CONFUSED ABOUT CONTEMPT? PROSECUTING AND DEFENDING ENFORCEMENT CASES

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A NOTE FROM THE AUTHORS

This paper was originally written in 1999 to discuss contempt in Title 5 cases. We have since made many additional and changes to it – it is a work in progress. We have also attempted to include more about visitation enforcement and other enforcement remedies available in other types of family law cases. We welcome your comments and feedback and appreciate all the calls and comments we have received over the years.

Please note that as used throughout this paper, "TFC" means Texas Family Code and "TRCP" means Texas Rules of Civil Procedure.

INTRODUCTION

This paper will introduce you to the process of evaluating, filing, trying (movant and defense), and preparing the order on a motion to enforce by contempt. Although this paper will focus on child support enforcement, many of the cases and procedures apply to visitation and property enforcement too.

In defending a respondent in an enforcement action, counsel for the respondent must go through the same steps as the movant's attorney for two reasons: first, to catch any mistakes or omissions made by the prosecuting attorney, and second, to identify any potential defense strategy.

WHAT DOES YOUR CLIENT WANT? MOVANT'S PERSPECTIVE

The movant's attorney should discuss with their client what the client is hoping to accomplish by filing the enforcement action. Most movants just want to collect their arrearage and have their child support paid on a regular basis. Some may also want the respondent to go to jail – as a deterrent to prevent future violations, as punishment for past violations, or to compel immediate payment.

Be sure and ask the client if she has received any direct payments, made any "deals" with the respondent regarding the child support (for example, did she tell him that he could stop paying child support if he paid her mortgage instead or if he bought a car for the child), and if the child has lived with her continuously during the entire time period for which enforcement is sought (the obligor may be entitled to an offset for any periods that the child lived with him – see TFC § 157.008(a)(b)(d)(e)).

The attorney should also discuss with the client what happens once the motion is filed – the respondent will be served (by a constable or private process server) and must appear in court to respond to the motion. This may make the respondent angry, which may trigger harassment or violence. Also let the client know what will happen when the respondent comes to court – if the respondent appears without an attorney, the judge will inform him of his rights and he may request that an attorney be appointed. If so, the court will conduct an indigency hearing before any action can be taken on the motion to enforce. If an attorney is appointed, the case may be reset,

so the movant may have to come to court again on another date. The court may also reset the case to give the respondent time to hire an attorney if he does not qualify for an appointed attorney. If the client understands all these steps, she will not be surprised or upset if the case is not resolved at the first setting.

Once the movant's attorney can negotiate with the respondent (either directly or through his attorney), there are three ways the case can be resolved:

1. the respondent pays the entire arrearage plus attorney's fees and costs – if so, in most cases it would be appropriate to nonsuit the motion;
2. the parties enter into an agreed judgment of contempt (discussed in further detail later); or
3. the case is tried to the judge (also discussed in further detail later).

These options should be discussed with the client. Does she think the respondent is able to pay the entire arrearage? Does he have a parent who consistently pays his debts or bails him out of trouble? Think about the terms of a proposed agreement before you are in the courtroom with your client. If the arrearage is very large, do some calculations to see what a reasonable payout schedule might be. Is the last child going to emancipate soon? Perhaps the respondent can pay a small monthly amount toward the arrearage (in addition to the regular support) until the regular support obligation ends and then pay toward the arrearage while the child is in college. Does your client want to avoid confrontation with the respondent? She may be hesitant to testify in court, so consider that when you are weighing your options.

The attorney should also be aware of the judge's (and the associate judge's) approach to resolving contempt cases. There are some judges who have the reputation of incarcerating anyone who doesn't pay their child support, while other judges are known for being less punitive. Judges also have different preferences about how the trial should proceed. This information is very helpful in evaluating settlement proposals and deciding whether you should go to trial. You do not want to try the case and lose. Your client is unlikely to see any money in the future if the respondent gets the idea that there will be no consequences for his non-payment.

WHAT DOES YOUR CLIENT WANT? DEFENSE'S PERSPECTIVE

The defense attorney seeks most importantly to keep their client out of jail. They also have an interest in getting the money paid. Payment prevents further legal problems and the process educates the client about his responsibilities. In meeting these objectives, defense will frequently engage in delay tactics to gain sufficient time for the respondent to raise money or to gather information to put on a defense case at trial. The respondent

will most likely end up paying the movant's attorney's fees and costs, so the defense attorney should be careful to avoid unnecessary delays.

The defense attorney is also concerned with the appearance of due process as well as actual due process. The client must feel like he got a fair trial and that his constitutional rights were protected.

The attorney should encourage the client to try to raise money. The respondent cannot be held in contempt if he is current at the time of the hearing, although he may still be responsible for the movant’s attorney’s fees and costs of court if he was not current at the time the motion was filed. TFC § 157.162(d)(e).

