,	)	Judge _____
	)	
vs.	)	
	)	
_____,	)	
Respondent.	)	
	)	

SENTENCING ORDER

NOW ON _____, the court makes the following order regarding sentencing on the obligor's plea or finding of guilt.

_____is the custodial person and appears:

- ☐ in person, pro se.
- ☐ in person and through counsel, _____.
- ☐ not.

_____is the obligor and appears:

- ☐ in person, pro se.
- ☐ in person and through counsel, _____.
- ☐ _____.

Other persons appear: _____.

Based upon a review of the record, the statements of the parties and the argument of counsel, the court makes the following findings and enters the following orders:

1. The Obligor has been advised of his/her rights at this stage of the contempt proceedings, including the right to an evidentiary hearing regarding his/her ability to purge the finding of guilt, the right to counsel at the sentencing stage, the right to present evidence and call witnesses, and the right to question any witnesses called by other parties concerning his/her ability to pay a purge fee.
2. On the issue of right to counsel:

☐ The court finds obligor to be indigent and appoints _____ to represent obligor.

☐ Obligor is represented by counsel.

☐ Obligor has waived his/her right to counsel.

3. On _____, the obligor pleaded or was found guilty of indirect contempt of court for failure to pay child support. The obligor was advised of his/her rights and knowingly and voluntarily waived the right to a jury trial, and to a non-jury trial.
4. The obligor has failed to comply with the terms of the purge conditions. The court imposes the following sentence:

   ☐ _____ days in the _____County Jail. The sentence shall be served flat time and obligor shall not be entitled to credit for good time, blood time, trustee time or any credit for time served. Obligor shall remain in the county jail until the sentence is fully served and completed or until obligor has posted the purge amount as ordered.

   ☐ A fine in the amount of _____.
5. Having conducted an inquiry into the obligor's ability to purge his/her contempt, the court finds that obligor has a present ability to pay $_____ and the court sets the purge fee in accordance with the evidence and pursuant to District Court Rule 8.3.
6. Judgment for Past Due Child Support.
   Judgment is confirmed for past due child support against the Obligor in the amount of:

Type of Judgment	**Amount**	**From**	**Through**
a. Balance of Previous Judgment(s)	$		
b. Unpaid Child Support Since Last Judgment	$		
c. Cash Medical Support	$		
d. Ongoing Medical Support	$		
e. Other: _____	$		
f. TOTAL JUDGMENT:	**$**		

This judgment does not include any unreimbursed medical and child care expenses that have not been reduced to judgment and the obligor's liability for these expenses, if any, is not addressed by this proceeding and is subject to later determination by an appropriate tribunal.

☐ Determination of the amount of interest owed through the date of this order is reserved.

☐ Statutory interest is also owed in the amount of $_____ through _____.

7. Beginning _____, the obligor shall pay $_____ per month on the child support judgment(s) until it and accrued interest are paid in full. When current support is no longer due, Obligor shall continue to pay the current support amount plus the above judgment payment until all past due child support, judgment(s), and interest, are paid in full or until further order of the court.
8. Regarding obligor's licenses, the court finds:

   ☐ the obligor is not in compliance with an order for support as defined in Title 43 O.S. Section 139.1. The Obligor is placed on probation as to any license defined by Title 43 O.S. Section 139.1. Probation is conditioned upon full compliance with the terms and payment plan in this order. If at the completion of the probationary period the obligor has failed to fully comply with the order, the licenses of the obligor shall be automatically suspended or revoked without further hearing. Full compliance is defined as full payments, including both current support and judgment payments, each and every month until the obligor is current in his/her support obligation, or until further order of this Court. The obligee may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license; or

   ☐ the obligor is not in compliance with an Order for Support as defined in Title 43 O.S. Section 139.1; therefore, the obligor's licenses (including driver's license) are hereby REVOKED.
9. The following is the current address of record for service of process for the Obligor:

   _____

   _____

10. Court Costs and fees:

☐ The obligor shall pay court costs and fees as determined by the Court Clerk of this County. Obligor is ordered to contact the Court Clerk's Office by the following date: _____ to determine costs and fees and make payment arrangements.

☐ The obligor shall pay court costs in the amount of $_____ on or before _____.

☐ Pursuant to District Court Rule 29, the obligor was previously appointed counsel in this case. On this date, the court finds the obligor has the ability to pay for counsel. The obligor is ordered to pay applicable counsel fees to the Court Clerk's office.

11. **OTHER**:

_____

_____

12. Prior orders not in conflict with this order remain in full force and effect.

IT IS SO ORDERED.

_____
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

By: _____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

_____ _____
Attorney for Custodial Parent Custodial Parent
_____
_____
_____

_____ _____
Attorney for Non-Custodial Parent Non-Custodial Parent
_____
_____
_____

CERTIFICATE OF SERVICE

On or before _____, I hereby certify that a true and correct copy of this document was:

☐ Hand Delivered to the ☐ Obligor ☐ Custodial Person ☐Attorney(s)
☐ Mailed with sufficient postage prepaid thereon to the verified address of record for the following parties: ☐ Obligor ☐ Custodial Person
☐ Mailed with sufficient postage prepaid to the attorney for the:
☐ Obligor ☐ Custodial Person at the address listed above
☐ Mailed with sufficient postage prepaid to the following parties:

Obligor at _____.

Custodial Person at _____.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,	)	
Petitioner,	)	
	)	No.
vs.	)	
	)	
,	)	
Respondent.	)	

ACKNOWLEDGEMENT OF NOTICE OF RIGHTS ON CIVIL CONTEMPT CITATION

I, _____, the party alleged by _____ to be guilty of indirect contempt of court for failure to pay child support, appear:

☐ pro se

☐ represented by counsel _____

and by my signature below acknowledge the following:

1. I have been advised of the elements of the Citation for Contempt as follows:

I have been charged with CIVIL INDIRECT CONTEMPT OF COURT pursuant to 43 O.S. 137 and 21 O.S. 566.1. I understand that if I am found guilty, I could be sentenced to serve up to six (6) months in county jail, unless I purge the finding of guilt by paying a purge amount set by the court. I could also be ordered to pay a fine up to the amount of $500.

2. I, _____, acknowledge that I have been advised of the following rights available during these proceedings:

a. Right to a trial by jury or by the judge;
b. Right to have a record of proceedings made;
c. If proceeding pro se, the right to have the representation of an attorney, including the right to a court-appointed attorney if I am unable to afford to hire an attorney;
d. Right to bring witnesses to testify on my own behalf;
e. Right to confront and cross-examine any witnesses who testify against me; and
f. Right to have _____ prove by clear and convincing evidence that the elements of the contempt citation have been met.

By signing below, I acknowledge that I have been thoroughly advised of and understand the above rights.

_____

Signature

_____

Printed Name

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

	)	Dist. Ct. No. _____
_____,	)	
Petitioner,	)	Judge _____
	)	
vs.	)	
	)	
_____,	)	
Respondent.	)	
	)	

ORDER ON FAILURE TO APPEAR

NOW on _____, this matter came on for hearing on the Citation for Contempt filed by _____.

The Court, upon reviewing the record, finds that obligor, _____, was properly served or ordered to appear this date; that he or she has failed to appear; and that a Bench Warrant should issue for his or her arrest.

Based upon a review of the record, the statements of the parties and the argument of counsel, the court makes the following findings and enters the following orders:

1. A Bench Warrant is authorized for obligor's arrest.

2. Cash bond is set in the amount of $_____.

☐ 3. Judgment for Past Due Child Support.

Judgment is confirmed for past due child support against the Obligor in the amount of:

Type of Judgment	**Amount**	**From**	**Through**
a. Balance of Previous Judgment(s)	$		
b. Unpaid Child Support Since Last Judgment	$		
c. Cash Medical Support	$		
d. Ongoing Medical Support	$		
e. Other: _____	$		
f. TOTAL JUDGMENT:	**$**		

This judgment does not include any unreimbursed medical and child care expenses that have not been reduced to judgment and the obligor's liability for these expenses, if any, is not addressed by this proceeding and is subject to later determination by an appropriate tribunal.

☐ Determination of the amount of interest owed through the date of this order is reserved.

☐ Statutory interest is also owed in the amount of $_____ through _____.

☐ 4. Beginning _____, the obligor shall pay $_____ per month on the child support judgment(s) until it and accrued interest are paid in full. When current support is no longer due, Obligor shall continue to pay the current support amount plus the above judgment payment until all past due child support, judgment(s), and interest, are paid in full or until further order of the court.

☐ 5. Regarding obligor's licenses, the Court finds and Orders:

☐ **Probation**. The obligor is not in compliance with an order for support as defined in Title 43 O.S. Section 139.1. The Obligor is placed on probation as to any license defined by Title 43 O.S. Section 139.1. Probation is conditioned upon full compliance with the terms and payment plan in this order. If at the completion of the probationary period the obligor has failed to fully comply with the order, the licenses of the obligor shall be automatically suspended or revoked without further hearing. Full compliance is defined as full payments, including both current support and judgment payments, each and every month until the obligor is current in his/her support obligation, or until further order of this Court. The obligee may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license;

☐ **Non-Issuance, Non-Renewal, or Revocation**. The Court finds that the obligor is not in compliance with an Order for Support as defined in Title 43 O.S. Section 139.1; therefore, the obligor's licenses (including driver's license) are hereby REVOKED.

Upon receipt of this order, the licensing board shall implement the order as defined by 43 O.S. § 139.1(F). The licensing board has no jurisdiction to modify, reverse, vacate, or stay this order of probation, suspension, or revocation.

6. Court Costs and fees:

☐ The obligor shall pay court costs and fees as determined by the Court Clerk of this County. Obligor is ordered to contact the Court Clerk's Office by the following date:

_____ to determine costs and fees and make payment arrangements.

☐ The obligor shall pay court costs in the amount of $_____ on or before _____.

☐ Pursuant to District Court Rule 29, the obligor was previously appointed counsel in this case. On this date, the court finds the obligor has the ability to pay for counsel. The obligor is ordered to pay applicable counsel fees to the Court Clerk's office.

7. **OTHER**: _____

_____

_____.

8. Prior orders not in conflict with this order remain in full force and effect.

_____
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

By: _____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

CERTIFICATE OF SERVICE

On or before _____, I hereby certify that a true and correct copy of this document was:

☐ Hand Delivered to the ☐ Obligor ☐ Custodial Person ☐Attorney(s)
☐ Mailed with sufficient postage prepaid thereon to the verified address of record for the following parties: ☐ Obligor ☐ Custodial Person
☐ Mailed with sufficient postage prepaid to the attorney for the:
☐ Obligor ☐ Custodial Person at the address listed above
☐ Mailed with sufficient postage prepaid to the following parties:

Obligor at _____.

Custodial Person at _____.

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

,		)	
	Petitioner,	)	
		)	No.
vs.		)	
		)	
,		)	
	Respondent.	)	

ACKNOWLEDGEMENT OF RECEIPT,
WAIVER OF SERVICE AND ENTRY OF APPEARANCE

I, the undersigned, hereby acknowledge that I have received copies of the _____ in the above styled and referenced case. I waive service of process of these documents upon me and make a voluntary appearance in this action.

By acknowledging that I have received these documents, I do not admit to the statements or allegations in the documents or waive any defenses I may have in this case. I understand that if I do not appear for a scheduled hearing, the contents of the documents are considered to be admitted, all defenses are waived, and a default order may be entered.

Date of receipt: _____

Name: _____

Address: _____

_____

Please sign, date and return this form to _____
by: _____

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

	)	Dist. Ct. No. _____
_____,	)	
Petitioner,	)	Judge _____
	)	
vs.	)	
	)	
_____,	)	
Respondent.	)	
	)	

ORDER OF RELEASE FROM CITATION FOR CONTEMPT

Now on _____, the above-styled case came before the undersigned judge for review.

1. Upon the motion of _____ (Petitioner) the Court finds the obligor has ☐ fully ☐ partially met the purge conditions. The court releases the Obligor from further appearances related to the Citation for Contempt for Indirect Contempt of Court filed on _____.

2. The obligor establishes an Address of Record pursuant to 43 O.S. § 112A as _____.
All parties and Custodial Persons are required to inform the Central Case Registry of the current address of record for service of process in support, visitation, and custody actions. The obligor understands service of process may be made by first class mail to this address and it may be subject to disclosure upon proper request. Any changes in your address of record, your employer, and your health insurance must be provided in writing to the Central Case Registry.

3. The remaining balance due on any obligations remains in full force and effect. Obligor's release from this contempt action in no way relieves the obligor from the obligation to pay current support and judgment payments.

4. Court Costs:

☐ Court costs have been paid in full.

☐ Court costs are not assessed at this time.

☐ The obligor shall pay court costs and fees as determined by the Court Clerk of this County. Obligor is ordered to contact the Court Clerk's Office by the following date: _____ to determine costs and fees and make payment arrangements.

☐ The obligor shall pay court costs in the amount of $_____ on or before _____.

☐ Pursuant to District Court Rule 29, the obligor was previously appointed counsel in this case. On this date, the court finds the obligor has the ability to pay for counsel. The obligor is ordered to pay applicable counsel fees to the Court Clerk's office.

Dated: _____

_____
JUDGE OF THE DISTRICT COURT

_____
Attorney's Signature
[Attorney's name], OBA#: [Bar number]
[Attorney's firm]
[Office address]
[Phone number]
[Fax number]

Appendix B

Legal Authority:
Oklahoma Constitution

Oklahoma Constitution
Article 2, Bill of Rights

Section 19 - Trial by jury

§ 19. Trial by jury.

The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars ($1,500.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars ($1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars ($10,000.00), and felony criminal cases shall consist of twelve (12) persons. All other juries shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.

In all criminal cases where imprisonment for more than six (6) months is authorized the entire number of jurors must concur to render a verdict. In all other cases three-fourths (3/4) of the whole number of jurors concurring shall have power to render a verdict. When a verdict is rendered by less than the whole number of jurors, the verdict shall be signed by each juror concurring therein.

Section 25 - Contempt - Definition - Jury trial - Hearing

§ 25. Contempt - Definition - Jury trial - Hearing.

The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt: Provided, that any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or entered by any court or judge of the State shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given.

Appendix C

Legal Authority:
Oklahoma Statutes

Oklahoma Statutes
Title 12, Civil Procedure

Section 68 - Appearance Bond - Right to Enforce

If a bench warrant or command to enforce a court order by body attachment is issued in a case for divorce, legal separation, annulment or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the court clerk upon order of the court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the State of Oklahoma. The penalty on the bond, or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the state may enforce the penalty on a forfeited bail bond.

Oklahoma Statutes
Title 21, Crimes and Punishments

Section 4 - Two Types of Crimes

Crimes are divided into:

1. Felonies;

2. Misdemeanors.

Section 5 - Definition of Felony

A felony is a crime which is, or may be, punishable with death, or by imprisonment in the penitentiary.

Section 6 - Definition of Misdemeanor

Every other crime is a misdemeanor.

Section 565 - Definition of Direct Contempt and Indirect Contempt

Contempts of court shall be divided into direct and indirect contempts. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a court.

Section 566 - Punishment for Contempt - Failure to Comply Child Support and Other Orders

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the court.

B. Any court in this state has the power to enforce an order for current child support, past-due child support and child support arrearage payments, other support, visitation, or other court orders regarding minor children and to punish an individual for failure to comply therewith, as set forth in subsection A of this section. Venue for an action under this section is proper, at the option of the petitioner:

1. In the county in this state in which the support order was entered, docketed or registered;

2. In the county in this state in which the obligee resides; or

3. In the county in this state in which the obligor resides or receives income.

Orders for current child support, past-due child support and child support arrearage payments are enforceable until paid in full. The remedies provided by this section are available regardless of the age of the child.

Section 566.1 - Indirect Contempt for Failure to Comply With Order for Child Support, Child Support Arrears, or Other Support

A. When a court of competent jurisdiction has entered an order compelling a parent to furnish child support, necessary food, clothing, shelter, medical support, payment of child care expenses, or other remedial care for the minor child of the parent:

1. Proof that:

a. the order was made, filed, and served on the parent,

b. the parent had actual knowledge of the existence of the order,

c. the order was granted by default after prior due process notice to the parent, or

d. the parent was present in court at the time the order was pronounced; and

2. Proof of noncompliance with the order, shall be prima facie evidence of an indirect civil contempt of court.

B. 1. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, punishment shall be, at the discretion of the court:

a. incarceration in the county jail not exceeding six (6) months, or

b. incarceration in the county jail on weekends or at other times that allow the obligor to be employed, seek employment or engage in other activities ordered by the court.

2. Punishment may also include imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00).

3. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, if the court finds by a preponderance of the evidence that the obligor is willfully unemployed, the court may require the obligor to work two (2) eight-hour days per week in a community service program as defined in Section 339.7 of Title 19 of the Oklahoma Statues, if the county commissioners of that county have implemented a community service program.

C. 1. During proceedings for indirect contempt of court, the court may order the obligor to complete an alternative program and comply with a payment plan for child support and arrears. If the obligor fails to complete the alternative program and comply with the payment plan, the court shall proceed with the indirect contempt and shall impose punishment pursuant to subsection B of this section.

2. An alternative program may include:

a. a problem-solving court program for obligors when child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the benefit of the child. A problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial contempt prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program as a condition of the Department of Human Services agreement to stay contempt proceedings or in lieu of incarceration after a finding of guilt. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court, and

b. participation in programs such as counseling, treatment, educational training, social skills training or employment training to which the obligor reports daily or on a regular basis at specified times for a specified length of time.

D. In the case of indirect contempt for the failure to comply with an order for child support, child support arrears, or other support, the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the court fails to follow the guidelines, the court shall make a specific finding stating the reasons why the imposition

of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

1. The proportion of the child support, child support arrearage payments, or other support that was unpaid in relation to the amount of support that was ordered paid;

2. The proportion of the child support, child support arrearage payments, or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

3. The present capacity of the party found in contempt to pay any arrearages;

4. Any willful actions taken by the party found in contempt to reduce the capacity of that party to pay any arrearages;

5. The past history of compliance or noncompliance with the support order; and

6. Willful acts to avoid the jurisdiction of the court.

Section 567 - Indirect Contempts - Notice - Trial by Jury - Appearance Bond

A. In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

B. In the event the party so charged shall demand a trial by jury, the court shall thereupon set the case for trial at the next jury term of said court, unless such time is waived by the party so charged, in which event the case shall be set for trial at a time determined by the court. The court shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the court clerk cash equal to the amount of the appearance bond.

C. In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash bond is not being requested, the clerk of the court shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

Oklahoma Statutes
Title 43, Marriage

Section 139.1 - Revocation, Suspension, Nonissuance or Nonrenewal of License for Noncompliance With Support Order

A. As used in this section and Section 6-201.1 of Title 47 of the Oklahoma Statutes:

1. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

2. "Noncompliance with an order for support" means that the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least ninety (90) days or has failed to make full payments pursuant to a court-ordered payment plan for at least ninety (90) days or has failed to obtain or maintain health insurance coverage as required by an order for support for at least ninety (90) days or has failed, after receiving appropriate notice to comply with subpoenas or orders relating to paternity or child support proceedings or has failed to comply with an order to submit to genetic testing to determine paternity;

3. "Order for support" means any judgment or order for the support of dependent children or an order to submit to genetic testing to determine paternity issued by any court of this state or other state or any judgment or order issued in accordance with an administrative procedure established by state law that affords substantial due process and is subject to judicial review;

4. "License" means a license, certificate, registration, permit, approval or other similar document issued by a licensing board granting to an individual a right or privilege to engage in a profession, occupation, or business, or any recreational license or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Oklahoma Wildlife Conservation Code, certificates of title for vessels and motors and other licenses or registrations issued pursuant to the Oklahoma Vessel and Motor Registration Act, or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

5. "Obligor" means the person who is required to make payments or comply with other provisions of an order for support;

6. "Oklahoma Child Support Services (OCSS)" means the state agency designated to administer a statewide plan for child support pursuant to Section 237 of Title 56 of the Oklahoma Statutes;

7. "Person entitled" means:

a. a person to whom a support debt or support obligation is owed,

b. the OCSS or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or

c. a person designated in a support order or as otherwise specified by the court; and

8. "Payment plan" includes, but is not limited to, a plan approved by the court that provides sufficient security to ensure compliance with a support order and/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment on an arrearage and, if applicable, current and future support.

B. 1. Except as otherwise provided by this subsection, the district courts of this state are hereby authorized to order the revocation, suspension, nonissuance or nonrenewal of a license or the placement of the obligor on probation who is in noncompliance with an order for support.

2. If the obligor is a licensed attorney, the court may report the matter to the State Bar Association to revoke or suspend the professional license of the obligor or other appropriate action in accordance with the rules of professional conduct and disciplinary proceedings.

3. Pursuant to Section 6-201.1 of Title 47 of the Oklahoma Statutes, the district or administrative courts of this state are hereby authorized to order the revocation or suspension of a driver license of an obligor who is in noncompliance with an order of support.

4. The remedy under this section is in addition to any other enforcement remedy available to the court.

C. 1. At any hearing involving the support of a child, if the district court finds evidence presented at the hearing that an obligor is in noncompliance with an order for support and the obligor is licensed by any licensing board, the court, in addition to any other enforcement action available, shall suspend or revoke the license of the obligor who is in noncompliance with the order of support or place the obligor on probation pursuant to paragraph 2 of this subsection.

2. a. To be placed on probation, the obligor shall agree to a payment plan to:

(1) make all future child support payments as required by the current order during the period of probation, and

(2) pay the full amount of the arrearage:

(a) by lump sum by a date certain, if the court determines the obligor has the ability, or

(b) by making monthly payments in addition to the monthly child support amount pursuant to Section 137 of this title.

b. The payments required to be made pursuant to this section shall continue until the child support arrearage and interest which was the subject of the license revocation action have been paid in full.

3. If the obligor is placed on probation, the obligor shall be allowed to practice or continue to practice the profession, occupation or business of the obligor, or to operate a motor vehicle. If the court orders probation, the appropriate licensing board shall not be notified and no action is required of that board.

4. Probation shall be conditioned upon full compliance with the order. If the court grants probation, the probationary period shall not exceed three (3) years.

5. If the obligor is placed on probation, the obligee or OCSS may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license. The obligor shall be served with notice of the hearing by regular mail to the obligor's address of record pursuant to Section 112A of this title.

