

FLORIDA'S CHILD SUPPORT BENCHBOOK

Child Support Hearing Officer Colloquy Motion for Contempt Hearing Checklist

NOTE: You must give the parties the "key to the jail."

- Swear in Department of Revenue representative and clerk, then parties.
- Determine if parties were served/noticed. The respondent has a continuing obligation to update his address from the initial child support hearing.
- If the respondent fails to attend the hearing after being served, the court can hold him in contempt and/or issue a writ of bodily attachment. Spencer v. Spencer, 311 SO.2d 822 (Fla. 3d DCA 1975). The court can set a reasonable purge amount and direct that upon arrest, contemnor is to be brought before the court w/in 48 hours for a hearing to determine whether or not he can pay, and if so, if failure to pay was willful.
- If the Respondent is not in court, determine if he or she is incarcerated. If the Respondent is incarcerated, the Motion for Contempt must be denied.
- If the respondent is not in court, see if AWI has any proof of income.
- The burden of proof is on petitioner (preponderance of the evidence) that:
 - There is a prior court order requiring child support payments. Put payment history on record. The clerk can testify as to the amounts.
 - The respondent has failed to make timely child support payments (not court costs or fees).

- Then burden shifts to respondent to show that he no longer has the ability to pay - not willful non-payment.
- The court MUST establish the respondent has the present ability to pay and willful refusal to pay. Gregory v. Rice, 727 So.2d 251(1999).
 - Make detailed fact finding of present circumstances to determine purge amount.
 - Inquire as to jobs, all assets, cash and current conditions.
 - If sentenced to jail, the party must have the ability to purge.
- Find in contempt of court for failing to comply with order of court, or if not then in compliance and issue compliance order.
- If in contempt, the court can either order incarceration or give the respondent 30 days to come up with the money and comply. If not paid in 30 days, the court can also order a writ and purge.
- Determine if the respondent has any money with him. He/she can make a direct payment in court.
- Establish amount of arrears and form of payment. Adjudicate arrears.
- Verify amount and order court costs.
- If the Respondent fails to appear, there is a presumption that the respondent has the ability to pay.