



**October 2013 Tip of the Month**  
**Contempt Proceedings in Family Court**  
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*The information contained in this tip is designed for use by attorneys. The information in this tip is not intended as legal advice. Each person's situation is different. Determining whether a contempt proceeding is appropriate in a particular case requires individualized advice. If you are seeking legal assistance please go to [www.lawhelpmn.org](http://www.lawhelpmn.org) to learn about legal resources in your area.*

## Introduction

Motions for civil contempt of court (the failure to obey a court order issued for the benefit of another party) are frequently seen in family court. Civil contempt proceedings have special rules and procedures that distinguish these proceedings from other family court motions. The purpose of this tip is to provide an overview of civil contempt in family court and provide a starting point for volunteers considering or encountering a contempt motion in their family law case.

## Purpose of Contempt

The purpose of civil contempt is to compel compliance with a court order, not to punish parties for past behavior.<sup>1</sup> Once a party is found in contempt, the court may impose a conditional penalty, including jail time, a fine, payment of fees, and other consequences. Examples of situations where contempt proceedings are appropriate include those in which a party has violated a parenting time schedule, failed to pay court-ordered child support or spousal maintenance, or failed to transfer a title of property.

## Preparing the paperwork

Contempt proceedings are initiated by service of an order to show cause,<sup>2</sup> notice of motion and motion and accompanying affidavits upon the alleged contemtor.<sup>3</sup> The order to show cause must direct the alleged contemtor to appear and show cause why he or she should not be held in contempt and why the moving party should not be granted the relief requested in the motion.<sup>4</sup> The order to show cause and the notice of motion and motion must contain the following: 1) a reference to the specific order or judgment of the court and date of entry or filing alleged to have been violated; 2) a quotation of the specific applicable provisions ordered; and 3) the alleged failures to comply.<sup>5</sup> Once the proper

<sup>1</sup> Mahady v. Mahady, 488 N.W. 2d 888, 809 (Minn. Ct. App. 1989).

<sup>2</sup> Minn. R. Gen. P. 309.01 allows for contempt proceedings to proceed without an order to show cause. As detailed in the comments to the 2012 amendments, "use of an order to show cause is the preferred method to commence a contempt proceeding if there is a meaningful risk that the alleged contemtor will not appear in response to the notice of motion." For the purposes of this tip the author is assuming the moving party is using an order to show cause.

<sup>3</sup> Minn. R. Gen. P. 309.01(a).

<sup>4</sup> Minn. R. Gen. P. 309.01(b).

<sup>5</sup> Id.

paperwork is prepared, the attorney should submit the notice of motion and motion, affidavits and the proposed order to show cause to the assigned judicial officer.<sup>6</sup>

## Service

Once the order to show cause is signed, the next step is to serve the contemtor with the paperwork referenced above. An order to show cause must be served directly on the alleged contemtor, not on the alleged contemtor's attorney.<sup>7</sup> The person serving the documents must show the original order to the alleged contemtor and then hand the alleged contemtor copies of the order to show cause, notice of motion and motion and supporting affidavits. After service is complete the person serving the documents must complete an affidavit of service and return the original order back to the serving party for filing. (It is best practice to contemporaneously notify opposing counsel that your client is initiating contempt proceedings.)

## The Contempt Hearing

The alleged contemtor must have to opportunity to appear and testify before the court.<sup>8</sup> When making a finding for contempt, the court looks at factors set out in *Hopp v. Hopp*.<sup>9</sup> Where appropriate, the court will make a finding of contempt and enter a sentence. The court will establish purge conditions that allow the contemtor to avoid the imposition of the sentence. When establishing the purge conditions, the court must determine that the contemtor has the ability to meet those conditions.<sup>10</sup> At the second hearing the contemtor has the opportunity to demonstrate compliance with the purge conditions.<sup>11</sup> Failing to comply with the purge conditions may result in confinement.

## Practice Tips

- Take efforts to resolve the issue prior to a contempt motion. Some attorneys will attach proof of efforts to resolve the issue, such as a letter to the contemtor, to the client's affidavit.
- Consider alternative forms of relief. For example, a motion for compensatory parenting time may be more effective than a motion for contempt.
- Volunteers representing clients who have received an IFP order are encouraged to use the local sheriff to serve the order to show cause.

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<sup>6</sup> Volunteers are encouraged to contact the judicial officer's clerk to determine the best method for submitting the materials.

<sup>7</sup> Minn. R. Gen. P. 309.01 (b).

<sup>8</sup> Minn. R. Gen. P. 309.02

<sup>9</sup> *Hopp v. Hopp* 156 N.W. 2d 212, 216-17 (Minn. 1968). For space purposes, the factors are not included in this tip; however, an understanding of the *Hopp* factors is required in every case. (1) the court has jurisdiction over the subject matter and the person; 2) a clear definition of the acts to be performed; notice of the acts to be performed and a reasonable time in which to comply; an application by the party seeking enforcement giving specific grounds for the complaint; 5) a hearing, after due notice, to give the nonperforming party an opportunity to show compliance or the reasons for failure; 6) a formal determination by the court of failure to comply and, if so, whether conditional confinement will aid compliance; 7) an opportunity to comply despite a good faith effort; and 8) the contemtor's ability to gain release through compliance or a good faith effort to comply. *Id.*

<sup>10</sup> *Mahady v. Mahady*, 488 N.W. 2d 888, 890 (Minn. Cr. App. 1989). This is sometimes referred to as giving the contemtor the "keys to the jail."

<sup>11</sup> *Id.*

- Set client expectations – remind them that the purpose of contempt is not to punish the other party.
- Come to the contempt hearing with possible purge conditions and a plan for how you want the conflict resolved.
- Think about the consequences of incarceration. A jailed party may not be able to maintain his or her employment.
- Contempt, particularly where confinement is concerned, is a complex area of law. All volunteers new to family law and contempt proceedings are strongly encouraged to read the relevant case law and speak with an experienced practitioner if they have questions about how these proceedings may or may not apply to specific cases.