6. If, by the completion of time allotted for the probationary period, the obligor has failed to fully comply with the terms of probation, the licenses of the obligor shall be automatically suspended or revoked without further hearing. If the licenses of the obligor are suspended or revoked, the obligor may thereafter apply for reinstatement in compliance with subsection D or E of this section.

D. When all support due is paid in full and the obligor has complied with all other provisions of the order for support, the obligor, the obligee or OCSS may file a motion with the court for reinstatement of the obligor's licenses or termination of probation and the motion shall be set for hearing. If the court finds the obligor has paid all support due in full and has complied with all other provisions of the order for support, the court shall reinstate the obligor's licenses or terminate the probation.

E. 1. An obligor whose licenses have been suspended or revoked may file a motion with the court for reinstatement of the licenses of the obligor prior to payment in full of all support due and the motion shall be set for hearing.

2. The court may reinstate the licenses of the obligor if the obligor has:

a. paid the current child support and the monthly arrearage payments each month for the current month and two (2) months immediately preceding,

or paid an amount equivalent to three (3) months of child support and arrearage payments which satisfies the current child support and monthly arrearage payments for the current month and two (2) months immediately preceding,

b. disclosed all information regarding health insurance availability and obtained and maintained health insurance coverage required by an order for support,

c. complied with all subpoenas and orders relating to paternity or child support proceedings,

d. complied with all orders to submit to genetic testing to determine paternity, and

e. disclosed all employment and address information.

3. If the court terminates the order of suspension, revocation, nonissuance or nonrenewal, it shall place the obligor on probation, conditioned upon compliance with any payment plan and the provisions of the order for support.

4. If the obligor fails to comply with the terms of probation, the court may refuse to reinstate the licenses and driving privileges of the obligor unless the obligor makes additional payments in an amount determined by the court to be sufficient to ensure future compliance, and the obligor complies with the other terms set by the court.

F. The obligor shall serve on the custodian or the state a copy of the motion for reinstatement of the licenses of the obligor and notice of hearing pursuant to Section 2005 of Title 12 of the Oklahoma Statutes, or if there is an address of record, by regular mail to the address of record on file with the central case registry pursuant to Section 112A of this title. When child support services are being provided pursuant to Section 237 of Title 56 of the Oklahoma Statutes, the obligor shall serve a copy of the motion for reinstatement of the licenses of the obligor on OCSS.

G. If the court orders termination of the order of suspension or revocation, the obligor shall send a copy of the order reinstating the licenses of the obligor to the licensing board, the custodian and OCSS when child support services are being provided pursuant to Section 237 of Title 56 of the Oklahoma Statutes.

H. Entry of this order does not limit the ability of the court to issue a new order requiring the licensing board to revoke or suspend the license of the same obligor in the event of another delinquency or failure to comply.

I. Upon receipt of a court order to suspend or revoke the license of an obligor, the licensing board shall comply with the order by:

1. Determining if the licensing board has issued a license to the individual whose name appears on the order for support;

2. Notifying the obligor of the suspension or revocation;

3. Demanding surrender of the license, if required;

4. Entering the suspension or revocation of the license on the appropriate records; and

5. Reporting the suspension or revocation of the license as appropriate.

J. Upon receipt of a court order to not issue or not renew the license of an obligor, the licensing board shall implement by:

1. Determining if the licensing board has received an application for issuance or renewal of a license from the individual whose name appears on the order of support;

2. Notifying the obligor of the nonissuance or nonrenewal; and

3. Entering the nonissuance or nonrenewal of the license as appropriate.

K. An order, issued by the court, directing the licensing board to suspend, revoke, not issue or not renew the license of the obligor shall be processed and implemented by the licensing board without any additional review or hearing and shall continue until the court or appellate court advises the licensing board by order that the suspension, revocation, nonissuance or nonrenewal is terminated.

L. The licensing board has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the court for the suspension, revocation, nonissuance or nonrenewal of a license.

M. In the event of suspension, revocation, nonissuance or nonrenewal of a license, any funds paid by the obligor to the licensing board for costs related to issuance, renewal, or maintenance of a license shall not be refunded to the obligor.

N. A licensing board may charge the obligor a fee to cover the administrative costs incurred by the licensing board to administer the provisions of this section. Fees collected pursuant to this section by a licensing board which has an agency revolving fund shall be deposited in the agency revolving fund for the use by the licensing board to pay the costs of administering this section. Otherwise, the administrative costs shall be deposited in the General Revenue Fund of the state.

O. Each licensing board shall promulgate rules necessary for the implementation and administration of this section.

P. The licensing board is exempt from liability to the obligor for activities conducted in compliance with Section 139 et seq. of this title.

Q. The provisions of this section may be used to revoke or suspend the licenses and driving privileges of the custodian of a child who fails to comply with an order to submit to genetic testing to determine paternity.

R. A final order entered pursuant to this section may be appealed to the Supreme Court of Oklahoma pursuant to Section 990A of Title 12 of the Oklahoma Statutes.

Section 140 - Problem-Solving Court Program

A. In cases in which child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes are being provided for the benefit of the child, the administrative or district court may order the obligor to participate in the problem-solving court program of the Department of Human Services. The problem-solving court program is an immediate and highly structured judicial intervention process for the obligor and requires completion of a participation agreement by the obligor and monitoring by the court. A problem-solving court program differs in practice and design from the traditional adversarial prosecution and trial systems. The problem-solving court program uses a team approach administered by the judge in cooperation with a child support state's attorney and a child support court liaison who focuses on removing the obstacles causing the nonpayment of the obligor. The obligors in this program shall be required to sign an agreement to participate in this program. The court liaisons assess the needs of the obligor, develop a community referral network, make referrals, monitor the compliance of the obligor in the program, and provide status reports to the court.

B. Participation in the problem-solving court program shall not act as a stay of federally mandated automated enforcement remedies. The child support obligation of the obligor shall not be suspended or abated during participation in the program.

Oklahoma Statutes
Title 56, Poor Persons

Section 240.10 - Requirement of Child Support Obligor's to Maintain Gainful Employment - Underemployed Defined - Notice to Obligor

A. When child support services are being provided for the benefit of the child under the state child support plan as provided in Section 237 of this title, the Department may initiate an administrative or district court action to obtain an order to require an unemployed or underemployed obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding programs, or the problem-solving court program under Section 14 of this act. "Underemployed" is defined as being employed less than full-time or in an occupation which pays less than employment which someone with the skills and education of the obligor could be reasonably expected to earn, so that the obligor cannot meet his support obligation. The Department shall give notice of this requirement to the obligor who is not complying with a district or administrative court order for support and whom the Department has reason to believe is unemployed or underemployed. The notice shall be served by the Department upon the obligor as provided in Section 2005 of Title 12 of the Oklahoma Statutes, or if there is an address of record on file with the central case registry pursuant to Section 112A of Title 43 of the Oklahoma Statutes, the notice may be served by regular mail at the address of record.

B. The notice shall state:

1. The name of the child for whom support is ordered and the custodian of the child;

2. That the obligor is not complying with the district or administrative court order for support and is delinquent in a certain amount;

3. That it appears that the obligor is unemployed or underemployed so that the obligor cannot meet the support obligation;

4. That the obligor shall appear on a date certain for a hearing to show cause why the obligor should not be ordered to participate in counseling, treatment, educational training, social skills training, employment training or job-finding programs or the problem-solving court program, and to accept available employment; and

5. That if it is determined that the obligor is unemployed or underemployed or if the obligor fails to appear, an order will be entered which will require the obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding programs or the problem-solving court program and to accept available employment.

C. 1. At the hearing, or if the obligor fails to appear for the hearing, the court shall enter an order determining if the obligor is unemployed, underemployed or in need of services as described in subsection C of this section.

2. If the court finds the obligor is in need of services as described in this subsection, the order shall set forth the findings of the court and require that the obligor participate in counseling, treatment, educational training, social skills training, employment training or job-finding programs or the problem-solving court program, and accept available employment. The order shall state when the obligor shall report and to what location.

3. An administrative order may be docketed with the district court and shall be enforced in the same manner as any other order of the district court, including indirect civil contempt proceedings. A copy of the order will be mailed by the Department to the last-known address of the obligor.

D. The obligor may show good cause why an order should not be entered requiring the obligor to participate in counseling, treatment, educational training, social skills training, employment training or job-finding programs or the problem-solving court program and accept available employment. "Good cause" is defined as establishing by expert medical opinion that the person is mentally or physically unable to work or such other grounds as the Department determines by regulation constitutes good cause.

Appendix D

Legal Authority:
District Court Rules

Rule 8.3 - Indirect Contempt for Failure to Pay Child Support - Purge Fee

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

(a) Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and

(b) (1) paying the full amount of the arrearage, or some portion thereof, as a lump sum if the court determines the contemnor has the financial ability to do so, and

(2) if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this Subsection (b)(2) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this Subsection (b)(2) shall bear interest as set forth in Title 43 O.S. § 114.

(c) The total amount of the payments required to be made pursuant to Subsections (a) and (b) above shall not exceed 40% of the contemnor's current gross monthly income. For purposes of this Subsection, the contemnor's gross income shall be determined in accordance with the child support provisions contained in Title 43. If the total amount of the payments required to be made pursuant to Subsections (a) and (b)(2) above exceeds 40% of the contemnor's gross monthly income, then the amount required to be paid under Subsection (b)(2) above shall be reduced such that the total payments required under Subsections (a) and (b)(2) shall equal 40% of the contemnor's gross monthly income. If application of this Subsection (c) creates a payout schedule which exceeds three years, then the terms and provisions of Title 43 O.S. § 137C shall apply.

(d) The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action, has been paid in full, at which time the contempt shall be deemed purged.

(e)If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the court, the contemnor may thereafter only be discharged from the custody of the sheriff:

(1) upon payment in full of the adjudicated arrearage; or

(2) upon serving the full sentence; or

(3) upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the court and entry of a court order that the contemnor be released from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this Section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

Rule 29 - Indigent Defendant in Civil Contempt Action - Right to Counsel - Attorney Fees

In a civil contempt action which may result in the incarceration of a defendant who appears without counsel, the court must inform the defendant that he has a right to counsel and that if he is financially unable to employ counsel and desires such, the court must assign counsel to defend him. Only after receiving notice of this right, can the defendant knowingly and intelligently waive his right to counsel.

A defendant who desires counsel and can establish indigency under the normal standards for appointment of counsel in a criminal case, shall have an attorney appointed to represent him.

The attorney shall represent the defendant until final disposition of the civil contempt action and shall receive compensation, payable from the local court fund, in an amount set by the trial court, not to exceed the following amounts:

For a non-jury trial	$100.00
For a jury trial	$250.00

See Walker v. McLain, 768 F.2d 1181 (10th Cir.1985).

Appendix E

Legal Authority: Caselaw

U.S. Supreme Court
Turner v. Rogers, 564 U.S. ____, 131 S.Ct. 2507 (2011)

No. 10–10
Michael D. Turner, Petitioner v. Rebecca L. Rogers Et Al.
On Writ of Certiorari to the Supreme Court of South Carolina

JUSTICE BREYER delivered the opinion of the Court.

South Carolina's Family Court enforces its child support orders by threatening with incarceration for civil contempt those who are (1) subject to a child support order, (2) able to comply with that order, but (3) fail to do so. We must decide whether the Fourteenth Amendment's Due Process Clause requires the State to provide counsel (at a civil contempt hearing) to an indigent person potentially faced with such incarceration. We conclude that where as here the custodial parent (entitled to receive the support) is unrepresented by counsel, the State need not provide counsel to the noncustodial parent (required to provide the support). But we attach an important caveat, namely, that the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order.

I

A

South Carolina family courts enforce their child support orders in part through civil contempt proceedings. Each month the family court clerk reviews outstanding child support orders, identifies those in which the supporting parent has fallen more than five days behind, and sends that parent an order to "show cause" why he should not be held in contempt. S. C. Rule Family Ct. 24 (2011). The "show cause" order and attached affidavit refer to the relevant child support order, identify the amount of the arrearage, and set a date for a court hearing. At the hearing that parent may demonstrate that he is not in contempt, say, by showing that he is not able to make the required payments. See Moseley v. Mosier, 279 S. C. 348, 351, 306 S. E. 2d 624, 626 (1983) ("When the parent is unable to make the required payments, he is not in contempt"). If he fails to make the required showing, the court may hold him in civil contempt. And it may require that he be imprisoned unless and until he purges himself of contempt by making the required child support payments (but not for more than one year regardless). See S. C. Code Ann. §63–3–620 (Supp. 2010) (imprisonment for up to one year of "adult who wilfully violates" a court order); Price v. Turner, 387 S. C. 142, 145, 691 S. E. 2d 470, 472 (2010) (civil contempt order must permit purging of contempt through compliance).

B

In June 2003 a South Carolina family court entered an order, which (as amended) required petitioner, Michael Turner, to pay $51.73 per week to respondent, Rebecca Rogers, to help

support their child. (Rogers' father, Larry Price, currently has custody of the child and is also a respondent before this Court.) Over the next three years, Turner repeatedly failed to pay the amount due and was held in contempt on five occasions. The first four times he was sentenced to 90 days' imprisonment, but he ultimately paid the amount due (twice without being jailed, twice after spending two or three days in custody). The fifth time he did not pay but completed a 6-month sentence.

After his release in 2006 Turner remained in arrears. On March 27, 2006, the clerk issued a new "show cause" order. And after an initial postponement due to Turner's failure to appear, Turner's civil contempt hearing took place on January 3, 2008. Turner and Rogers were present, each without representation by counsel.

The hearing was brief. The court clerk said that Turner was $5,728.76 behind in his payments. The judge asked Turner if there was "anything you want to say." Turner replied, "Well, when I first got out, I got back on dope. I done meth, smoked pot and everything else, and I paid a little bit here and there. And, when I finally did get to working, I broke my back, back in September. I filed for disability and SSI. And, I didn't get straightened out off the dope until I broke my back and laid up for two months. And, now I'm off the dope and everything. I just hope that you give me a chance. I don't know what else to say. I mean, I know I done wrong, and I should have been paying and helping her, and I'm sorry. I mean, dope had a hold to me." App. to Pet. for Cert. 17a. The judge then said, "[o]kay," and asked Rogers if she had anything to say. Ibid. After a brief discussion of federal benefits, the judge stated, "If there's nothing else, this will be the Order of the Court. I find the Defendant in willful contempt. I'm [going to] sentence him to twelve months in the Oconee County Detention Center. He may purge himself of the contempt and avoid the sentence by having a zero balance on or before his release. I've also placed a lien on any SSI or other benefits." Id., at 18a. The judge added that Turner would not receive good-time or work credits, but "[i]f you've got a job, I'll make you eligible for work release." Ibid. When Turner asked why he could not receive good-time or work credits, the judge said, "[b]ecause that's my ruling." Ibid.

The court made no express finding concerning Turner's ability to pay his arrearage (though Turner's wife had voluntarily submitted a copy of Turner's application for disability benefits, cf. post, at 7, n. 3 (THOMAS, J., dissenting); App. 135a–136a). Nor did the judge ask any followup questions or otherwise address the ability-to-pay issue. After the hearing, the judge filled out a prewritten form titled "Order for Contempt of Court," which included the statement: "Defendant (was) (was not) gainfully employed and/or (had) (did not have) the ability to make these support payments when due." Id., at 60a, 61a. But the judge left this statement as is without indicating whether Turner was able to make support payments.

C

While serving his 12-month sentence, Turner, with the help of pro bono counsel, appealed. He claimed that the Federal Constitution entitled him to counsel at his contempt hearing. The South Carolina Supreme Court decided Turner's appeal after he had completed his sentence. And it rejected his "right to counsel" claim. The court pointed out that civil contempt differs

significantly from criminal contempt. The former does not require all the "constitutional safeguards" applicable in criminal proceedings. 387 S. C., at 145, 691 S. E. 2d, at 472. And the right to government-paid counsel, the Supreme Court held, was one of the "safeguards" not required. Ibid.

Turner sought certiorari. In light of differences among state courts (and some federal courts) on the applicability of a "right to counsel" in civil contempt proceedings enforcing child support orders, we granted the writ. Compare, e.g., Pasqua v. Council, 186 N. J. 127, 141–146, 892 A. 2d 663, 671–674 (2006); Black v. Division of Child Support Enforcement, 686 A. 2d 164, 167–168 (Del. 1996); Mead v. Batchlor, 435 Mich. 480, 488–505, 460 N. W. 2d 493, 496– 504 (1990); Ridgway v. Baker, 720 F. 2d 1409, 1413–1415 (CA5 1983) (all finding a federal constitutional right to counsel for indigents facing imprisonment in a child support civil contempt proceeding), with Rodriguez v. Eighth Judicial Dist. Ct., County of Clark, 120 Nev. 798, 808–813, 102 P. 3d 41, 48–51 (2004) (no right to counsel in civil contempt hearing for nonsupport, except in "rarest of cases"); Andrews v. Walton, 428 So. 2d 663, 666 (Fla. 1983) ("no circumstances in which a parent is entitled to courtappointed counsel in a civil contempt proceeding for failure to pay child support"). Compare also In re Grand Jury Proceedings, 468 F. 2d 1368, 1369 (CA9 1972) (per curiam) (general right to counsel in civil contempt proceedings), with Duval v. Duval, 114 N. H. 422, 425–427, 322 A. 2d 1, 3–4 (1974) (no general right, but counsel may be required on case-by-case basis).

II

Respondents argue that this case is moot. See Massachusetts v. Mellon, 262 U. S. 447, 480 (1923) (Article III judicial power extends only to actual "cases" and "controversies"); Alvarez v. Smith, 558 U. S. __, __ (2009) (slip op., at 4) ("An actual controversy must be extant at all stages of review" (internal quotation marks omitted)). They point out that Turner completed his 12-month prison sentence in 2009. And they add that there are no "collateral consequences" of that particular contempt determination that might keep the dispute alive. Compare Sibron v. New York, 392 U. S. 40, 55–56 (1968) (release from prison does not moot a criminal case because "collateral consequences" are presumed to continue), with Spencer v. Kemna, 523 U. S. 1, 14 (1998) (declining to extend the presumption to parole revocation).

The short, conclusive answer to respondents' mootness claim, however, is that this case is not moot because it falls within a special category of disputes that are "capable of repetition" while "evading review." Southern Pacific Terminal Co. v. ICC, 219 U. S. 498, 515 (1911). A dispute falls into that category, and a case based on that dispute remains live, if "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." Weinstein v. Bradford, 423 U. S. 147, 149 (1975) (per curiam).

Our precedent makes clear that the "challenged action," Turner's imprisonment for up to 12 months, is "in its duration too short to be fully litigated" through the state courts (and arrive here) prior to its "expiration." See, e.g., First Nat. Bank of Boston v. Bellotti, 435 U. S. 765, 774 (1978) (internal quotation marks omitted) (18-month period too short); Southern Pacific

Terminal Co., supra, at 514–516 (2-year period too short). At the same time, there is a more than "reasonable" likelihood that Turner will again be "subjected to the same action." As we have pointed out, supra, at 2–3, Turner has frequently failed to make his child support payments. He has been the subject of several civil contempt proceedings. He has been imprisoned on several of those occasions. Within months of his release from the imprisonment here at issue he was again the subject of civil contempt proceedings. And he was again imprisoned, this time for six months. As of December 9, 2010, Turner was $13,814.72 in arrears, and another contempt hearing was scheduled for May 4, 2011. App. 104a; Reply Brief for Petitioner 3, n. 1. These facts bring this case squarely within the special category of cases that are not moot because the underlying dispute is "capable of repetition, yet evading review." See, e.g., Nebraska Press Assn. v. Stuart, 427 U. S. 539, 546–547 (1976) (internal quotation marks omitted).

Moreover, the underlying facts make this case unlike DeFunis v. Odegaard, 416 U. S. 312 (1974) (per curiam), and St. Pierre v. United States, 319 U. S. 41 (1943) (per curiam), two cases that respondents believe require us to find this case moot regardless. DeFunis was moot, but that is because the plaintiff himself was unlikely to again suffer the conduct of which he complained (and others likely to suffer from that conduct could bring their own lawsuits). Here petitioner himself is likely to suffer future imprisonment.

St. Pierre was moot because the petitioner (a witness held in contempt and sentenced to five months' imprisonment) had failed to "apply to this Court for a stay" of the federal-court order imposing imprisonment. 319 U. S., at 42–43. And, like the witness in St. Pierre, Turner did not seek a stay of the contempt order requiring his imprisonment. But this case, unlike St. Pierre, arises out of a state-court proceeding. And respondents give us no reason to believe that we would have (or that we could have) granted a timely request for a stay had one been made. Cf. 28 U. S. C. §1257 (granting this Court jurisdiction to review final state-court judgments). In Sibron, we rejected a similar "mootness" argument for just that reason. 392 U. S., at 53, n. 13. And we find this case similar in this respect to Sibron, not to St. Pierre.

III

A

We must decide whether the Due Process Clause grants an indigent defendant, such as Turner, a right to stateappointed counsel at a civil contempt proceeding, which may lead to his incarceration. This Court's precedents provide no definitive answer to that question. This Court has long held that the Sixth Amendment grants an indigent defendant the right to state-appointed counsel in a criminal case. Gideon v. Wainwright, 372 U. S. 335 (1963). And we have held that this same rule applies to criminal contempt proceedings (other than summary proceedings). United States v. Dixon, 509 U. S. 688, 696 (1993); Cooke v. United States, 267 U. S. 517, 537 (1925).

But the Sixth Amendment does not govern civil cases. Civil contempt differs from criminal contempt in that it seeks only to "coerc[e] the defendant to do" what a court had previously

ordered him to do. Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 442 (1911). A court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." Hicks v. Feiock, 485 U. S. 624, 638, n. 9 (1988). And once a civil contemnor complies with the underlying order, he is purged of the contempt and is free. Id., at 633 (he "carr[ies] the keys of [his] prison in [his] own pockets" (internal quotation marks omitted)).

Consequently, the Court has made clear (in a case not involving the right to counsel) that, where civil contempt is at issue, the Fourteenth Amendment's Due Process Clause allows a State to provide fewer procedural protections than in a criminal case. Id., at 637–641 (State may place the burden of proving inability to pay on the defendant).

This Court has decided only a handful of cases that more directly concern a right to counsel in civil matters. And the application of those decisions to the present case is not clear. On the one hand, the Court has held that the Fourteenth Amendment requires the State to pay for representation by counsel in a civil "juvenile delinquency" proceeding (which could lead to incarceration). In re Gault, 387 U. S. 1, 35–42 (1967). Moreover, in Vitek v. Jones, 445 U. S. 480, 496–497 (1980), a plurality of four Members of this Court would have held that the Fourteenth Amendment requires representation by counsel in a proceeding to transfer a prison inmate to a state hospital for the mentally ill. Further, in Lassiter v. Department of Social Servs. of Durham Cty., 452 U. S. 18 (1981), a case that focused upon civil proceedings leading to loss of parental rights, the Court wrote that the "pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation." Id., at 25. And the Court then drew from these precedents "the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty." Id., at 26–27.

On the other hand, the Court has held that a criminal offender facing revocation of probation and imprisonment does not ordinarily have a right to counsel at a probation revocation hearing. Gagnon v. Scarpelli, 411 U. S. 778 (1973); see also Middendorf v. Henry, 425 U. S. 25 (1976) (no due process right to counsel in summary court-martial proceedings). And, at the same time, Gault, Vitek, and Lassiter are readily distinguishable. The civil juvenile delinquency proceeding at issue in Gault was "little different" from, and "comparable in seriousness" to, a criminal prosecution. 387 U. S., at 28, 36. In Vitek, the controlling opinion found no right to counsel. 445 U. S., at 499–500 (Powell, J., concurring in part) (assistance of mental health professionals sufficient). And the Court's statements in Lassiter constitute part of its rationale for denying a right to counsel in that case. We believe those statements are best read as pointing out that the Court previously had found a right to counsel "only" in cases involving incarceration, not that a right to counsel exists in all such cases (a position that would have been difficult to reconcile with Gagnon).

B

Civil contempt proceedings in child support cases constitute one part of a highly complex system designed to assure a noncustodial parent's regular payment of funds typically necessary for the support of his children. Often the family receives welfare support from a stateadministered federal program, and the State then seeks reimbursement from the noncustodial parent. See 42 U. S. C. §§608(a)(3) (2006 ed., Supp. III), 656(a)(1) (2006 ed.); S. C. Code Ann. §§43–5–65(a)(1), (2) (2010 Cum. Supp.). Other times the custodial parent (often the mother, but sometimes the father, a grandparent, or another person with custody) does not receive government benefits and is entitled to receive the support payments herself.

The Federal Government has created an elaborate procedural mechanism designed to help both the government and custodial parents to secure the payments to which they are entitled. See generally Blessing v. Freestone, 520 U. S. 329, 333 (1997) (describing the "interlocking set of cooperative federal-state welfare programs" as they relate to child support enforcement); 45 CFR pt. 303 (2010) (prescribing standards for state child support agencies). These systems often rely upon wage withholding, expedited procedures for modifying and enforcing child support orders, and automated data processing. 42 U. S. C. §§666(a), (b), 654(24). But sometimes States will use contempt orders to ensure that the custodial parent receives support payments or the government receives reimbursement. Although some experts have criticized this last-mentioned procedure, and the Federal Government believes that "the routine use of contempt for nonpayment of child support is likely to be an ineffective strategy," the Government also tells us that "coercive enforcement remedies, such as contempt, have a role to play." Brief for United States as Amicus Curiae 21–22, and n. 8 (citing Dept. of Health and Human Services, National Child Support Enforcement, Strategic Plan: FY 2005–2009, pp. 2, 10). South Carolina, which relies heavily on contempt proceedings, agrees that they are an important tool.

We here consider an indigent's right to paid counsel at such a contempt proceeding. It is a civil proceeding. And we consequently determine the "specific dictates of due process" by examining the "distinct factors" that this Court has previously found useful in deciding what specific safeguards the Constitution's Due Process Clause requires in order to make a civil proceeding fundamentally fair. Mathews v. Eldridge, 424 U. S. 319, 335 (1976) (considering fairness of an administrative proceeding). As relevant here those factors include (1) the nature of "the private interest that will be affected," (2) the comparative "risk" of an "erroneous deprivation" of that interest with and without "additional or substitute procedural safeguards," and (3) the nature and magnitude of any countervailing interest in not providing "additional or substitute procedural requirement[s]." Ibid. See also Lassiter, 452 U. S., at 27–31 (applying the Mathews framework).

The "private interest that will be affected" argues strongly for the right to counsel that Turner advocates. That interest consists of an indigent defendant's loss of personal liberty through imprisonment. The interest in securing that freedom, the freedom "from bodily restraint," lies "at the core of the liberty protected by the Due Process Clause." Foucha v. Louisiana, 504 U. S. 71, 80 (1992). And we have made clear that its threatened loss through legal proceedings demands "due process protection." Addington v. Texas, 441 U. S. 418, 425 (1979). Given the importance of the interest at stake, it is obviously important to assure accurate decisionmaking in respect to the key "ability to pay" question. Moreover, the fact that ability to comply marks a dividing line between civil and criminal contempt, Hicks, 485 U. S., at 635, n. 7, reinforces the

need for accuracy. That is because an incorrect decision (wrongly classifying the contempt proceeding as civil) can increase the risk of wrongful incarceration by depriving the defendant of the procedural protections (including counsel) that the Constitution would demand in a criminal proceeding. See, e.g., Dixon, 509 U. S., at 696 (proof beyond a reasonable doubt, protection from double jeopardy); Codispoti v. Pennsylvania, 418 U. S. 506, 512– 513, 517 (1974) (jury trial where the result is more than six months' imprisonment). And since 70% of child support arrears nationwide are owed by parents with either no reported income or income of $10,000 per year or less, the issue of ability to pay may arise fairly often. See E. Sorensen, L. Sousa, & S. Schaner, Assessing Child Support Arrears in Nine Large States and the Nation 22 (2007) (prepared by The Urban Institute), online at http://aspe.hhs.gov/hsp/07/assessing-CS-debt/report.pdf (as visited June 16, 2011, and available in Clerk of Court's case file); id., at 23 ("research suggests that many obligors who do not have reported quarterly wages have relatively limited resources"); Patterson, Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor's Prison, 18 Cornell J. L. & Pub. Pol'y 95, 117 (2008). See also, e.g., McBride v. McBride, 334 N. C. 124, 131, n. 4, 431 S. E. 2d 14, 19, n. 4 (1993) (surveying North Carolina contempt orders and finding that the "failure of trial courts to make a determination of a contemnor's ability to comply is not altogether infrequent").

On the other hand, the Due Process Clause does not always require the provision of counsel in civil proceedings where incarceration is threatened. See Gagnon, 411 U. S. 778. And in determining whether the Clause requires a right to counsel here, we must take account of opposing interests, as well as consider the probable value of "additional or substitute procedural safeguards." Mathews, supra, at 335.

Doing so, we find three related considerations that, when taken together, argue strongly against the Due Process Clause requiring the State to provide indigents with counsel in every proceeding of the kind before us.

First, the critical question likely at issue in these cases concerns, as we have said, the defendant's ability to pay. That question is often closely related to the question of the defendant's indigence. But when the right procedures are in place, indigence can be a question that in many—but not all—cases is sufficiently straightforward to warrant determination prior to providing a defendant with counsel, even in a criminal case. Federal law, for example, requires a criminal defendant to provide information showing that he is indigent, and therefore entitled to statefunded counsel, before he can receive that assistance. See 18 U. S. C. §3006A(b).

Second, sometimes, as here, the person opposing the defendant at the hearing is not the government represented by counsel but the custodial parent unrepresented by counsel. See Dept. of Health and Human Services, Office of Child Support Enforcement, Understanding Child Support Debt: A Guide to Exploring Child Support Debt in Your State 5, 6 (2004) (51% of nationwide arrears, and 58% in South Carolina, are not owed to the government). The custodial parent, perhaps a woman with custody of one or more children, may be relatively poor, unemployed, and unable to afford counsel. Yet she may have encouraged the court to enforce its order through contempt. Cf. Tr. Contempt Proceedings (Sept. 14, 2005), App. 44a–45a (Rogers

asks court, in light of pattern of nonpayment, to confine Turner). She may be able to provide the court with significant information. Cf. id., at 41a–43a (Rogers describes where Turner lived and worked). And the proceeding is ultimately for her benefit.

A requirement that the State provide counsel to the noncustodial parent in these cases could create an asymmetry of representation that would "alter significantly the nature of the proceeding." Gagnon, supra, at 787. Doing so could mean a degree of formality or delay that would unduly slow payment to those immediately in need. And, perhaps more important for present purposes, doing so could make the proceedings less fair overall, increasing the risk of a decision that would erroneously deprive a family of the support it is entitled to receive. The needs of such families play an important role in our analysis. Cf. post, at 10–12 (opinion of THOMAS, J.).

Third, as the Solicitor General points out, there is available a set of "substitute procedural safeguards," Mathews, 424 U. S., at 335, which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty. They can do so, moreover, without incurring some of the drawbacks inherent in recognizing an automatic right to counsel. Those safeguards include (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. See Tr. of Oral Arg. 26–27; Brief for United States as Amicus Curiae 23–25. In presenting these alternatives, the Government draws upon considerable experience in helping to manage statutorily mandated federal-state efforts to enforce child support orders. See supra, at 10. It does not claim that they are the only possible alternatives, and this Court's cases suggest, for example, that sometimes assistance other than purely legal assistance (here, say, that of a neutral social worker) can prove constitutionally sufficient. Cf. Vitek, 445 U. S., at 499–500 (Powell, J., concurring in part) (provision of mental health professional). But the Government does claim that these alternatives can assure the "fundamental fairness" of the proceeding even where the State does not pay for counsel for an indigent defendant.

While recognizing the strength of Turner's arguments, we ultimately believe that the three considerations we have just discussed must carry the day. In our view, a categorical right to counsel in proceedings of the kind before us would carry with it disadvantages (in the form of unfairness and delay) that, in terms of ultimate fairness, would deprive it of significant superiority over the alternatives that we have mentioned. We consequently hold that the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to a year). In particular, that Clause does not require the provision of counsel where the opposing parent or other custodian (to whom support funds are owed) is not represented by counsel and the State provides alternative procedural safeguards equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

We do not address civil contempt proceedings where the underlying child support payment is owed to the State, for example, for reimbursement of welfare funds paid to the parent with custody. See supra, at 10. Those proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative. Cf. Johnson v. Zerbst, 304 U. S. 458, 462–463 (1938) ("[T]he average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel" (emphasis added)). And this kind of proceeding is not before us. Neither do we address what due process requires in an unusually complex case where a defendant "can fairly be represented only by a trained advocate." Gagnon, 411 U. S., at 788; see also Reply Brief for Petitioner 18–20 (not claiming that Turner's case is especially complex).

IV

The record indicates that Turner received neither counsel nor the benefit of alternative procedures like those we have described. He did not receive clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding. No one provided him with a form (or the equivalent) designed to elicit information about his financial circumstances. The court did not find that Turner was able to pay his arrearage, but instead left the relevant "finding" section of the contempt order blank. The court nonetheless found Turner in contempt and ordered him incarcerated. Under these circumstances Turner's incarceration violated the Due Process Clause.

We vacate the judgment of the South Carolina Supreme Court and remand the case for further proceedings not inconsistent with this opinion. It is so ordered.

THOMAS, J., dissenting

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, and with whom THE CHIEF JUSTICE and JUSTICE ALITO join as to Parts I–B and II, dissenting.

The Due Process Clause of the Fourteenth Amendment does not provide a right to appointed counsel for indigent defendants facing incarceration in civil contempt proceedings. Therefore, I would affirm. Although the Court agrees that appointed counsel was not required in this case, it nevertheless vacates the judgment of the South Carolina Supreme Court on a different ground, which the parties have never raised. Solely at the invitation of the United States as amicus curiae, the majority decides that Turner's contempt proceeding violated due process because it did not include "alternative procedural safeguards." Ante, at 15. Consistent with this Court's longstanding practice, I would not reach that question.1

I

The only question raised in this case is whether the Due Process Clause of the Fourteenth Amendment creates a right to appointed counsel for all indigent defendants facing incarceration in civil contempt proceedings. It does not. A

Under an original understanding of the Constitution, there is no basis for concluding that the guarantee of due process secures a right to appointed counsel in civil contempt proceedings. It certainly does not do so to the extent that the Due Process Clause requires " 'that our Government must proceed according to the "law of the land"—that is, according to written constitutional and statutory provisions.' " Hamdi v. Rumsfeld, 542 U. S. 507, 589 (2004) (THOMAS, J., dissenting) (quoting In re Winship, 397 U. S. 358, 382 (1970) (Black, J., dissenting)). No one contends that South Carolina law entitles Turner to appointed counsel. Nor does any federal statute or constitutional provision so provide. Although the Sixth Amendment secures a right to "the Assistance of Counsel," it does not apply here because civil contempt proceedings are not "criminal prosecutions." U. S. Const., Amdt. 6; see ante, at 8. Moreover, as originally understood, the Sixth Amendment guaranteed only the "right to employ counsel, or to use volunteered services of counsel"; it did not require the court to appoint counsel in any circumstance. Padilla v. Kentucky, 559 U. S. ___, ___ (2010) (SCALIA, J., dissenting) (slip op., at 2); see also United States v. Van Duzee, 140 U. S. 169, 173 (1891); W. Beaney, The Right to Counsel in American Courts 21–22, 28–29 (1955); F. Heller, The Sixth Amendment to the Constitution of the United States 110 (1951).

Appointed counsel is also not required in civil contempt proceedings under a somewhat broader reading of the Due Process Clause, which takes it to approve " '[a] process of law, which is not otherwise forbidden, . . . [that] can show the sanction of settled usage.' " Weiss v. United States, 510 U. S. 163, 197 (1994) (SCALIA, J., concurring in part and concurring in judgment) (quoting Hurtado v. California, 110 U. S. 516, 528 (1884)). Despite a long history of courts exercising contempt authority, Turner has not identified any evidence that courts appointed counsel in those proceedings. See Mine Workers v. Bagwell, 512 U. S. 821, 831 (1994) (describing courts' traditional assumption of "inherent contempt authority"); see also 4 W. Blackstone, Commentaries on the Laws of England 280–285 (1769) (describing the "summary proceedings" used to adjudicate contempt). Indeed, Turner concedes that contempt proceedings without appointed counsel have the blessing of history. See Tr. of Oral Arg. 15–16 (admitting that there is no historical support for Turner's rule); see also Brief for Respondents 47–48.

B

Even under the Court's modern interpretation of the Constitution, the Due Process Clause does not provide a right to appointed counsel for all indigent defendants facing incarceration in civil contempt proceedings. Such a reading would render the Sixth Amendment right to counsel—as is currently understood—superfluous. it Moreover, it appears that even cases applying the Court's modern interpretation of due process have not understood it to categorically require appointed counsel in circumstances outside those otherwise covered by the Sixth Amendment.

1

Under the Court's current jurisprudence, the Sixth Amendment entitles indigent defendants to appointed counsel in felony cases and other criminal cases resulting in a sentence of imprisonment. See Gideon v. Wainwright, 372 U. S. 335, 344–345 (1963); Argersinger v. Hamlin, 407 U. S. 25, 37 (1972); Scott v. Illinois, 440 U. S. 367, 373–374 (1979); Alabama v. Shelton, 535 U. S. 654, 662 (2002). Turner concedes that, even under these cases, the Sixth Amendment does not entitle him to appointed counsel. See Reply Brief for Petitioner 12 (acknowledging that "civil contempt is not a 'criminal prosecution' within the meaning of the Sixth Amendment"). He argues instead that "the right to the assistance of counsel for persons facing incarceration arises not only from the Sixth Amendment, but also from the requirement of fundamental fairness under the Due Process Clause of the Fourteenth Amendment." Brief for Petitioner 28. In his view, this Court has relied on due process to "rejec[t] formalistic distinctions between criminal and civil proceedings, instead concluding that incarceration or other confinement triggers the right to counsel." Id., at 33.

But if the Due Process Clause created a right to appointed counsel in all proceedings with the potential for detention, then the Sixth Amendment right to appointed counsel would be unnecessary. Under Turner's theory, every instance in which the Sixth Amendment guarantees a right to appointed counsel is covered also by the Due Process Clause. The Sixth Amendment, however, is the only constitutional provision that even mentions the assistance of counsel; the Due Process Clause says nothing about counsel. Ordinarily, we do not read a general provision to render a specific one superfluous. Cf. Morales v. Trans World Airlines, Inc., 504 U. S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general"). The fact that one constitutional provision expressly provides a right to appointed counsel in specific circumstances indicates that the Constitution does not also sub silentio provide that right far more broadly in another, more general, provision. Cf. Albright v. Oliver, 510 U. S. 266, 273 (1994) (plurality opinion) ("Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims" (internal quotation marks omitted)); id., at 281 (KENNEDY, J., concurring in judgment) ("I agree with the plurality that an allegation of arrest without probable cause must be analyzed under the Fourth Amendment without reference to more general considerations of due process"); Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, 560 U. S. ___, ___ (2010) (opinion of SCALIA, J.) (slip op., at 16) (applying Albright to the Takings Clause).

2

Moreover, contrary to Turner's assertions, the holdings in this Court's due process decisions regarding the right to counsel are actually quite narrow. The Court has never found in the Due Process Clause a categorical right to appointed counsel outside of criminal prosecutions or proceedings "functionally akin to a criminal trial." Gagnon v. Scarpelli, 411 U. S. 778, 789, n. 12 (1973) (discussing In re Gault, 387 U. S. 1 (1967)). This is consistent with the conclusion that the Due Process Clause does not expand the right to counsel beyond the boundaries set by the Sixth Amendment.

After countless factors weighed, mores evaluated, and practices surveyed, the Court has not determined that due process principles of fundamental fairness categorically require counsel in any context outside criminal proceedings. See, e.g., Lassiter v. Department of Social Servs. of Durham Cty., 452 U. S. 18, 31–32 (1981); Wolff v. McDonnell, 418 U. S. 539, 569–570 (1974); see also Walters v. National Assn. of Radiation Survivors, 473 U. S. 305, 307– 308, 320–326 (1985); Goss v. Lopez, 419 U. S. 565, 583 (1975). Even when the defendant's liberty is at stake, the Court has not concluded that fundamental fairness requires that counsel always be appointed if the proceeding is not criminal.2 See, e.g., Scarpelli, supra, at 790 (probation revocation); Middendorf v. Henry, 425 U. S. 25, 48 (1976) (summary court-martial); Parham v. J. R., 442 U. S. 584, 599–600, 606–607, 610, n. 18 (1979) (commitment of minor to mental hospital); Vitek v. Jones, 445 U. S. 480, 497–500 (1980) (Powell, J., controlling opinion concurring in part) (transfer of prisoner to mental hospital). Indeed, the only circumstance in which the Court has found that due process categorically requires appointed counsel is juvenile delinquency proceedings, which the Court has described as "functionally akin to a criminal trial." Scarpelli, supra, at 789, n. 12 (discussing In re Gault, supra); see ante, at 9.

Despite language in its opinions that suggests it could find otherwise, the Court's consistent judgment has been that fundamental fairness does not categorically require appointed counsel in any context outside of criminal proceedings. The majority is correct, therefore, that the Court's precedent does not require appointed counsel in the absence of a deprivation of liberty. Id., at 9–10. But a more complete description of this Court's cases is that even when liberty is at stake, the Court has required appointed counsel in a category of cases only where it would have found the Sixth Amendment required it—in criminal prosecutions.

II

The majority agrees that the Constitution does not entitle Turner to appointed counsel. But at the invitation of the Federal Government as amicus curiae, the majority holds that his contempt hearing violated the Due Process Clause for an entirely different reason, which the parties have never raised: The family court's procedures "were in adequate to ensure an accurate determination of [Turner's] present ability to pay." Brief for United States as Amicus Curiae 19 (capitalization and boldface type deleted); see ante, at 14–16. I would not reach this issue.

There are good reasons not to consider new issues raised for the first and only time in an amicus brief. As here, the new issue may be outside the question presented.3 See Pet. for Cert. i ("Whether . . . an indigent defendant has no constitutional right to appointed counsel at a civil contempt proceeding that results in his incarceration"); see also ante, at 4–5 (identifying the conflict among lower courts as regarding "the right to counsel"). As here, the new issue may not have been addressed by, or even presented to, the state court. See 387 S. C. 142, 144, 691 S. E. 2d 470, 472 (2010) (describing the only question as whether "the Sixth and Fourteenth Amendments of the United States Constitution guarantee [Turner], as an indigent defendant in family court, the right to appointed counsel"). As here, the parties may not have preserved the issue, leaving the record undeveloped. See Tr. of Oral Arg. 49, 43 ("The record is insufficient" regarding alternative procedures because "[t]hey were raised for the very first time at the merits stage here; so, there's been no development"); Brief for Respondents 63. As here, the parties

may not address the new issue in this Court, leaving its boundaries untested. See Brief for Petitioner 27, n. 15 (reiterating that "[t]he particular constitutional violation that Turner challenges in this case is the failure of the family court to appoint counsel"); Brief for Respondents 62 (declining to address the Government's argument because it is not "properly before this Court" (capitalization and boldface type deleted). Finally, as here, a party may even oppose the position taken by its allegedly supportive amicus. See Tr. of Oral Arg. 7–12, 14–15 (Turner's counsel rejecting the Government's argument that any procedures short of a categorical right to appointed counsel could satisfy due process); Reply Brief for Petitioner 14–15.

Accordingly, it is the wise and settled general practice of this Court not to consider an issue in the first instance, much less one raised only by an amicus. See this Court's Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court"); Adarand Constructors, Inc. v. Mineta, 534 U. S. 103, 110 (2001) (per curiam) ("[T]his is a court of final review and not first view" (internal quotation marks omitted)); United Parcel Service, Inc. v. Mitchell, 451 U. S. 56, 60, n. 2 (1981) (declining to consider an amicus' argument "since it was not raised by either of the parties here or below" and was outside the grant of certiorari). This is doubly true when we review the decision of a state court and triply so when the new issue is a constitutional matter. See McGoldrick v. Compagnie Generale Transatlantique, 309 U. S. 430, 434 (1940) ("[I]t is only in exceptional cases, and then only in cases coming from the federal courts, that [this Court] considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below"); Cardinale v. Louisiana, 394 U. S. 437, 438 (1969) ("[T]he Court will not decide federal constitutional issues raised here for the first time on review of state court decisions").

The majority errs in moving beyond the question that was litigated below, decided by the state courts, petitioned to this Court, and argued by the parties here, to resolve a question raised exclusively in the Federal Government's amicus brief. In some cases, the Court properly affirms a lower court's judgment on an alternative ground or accepts the persuasive argument of an amicus on a question that the parties have raised. See, e.g., United States v. Tinklenberg, 563 U. S. ___, ___ (2011) (slip op., at 13). But it transforms a case entirely to vacate a state court's judgment based on an alternative constitutional ground advanced only by an amicus and outside the question on which the petitioner sought (and this Court granted) review.

It should come as no surprise that the majority confines its analysis of the Federal Government's new issue to acknowledging the Government's "considerable experience" in the field of child support enforcement and then adopting the Government's suggestions in toto. See ante, at 14–15. Perhaps if the issue had been preserved and briefed by the parties, the majority would have had alternative solutions or procedures to consider. See Tr. of Oral Arg. 43 ("[T]here's been no development. We don't know what other States are doing, the range of options out there"). The Federal Government's interest in States' child support enforcement efforts may give the Government a valuable perspective,4 but it does not overcome the strong reasons behind the Court's practice of not considering new issues, raised and addressed only by an amicus, for the first time in this Court.

III

For the reasons explained in the previous two sections, I would not engage in the majority's balancing analysis. But there is yet another reason not to undertake the Mathews v. Eldridge balancing test here. 424 U. S. 319 (1976). That test weighs an individual's interest against that of the Government. Id., at 335 (identifying the opposing interest as "the Government's interest"); Lassiter, 452 U. S., at 27 (same). It does not account for the interests of the child and custodial parent, who is usually the child's mother. But their interests are the very reason for the child support obligation and the civil contempt proceedings that enforce it.

When fathers fail in their duty to pay child support, children suffer. See Cancian, Meyer, & Han, Child Support: Responsible Fatherhood and the Quid Pro Quo, 635 Annals Am. Acad. Pol. & Soc. Sci. 140, 153 (2011) (finding that child support plays an important role in reducing child poverty in single-parent homes); cf. Sorensen & Zibman, Getting to Know Poor Fathers Who Do Not Pay Child Support, 75 Soc. Serv. Rev. 420, 423 (2001) (finding that children whose fathers reside apart from them are 54 percent more likely to live in poverty than their fathers). Nonpayment or inadequate payment can press children and mothers into poverty. M. Garrison, The Goals and Limits of Child Support Policy, in Child Support: The Next Frontier 16 (J. Oldham & M. Melli eds. 2000); see also Dept. of Commerce, Census Bureau, T. Grall, Custodial Mothers and Fathers and Their Child Support: 2007, pp. 4–5 (2009) (hereinafter Custodial Mothers and Fathers) (reporting that 27 percent of custodial mothers lived in poverty in 2007).

The interests of children and mothers who depend on child support are notoriously difficult to protect. See, e.g., Hicks v. Feiock, 485 U. S. 624, 644 (1988) (O'Connor, J., dissenting) ("The failure of enforcement efforts in this area has become a national scandal" (internal quotation marks omitted)). Less than half of all custodial parents receive the full amount of child support ordered; 24 percent of those owed support receive nothing at all. Custodial Mothers and Fathers 7; see also Dept. of Health and Human Services, Office of Child Support Enforcement, FY 2008 Annual Report to Congress, App. III, Table 71 (showing national child support arrears of $105.5 billion in 2008). In South Carolina alone, more than 139,000 noncustodial parents defaulted on their child support obligations during 2008, and at year end parents owed $1.17 billion in total arrears. Id., App. III, Tables 73 and 71.

That some fathers subject to a child support agreement report little or no income "does not mean they do not have the ability to pay any child support." Dept. of Health and Human Services, H. Sorensen, L. Sousa, & S. Schaner, Assessing Child Support Arrears in Nine Large States and the Nation 22 (2007) (prepared by The Urban Institute) (hereinafter Assessing Arrears). Rather, many "deadbeat dads"5 "opt to work in the underground economy" to "shield their earnings from child support enforcement efforts." Mich. Sup. Ct., Task Force Report: The Underground Economy 10 (2010) (hereinafter Underground Economy). To avoid attempts to garnish their wages or otherwise enforce the support obligation, "deadbeats" quit their jobs, jump from job to job, become self-employed, work under the table, or engage in illegal activity.6 See Waller & Plotnick, Effective Child Support Policy for LowIncome Families: Evidence from Street Level Research, 20 J. Pol'y Analysis & Mgmt. 89, 104 (2001); Assessing Arrears 22–23.

Because of the difficulties in collecting payment through traditional enforcement mechanisms, many States also use civil contempt proceedings to coerce "deadbeats" into paying what they owe. The States that use civil contempt with the threat of detention find it a "highly effective" tool for collecting child support when nothing else works. Compendium of Responses Collected by the U. S. Dept. of Health and Human Services Office of Child Support Enforcement (Dec. 28, 2010), reprinted in App. to Brief for Sen. DeMint et al. as Amici Curiae 7a; see id., at 3a, 9a. For example, Virginia, which uses civil contempt as "a last resort," reports that in 2010 "deadbeats" paid approximately $13 million "either before a court hearing to avoid a contempt finding or after a court hearing to purge the contempt finding." Id., at 13a–14a. Other States confirm that the mere threat of imprisonment is often quite effective because most contemners "will pay . . . rather than go to jail." Id., at 4a; see also Underground Economy C–2 ("Many judges . . . report that the prospect of [detention] often causes obligors to discover previously undisclosed resources that they can use to make child support payments").

This case illustrates the point. After the family court imposed Turner's weekly support obligation in June 2003, he made no payments until the court held him in contempt three months later, whereupon he paid over $1,000 to avoid confinement. App. 17a–18a, 131a. Three more times, Turner refused to pay until the family court held him in contempt—then paid in short order. Id., at 23a– 25a, 31a–34a, 125a–126a, 129a–130a.

Although I think that the majority's analytical framework does not account for the interests that children and mothers have in effective and flexible methods to secure payment, I do not pass on the wisdom of the majority's preferred procedures. Nor do I address the wisdom of the State's decision to use certain methods of enforcement. Whether "deadbeat dads" should be threatened with incarceration is a policy judgment for state and federal lawmakers, as is the entire question of government involvement in the area of child support. See Elrod & Dale, Paradigm Shifts and Pendulum Swings in Child Custody, 42 Fam. L. Q. 381, 382 (2008) (observing the "federalization of many areas of family law" (internal quotation marks omitted)). This and other repercussions of the shift away from the nuclear family are ultimately the business of the policymaking branches. See, e.g., D. Popenoe, Family in Decline in America, reprinted in War Over the Family 3, 4 (2005) (discussing "four major social trends" that emerged in the 1960's "to signal a widespread 'flight' " from the "nuclear family"); Krause, Child Support Reassessed, 24 Fam. L. Q. 1, 16 (1990) ("Easy-come, easy-go marriage and casual cohabitation and procreation are on a collision course with the economic and social needs of children"); M. Boumil & J. Friedman, Deadbeat Dads 23– 24 (1996) ("Many [children of deadbeat dads] are born out of wedlock . . . . Others have lost a parent to divorce at such a young age that they have little conscious memory of it").

* * *

I would affirm the judgment of the South Carolina Supreme Court because the Due Process Clause does not provide a right to appointed counsel in civil contempt hearings that may lead to incarceration. As that is the only issue properly before the Court, I respectfully dissent.

1 I agree with the Court that this case is not moot because the challenged action is likely to recur yet is so brief that it otherwise evades our review. Ante, at 5–7.

2 "Criminal contempt is a crime in the ordinary sense"; therefore, criminal contemners are entitled to "the protections that the Constitution requires of such criminal proceedings," including the right to counsel. Mine Workers v. Bagwell, 512 U. S. 821, 826 (1994) (citing Cooke v. United States, 267 U. S. 517, 537 (1925); internal quotation marks omitted).

3 Indeed, the new question is not one that would even merit certiorari. See this Court's Rule 10. Because the family court received a form detailing Turner's finances and the judge could not hold Turner in contempt without concluding that he could pay, the due process question that the majority answers reduces to a factbound assessment of the family court's performance. See ante, at 14–16; Reply Brief for Petitioner 14–15 ("[I]n advance of his hearing, Turner supplied to the family court just such a form").

4 See, e.g., Deadbeat Parents Punishment Act of 1998, 112 Stat. 618; Child Support Recovery Act of 1992, 106 Stat. 3403; Child Support Enforcement Amendments of 1984, 98 Stat. 1305; Social Services Amendments of 1974, 88 Stat. 2337.

5 See Deadbeat Parents Punishment Act of 1998, 112 Stat. 618 (referring to parents who "willfully fai[l] to pay a support obligation" as "[d]eadbeat [p]arents").

6 In this case, Turner switched between eight different jobs in three years, which made wage withholding difficult. App. 12a, 18a, 24a, 47a, 53a, 136a–139a. Most recently, Turner sold drugs in 2009 and 2010 but paid not a penny in child support during those years. Id., at 105a–111a; App. to Brief for Respondents 16a, 21a–24a, 29a–32a, 37a–54a.

U.S. Supreme Court
Hicks v. Feiock, 485 U.S. 624, 108 S.Ct. 1423 (1988)

No. 86–787
Cecil Hicks, District Attorney for County of Orange, California,
Acting on Behalf of Alta Sue Feiock, Petitioner v. Phillip William Feiock

Syllabus

After respondent stopped making $150 monthly child support payments to his ex-wife under a California state court order, he was served with an order to show cause why he should not be held in contempt on nine counts of failure to make the payments. At the contempt hearing, his defense that he was financially unable to make payments was partially successful, but he was adjudged in contempt on five counts; was sentenced to a 5-day jail term on each count, to be served consecutively; and was placed on probation for three years upon suspension of the sentence. As conditions of his probation, he was ordered to resume the monthly payments and to begin repaying $50 per month on his accumulated arrearages. During the contempt hearing, the court rejected his contention that the application against him of Cal.Civ.Proc.Ann. § 1209.5 (West 1982), governing the *prima facie* showing of contempt of a court order to make child support payments, was unconstitutional under the Fourteenth Amendment's Due Process Clause because it shifts to the defendant the burden of proof as to ability to comply with the order, which is an element of the crime of contempt. The California Court of Appeal annulled the contempt order, ruling that § 1209.5 purports to impose "a mandatory presumption compelling a conclusion of guilt without independent proof of an ability to pay," and is therefore unconstitutional because "the mandatory nature of the presumption lessens the prosecution's burden of proof." The court went on to state that, for future guidance, however, the statute should be construed as authorizing a permissive inference, not a mandatory presumption. The California Supreme Court denied review.

Held:

1. With regard to the determination of issues necessary to decide this case, the state appellate court ruled that whether the individual is able to comply with a court order is an element of the offense of contempt, rather than an affirmative defense to the charge, and that § 1209.5 shifts to the alleged contemnor the burden of persuasion, rather than simply the burden of production in showing inability to comply. Since the California Supreme Court denied review, this Court is not free to overturn the

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state appellate court's conclusions as to these state law issues. However, the issue whether the contempt proceeding and the relief given were properly characterized as civil or criminal in nature, for purposes of determining the proper applicability of federal constitutional protections, raises a question of federal law, rather than state law. Thus, the state appellate court erred insofar as it sustained respondent's challenge to § 1209.5 under the Due Process Clause simply

because it concluded that the contempt proceeding was "quasi-criminal" as a matter of California law. Pp. 485 U. S. 629-630.

2. For the purposes of applying the Due Process Clause to a State's proceedings, state law provides strong guidance, but is not dispositive, as to the classification of the proceeding or the relief imposed as civil or criminal. The critical features are the substance of the proceeding and the character of the relief that the proceeding will afford. With regard to contempt cases, the proceeding and remedy are for civil contempt if the punishment is remedial, and for the complainant's benefit. But if for criminal contempt, the sentence is punitive, to vindicate the court's authority. Thus, if the relief provided is a sentence of imprisonment, it is remedial if the defendant stands committed unless and until he performs the affirmative act required by the court's order, and is punitive if the sentence is limited to unconditional imprisonment for a definite period. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that is payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the act required by the court's order. These distinctions lead to the fundamental proposition that criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of criminal proceedings, including the requirement that the offense be proved beyond a reasonable doubt. Pp. 485 U. S. 631-635.

3. Although the underlying purposes of particular kinds of relief are germane, they are not controlling in determining the classification of the relief imposed in a State's proceedings. In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive, or both. If classification were to be hinged on the overlapping purposes of civil and criminal contempt proceedings, the States will be unable to ascertain with any degree of assurance how their proceedings will be understood as a matter of federal law, thus creating novel and complex problems. Pp. 485 U. S. 635-637.

4. In respondent's contempt proceeding, § 1209.5's burden of persuasion requirement (as interpreted by the state court), if applied in a criminal proceeding, would violate the Due Process Clause because it would undercut the State's burden to prove guilt beyond a reasonable doubt.

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If applied in a civil proceeding, however, this particular statute would be constitutionally valid. There were strong indications that the proceeding was intended to be criminal in nature, such as the notice sent to respondent, which labeled the proceeding as "criminal in nature," and the District Attorney's participation in the case. However, if the trial court imposed only civil coercive remedies, it would be improper to invalidate that result merely because the Due Process Clause was not satisfied. The relief afforded -- respondent's jail sentence, its suspension, and his fixed term of probation -- would be criminal in nature if that were all. However, the trial court did not specify whether payment of the arrearages (which, if timely made, would be completed before expiration of the probation period) would have purged respondent's determinate sentence, thus making the relief civil in nature. Since the state

appellate court, because of its erroneous views as to these controlling principles of federal law, did not pass on this issue, it must be determined by that court on remand for its further consideration of § 1209.5. Pp. 485 U. S. 637-641.

180 Cal.App.3d 649, 225 Cal.Rptr. 748, vacated and remanded.

WHITE, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C.J., and SCALIA, J., joined. KENNEDY, J., took no part in the consideration or decision of the case.

JUSTICE WHITE delivered the opinion of the Court.

A parent failed to comply with a valid court order to make child support payments, and defended against subsequent contempt charges by claiming that he was financially unable

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to make the required payments. The trial court ruled that, under state law, he is presumed to remain able to comply with the terms of the prior order, and judged him to be in contempt. The state appellate court held that the legislative presumptions applied by the trial court violate the Due Process Clause of the Fourteenth Amendment, which forbids a court to employ certain presumptions that affect the determination of guilt or innocence in criminal proceedings. We must decide whether the Due Process Clause was properly applied in this case.

I

On January 19, 1976, a California state court entered an order requiring respondent, Phillip Feiock, to begin making monthly payments to his ex-wife for the support of their three children. Over the next six years, respondent only sporadically complied with the order, and by December, 1982, he had discontinued paying child support altogether. His ex-wife sought to enforce the support orders. On June 22, 1984, a hearing was held in California state court on her petition for ongoing support payments and for payment of the arrearage due her. The court examined respondent's financial situation and ordered him to begin paying $150 per month commencing on July 1, 1984. The court reserved jurisdiction over the matter for the purpose of determining the arrearages and reviewing respondent's financial condition.

Respondent apparently made two monthly payments, but paid nothing for the next nine months. He was then served with an order to show cause why he should not be held in contempt on nine counts of failure to make the monthly payments ordered by the court. At a hearing on August 9, 1985, petitioner made out a *prima facie* case of contempt against respondent by establishing the existence of a valid court order, respondent's knowledge of the order, and respondent's failure to comply with the order. Respondent defended by arguing that he was unable to pay support during

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the months in question. This argument was partially successful, but respondent was adjudged to be in contempt on five of the nine counts. He was sentenced to 5 days in jail on each count, to be served consecutively, for a total of 25 days. This sentence was suspended, however, and respondent was placed on probation for three years. As one of the conditions of his probation, he was ordered once again to make support payments of $150 per month. As another condition of his probation, he was ordered, starting the following month, to begin repaying $50 per month on his accumulated arrearage, which was determined to total $1,650.

At the hearing, respondent had objected to the application of Cal.Civ.Proc.Code Ann. § 1209.5 (West 1982) against him, claiming that it was unconstitutional under the Due Process Clause of the Fourteenth Amendment because it shifts to the defendant the burden of proving inability to comply with the order, which is an element of the crime of contempt. [Footnote 1] This objection was rejected, and he renewed it on appeal. The intermediate state appellate court agreed with respondent and annulled the contempt order, ruling that the state statute purports to impose "a mandatory presumption compelling a conclusion of guilt without independent proof of an ability to pay," and is therefore unconstitutional because "the mandatory nature of the presumption lessens the prosecution's burden of proof." 180 Cal.App.3d 649, 654, 225 Cal.Rptr. 748, 751 (1986). [Footnote 2] In light of its holding that the statute as previously interpreted was unconstitutional, the

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court went on to adopt a different interpretation of that statute to govern future proceedings:

> "For future guidance, however, we determine the statute in question should be construed as authorizing a permissive inference, but not a mandatory presumption."

Id. at 655, 225 Cal.Rptr. at 751. The court explicitly considered this reinterpretation of the statute to be an exercise of its "obligation to interpret the statute to preserve its constitutionality whenever possible." *Ibid.* The California Supreme Court denied review, but we granted certiorari. 480 U.S. 915 (1987).

II

Three issues must be decided to resolve this case. First is whether the ability to comply with a court order constitutes an element of the offense of contempt or, instead, inability to comply is an affirmative defense to that charge. Second is whether § 1209.5 requires the alleged contemnor to shoulder the burden of persuasion or merely the burden of production in attempting to establish his inability to comply with the order. Third is whether this contempt proceeding was a criminal proceeding or a civil proceeding, *i.e.*, whether the relief imposed upon respondent was criminal or civil in nature.

Petitioner argues that the state appellate court erred in its determinations on the first two points of state law. The court ruled that whether the individual is able to comply with a court order is an element of the offense of contempt, rather than an affirmative defense to the charge, and that § 1209.5 shifts to the alleged contemnor the burden of persuasion, rather than simply the burden of production in showing inability to comply. We are not at liberty to depart from the state appellate court's resolution of these issues of state law. Although petitioner marshals a number of sources in support of the contention that the state appellate court misapplied state law on these two points, the California Supreme Court

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denied review of this case, and we are not free in this situation to overturn the state court's conclusions of state law. [Footnote 3]

The third issue, however, is a different matter: the argument is not merely that the state court misapplied state law, but that the characterization of this proceeding and the relief given as civil or criminal in nature, for purposes of determining the proper applicability of federal constitutional protections, raises a question of federal law, rather than state law. This proposition is correct as stated. *In re Winship,* 397 U. S. 358, 397 U. S. 365-366 (1970); *In re Gault,* 387 U.S. 1, 387 U.S. 49-50 (1967); *Shillitani v. United States,* 384 U.S. 364, 384 U.S. 368-369 (1966). The fact that this proceeding and the resultant relief were judged to be criminal in nature as a matter of state law is thus not determinative of this issue, and the state appellate court erred insofar as it sustained respondent's challenge to the statute under the Due Process Clause simply because it concluded that this contempt proceeding is "quasi-criminal" as a matter of California law. 180 Cal.App.3d at 653, 225 Cal.Rptr. at 750.

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III

A

The question of how a court determines whether to classify the relief imposed in a given proceeding as civil or criminal in nature, for the purposes of applying the Due Process Clause and other provisions of the Constitution, is one of long standing, and its principles have been settled, at least in their broad outlines, for many decades. When a State's proceedings are involved, state law provides strong guidance about whether or not the State is exercising its authority "in a nonpunitive, noncriminal manner," and one who challenges the State's classification of the relief imposed as "civil" or "criminal" may be required to show "the clearest proof" that it is not correct as a matter of federal law. *Allen v. Illinois,* 478 U.S. 364, 478 U.S. 368-369 (1986). Nonetheless, if such a challenge is substantiated, then the labels affixed either to the proceeding or to the relief imposed under state law are not controlling, and will not be allowed to defeat the applicable protections of federal constitutional law. *Ibid.* This is particularly so in the codified laws of contempt, where the "civil" and "criminal" labels of the law have become increasingly blurred. [Footnote 4]

Instead, the critical features are the substance of the proceeding and the character of the relief that the proceeding will afford.

> "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt, the sentence is punitive, to vindicate the authority of the court."

Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 221 U.S. 441 (1911). The character of the relief imposed is thus ascertainable by applying a few straightforward

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rules. If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs the affirmative act required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." *Id.* at 221 U.S. 442. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order. These distinctions lead up to the fundamental proposition that criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings, including the requirement that the offense be proved beyond a reasonable doubt. *See, e.g., Gompers, supra,* at 221 U.S. 444; *Michaelson v. United States ex rel. Chicago, St. P., M. & O. R. Co.*, 266 U.S. 42, 266 U.S. 66 (1924). [Footnote 5]

The Court has consistently applied these principles. In *Gompers,* decided early in this century, three men were found guilty of contempt and were sentenced to serve 6, 9, and 12 months, respectively. The Court found this relief to be criminal in nature, because the sentence was determinate and unconditional.

> "The distinction between refusing to do an act commanded, -- remedied by imprisonment until the party performs the required act; and doing an act forbidden, -- punished by imprisonment for a definite term, is sound in principle, and generally, if not universally, affords a test by which to determine the character of the punishment.

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Gompers, 221 U.S. at 221 U.S. 443. In the former instance, the conditional nature of the punishment renders the relief civil in nature because the contemnor 'can end the sentence and discharge himself at any moment by doing what he had previously refused to do.' *Id.* at 221 U.S. 442. In the latter instance, the unconditional nature of the punishment renders the relief criminal in nature because the relief 'cannot undo or remedy what has been done nor afford any compensation' and the contemnor 'cannot shorten the term by promising not to repeat the offense.' *Ibid.*"

The distinction between relief that is civil in nature and relief that is criminal in nature has been repeated and followed in many cases. An unconditional penalty is criminal in nature because it is "solely and exclusively punitive in character." *Penfield Co. v. SEC,* 330 U.S. 585, 330 U.S. 593 (1947). A conditional penalty, by contrast, is civil because it is specifically designed to compel the doing of some act.

> "One who is fined, unless by a day certain he [does the act ordered], has it in his power to avoid any penalty. And those who are imprisoned until they obey the order, 'carry the keys of their prison in their own pockets.'"

Id. at 330 U.S. 590, quoting *In re Nevitt,* 117 F. 448, 461 (CA8 1902). In *Penfield,* a man was found guilty of contempt for refusing to obey a court order to produce documents. This Court ruled that, since the man was not tried in a proceeding that afforded him the applicable constitutional protections, he could be given a conditional term of imprisonment, but could not be made to pay "a flat, unconditional fine of $50.00." *Penfield, supra,* at 330 U.S. 588. [Footnote 6] *See*

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also United States v. Rylander, 460 U.S. 752 (1983); *Nye v. United States,* 313 U.S. 33 (1941); *Fox v. Capital Co.,* 299 U.S. 105 (1936); *Lamb v. Cramer,* 285 U.S. 217 (1932); *Oriel v. Russell,* 278 U.S. 358 (1929); *Ex parte Grossman,*267 U.S. 87 (1925); *Doyle v. London Guarantee Co.,* 204 U.S. 599 (1907); *In re Christensen Engineering Co.,* 194 U.S. 458 (1904); *Bessette v. W. B. Conkey Co.,* 194 U.S. 324 (1904).

Shillitani v. United States, 384 U.S. 364 (1966), adheres to these same principles. There two men were adjudged guilty of contempt for refusing to obey a court order to testify under a grant of immunity. Both were sentenced to two years of imprisonment, with the proviso that if either answered the questions before his sentence ended, he would be released. The penalties were upheld because of their "conditional nature," even though the underlying proceeding lacked certain constitutional protections that are essential in criminal proceedings. *Id.* at 384 U.S. 365. Any sentence "must be viewed as remedial," and hence civil in nature, "if the court conditions release upon the contemnor's willingness to [comply with the order]." *Id.* at 384 U.S. 370. By the same token, in a civil proceeding the court "may also impose a determinate sentence *which includes a purge clause.*" *Id.* at 384 U.S. 370, n. 6 (emphasis added).

> "On the contrary, a criminal contempt proceeding would be characterized by the imposition of an

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> unconditional sentence for punishment or deterrence."

Id. at 384 U.S. 370, n. 5. [Footnote 7]

B

In repeatedly stating and following the rules set out above, the Court has eschewed any alternative formulation that would make the classification of the relief imposed in a State's proceedings turn simply on what their underlying purposes are perceived to be. Although the purposes that lie behind particular kinds of relief are germane to understanding their character, this Court has never undertaken to psychoanalyze the subjective intent of a State's laws and its courts, not only because that effort would be unseemly and improper, but also because it would be misguided. In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order. As was noted in *Gompers:*

> "It is true that either form of [punishment] has also an incidental effect. For if the case is civil and the punishment is purely remedial, there is also a vindication of the court's authority. On the other hand, if the proceeding is for criminal contempt and the [punishment] is solely

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> punitive, to vindicate the authority of the law, the complainant may also derive some incidental benefit from the fact that such punishment tends to prevent a repetition of the disobedience. But such indirect consequences will not change [punishment] which is merely coercive and remedial into that which is solely punitive in character, or vice versa."

221 U.S. at 221 U.S. 443. For these reasons, this Court has judged that conclusions about the purposes for which relief is imposed are properly drawn from an examination of the character of the relief itself.

There is yet another reason why the overlapping purposes of civil and criminal contempt proceedings have prevented this Court from hinging the classification on this point. If the definition of these proceedings and their resultant relief as civil or criminal is made to depend on the federal courts' views about their underlying purposes, which indeed often are not clearly articulated in any event, then the States will be unable to ascertain with any degree of assurance how their proceedings will be understood as a matter of federal law. The consequences of any such shift in direction would be both serious and unfortunate. Of primary practical importance to the decision in this case is that the States should be given intelligible guidance about how, as a matter of federal constitutional law, they may lawfully employ presumptions and other procedures in their contempt proceedings. It is of great importance to the States that they be able to understand clearly and in advance the tools that are available to them in ensuring swift and certain compliance with valid court orders -- not only orders commanding payment of child

support, as in this case, but also orders that command compliance in the more general area of domestic relations law, and in all other areas of the law as well.

The States have long been able to plan their own procedures around the traditional distinction between civil and

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criminal remedies. The abandonment of this clear dividing line in favor of a general assessment of the manifold and complex purposes that lie behind a court's action would create novel problems where now there are rarely any -- novel problems that could infect many different areas of the law. And certainly the fact that a contemnor has his sentence suspended and is placed on probation cannot be decisive in defining the civil or criminal nature of the relief, for many convicted criminals are treated in exactly this manner for the purpose (among others) of influencing their behavior. What is true of the respondent in this case is also true of any such convicted criminal: as long as he meets the conditions of his informal probation, he will never enter the jail. Nonetheless, if the sentence is a determinate one, then the punishment is criminal in nature, and it may not be imposed unless federal constitutional protections are applied in the contempt proceeding. [Footnote 8]

IV

The proper classification of the relief imposed in respondent's contempt proceeding is dispositive of this case. As interpreted by the state court here, § 1209.5 requires respondent to carry the burden of persuasion on an element of the offense by showing his inability to comply with the court's order to make the required payments. If applied in a criminal proceeding, such a statute would violate the Due Process Clause, because it would undercut the State's burden to prove guilt beyond a reasonable doubt. *See, e.g.,421 U.S.*

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Wilbur, 421 U.S. 684, 421 U.S. 701-702 (1975). If applied in a civil proceeding, however, this particular statute would be constitutionally valid, *Maggio v. Zeitz,* 333 U.S. 56, 333 U.S. 75-76 (1948); *Oriel*, 278 U.S. at 278 U.S. 364-365, and respondent conceded as much at the argument. Tr. of Oral Arg. 37. [Footnote 9]

The state court found the contempt proceeding to be "quasi-criminal" in nature without discussing the point. 180 Cal.App.3d at 653, 225 Cal.Rptr. at 750. There were strong indications that the proceeding was intended to be criminal in nature, such as the notice sent to respondent, which clearly labeled the proceeding as "criminal in nature," Order to Show Cause and Declaration for Contempt (June 12, 1985), App. 21, and the participation of the District Attorney in the case. Though significant, these facts are not dispositive of the issue before us, for if the trial court had imposed only civil coercive remedies, as surely it was authorized to do, then it would be improper to invalidate that result merely because the Due Process Clause, as applied in *criminal* proceedings, was not satisfied. [Footnote 10] It also bears emphasis that the

purposes underlying this proceeding were wholly ambiguous. Respondent was charged with violating nine discrete prior court orders, and the proceeding may have been intended

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primarily to vindicate the court's authority in the face of his defiance. On the other hand, as often is true when court orders are violated, these charges were part of an ongoing battle to force respondent to conform his conduct to the terms of those orders, and of future orders as well.

Applying the traditional rules for classifying the relief imposed in a given proceeding requires the further resolution of one factual question about the nature of the relief in this case. Respondent was charged with nine separate counts of contempt, and was convicted on five of those counts, all of which arose from his failure to comply with orders to make payments in past months. He was sentenced to 5 days in jail on each of the five counts, for a total of 25 days, but his jail sentence was suspended and he was placed on probation for three years. If this were all, then the relief afforded would be criminal in nature. [Footnote 11] But this is not all. One of the conditions of respondent's probation was that he begin making payments on his accumulated arrearage, and that he continue making these payments at the rate of $50 per month. At that rate, all of the arrearage would be paid before respondent completed his probation period. Not only did the order therefore contemplate that respondent would be required to

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purge himself of his past violations, but it expressly states that "[i]f any two payments are missed, whether consecutive or not, the entire balance shall become due and payable." Order of the California Superior Court for Orange County (Aug. 9, 1985), App. 39. What is unclear is whether the ultimate satisfaction of these accumulated prior payments would have purged the determinate sentence imposed on respondent. Since this aspect of the proceeding will vary as a factual matter from one case to another, depending on the precise disposition entered by the trial court, and since the trial court did not specify this aspect of its disposition in this case, it is not surprising that neither party was able to offer a satisfactory explanation of this point at argument. Tr. of Oral Arg. 42-47. [Footnote 12] If the relief imposed here is in fact a determinate sentence with a purge clause, then it is civil in nature. *Shillitani*, 384 U.S. at 3 384 U.S. 70, n. 6; *Fox,* 299 U.S. at 299 U.S. 106, 299 U.S. 108; *Gompers*, 221 U.S. at 221 U.S. 442.

The state court did not pass on this issue because of its erroneous view that it was enough simply to aver that this proceeding is considered "quasi-criminal" as a matter of state law. And, as noted earlier, the court's view on this point, coupled with its view of the Federal Constitution, also led it to reinterpret the state statute, thus softening the impact of the presumption, in order to save its constitutionality. Yet the Due Process Clause does not necessarily prohibit the State from employing this presumption as it was construed by the state court, *if* respondent would purge his contempt judgment by paying off his arrearage. In these circumstances, the proper course for this Court is to vacate the judgment below and remand for further consideration of § 1209.5 free from the compulsion of an erroneous view of federal

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law. *See, e.g., Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.,* 467 U.S. 138, 467 U.S. 152 (1984). If on remand it is found that respondent would purge his sentence by paying his arrearage, then this proceeding is civil in nature and there was no need for the state court to reinterpret its statute to avoid conflict with the Due Process Clause. [Footnote 13]

We therefore vacate the judgment below and remand for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE KENNEDY took no part in the consideration or decision of this case.

[Footnote 1]
California Civ.Proc.Code Ann. § 1209.5 (West 1982) states that

> "[w]hen a court of competent jurisdiction makes an order compelling a parent to furnish support . . . for his child, proof that . . . the parent was present in court at the time the order was pronounced and proof of noncompliance therewith shall be prima facie evidence of a contempt of court."

[Footnote 2]
Although the court mentioned one state case among the cases it cited in support of this proposition, the court clearly rested on federal constitutional grounds as articulated in this Court's decisions, 180 Cal.App.3d at 652-655, 225 Cal.Rptr. at 749-751, as did the other state case it cited. *See People v. Roder,* 33 Cal.3d 491, 658 P.2d 1302 (1983).

[Footnote 3]

> "Where an intermediate appellate state court rests its considered judgment upon the rule of law which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise. . . . This is the more so where, as in this case, the highest court has refused to review the lower court's decision rendered in one phase of the very litigation which is now prosecuted by the same parties before the federal court. . . . Even though it is arguable that the Supreme Court of [the State] will at some later time modify the rule of [this] case, whether that will ever happen remains a matter of conjecture. In the meantime, the state law applicable to these parties and in this case has been authoritatively declared by the highest state court in which a decision could be had. . . . We think that the law thus announced and applied is the law of the state applicable in the same case and to the same parties in the federal court, and that the federal court is not free to apply a different rule however desirable it may

> believe it to be, and even though it may think that the state Supreme Court may establish a different rule in some future litigation."

West v. American Telephone & Telegraph Co., 311 U.S. 223, 311 U.S. 237-238 (1940).

[Footnote 4]
California is a good example of this modern development, for although it defines civil and criminal contempts in separate statutes, *compare* Cal.Civ.Proc.Code Ann. § 1209 (West Supp.1988) *with* Cal.Penal Code Ann. § 166 (West 1970), it has merged the two kinds of proceedings under the same procedural rules. *See* Cal.Civ.Proc.Code Ann. §§ 1209-1222 (West 1982 and Supp.1988).

[Footnote 5]
We have recognized that certain specific constitutional protections, such as the right to trial by jury, are not applicable to those criminal contempts that can be classified as petty offenses, as is true of other petty crimes as well. *Bloom v. Illinois,* 391 U.S. 194, 391U.S. 208-210 (1968). This is not true, however, of the proposition that guilt must be proved beyond a reasonable doubt. *Id.* at 391 U.S. 205.

[Footnote 6]
In *Penfield*, the original court order required a person to produce certain documents. He refused to comply. The District Court then found him guilty of contempt and required him to pay a fine to the court, which he promptly paid. (The court had also ordered him to stand committed until he paid this fine.) The Court of Appeals reversed, finding that the District Court had erred in imposing this relief, which was criminal in nature, and ordered the man instead to stand committed to prison until he complied with the original order by producing the documents. This Court affirmed, finding that this relief was civil in nature and was properly imposed, whereas the relief that had been ordered by the District Court was criminal in nature and had not been properly imposed. 330 U.S. at 330 U.S. 587-595. The reason that the sanction imposed by the District Court was found to be criminal in nature is because it was determinate: the contemnor could not avoid the sanction by agreeing to comply with the original order to produce the documents. Yet the sanction of confinement imposed by the Court of Appeals was civil in nature, because it was conditional, *i.e.*, not determinate: the contemnor would avoid the sanction by agreeing to comply with the original order to produce the documents.

[Footnote 7]
In these passages from *Shillitani*, the Court clearly indicated that, when it spoke of a court's conditioning release upon the contemnor's willingness to comply, it did not mean simply release *from physical confinement*, but release from the imposition of any sentence that would otherwise be determinate. The critical feature that determines whether the remedy is civil or criminal in nature is not when or whether the contemnor is physically required to set foot in a jail, but whether the contemnor can avoid the sentence imposed on him, or purge himself of it, by complying with the terms of the original order. It follows that the remedy in this case is not rendered civil in nature merely by suspending respondent's sentence and placing him on probation (with its attendant disabilities, *see* n 11, *infra*).

[Footnote 8]
This does not even suggest, of course, that the State is unable to suspend the sentence imposed on either a criminal contemnor or a civil contemnor in favor of a term of informal probation. That action may be appropriate, and even most desirable, in a great many cases, especially when the order that has been disobeyed was one to pay a sum of money. This also accords with the repeated emphasis in our decisions that, in wielding its contempt powers, a court "must exercise *the least possible power adequate to the end proposed.'" Shillitani v. United States, 384 U.S.* 364, *384 U.S.* 371 *(1966), quoting Anderson v. Dunn, 6 Wheat. 204, 19 U.S.* 231 *(1821).*

[Footnote 9]
Our precedents are clear, however, that punishment may not be imposed in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order. *United States v. Rylander,* 460 U.S. 752, 460 U.S. 757 (1983); *Shillitani, supra,* at 384 U.S. 371; *Oriel,* 278 U.S. at 278 U.S. 366.

[Footnote 10]
This can also be seen by considering the notice given to the alleged contemnor. This Court has stated that one who is charged with a crime is "entitled to be informed of the nature of the charge against him but to know that it is a charge and not a suit." *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 221 U.S. 446 (1911). Yet if the relief ultimately given in such a proceeding is wholly civil in nature, then this requirement would not be applicable. It is also true, of course, that if both civil and criminal relief are imposed in the same proceeding, then the "*criminal feature of the order is dominant, and fixes its character for purposes of review.'" Nye v. United States, 313 U. S. 33, 313 U. S. 42-43 (1941), quoting Union Tool Co. v. Wilson, 259 U.S.* 107, *259 U.S.* 110 *(1922).*

[Footnote 11]
That a determinate sentence is suspended and the contemnor put on probation does not make the remedy civil in nature, for a suspended sentence, without more, remains a determinate sentence, and a fixed term of probation is itself a punishment that is criminal in nature. A suspended sentence with a term of probation is not equivalent to a conditional sentence that would allow the contemnor to avoid or purge these sanctions. A determinate term of probation puts the contemnor under numerous disabilities that he cannot escape by complying with the dictates of the prior orders, such as: any conditions of probation that the court judges to be reasonable and necessary may be imposed; the term of probation may be revoked and the original sentence (including incarceration) may be reimposed at any time for a variety of reasons without all the safeguards that are ordinarily afforded in criminal proceedings; and the contemnor's probationary status could affect other proceedings against him that may arise in the future (for example, this fact might influence the sentencing determination made in a criminal prosecution for some wholly independent offense).

[Footnote 12]
It is also perhaps of some significance, though not binding upon us, that the parties reinforce the ambiguity on this point by entitling this contempt order, in the Joint Appendix, as "Order of the

Superior Court of the State of California, County of Orange, to Purge Arrearage and Judgment of Contempt." App. i.

[Footnote 13]
Even if this relief is judged on remand to be criminal in nature because it does not allow the contemnor to purge the judgment by satisfying the terms of the prior orders, this result does not impose any real handicap on the States in enforcing the terms of their orders, for it will be clear to the States that the presumption established by § 1209.6 can be imposed, consistent with the Due Process Clause, in any proceeding where the relief afforded is civil in nature as defined by this Court's precedents. In addition, the state courts remain free to decide for themselves the state law issues we have taken as having been resolved in this case by the court below, and to judge the lawfulness of statutes that impose similar presumptions under the provisions of their own state constitutions.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

This case concerns a contempt proceeding against a parent who repeatedly failed to comply with a valid court order to make child support payments. In my view, the proceeding is civil as a matter of federal law. Therefore, the Due Process Clause of the Fourteenth Amendment does not prevent the trial court from applying a legislative presumption that the parent remained capable of complying with the order until the time of the contempt proceeding.

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I

The facts of this case illustrate how difficult it can be to obtain even modest amounts of child support from a noncustodial parent. Alta Sue Adams married respondent Phillip William Feiock in 1968. The couple resided in California and had three children. In 1973, respondent left the family. Mrs. Feiock filed a petition in the Superior Court of California for the County of Orange seeking dissolution of her marriage, legal custody of the children, and child support. In January, 1976, the court entered an interlocutory judgment of dissolution of marriage, awarded custody of the children to Mrs. Feiock, and ordered respondent to pay child support beginning February 1, 1976. The court ordered respondent to pay $35 per child per month for the first four months, and $75 per child per month starting June 1, 1976. The order has never been modified.

After the court entered a final judgment of dissolution of marriage, Mrs. Feiock and the children moved to Ohio. Respondent made child support payments only sporadically, and stopped making any payments by December, 1982. Pursuant to Ohio's enactment of the Uniform Reciprocal Enforcement of Support Act (URESA), Mrs. Feiock filed a complaint in the Court of Common Pleas of Stark County, Ohio. *See* Ohio Rev.Code Ann. § 3115.09(B) (1980). The complaint recited that respondent was obliged to pay $225 per month in support, and that respondent was $2,300 in arrears. The Ohio court transmitted the complaint and supporting documents to to the Superior Court of California for the County of Orange, which had

jurisdiction over respondent. Petitioner, the Orange County District Attorney, prosecuted the case on behalf of Mrs. Feiock in accordance with California's version of URESA. *See* Cal.Civ.Proc.Code Ann. § 1670 *et seq.* (West 1982).

After obtaining several continuances, respondent finally appeared at a hearing before the California court on June 22, 1984. Respondent explained that he had recently become a

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partner in a flower business that had uncertain prospects. The court ordered respondent to pay $150 per month on a temporary basis, although it did not alter the underlying order. Payments were to begin July 1, 1984.

Respondent made payments only for August and September. Respondent appeared in court three times thereafter, but never asked for a modification of the order. Eventually, the Orange County District Attorney filed Orders to Show Cause and Declarations of Contempt alleging nine counts of contempt based on respondent's failure to make nine of the $150 support payments. At a hearing held August 9, 1985, the District Attorney invoked Cal.Civ.Proc.Code Ann. § 1209.5 (West 1982), which says:

> "When a court of competent jurisdiction makes an order compelling a parent to furnish support . . . for his child, . . . proof that the parent was present in court at the time the order was pronounced and proof of noncompliance therewith shall be prima facie evidence of a contempt of court."

In an effort to overcome this presumption, respondent testified regarding his ability to pay at the time of each alleged act of contempt. The court found that respondent had been able to pay five of the missed payments. Accordingly, the court found respondent in contempt on five of the nine counts and sentenced him to 5 days in jail on each count, to be served consecutively, for a total of 25 days. The court suspended execution of the sentence and placed respondent on three years' informal probation on the conditions that he make monthly support payments of $150 starting immediately and additional payments of $50 per month on the arrearage starting October 1, 1985.

Respondent filed a petition for a writ of habeas corpus in the California Court of Appeal, where he prevailed on his argument that § 1209.5 is unconstitutional as a mandatory presumption shifting to the defendant the burden of proof of an element of a criminal offense. That is the argument that the

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Court confronts in this case. In my view, no remand is necessary because the judgment below is incorrect as a matter of federal law.

II

The California Court of Appeal has erected a substantial obstacle to the enforcement of child support orders. As petitioner vividly describes it, the judgment turns the child support order into "a worthless piece of scrap." Brief for Petitioner 47. The judgment hampers the enforcement of support orders at a time when strengthened enforcement is needed.

> "The failure of enforcement efforts in this area has become a national scandal. In 1983, only half of custodial parents received the full amount of child support ordered; approximately 26% received some lesser amount, and 24% received nothing at all."

Brief for Women's Legal Defense Fund *et al.* as *Amici Curiae* 26 (footnote omitted). The facts of this case illustrate how easily a reluctant parent can evade a child support obligation. Congress recognized the serious problem of enforcement of child support orders when it enacted the Child Support Enforcement Amendments of 1984, Pub.L. 98-378, 98 Stat. 1305. S.Rep. No. 98-387, pp. 5-6 (1984); H.R.Rep. No. 98-527, pp. 30, 49 (1983). The California Legislature responded to the problem by enacting the presumption described in § 1209.5. Now, says petitioner, the California Court of Appeal has sabotaged the California Legislature's effort.

Contempt proceedings often will be useless if the parent seeking enforcement of valid support orders must prove that the obligor can comply with the court order. The custodial parent will typically lack access to the financial and employment records needed to sustain the burden imposed by the decision below, especially where the noncustodial parent is self-employed, as is the case here. Serious consequences follow from the California Court of Appeal's decision to invalidate California's statutory presumption that a parent continues

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to be able to pay the child support previously determined to be within his or her means.

Petitioner asks us to determine as a matter of California law that inability to comply with a support order is an affirmative defense to a contempt charge, so that the burden of persuasion may be placed on the contemnor under *Martin v. Ohio,* 480 U.S. 228 (1987). Petitioner also contends that the Court of Appeal erred in supposing that § 1209.5 shifts the burden of persuasion, rather than merely the burden of production, citing *Lyons v. Municipal Court,* 75 Cal.App.3d 829, 838, 142 Cal.Rptr. 449, 452 (1977); *Oliver v. Superior Court,* 197 Cal.App.2d 237, 242, 17 Cal.Rptr. 474, 476-477 (1961); 4A J. Goddard, California Practice: Family Law Practice § 686 (3d ed.1981);14 Cal.Jur. 3d Contempt §§ 32, 71 (1974); and 6 B. Within, Summary of California Law, Parent and Child § 137 (8th ed.1974). But the interpretation of California law is the province of California courts. I agree with the majority that, for purposes of this decision, we should assume that the California Court of Appeal correctly determined these matters of state law. *Martin v. Ohio, supra; United Gas Public Service Co. v. Texas,* 303 U.S. 123, 303 U.S. 139 (1938). If the Court of Appeal was in error, the California courts may correct it in future cases.

The linchpin of the Court of Appeal's opinion is its determination that the contempt proceeding against respondent was criminal in nature. The court applied what it understood are the federal due process standards for mandatory evidentiary presumptions in criminal cases. *See Ulster County Court v. Allen,* 442 U.S. 140, 442 U.S. 167 (1979) (mandatory presumptions are impermissible unless "the fact proved is sufficient to support the inference of guilt beyond a reasonable doubt"); *Sandstrom v. Montana,* 442 U.S. 510, 442 U.S. 523-524 (1979). This Court has recognized, by contrast, that civil contempt proceedings do not require proof beyond a reasonable doubt, and that the rules governing use of presumptions differ accordingly. In the civil contempt context, we have

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upheld a rule that shifts to the contemnor the burden of production on ability to comply, *United States v. Rylander,* 460 U.S. 752, 460 U.S. 757 (1983), and we have recognized that the contemnor may bear the burden of persuasion on this issue as well, *Maggio v. Zeitz,* 333 U.S. 56, 333 U.S. 75-76 (1948). If the contempt proceeding in this case may be characterized as civil in nature, as petitioner urges, then, under our precedents, the presumption provided in Cal.Civ.Proc.Code Ann. § 1209.5 (West 1982) would not violate the Due Process Clause.

The characterization of a state proceeding as civil or criminal for the purpose of applying the Due Process Clause of the Fourteenth Amendment is itself a question of federal law. *Allen v. Illinois,* 478 U.S. 364 (1986). The substance of particular contempt proceedings determines whether they are civil or criminal, regardless of the label attached by the court conducting the proceedings. *See Shillitani v. United States,* 384 U.S. 364, 384 U.S. 368-370 (1966); *Penfield Co. v. SEC,* 330 U.S. 585, 330 U.S. 590 (1947); *Nye v. United States,* 313 U.S. 33, 313 U.S. 42-43 (1941); *Lamb v. Cramer,* 285 U.S. 217, 285 U.S. 220-221 (1932); *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 221 U.S. 441-443 (1911). Civil contempt proceedings are primarily coercive; criminal contempt proceedings are punitive. As the Court explained in *Gompers:*

> "The distinction between refusing to do an act commanded -- remedied by imprisonment until the party performs the required act; and doing an act forbidden -- punished by imprisonment for a definite term, is sound in principle and generally, if not universally, affords a test by which to determine the character of the punishment."

221 U.S. at 221 U.S. 443. Failure to pay alimony is an example of the type of act cognizable in an action for civil contempt. *Id.* at 221 U.S. 442.

Whether a particular contempt proceeding is civil or criminal can be inferred from objective features of the proceeding and the sanction imposed. The most important indication is whether the judgment inures to the benefit of another party to the proceeding. A fine payable to the complaining party

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and proportioned to the complainant's loss is compensatory and civil. *United States v. Mine Workers,* 330 U.S. 258, 330 U.S. 304 (1947). Because the compensatory purpose limits the amount of the fine, the contemnor is not exposed to a risk of punitive sanctions that would make criminal safeguards necessary. By contrast, a fixed fine payable to the court is punitive and criminal in character.

An analogous distinction can be drawn between types of sentences of incarceration. Commitment to jail or prison for a fixed term usually operates as a punitive sanction because it confers no advantage on the other party. *Gompers, supra,* at 221 U.S. 449. But if a contemnor is incarcerated until he or she complies with a court order, the sanction is civil. Although the imprisonment does not compensate the adverse party directly, it is designed to obtain compliance with a court order made in that party's favor.

> "When the [contemnors] carry 'the keys of their prison in their own pockets,' the action 'is essentially a civil remedy designed for the benefit of other parties, and has quite properly been exercised for centuries to secure compliance with judicial decrees.'"

Shillitani, supra, at 384 U.S. 368 (citations omitted).

III

Several peculiar features of California's contempt law make it difficult to determine whether the proceeding in this case was civil or criminal. All contempt proceedings in California courts are governed by the same procedural rules. Cal.Civ.Proc.Code Ann. §§ 1209-1222 (West 1982 and Supp.1988); *In re Morris,* 194 Cal.63, 67, 227 P. 914, 915 (1924); Wright, Byrne, Haakh, Westbrook, & Wheat, Civil and Criminal Contempt in the Federal Courts, 17 F.R.D. 167, 180 (1955). Because state law provides that defendants in civil contempt proceedings are entitled to most of the protections guaranteed to ordinary criminal defendants, the California courts have held that civil contempt proceedings are quasi-criminal under state law. *See, e.g., Ross v. Superior Court,* 19 Cal.3d 899, 913, 569 P.2d 727, 736 (1977);

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Culver City v. Superior Court, 38 Cal.2d 535, 541-542, 241 P.2d 258, 261-262 (1952); *In re Martin,* 71 Cal.App.3d 472, 480, 139 Cal.Rptr. 451, 455-456 (1977). Therefore, indications that the California Superior Court conducted respondent's hearing as a criminal proceeding do not conclusively demonstrate for purposes of federal due process analysis that respondent was tried for criminal contempt.

Certain formal aspects of the proceeding below raise the possibility that it involved criminal contempt. The orders to show cause stated that "[a] contempt proceeding is criminal in nature" and that a violation would subject the respondent to "possible penalties." App. 18, 21. The orders advised respondent of his right to an attorney. *Ibid.* During the hearing, the trial judge told respondent that he had a constitutional right not to testify. *Id.* at 27. Finally, the judge

imposed a determinate sentence of five days in jail for each count of contempt, to be served consecutively. *See* Cal.Civ.Proc.Code Ann. § 1218 (West 1982) (contempt may be punished by a fine not exceeding $500, or imprisonment not exceeding five days, or both); *cf.* Cal.Civ.Proc.Code Ann. § 1219 (West 1982) (contempt may be punished by imprisonment until an act is performed, if the contempt is the omission to perform the act).

Nevertheless, the substance of the proceeding below and the conditions on which the sentence was suspended reveal that the proceeding was civil in nature. Mrs. Feiock initiated the underlying action in order to obtain enforcement of the child support order for the benefit of the Feiock children. The California District Attorney conducted the case under a provision of the URESA that authorizes him to act on Mrs. Feiock's behalf. Cal.Civ.Proc.Code Ann. § 1680 (West 1982). As the very caption of the case in this Court indicates, the District Attorney is acting on behalf of Mrs. Feiock, not as the representative of the State of California in a criminal prosecution. Both of the provisions of California's

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enactment of the URESA that authorize contempt proceedings appear in a chapter of the Code of Civil Procedure entitled "Civil Enforcement." *Id.* §§ 1672, 1685. It appears that most States enforce child and spousal support orders through civil proceedings like this one, in which the burden of persuasion is shifted to the defendant to show inability to comply. J. Atkinson, Modern Child Custody Practice 556 (1986); H. Krause, Child Support in America 65 (1981); Annot., 53 A.L.R.2d 591, 607-616 (1957 and Supp.1987).

These indications that the proceeding was civil are confirmed by the character of the sanction imposed on respondent. The California Superior Court sentenced respondent to a fixed term of 25 days in jail. Without more, this sanction would be punitive, and appropriate for a criminal contempt. But the court suspended the determinate sentence and placed respondent on three years' informal probation on the conditions that he comply with the support order in the future and begin to pay on the arrearage that he had accumulated in the past. App. 40. These special conditions aim exclusively at enforcing compliance with the existing child support order.

Our precedents indicate that such a conditional sentence is coercive, rather than punitive. Thus in *Gompers,* we observed that civil contempt may be punished by an order that "the defendant stand committed *unless* and until he performs the affirmative act required by the court's order." 221 U.S. at 221 U.S. 442 (emphasis added). In *Shillitani,* we decided that civil contempt could be punished by a prison sentence fixed at two years if it included a proviso that the contemnor would be released as soon as he complied with the court order. 384 U.S. at 384 U.S. 365. In this case, if respondent performs his obligations under the original court order, he can avoid going to jail at all. Like the sentence in *Shillitani,* respondent's prison sentence is coercive, rather than punitive, because it effectively "conditions release upon the contemnor's willingness to [comply]." *Id.* at 384 U.S. 370.

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It is true that the order imposing the sentence does not expressly provide that, *if* respondent is someday incarcerated and *if* he subsequently complies, he will be released immediately. The parties disagree about what will happen if this contingency arises, Tr. of Oral Arg. 44, 45-47, and there is no need to address today the question whether the failure to grant immediate release would render the sanction criminal. In the case before us, respondent carries something even better than the "keys to the prison" in his own pocket: as long as he meets the conditions of his informal probation, he will never enter the jail.

It is critical that the only conditions placed on respondent's probation, apart from the requirement that he conduct himself generally in accordance with the law, are that he cure his past failures to comply with the support order and that he continue to comply in the future. * The sanction imposed on respondent is unlike ordinary criminal probation because it is collateral to a civil proceeding initiated by a private party, and respondent's sentence is suspended on the condition that he comply with a court order entered for the benefit of that party. This distinguishes respondent's sentence from suspended criminal sentences imposed outside the contempt context.

This Court traditionally has inquired into the substance of contempt proceedings to determine whether they are civil or criminal, paying particular attention to whether the sanction

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imposed will benefit another party to the proceeding. In this case, the California Superior Court suspended respondent's sentence on the condition that he bring himself into compliance with a court order providing support for his children, represented in the proceeding by petitioner. I conclude that the proceeding in this case should be characterized as one for civil contempt, and I would reverse the judgment below.

* Unlike the Court, *ante* at 485 U. S. 638-641, I find no ambiguity in the court's sentencing order that hints that respondent can purge his jail sentence by paying off the arrearage alone. The sentencing order suspends execution of the jail sentence and places respondent on probation on the conditions that he both make future support payments at $150 per month and pay $50 per month on the arrearage. App. 40. If respondent pays off the arrearage before the end of his probation period, but then fails to make a current support payment, the suspension will be revoked and he will go to jail. *See People v. Chagolla,* 151 Cal.App.3d 1045, 199 Cal.Rptr. 181 (1984) (explaining that if a court suspends a sentence on conditions, and any condition is violated, the court must reinstate the original sentence).

U.S. Court of Appeals, Tenth Circuit
Walker v. McLain, 768 F.2d 1181 (1985)

Edward John Walker, Petitioner-Appellant, v. Ray McLain, Sheriff of Lincoln County, Oklahoma, Respondent-Apellee

McKAY, Circuit Judge.

The issue in this case is whether an indigent person facing incarceration in a civil contempt action for nonsupport is entitled to have appointed counsel.

The relevant facts are not in dispute. After his divorce from his wife, petitioner was ordered to pay $500 per month in child support. Of this amount, $380 represented the children's share of his monthly social security disability benefits, and $120 represented payments to be made out of petitioner's income. Petitioner's wife has received the $380 each month, but petitioner has never paid the $120 per month additional support obligation. Petitioner claims he is unable to meet this obligation because of indigency. On February 15, 1984, a state trial court found the failure to make support payments to be wilful, held petitioner in contempt, and sentenced him to jail for 90 days, or until he paid $1,000 to purge the contempt. It is undisputed that the trial court did not advise petitioner of any right to appointment of counsel, nor was counsel appointed for him.

The case was originally filed as a habeas corpus action alleging that petitioner's incarceration for civil contempt was illegal because the state trial court had failed to appoint counsel to represent him or to advise him of his right to appointed counsel. The district court denied the petition, and this appeal followed.

The first question that must be addressed is whether the case is moot, since petitioner has served his contempt sentence and is now out of jail. We find this case not to be moot because it falls within the category of cases challenging conduct that is "capable of repetition yet evading review." This doctrine was first enunciated in *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911). In the absence of class action, it is limited to situations where: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975).

The present case meets both of these requirements. Petitioner's contempt sentence was for 90 days, a time that expired long before his case could be reviewed. Respondent conceded at oral argument that 90 days is, to his knowledge, the maximum time served for civil contempt for nonsupport. Secondly, it is likely that petitioner will be subjected to the same conduct again. He asserts that his failure to pay is due to indigency and that as long as his indigency continues he will remain unable to meet his support obligations. There is thus a clear risk that he will once again be held in contempt for nonsupport and again be subjected to imprisonment.

In addition, although petitioner has been released, the contempt order has never been vacated. Since petitioner may suffer collateral consequences flowing from his contempt conviction, his case is not moot. *Carafas v. LaVallee,* 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968). The state may, for example, rely on the finding of contempt in determining child visitation rights or in other child support proceedings. *See Pirrong v. Pirrong,* 552 P.2d 383, 385 (Okla.1976). A habeas corpus challenge is moot "only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction." *Lane v. Williams,* 455 U.S. 624, 632, 102 S.Ct. 1322, 1327, 71 L.Ed.2d 508 (1982) (quoting *Sibron v. New York,* 392 U.S. 40, 57, 88 S.Ct. 1889, 1899, 20 L.Ed.2d 917 (1967)). The possible collateral consequences arising from defendant's still valid contempt conviction save this case "from ending ignominiously in the limbo of mootness." *Ridgway v. Baker,* 720 F.2d 1409, 1411-12 n. 2 (5th Cir.1983) (quoting *Sibron,* 392 U.S. at 55, 88 S.Ct. at 1898) (finding case not to be moot because contempt conviction might be used in separate child support proceedings). Thus, we find the case not to be moot despite petitioner's release from confinement.

The government asserts that petitioner was not entitled to appointed counsel because the contempt proceeding that resulted in his incarceration was a civil rather than a criminal proceeding. We cannot accept such a proposition.

"It is the defendant's interest in personal freedom, and not simply the special sixth and fourteenth amendment right to counsel in criminal cases, which triggers the right to appointed counsel." *Lassiter v. Department of Social Services of Durham County,* 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 *reh. denied,* 453 U.S. 927, 102 S.Ct. 889, 69 L.Ed.2d 1023 (1981). It would be absurd to distinguish criminal and civil incarceration; from the perspective of the person incarcerated, the jail is just as bleak no matter which label is used. In addition, the line between criminal and civil contempt is a fine one, and is rarely as clear as the state would have us believe. The right to counsel, as an aspect of due process, turns not on whether a proceeding may be characterized as "criminal" or "civil," but on whether the proceeding may result in a deprivation of liberty. *Ridgway v. Baker,* 720 F.2d 1409, 1413 (5th Cir.1983).

The case of *Mathews v. Eldridge,* 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976), sets forth the elements to be evaluated in deciding what due process requires: the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and the government's interest, including the fiscal and administrative burdens additional procedures would entail.1 The petitioner's interest in this case is one of the most important protected by our constitution — the interest in personal liberty. The district court rejected petitioner's claim, in part, because petitioner "holds the keys to the prison door," in that he need serve no time in jail if he pays to purge the contempt. Thus, it is argued, petitioner's liberty interest is conditional, and, as in *Gagnon v. Scarpelli,* 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) (probation revocation hearing), and *Morrissey v. Brewer,* 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (parole revocation hearing),2 petitioner's right to appointed counsel is not absolute.

It is true that the defendant's right to appointed counsel diminishes as his interest in personal liberty diminishes. *Lassiter,* 452 U.S. at 26, 101 S.Ct. at 2159. However, petitioner's liberty interest cannot truly be viewed as conditional. If petitioner is truly indigent, his liberty interest is no more conditional than if he were serving a criminal sentence; he does not have the keys to the prison door if he cannot afford the price. The fact that he should not have been jailed if he is truly indigent only highlights the need for counsel, for the assistance of a lawyer would have greatly aided him in establishing his indigency and ensuring that he was not improperly incarcerated. The argument that the petitioner has the keys to the jailhouse door does not apply to diminish petitioner's liberty interest.

The state has an interest in seeing that minor children are supported, but this interest would in no way be undercut by providing counsel to aid the nonsupporting parent in establishing that his failure to pay is not wilful. The state has an interest in ensuring the accuracy of the determination reached in a civil nonsupport action and, as will be discussed, a lawyer will aid in achieving this goal. While the state does have an interest in minimizing the cost of such proceedings, this interest in monetary savings cannot outweigh the strong private interest of the petitioner and the substantial procedural fairness achieved by providing a lawyer for the indigent defendant in a civil contempt proceeding. *See Lassiter,* 452 U.S. at 28, 101 S.Ct. at 2160; *Nordgren v. Mitchell,* 716 F.2d 1335, 1339 (10th Cir.1983).

Finally, the risk of an erroneous deprivation of liberty created by refusing to appoint counsel for the indigent petitioner is high. The courts have long recognized the importance of a lawyer in protecting the right to liberty. *See Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Argersinger v. Hamlin,* 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972); *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). The presence of counsel goes to the very integrity of the fact finding process. As the Supreme Court has noted:

Even the intelligent and educated layman has small and sometimes no skill in the science of law.... He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Powell v. Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 64, 77 L.Ed. 158 (1932). The issues in a proceeding for wilful nonsupport are not so straightforward that counsel will not be of assistance in insuring the accuracy and fairness of the proceeding. This is particularly true where the petitioner is indigent and is attempting to prove his indigency as a defense to wilfulness.

Indeed, because of the importance of counsel in ensuring the integrity of the fact finding process, our preferred course would be to require that counsel be appointed to assist a defendant in proving that he is "indigent" and therefore entitled to counsel. If the defendant were then found to have funds available for securing his own counsel, he could be required to reimburse the government for the cost of the counsel provided at the preliminary indigency determination.3 Unfortunately, however, even criminal defendants are not entitled to assistance

of counsel in their attempts to prove that they are entitled to appointed counsel under the current state of the law. Thus, it would be inappropriate to extend that right to defendants in civil contempt proceedings at this time. However, due process does require, at a minimum, that an indigent defendant threatened with incarceration for civil contempt for nonsupport, who can establish indigency under the normal standards for appointment of counsel in a criminal case, be appointed counsel to assist him in his defense. Our decision is consistent with that of every federal appellate court that has considered this question. *See Sevier v. Turner,* 742 F.2d 262 (6th Cir.1984); *Ridgway v. Baker,* 720 F.2d 1409 (5th Cir.1983) (finding sixth amendment right to counsel); *Nordgren v. Mitchell,* 716 F.2d 1335 (10th Cir.1983) (by implication); *Henkel v. Bradshaw,* 483 F.2d 1386 (9th Cir.1973) (dictum). In addition, the federal courts have uniformly recognized the right to appointed counsel in other types of civil contempt proceedings. *United States v. Anderson,* 553 F.2d 1154 (8th Cir.1977) (contempt for refusing to comply with grand jury summons); *In re Di Bella,* 518 F.2d 955 (2d Cir.1975); *In re Kilgo,* 484 F.2d 1215 (4th Cir.1973); *In re Grand Jury Proceedings: United States v. Sun Kung Kang,* 468 F.2d 1368 (9th Cir.1972).

Petitioner was held in contempt and jailed without the assistance of counsel and without being informed of his right to appointed counsel if indigent. An indigent's right to appointed counsel imposes on the court an obligation to inform him of that right. *See Miranda v. Arizona,* 384 U.S. 436, 473 & n. 43, 86 S.Ct. 1602, 1627 & n. 43, 16 L.Ed.2d 694 (1965). In the absence of such notice, an indigent defendant cannot be said to have waived his right to counsel. While we have no clear indication of whether petitioner, if informed of the right, would have met the standards of financial inability required for appointment of counsel, we need not remand for a determination of that question. As the Supreme Court stated in *Miranda,*

While a warning that the indigent may have counsel appointed need not be given to the person who is known to have an attorney or is known to have ample funds to secure one, the expedient of giving a warning is too simple and the rights involved too important to engage in *ex post facto* inquiries into financial ability where there is any doubt at all on that score.

384 U.S. at 473 n. 43, 86 S.Ct. at 1627 n. 43. In the present case, the very issue in the contempt proceeding was petitioner's alleged inability to pay his support obligations. Clearly there is sufficient doubt concerning his ability to pay a lawyer that failure to warn him of his right to appointed counsel if indigent cannot be considered harmless error. Petitioner's contempt conviction thus was obtained in violation of his due process rights, and cannot stand.

The state may, if it chooses, cite petitioner again for wilful failure to pay child support. The court would then be required to determine whether he meets the standards for appointment of counsel. If he does, counsel must be appointed to represent him. If, with the assistance of counsel, he is unable to prove indigency, it may validly jail him for contempt. It may not, however, rely on a contempt order entered without the assistance of counsel and without notice of the right to appointed counsel.

The judgment is reversed and the case remanded with instructions to grant the writ of habeas corpus and order petitioner's civil contempt order vacated.

Footnotes

1. Petitioner argues that the Mathews analysis is inapplicable because where liberty is at stake a person is presumptively entitled to counsel. Petitioner's Brief at 26-27. However, the language in Lassiter on which he relies does not mean that the Mathews analysis does not apply when personal liberty is at stake. Rather, it indicates that, where personal liberty is not at stake, the court must take a second step in the analysis and weigh the combination of the Mathews factors against a presumption against the right to counsel. Lassiter, 452 U.S. at 27, 101 S.Ct. at 2159. When liberty is at stake, as in this case, the presumption does not come into play, and the court should follow the standard due process analysis.

2. The rule in these cases has since been abrogated by statute. See Baldwin v. Benson, 584 F.2d 953 (10th Cir.1978).

3. Many states have recoupment statutes, as does the Criminal Justice Act of 1964, which governs appointment of counsel in federal criminal cases. The Supreme Court has held that requiring a defendant to reimburse the government does not infringe on the defendant's constitutional right to counsel if the statute is "carefully designed to ensure that only those who actually become capable of repaying the state will ever be obliged to do so." Fuller v. Oregon, 417 U.S. 40, 53, 94 S.Ct. 2116, 2124, 40 L.Ed.2d 642 (1974). There would thus be no constitutional obstacle to requiring reimbursement from those defendants who are found to be financially able to afford counsel.

Clark v. Most Worshipful St. John's Grand Lodge of Ancient Free and Accepted Masons
1947 OK 84, 181 P.2d 229

Case Number: 32573
Decided: 03/18/1947
Supreme Court of Oklahoma

Syllabus

¶0 1. INJUNCTION - CONTEMPT - One knowingly violating injunction guilty of contempt though not party to injunction suit.
The general rule is that one who violates an injunction is guilty of contempt, although not a party to the injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such person.
2. CONTEMPT - In case of civil contempt defendant's guilt need not be established beyond a reasonable doubt.
In the trial of contempt proceedings, civil in nature, it is not essential, in order to sustain a conviction, that the defendant's guilt be established beyond a reasonable doubt. In such case a conviction will be sustained if the guilt of defendant be established by clear and convincing evidence.
3. SAME - Instruction to jury held not undue comment upon weight of evidence.
Record examined. Held, the trial court committed no error in the instructions given to the jury in that it unduly commented upon the weight of the evidence or unduly emphasized certain portions thereof.
4. SAME - Reversal of judgment against certain defendants for lack of evidence.
In the trial of a contempt case where a number of defendants are charged and convicted, and there is a total lack of evidence to sustain the judgment as to some of the defendants, the judgment as to such defendants will be set aside by this court on appeal, with directions that they be discharged.

Appeal from District Court, Creek County; C.O. Beaver, Judge.

Application by Most Worshipful St. John's Grand Lodge of Ancient, Free and Accepted Masons of the State of Oklahoma, for citation for contempt of court in violating injunction. From a judgment finding them guilty of contempt, L.C. Clark, Mrs. L.C. Clark, Polly Ann Spencer, Aaron Jackson, and Turner Spencer appeal. Affirmed as to defendants L.C. Clark, Mrs. L.C. Clark, and Aaron Jackson, and reversed as to defendants Polly Ann Spencer and Turner Spencer.

J.B. Champion and Wilson Wallace, both of Ardmore, for plaintiffs in error.

Bruce & Rowan, of Oklahoma City, and Amos T. Hall, of Tulsa, for defendants in error.

PER CURIAM.

¶1 This is an appeal by L.C. Clark, Mrs. L.C. Clark, Polly Ann Spencer, and Aaron Jackson from a judgment of the district court of Creek county adjudging them guilty of contempt of court.

¶2 It appears that on the 9th day of March, 1943, the Most Worshipful St. John's Grand Lodge, Ancient, Free and Accepted Masons obtained a judgment perpetually enjoining the Most Worshipful St. Joseph Grand Lodge, Ancient Free and Accepted Masons, Colored, and Mount Olive Grand Chapter, Order of the Eastern Star, Colored, and Daughters of the Sphinx, Colored, enjoining them, their officers, agents, servants, members and all persons acting under and through them from operating as a Grand Lodge of Masons, from organizing subordinate lodges, from using the descriptive name, Masons, Masonic Lodge or Masonic Grand Lodge, from wearing and exhibiting the badges, emblems and insignia similar to those used by plaintiff; and from using a name or names so nearly resembling the name of plaintiff as to be a colorable imitation thereof and calculated to deceive the public. The judgment granting the injunction was affirmed by this court on appeal. Most Worshipful St. Joseph Grand Lodge et al. v. Most Worshipful St. John's Grand Lodge et al., 194 Okla. 434, 152 P.2d 378. The defendants herein were not, however, personally made parties to the injunction proceeding nor are they personally mentioned or enjoined in the judgment.

¶3 Plaintiff in the injunction suit on the 11th day of May, 1945, filed an application against the defendants for citation for contempt. The application, after alleging the granting of the permanent injunction above set forth and reciting the terms thereof, further states that defendants at the time the injunction was granted were officers and members and agents of the St. Joseph Grand Lodge and were also members of subordinate lodges organized under its jurisdiction. It is also alleged that after the granting of the injunction defendants continued to do the things they were enjoined from doing by the judgment granting the injunction. The application further states:

> "Plaintiff further states that the said defendants in order to evade the terms and provisions the force and effect of the said permanent injunction have organized another Grand Lodge and other lodges, and are holding themselves out as a Grand Lodge, subordinate lodges, officers and representatives of the Masonic order; that the renaming of the Grand Lodge was a mere subterfuge to evade the force and effect of the solemn judgment of the court and the said personal defendants are the same persons who were officers and representatives of the enjoined society."

¶4 Upon this application a citation was issued and served upon each of the defendants.

¶5 Defendants in answer to the citation generally and specially denied all the allegations contained in the application and demanded a jury trial. This request was granted and the case tried to a jury, resulting in a verdict finding defendants guilty of contempt as charged. Judgment was rendered upon the verdict assessing a fine against defendant L.C. Clark in the sum of $200, and a fine of $100 against each of the other defendants.

¶6 Defendants first contend that since they were not personally made parties defendant to the injunction proceeding and were not personally named in the judgment granting the injunction, they cannot be held in contempt of court although they violated the terms of the injunction. This conclusion does not necessarily follow. The judgment enjoined the officers, agents, servants and members of the St. Joseph Grand Lodge and the Mount Olive Grand Chapter and members and subordinate lodges from doing the things therein mentioned as well as the lodges themselves. The lodges could only act by and through their officers, members and agents. If, therefore, defendants as officers, members or agents of defendant lodges, with knowledge that an injunction had been granted and the conditions thereof, wilfully violated its terms they may be held in contempt of court to the same extent as though they had been personally named in the injunction proceeding. In vol. 17, C.J.S. p. 47, § 33, it is said:

> "All persons who interfere with the proper exercise of a court's judicial functions, whether parties or strangers are punishable for contempt. Accordingly, one participating in the commission of acts constituting a contempt, or who conspires with others to commit such acts, or who procures the commission by another of such an act, is also guilty of contempt. . . .
>
> ". . . Strangers who have knowledge of an injunction, and who are the servants or agents of the person against whom it is directed, or who act in collusion or combination with the party enjoined, are punishable for contempt of the injunction."

¶7 At page 49, section 34, it is stated:

> "It is usual, in an order directed against the corporation, to lay the restraint or command, not only on the corporation itself, but also on its officers, agents, and servants, so that in the case of its violation not only the corporation itself is amenable to punishment, but also its officers, agents, and servants, whether parties to the proceeding or not, provided they have knowledge of the terms of the order and disobey it wilfully. Even though a judgment decree, or order is addressed to the corporation only, the officers, as well as the corporation itself, may be punished for contempt for disobedience to its terms, at least if they knowingly disobey the court's mandate, since a lawful judicial command to a corporation is in effect a command to the officers."

¶8 In vol. 15 A.L.R. p. 387, the author says:

> "The general rule is that one who violates an injunction is guilty of contempt, although he is not a party to the injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such a person."

¶9 The authorities appearing in the annotations amply support the above statement.

¶10 Defendants further contend that they should have been discharged for the reason that after the injunction was granted the lodges did not operate under the name of St. Joseph Grand Lodge or Mount Olive Grand Chapter. The evidence shows that after the judgment granting the injunction was affirmed by this court the use of the names St. Joseph Grand Lodge and Mount Olive Chapter was discontinued; that the lodges were reorganized and that new charters were procured and taken in the names of Mount Mariah Grand Lodge and Queen Esther Chapter and that in some instances the names and number of subordinate lodges were changed. The evidence is undisputed that while defendants changed the names of their lodges they continued to operate as before; that they continued to teach the same principles of Masonry; that the new organizations consisted of substantially the same members; they continued to use the descriptive name Mason and Masonic Lodge; they kept using the same signs, grips, insignia and equipment and continued to operate in the same manner as they did prior to the granting of the injunction. The only change made by the lodges in reorganization was to change the names under which they conducted the various lodges. Defendants assert that since the evidence discloses that after the granting of the injunction they no longer operated under the names of St. Joseph Grand Lodge and Mount Olive Grand Chapter, but operated under entirely different names, it cannot be said that they have violated any terms of the injunction. This contention cannot be sustained. Defendants could not avoid or escape the force and effect of the injunction by merely changing the names of the organizations. John A. Bell Grand Lodge, Colored Fraternal Organizations, v. Most Worshipful St. John's Grand Lodge A. F. & A. M. of Okla., 89 Okla. 112, 214 P. 114.

¶11 Defendants further contend that the judgment convicting them of contempt cannot be sustained for the reason that the evidence fails to show that they personally had notice or knowledge of the granting of the injunction or the terms and conditions thereof and that the evidence also fails to show that they personally violated its terms. This contention we think well taken as to the defendants Polly Ann Spencer and Turner Spencer. The evidence fails to show that either of these defendants were present when the injunction suit was tried or that they had any notice or knowledge of the granting of the injunction; nor does the evidence show the defendant Polly Ann Spencer in any manner violated the terms and conditions of the injunction. The evidence affirmatively shows that defendant Turner Spencer was neither an officer nor member of St. Joseph Grand Lodge at the time the injunction was granted. He was, however, at that time a member and took active part in his local lodge. He testified that he was not present at the time the injunction suit was tried and that he had no notice or knowledge that an injunction had ever been granted. There is no evidence to the contrary. There is a total lack of evidence to sustain the judgment as against these defendants. As to the other defendants, their guilt is established by their own evidence. They admitted that they were present in court at the time the injunction was granted and the evidence is sufficient to sustain a finding that they were familiar with the terms and conditions thereof. They further admitted that after the injunction was granted they discarded the use of the names St. Joseph Grand Lodge and Mount Olive Grand Chapter; that they thereafter reorganized and took out new charters in the names of Mount Mariah Grand Lodge and Queen Esther Chapter. They also admitted that they thereafter continued to operate as before and as heretofore stated in the opinion. Defendant L.C. Clark admitted that he was Grand Master of St. Joseph Grand Lodge; that he verified the answer in the injunction proceedings; that he was present at the time of the trial of the injunction suit, knew

that an injunction had been granted and knew the terms and conditions thereof. He further testified that upon reorganization of the lodge he became Grand Master of Mount Mariah Grand Lodge.

¶12 Defendant Aaron Jackson admitted that he was Deputy Grand Master of the St. Joseph Grand Lodge at the time the injunction was granted; that upon the reorganization he remained a member of the Mount Mariah Grand Lodge and thereafter actively participated in the conduct of the subordinate lodge of which he was a member and which was operated under the jurisdiction of the Mount Mariah Grand Lodge. He further testified that he was present in court at the time the injunction suit was tried and knew that the injunction had been granted.

¶13 Mrs. L.C. Clark in her testimony admitted that she was Grand Chaplain of the Mount Olive Chapter at the time the injunction was granted; that upon reorganization she became Grand Matron of the Queen Esther Chapter and that she thereafter actively participated in the operation thereof; that she was present when the injunction suit was tried and she knew that the injunction had been granted.

¶14 We think the evidence clearly establishes that these defendants as officers of their various lodges had notice and knowledge of the granting of the injunction and knew the terms and conditions thereof and wilfully violated its terms and are therefore guilty of contempt of court.

¶15 Defendants further contend that the court committed error in failing to charge the jury that before they could convict the defendants they must be satisfied of their guilt beyond a reasonable doubt. They cite authorities which they assert support this contention. This rule, however, applies only to contempts which are classified as criminal. Vol. 17 C.J.S. p. 113. The rule has no application to civil contempts. In vol. 17 C.J.S. p. 114 it is said:

> "In cases of civil contempt it has been held that the proof need not be beyond a reasonable doubt; and, while a preponderance of the evidence, as in other civil cases, has been held sufficient, there is authority to the effect that a bare preponderance is not enough."

¶16 In the case of Morgan v. National Bank of Commerce of Shawnee, 90 Okla. 280, 217 P. 388, we said:

> "In the trial of the accused for indirect contempt in a proceeding civil in its nature, the prosecution must prove the contemnor guilty of the acts constituting the contempt by clear and convincing evidence." The present proceeding was brought to enforce and protect private rights, not to vindicate the dignity of the court, and is civil in nature and is governed by rules pertaining to civil causes.

¶17 Since we conclude that the contempt charged in the instant case is a civil contempt, the trial court committed no error in failing to charge the jury that defendants could not be convicted unless their guilt be established beyond a reasonable doubt.

¶18 The trial court at the request of defendants instructed the jury that the burden of proof was upon plaintiffs to establish the guilt of the defendants by clear and convincing evidence. In instruction No. 4, however, the court also charged the jury that it would be their duty to convict the defendants if their guilt was established by a preponderance of the evidence. Defendants have excepted to and criticized this instruction. While the instructions appear somewhat contradictory in this respect, since, however, as heretofore stated, defendants Clark, Mrs. Clark, and Aaron Jackson are guilty under their own evidence, the judgment will not be reversed because of this contradiction in the instruction.

¶19 Defendants also criticize instruction No. 3. It is contended that the court in this instruction unduly comments upon the weight of the evidence and places undue emphasis on certain portions thereof. We have carefully examined this instruction and reach the conclusion that it is not subject to such criticism. The court committed no error in giving this instruction.

¶20 Pecola McCloud also appears as a party appellant on the briefs of the parties. The record shows that he was made a party defendant in the contempt proceeding and was also found guilty. The record further discloses, however, that he has not appealed from the judgment and sentence against him. He was not made a party to the motion for new trial; he filed no supersedeas bond; he is not mentioned as party appellant in the petition in error. We cannot, therefore, review the judgment as against him.

¶21 The judgment is affirmed as to the defendants L.C. Clark, Mrs. L.C. Clark, and Aaron Jackson and reversed as to defendants Polly Ann Spencer and Turner Spencer and the cause remanded as to them with directions that they be discharged.

¶22 HURST, C.J., DAVISON, V.C.J., and RILEY, OSBORN, BAYLESS, WELCH, and GIBSON, JJ., concur.

Davis v. Davis
1987 OK CIV APP 41, 739 P.2d 1029

Case Number: 65392
Decided: 06/02/1987
NANCY JACKSON DAVIS, APPELLEE, v. HENRY T. DAVIS, APPELLANT.

Appeal from the District Court of Cleveland County; Alan C. Couch, Judge.

¶0 Appellant seeks review of Trial Court's adjudication of Appellant's guilt on citation for contempt of divorce decree ordering payment of child support. At trial before the bench on Appellee's citation of contempt directed at Appellant, evidence showed that Appellant husband was in arrears on child support obligation at time of trial in excess of $5,000.00. Appellant attempted to excuse his disobedience of the child support obligation by showing his ineptitude at managing his own financial affairs. Trial Court found Appellant guilty of contempt, sentenced him to ninety (90) days in county jail, and reduced arrearage of $5,106.00 to judgment. Appellant seeks review.

AFFIRMED AS MODIFIED.

Richard E. Elsea, Tulsa, for appellant.
Richard B. Talley, Talley, Perrine, Smith & Ferrar, Norman, for appellee.

BAILEY, Judge

¶1 This case comes on for review of the Trial Court's determination of Appellant's guilt on a citation of contempt for failure to obey child support obligations created by decree of divorce. Appellee wife cited Appellant husband for contempt when husband fell seriously in arrears in his ordered child support payments. At trial before the bench on the contempt citation, the arrearage was shown to amount to approximately $5,000.00. Husband attempted to excuse his failure to pay child support by showing his ineptitude in managing his own financial affairs. The Trial Court found that Appellant had violated the terms of the divorce decree in reference to the child support obligation "plain and simple," and found Appellant guilty of contempt, sentencing him to ninety (90) days in county jail. The Trial Court also reduced the arrearage to judgment in the sum of five thousand one hundred and six dollars ($5,106.00). From these judgments and sentence, Appellant seeks review.

¶2 In his first two propositions of error, Appellant asserts that his adjudication of guilt on the contempt citation must not stand, as Appellant was not shown to have "willfully" disobeyed the court's order with regard to non-payment of support by "clear and convincing" proof. A party may be adjudged guilty of indirect contempt where it is shown that the contemner "willfully" disobeyed an "order lawfully issued or made by [the] court." 21 O.S. 1981 § 565 . The proof of the disobedience must be clear and convincing. Hadley v. Hadley, 129 Okl. 219, 280 P. 1097 (1928); Whillock v. Whillock, 550 P.2d 558 (Okl. 1976). In defense, it may be shown that the contemner was unable to comply with the court's order and that an honest effort was made to

comply, which showing will excuse non-compliance. Huchteman v. Huchteman, 557 P.2d 427 (Okl. 1976); Johnson v. Johnson, 319 P.2d 1107 (Okl. 1957). Stated another way, if non-compliance with the court's order is through no fault of the contemner, then non-compliance with the orders of the court is excused. Garroutte v. Garroutte, 455 P.2d 306 (Okl. 1969).

¶3 Under these authorities and the facts adduced at trial on the contempt charge, there is no doubt that Appellant's disobedience of the court's orders relative to child support was "willful" within the meaning of 21 O.S. § 565 . "Willful" is defined as something done "with the specific intent to fail to do something the law requires to be done." Black's Law Dictionary (5th Ed., 1979). In the case at bar, Appellant admitted he knew that he was under court order to pay his ex-spouse support. Further, it was shown that Appellant had, during the period in which he made reduced or no support payments, acquired a new residence, new furniture and a new car. These acts of Appellant evince a clear and willfull disregard for the court's orders. That Appellant would assert his apparent inability to deal with his own finances as grounds for non-compliance is clearly spurious, and Appellant's ineptitude in dealing with his checking account will not excuse his willful failure to comply with his child support obligations.

¶4 Appellant also raises the error of the Trial Court in sentencing him to serve ninety (90) days in jail for his failure to comply with the lawful orders of the court as excessive and contrary to law. Initially, we recognize that the power to punish for contempt is largely within the discretion of the court. 17 C.J.S., Contempt, § 57; McAllum v. McAllum, 200 Okl. 356, 194 P.2d 863 (1948). In divorce actions, the purpose underlying citations for contempt and confinement therefor for violations of the support obligations contained in divorce decrees is mainly coercive, not punitive. Johnson, supra. In that regard, it has been said that one confined for contempt holds the "keys" to his own freedom by performing the act ordered. Johnson, supra; Wells v. Wells, 46 Okl. 88, 148 P. 723 (1915). Further, and while we believe the punishment assessed was well within the prescribed limits of 21 O.S. 566, and there has been shown no abuse of discretion by the court in the imposition of this sentence, we believe that the order of confinement should have been couched in terms that would allow Appellant to purge himself of the contempt by payment of the arrearage. Huchteman, supra; Johnson, supra; Wells, supra. For these reasons, we hold that the Trial Court's order of confinement for ninety (90) days should be modified so that, in the event Appellant purges himself of the contempt by payment of all arrearages, Appellant should be discharged from the jail sentence. Tisdell v. Tisdell, 363 P.2d 277 (Okl. 1961). In the event Appellant fails to so purge himself of the contempt, he should serve the entire sentence.

¶5 The orders of the Trial Court are therefore AFFIRMED AS MODIFIED.

¶6 **HANSEN, P.J., and HUNTER, J., concur.**

Henry v. Schmidt
2004 OK 34, 91 P.3d 651

Case Number: 97705
Decided: 05/18/2004
THE SUPREME COURT OF THE STATE OF OKLAHOMA
JENNIFER L. HENRY, Plaintiff/Appellant, v. ARNOLD J. SCHMIDT, Defendant/Appellee.

ON CERTIORARI FROM THE COURT OF CIVIL APPEALS, DIVISION III

¶0 In a custody modification proceeding, the defendant filed a motion for indirect contempt against the plaintiff. The district court found the plaintiff guilty of two counts of indirect contempt, fined the plaintiff $500.00 on each count, and sentenced the plaintiff to 15 days in the Osage County Jail on each count. The district court granted defendant's motion to assess attorney fees against the plaintiff. The Court of Civil Appeals affirmed the district court's judgment. This Court granted certiorari.

COURT OF CIVIL APPEALS' OPINION VACATED IN PART AND
LEFT UNDISTURBED IN PART;
TRIAL COURT'S JUDGMENT REVERSED;
CAUSE REMANDED.

James R. Elder, Tulsa, Oklahoma, for the Appellant.
Patti J. Palmer & Lamirand, Pawhuska, Oklahoma, for the Appellee.

HODGES, J.

I. ISSUE

¶1 The issue before this Court is whether a sentence and a fine can be imposed for indirect contempt without allowing the accused to purge the sentence.1 We find the trial court was within its statutory authority to impose a sentence and fine for indirect contempt. However, the trial court erred in using a clear-and-convincing evidence standard rather than beyond a reasonable doubt and in not affording the defendant her right to a jury trial.

II. FACTS

¶2 In the underlying proceeding to establish paternity, the court adjudicated Arnold Schmidt to be the father of his and Jennifer Henry's child (the child), awarded custody to Henry, and awarded visitation to Schmidt. Later Schmidt filed a motion to modify custody. A trial was set for April of 2001. After taking testimony for three days, the court continued the trial until 9:30 a.m. on May 15, 2001. When the parties appeared before the court on May 15, 2001, Henry requested a continuance. She requested that she be allowed to attend a ceremony at which the child was to receive an award. After Henry promised that she would return, the judge continued the trial until 1:00 p.m. About 12:45, Henry called the judge's bailiff stating that she had car

problems between Hominy and Wynona and that she would be in court as soon as her car cooled. She said that she had spoken to a Wynona police officer about the car problems.

¶3 Schmidt filed a motion for contempt against Henry. In the motion, Schmidt asked that Henry be assessed attorney fees, that she be fined, and that the court impose a term of imprisonment. A hearing was held on the motion for contempt at which both Schmidt and Henry appeared.

¶4 Mr. Janeway, Henry's employer, testified that, on May 15, Henry returned to work, went to lunch with customers, and was at work all afternoon. Mr. Teal, the Wynona officer on duty, testified that he was the only officer on duty, that he patrolled the highway between Hominy and Wynona, that he did not remember assisting anyone with car problems, that no records indicated that he had assisted anyone, and that he did not recognize Henry. Schmidt's attorney could not find Henry when she traveled the road between Hominy and Wynona looking for her.

¶5 On May 16, the day that the trial was scheduled to reconvene, Henry's family called to say that she was ill. A doctor's office faxed the judge a statement that Henry could return to work on May 18, 2001. On May 18, 2001, Henry was served with notice that the trial was reset for May 24th and May 25th, 2001.

¶6 Schmidt hired private investigators to observe Henry's activities on May 23rd through May 25th. The investigators testified that on May 24th, Henry went to several stores where she shopped. After shopping at the grocery store, Henry loaded the groceries into the trunk of the car. Later in the day, Henry, her husband, and the child went to the home of Henry's father and then to a motor home at Walnut Creek State Park.

¶7 On the afternoon of May 25th, Henry and the child returned to the camp site by boat. Henry retrieved a large bag of charcoal from under the motor home. The investigators' pictures of Henry confirm these activities. Even though Henry continued to maintain that she was ill on May 24th and 25th and that she was confined to bed for most of the time, her testimony about her activities was conflicting.

¶8 The court took judicial notice that Henry had failed to appear in court for previous hearings. Bench warrants were issued on several occasions because Henry had failed to appear in court. Further, Henry admitted that she failed to appear in court in a Tulsa County felony case.

¶9 The trial court found by clear-and-convincing evidence that Henry was guilty of two counts of contempt, ordered her to pay a $500 for each count, ordered her to serve 15 days in the Osage County Jail, and ordered her to reimburse Schmidt $3,000 in attorney fees. The Court of Civil Appeals affirmed. This Court granted certiorari.

III. ANALYSIS

¶10 The only issue preserved for this Court's review is whether the trial court erred in assessing a fine and ordering Henry to serve 30 days in the Osage County jail. Henry argues that she should have been allowed to purge the contempt, but since purge was impossible at the time of

the contempt order, incarceration was unauthorized. Henry argues for a dichotomy equating criminal contempt with direct contempt and civil contempt with indirect contempt. A dichotomy which is inconsistent with Oklahoma's statutory scheme.

¶11 Contempt as civil and criminal was a concept of the common law distinguished by procedural differences.2 Oklahoma has abolished all common law forms of contempt.3 In Oklahoma, contempt is governed by its constitution and statutes,4 in which the legislature did not adopt the common law distinction between civil and criminal contempt.5 Rather, contempt proceedings are sui generis.6 Oklahoma's constitution dictates that the legislature is to pass laws defining contempt and regulating the proceedings and punishments.7 Constitutionally, a person accused of contempt must be given an opportunity to be heard.8

¶12 The legislature divided contempt into direct and indirect.9 Direct contempt is an act committed in the presence of the court.10 Indirect contempt "is the willful disobedience of any process or order lawfully issued or made by [the] court. . . ."11 Because Henry refused to appear in court as ordered, her acts were indirect contempts.

¶13 The punishment for indirect contempt may be remedial to coerce the defendant's behavior, or it may be penal to punish the defendant for disobedient or disorderly behavior.12 The legislature has provided for a fine and imprisonment as punishment for both direct contempt and indirect contempt.13 If the imprisonment is for a definite period of time, its purpose is penal and cannot be shortened by compliance or by a promise to comply with a court order.14 If the disobedience is a completed act, then the imprisonment must be penal rather than coercive.15 In contrast, if the purpose is to coerce the defendant to comply with a court order, purge may be properly allowed and sometimes statutorily required.16 The statutes do not make a distinction between penal and coercive punishment based on the style of the case or who initiates the proceedings.17

¶14 In the present case, the trial court ordered Henry imprisoned for 30 days total. The imprisonment was punitive with no right to purge and was within the trial court's statutory authority as was the fine.18

¶15 Henry argues that she did not have timely notice that she might be imprisoned. This is simply not true. The application for contempt prays that Henry "be adjudged guilty of indirect contempt, and punished by fine or imprisonment, and [Schmidt] be awarded his reasonable attorney's fee and costs, and all other and further relief to which he may be entitled. . . ."

¶16 Henry relies primarily on Morgan v. National Bank of Commerce of Shawnee.19 Since this Court reached its decision in Morgan, Oklahoma's contempt jurisprudence has evolved to better reflect its statutory scheme. The civil and criminal dichotomy articulated in Morgan is not a correct statement of the statutory law but reflects the remains of the common-law notion of contempt proceedings. To the extent that Morgan is inconsistent with this opinion, it is overruled.

¶17 In Board of Governors of Registered Dentists of Oklahoma v. Cryan,20 this Court addressed a similar issue. This Court rejected the claim that "the court may only act remedially in an indirect contempt situation."21 In Cryan, the legislature authorized the imposition of a penal fine and term of imprisonment for indirect contempt for a person guilty of violating an injunction prohibiting the unlicensed practice of dentistry. Similarly, the legislature has authorized the court to impose a fine and term of imprisonment for indirect contempt for wilfully disobeying a court's orders.22 This punitive measure is not compromised by an award of attorney fees or other sanctions.23

¶18 Even though a penal sanction may be imposed for indirect contempt, it may not be imposed absent federal constitutional protections.24 In Hicks v. Feiock,25 a parent failed to make court ordered child support payments. He was sentenced to 25 days suspended sentence and placed on probation.26 He was also ordered to make payments on the arrearage.27 The trial court's order was unclear whether satisfaction of the arrearage would purge the sentence.28 Statutorily the state placed an element of the offense, the ability of make the required child support payments, on the parent.29 The United States Supreme Court held if the payment of the arrearage purged the sentence, then the statute was constitutionally valid and the constitutional protections attaching to criminal protections did not apply.30 However, if the payments did not purge the sentence, (1) the proceeding was penal, (2) federal constitutional protections attached, and (3) the state was constitutionally required to show beyond a reasonable doubt the parent's ability to make the required payments.31

¶19 Federal constitutional protections attaching to an indirect contempt proceeding wherein penal sanctions are imposed include the right to a jury trial32 and proof of the offense beyond a reasonable doubt.33 In an indirect contempt proceeding with the imposition of penal sanctions, a defendant may waive his constitutional right to a jury trial only upon "a clear showing that such waiver was competently, knowingly and intelligently given."34 "A record showing an intelligent, competent and knowing waiver of a fundamental right is mandatory. Anything less is not a waiver."35

¶20 In the present case, Henry was not afforded the required constitutional protections before penal sanctions were imposed. There is no showing of a valid waiver of Henry's fundamental right to a jury trial. Further, the trial court based its decision on a clear-and-convincing evidence standard. The trial court was authorized to impose remedial or coercive sanctions with the right to purge based on a clear-and-convincing standard. Because penal sanctions were imposed, the burden of persuasion standard was proof beyond a reasonable doubt.36

IV. CONCLUSION

¶21 We hold when a trial court imposes a penal sanction in an indirect contempt proceeding, the defendant is entitled to the constitutional protections afforded in criminal proceedings. This holding does not apply to indirect contempt proceedings wherein only remedial or coercive sanctions are imposed and where the evidentiary burden of persuasion remains clear and convincing.37 This matter is remanded to the trial court with instructions to afford Henry a jury trial and to find proof beyond a reasonable doubt before penal sanctions are imposed. The Court

of Civil Appeals' opinion is vacated to the extent that it addresses the correctness of imposing a fine and of a term of imprisonment. Because the issue of the attorney fees addressed by the Court of Civil Appeals were not raised in the petition for certiorari, the remainder of the Court of Civil Appeals' opinion is left undisturbed.

COURT OF CIVIL APPEALS' OPINION VACATED IN PART AND LEFT UNDISTURBED IN PART; TRIAL COURT'S JUDGMENT REVERSED; CAUSE REMANDED.

¶22 Watt, C.J., Hodges, Lavender, Hargrave, Kauger, Boudreau, Winchester, Edmondson, JJ., concur.

¶23 Opala, V.C.J., concurs in result.

FOOTNOTES

1 In this context, to purge means to clear a contempt. Black's Law Dictionary 1111 (5th ed. 1979).

2 Harper v. Shaffer, 1988 OK 45, ¶ 2, 755 P.2d 640, 643-44 (1988) (Opala, J., dissenting); Ronald L. Goldfarb, The Contempt Power 49 (1963); see Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 444-45 (1911).

3 Watson v. State ex rel. Michael, 1989 OK 116, ¶ 5, 777 P.2d 945, 946-47.

4 Id.; Okla. Const. art. 2, § 25, Okla. Stat. tit. 21, §§ 565-67 (2001).

5 Okla. Stat. tit. 21, §§ 565-67 (2001).

6 Board of Governors of Registered Dentists of Oklahoma v. Cryan, 1998 OK 55, ¶ 7, 638 P.2d 437, 438.

7 Okla. Const. art. 2, § 25. Oklahoma's constitution does not prohibit a punitive sentence for indirect contempt. Cryan, 1998 OK 55 at ¶ 7, 638 P.2d at 438-39.

8 Okla. Const. art. 2, § 25.

9 Okla. Stat. tit. 21, § 565 (2001).

10 Id.

11 Id.

12 Hicks v. Feiock, 485 U.S. 624, 631-32 (1988); Goldfarb, supra note 1, at 56-58.

13 Okla. Stat. tit. 21, § 566 (2001).

14 Gompers, 221 U.S. at 442-43.

15 Id.; Goldfarb, supra note 1, at 57.

16 Okla. Stat. tit. 21, § 566(B)(1) (2001) (requiring the court to set a purge fee in cases "of indirect contempt for the failure to comply with an order for child support, other support, visitation, and other orders regarding minor children").

17 see Okla. Stat. tit. 21, §§ 565-67 (2001).

18 Id. at § 566.

19 1923 OK 240, 217 P. 388.

20 1981 OK 52, 638 P.2d 437.

21 Id. at 1981 OK 52, ¶ 7, 638 P.2d at 438-39.

22 Okla. Stat. tit. 21, §§ 565-67 (2001).

23 Gibbs v. Easa, 1998 OK 55, ¶¶ 12-13, 998 P.2d 583, 586-87. Henry's petition for certiorari did not raise the issue of whether attorney fees should have been awarded. Thus, the issue is not addressed here, and the part of the Court of Civil Appeals' opinion addressing the issue is left intact.

24 Hicks, 485 U.S. at 632.

25 Id. at 624

26 Id. at 639.

27 Id.

28 Id.

29 Id. at 637.

30 Id. at 637-38.

31 Id. at 637-38.

32 Okla. Const. art. 2, § 25; Okla. Stat. tit. 21, 567 (2001).

33 Hicks, 485 U.S. at 632.

34 Valega v. City of Oklahoma City, 1988 OK CR 101, § 5, 755 P.2d 118.

35 Id.; Taylor v. Illinois, 484 U.S. 400, 418 n. 24 (1988).

36 Hicks, 485 U.S. at 9. Article 2, section 7 of the Oklahoma's constitution provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Due process protections encompassed within article 2, section 7 of Oklahoma's constitution are coextensive with those of its federal counterpart. Presley v. Board or County Comm'rs, 1999 OK 45, ¶ 8, 981 P.2d 309, 312. Therefore, in addition to article 2, section 25 of Oklahoma's constitution, article 2, section 7 provides a bona fide, separate, adequate, and independent ground for this Court's decision. see Michigan v. Long, 463 U.S. 1032, 1042 (1983).

37 All defendants in indirect contempt proceedings have a statutory right to be tried by a jury. Okla. Stat. tit. 21, § 567 (2001).

Whillock v. Whillock
1976 OK 51, 550 P.2d 558

Decided: 04/20/1976
SUPREME COURT OF OKLAHOMA
ARTHUR FAYE WHILLOCK, APPELLANT, v. MACKIE JOE WHILLOCK, APPELLEE.

Appeal from District Court of Tulsa County; Robert Caldwell, Trial Judge.

¶0 Appellant was found guilty in trial court, upon jury verdict, of indirect contempt of court for refusal to make alimony payments pursuant to court order. Trial court sentenced him to serve one year in county jail. He appeals. AFFIRMED.

Terry L. Meltzer, Tulsa, for appellant.

Morehead, Savage, O'Donnell, McNulty & Cleverdon, by C.B. Savage, Tulsa, for appellee.

BERRY, Justice.

[550 P.2d 559]

¶1 This is an appeal by Arthur Faye Whillock, appellant, from judgment entered upon jury verdict finding him guilty of indirect contempt of court. Trial court sentenced him to serve one year in the Tulsa County jail.

¶2 The record shows on November 5, 1973, appellant and his wife Mackie Joe Whillock, appellee, were granted a divorce in District Court of Tulsa County, Oklahoma. The decree required appellant to pay alimony in monthly installments of $400.00 each. The decree made further provision that alimony payments would terminate on death or remarriage of appellee.

¶3 On May 31, 1974, appellant filed motion to terminate alimony payments on ground appellee had remarried. Hearing was held and trial court found that appellee had not remarried. Thus, appellant's motion to terminate alimony payments was denied. No appeal was taken from this ruling.

¶4 Thereafter, on September 25, 1974, appellee filed application for contempt citation alleging appellant had willfully refused to make alimony payments and was in arrears in sum of $1,080.00. Contempt citation was thereupon issued resulting in jury verdict and sentencing.

¶5 In this Court appellant first contends trial court erred in refusing to allow him to present the same evidence to jury that appellee had presented as to her remarriage.

¶6 21 O.S. 1971 § 565 , defines direct and indirect contempt. Indirect contempt is defined as:

> "* * * Indirect contempts of court shall consist of wilful disobedience of any process or order lawfully issued or made by court; resistance wilfully offered by any person to the execution of a lawful order or process of a court."
>
> 21 O.S. 1971 § 567 , provides in part:
>
> "In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury."

¶7 A civil contempt is the willful violation of an order to do something ordered by the court for the benefit of opposing party. Blanchard v. Bryan, 83 Okl. 33, 200 P. 444.

¶8 Section 565 above requires the order or process disobeyed to be lawful. The lawfulness of the order is determined by whether the court had jurisdiction to so act. H.F. Wilcox Oil & Gas Co. v. Walker, 169 Okl. 33, 35 P.2d 893.

¶9 Disobedience of an order made by a court within its jurisdiction and power is a contempt, although the order may be clearly erroneous, or was improvidently granted or irregularly obtained. Ex parte Thompson, 94 Okl.Cr. 344, 235 P.2d 955.

¶10 In instant action, trial court had proper jurisdiction to enter award for alimony payments. Likewise, trial court had proper jurisdiction to overrule appellant's motion to terminate alimony payments.

¶11 12 O.S. 1971 § 1289 provides in part:

> "* * * The Court shall also provide in the divorce decree that any such support payments shall terminate after remarriage of the recipient, unless the recipient can make a proper showing that said support is still needed and that circumstances have not rendered payment of the same inequitable; provided, however, that unless the recipient shall commence an action for such determination within ninety (90) days of the date of such remarriage, the Court shall, upon proper application, order the support judgment terminated and the lien thereof discharged." [emphasis supplied]

¶12 Appellant did not appeal from order of trial court overrruling his motion to terminate alimony payments. Instead, he ignored the order and refused to make alimony payments.

¶13 The proper manner for challenging correctness of an adverse ruling is by appeal and not by disobedience. See 17 Am.Jur.2d Contempt § 47 and 12 ALR2d 1107.

[550 P.2d 560]

¶14 An order issued by a court with jurisdiction over the person and subject matter, as in case at bar, must be obeyed until said order is reversed, modified, or set aside by orderly and proper proceedings.

¶15 To allow an indirect contempt proceeding to result in a retrial of original controversy upon which court's order was based would encourage experimentation with disobedience. See Maggio v. Zeitz, 333 U.S. 56, 68 S.Ct. 401, 92 L.Ed. 476.

¶16 We, therefore, hold trial court, in the contempt proceeding, properly excluded appellant's evidence that appellee had remarried.

¶17 Appellant next contends evidence was insufficient to support judgment and sentence entered. Under this contention appellant cites Hadley v. Hadley, 129 Okl. 219, 280 P. 1097, wherein we held that failure to pay money pursuant to court order in divorce case does not constitute indirect contempt in absence of clear and convincing evidence of willful disobedience. Appellant asserts that evidence shows he paid $900.00 for his son's college expenses and appellee approved of this expenditure.

An examination of record reveals the only evidence offered to support this contention was appellant's testimony that "I am sure ¶18 she wants me to help him with his schooling * * *" The evidence wholly fails to show appellee was in any manner advised that she would not receive her alimony payments if appellant paid their son's college expenses. Further, evidence wholly fails to show appellee waived her right to receive alimony payments in return for payment of their son's college expenses.

¶19 The fact remains appellant had $900.00 with which to make alimony payments pursuant to lawful order of court and he wholly failed to make such payments.

¶20 We conclude Hadley v. Hadley, supra, is not supportive of appellant's contention. Thus, we hold evidence was sufficient to support judgment and sentence entered.

¶21 Finally, appellant contends trial court erred in its instruction to jury concerning burden of proof.

¶22 The following instruction is complained of as error:

> "You are instructed that if you find by a fair preponderance of the evidence, after taking into consideration all of the facts and circumstances in this case, that the Plaintiff, Arthur Faye Whillock has been willfully disobedient of the order of the Court made on November 5, 1973, then it will be your duty to find the Plaintiff guilty; if you do not so find, then it is your duty to return a verdict of not guilty."

¶23 Appellant cites Clark v. Most Worshipful St. John's Grand Lodge of Ancient Free and Accepted Masons, 198 Okl. 621, 181 P.2d 229, wherein we held that in an indirect case,

prosecution must prove contemnor guilty of acts constituting contempt by clear and convincing evidence.

¶24 We agree that in an indirect contempt case, the contemnor must be proven guilty of acts constituting contempt by clear and convincing evidence. However, appellant overlooks Morgan v. National Bank of Commerce, 90 Okl. 280, 217 P. 388, wherein we held that where contemnor admits violation of an order of court, he has burden of excusing his acts.

¶25 In instant action, appellant admitted he had not made timely and proper alimony payments as ordered. Nothing in this ruling precludes appellant from again filing application to terminate alimony wherein change of circumstances or newly discovered evidence is alleged.

¶26 Judgment of trial court is, therefore, affirmed.

¶27 WILLIAMS, C.J., HODGES, V.C.J. and DAVISON, IRWIN, LAVENDER, BARNES and SIMMS, JJ., concur.

¶28 DOOLIN, J., dissents.

Appendix F

Legal Authority:
Jury Instructions for Child Support Contempt Actions

Jury Instructions for Child Support Contempt Actions
Oklahoma Uniform Jury Instructions

Contempt, Elements & Standard (Read Prior to Argument)

- Instruction No. 3-23, OUJI-CR

Cautionary Instructions (After Jury is Sworn, Prior to Evidence)

- Bias on Account of Race, Religion, etc.
  - Instruction No. 1.5, OUJI-CIV
- Cautionary Instructions after Jury Is Sworn
  - Instruction No. 1.4, OUJI-CIV
- Notetaking by Jurors
  - Instruction No. 1.7, OUJI-CIV (If applicable)
- Oath Administered to Jury
  - Instruction No. 1.3, OUJI-CIV

Closing Instructions (Read Prior to Argument)

- Closing Charge (Final Instruction Given)
  - Instruction No. 10-10(A), OUJI-CR
- Introduction & Function of Jury
  - Instructions Nos. 10-1, 10-2, & 10-8 OUJI-CR (Combined)
- Judicial Rulings
  - Instructions Nos. 10-7 & 10-9, OUJI-CR (Combined)
- Notetaking by Jurors
  - Instruction No. 10-8A, OUJI-CR (If applicable)

Discharge of Jury (After Verdict is Read)

- Instruction No. 10-12, OUJI-CR

Evidentiary Instructions (Read Prior to Argument, If Applicable)

- Credibility of Defendant as a Witness
  - Instruction No. 9-41, OUJI-CR
- Impeachment
  - Prior Bad Acts
    - Instruction No. 9-21, OUJI-CR

- Prior Conviction
  - Instruction No. 3.14, OUJI-CIV, OR
  - Instruction 9-22, OUJI-CR

- Prior Inconsistent Statements
  - Instruction No. 9-20, OUJI-CR

Statement of Issues (Read Prior to Argument)

- Instructions No. 2.1 & No. 2.5, OUJI-CIV (Combined)

Verdict (Read Prior to Argument)

- Return of Verdict
  - Instruction No. 10-15, OUJI-CR
    Caution: When using this instruction it is necessary to modify the standard from beyond a reasonable doubt to clear and convincing.

- Verdict Form
  - Instruction No. 10-16, OUJI-CR

Voir Dire (Prior to Voir Dire)

- Explanation to Jury Panel of Voir Dire
  - Instruction No. 1.1, OUJI-CIV

- Oath on Voir Dire
  - Instruction No. 1.2, OUJI-CIV

Jury Instructions for Child Support Contempt Actions
Suggested Jury Instructions[9]

Contempt, Burden Shifts to Obligor to Establish Excuse:

If the [CP] proves by clear and convincing evidence that [NCP] willfully failed to comply with the order(s) of the court, [NCP] then has the burden to prove, by a preponderance of the evidence, that [his/her] failure to comply should be excused.

You are instructed that "preponderance of the evidence" as used in these instructions means evidence which, in light of all facts and circumstances appearing at the trial, is, in the judgment of the jury, entitled to the greater weight and credit. It does not necessarily mean the greater number of witnesses testifying to a fact or state of facts.[10]

Contempt, Partial Compliance Sufficient to Establish:

You are instructed that you may find [NCP] guilty of contempt if you find that [he/she] only partially complied with the child support order and that [his/her] failure to pay more was willful.[11]

Order of Court Must Be Obeyed:

You are instructed that an order issued by a court with jurisdiction over the person and subject matter must be obeyed until it is reversed, modified, or set aside by orderly and proper proceedings.[12]

Definition of Willfulness:

The term "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.[13]

OR

"Willful" or "willfully," as used in these instructions, means without lawful excuse, with the specific intent to fail to do something the law requires to be done.[14]

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[9] The following jury instructions are based on cited legal authority, although they are not included in the Oklahoma Uniform Jury Instructions. These are included as examples of additional instructions you may want to suggest to the court.

[10] *Davis v. Davis*, 739 P.2d 1031; *Huchteman v. Huchteman*, 557 P.2d 427; *Willock v. Willock*, 550 P.2d 558.

[11] 21 O.S. § 566.

[12] *Willock v. Willock*, 550 P.2d 558.

[13] 21 O.S. § 92.

[14] *Davis v. Davis*, 739 P.2d 1029.