Some courts are much tougher on repeat offenders, so if the respondent can pay off the arrearage and the motion is nonsuited, if he appears in court in the future, he may be in a better position than if there is a contempt judgment already in the court's file. If he can't pay the entire arrearage, can he pay a portion of it?

It is very important for the respondent to come up with a specific plan to pay the arrearage. If the case goes to trial, he must offer the judge an alternative to incarceration.

REVIEW THE FILE

Prior to bringing a motion to enforce, the prosecuting attorney should examine the court’s file (or at the very least, check the District Clerk’s records online), not just the order to be enforced. The attorney should look for past discovery, past contempt motions and orders, and/or orders subsequent to the one your client wants enforced to see what has previously happened in the case. Frequently, the client will not know the legal effect of past litigation.

The prosecuting attorney also needs to look for an assignment to the Attorney General's Office. Sometimes this will not be reflected in the court's file, so question your client regarding any Attorney General involvement. Should an assignment exist, the Attorney General must be notified when the motion to enforce is filed. TFC § 102.009(d). Failure to provide the notice can be a basis for a motion for continuance or abatement prior to trial (defense tactic – delay).

REVIEW THE ORDER TO BE ENFORCED

The prosecuting attorney should examine the order to ensure that portion of the order for which enforcement is desired is enforceable. Examination cannot end there. The entire order must be reviewed. There could be different sections that when read together could make the order vague and ambiguous.

To be enforceable by contempt, a judgment must clearly order or command a party to perform the obligations imposed and the terms for compliance must be clear and

unequivocal. *In re Coppock,* 277 S.W.3d 417, 418 (Tex. 2009) (permanent injunction restraining communications "in a coarse or offensive" manner is too vague to be enforced by contempt). Without language making clear that a party is under order, agreements incorporated into divorce decrees can only be enforced as contractual obligations. *McGoodwin v. McGoodwin,* 671 S.W.2d 880, 882 (Tex. 1984); *Ex parte Jones,* 358 S.W.2d 370, 375 (Tex. 1962). Obligations that are merely contractual cannot be enforced by contempt. *See* TEX. CONST. art. I, § 18 ("No person shall ever be imprisoned for debt."); *In re Green,* 221 S.W.3d 645, 648-649 (Tex. 2007).

It has become customary to include in final orders a provision requiring mediation prior to filing for modification. This language frequently requires mediation prior to enforcement as well. This could be used by the defense as a delay tactic if an enforcement action is filed by a private attorney for a party, although query whether this would apply if the enforcement action is filed by the Attorney General's Office (who receives their authority by an assignment of the obligee's rights to them – TFC § 231.104) or a "friend of the court" (who receives their authority by court appointment pursuant to TFC, Chapter 202).

Beware, however, that if the respondent attends mediation, he will most likely waive his fifth amendment rights during the mediation process. Even though what is said in mediation cannot be disclosed at trial, if it is otherwise discoverable, the information can come in – for example, the respondent says at mediation that since he bought his new Lexus, he can't afford to pay the child support. At trial, movant's counsel can present evidence from the tax assessor's office regarding ownership of the Lexus, or merely ask his client, do you know what kind of car your ex-husband has? Also, the mediator's fee and/or the attorney's fees incurred by the movant's attorney may be assessed against the respondent.

WHAT'S ENFORCEABLE AND WHAT'S NOT

There are four basic restrictions on what is enforceable. The most cited case on enforceability is *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967). *Slavin* and its progeny establish the notion that if an order does not clearly and specifically set forth what the respondent is ordered to do and how he is to do it, he cannot be sent to jail for not doing it. But see *Ex parte Crawford* – if there are two reasonable interpretations of the order, the lesser of the two may be enforceable (court upheld enforcement of lower of two possible amounts). 684 S.W.2d 124 (Tex. App. – Houston [14th Dist.] 1984, orig. proceeding).

The second restriction on what is enforceable by contempt is the notion that the court cannot incarcerate someone for something that it is beyond its power to order. An example would be requiring someone whose rights have been terminated to continue paying ongoing child support. An agreement to pay college expenses is enforceable as a contract, not as child support.

Burtch v. Burtch, 972 S.W.2d 882 (Tex. App. – Austin 1998, no pet.). An agreement incorporated in a decree is enforceable as a judgment, not by contempt. *Ex parte Gorena*, 595 S.W.2d 841 (Tex. 1979).

The third restriction on enforcement is the constitutional prohibition against incarceration for debt. Texas Constitution, Article 1, Section 18. Spousal support was formerly considered debt, as were uninsured medical expenses. Now such things are specifically not debt. *Ex parte Hall*, 854 S.W.2d 656 (Tex. 1993). However, there are still attempts to enforce the payment of property division debts one party is ordered to pay in a divorce decree. The failure to make these payments is not punishable by contempt.

The fourth restriction involves void orders. The court cannot enforce a void order by incarceration. Sometimes courts approve agreed orders containing void provisions. Such provisions are not enforceable by contempt. For example, an agreed order to never seek enforcement of child support is void as against public policy.

PREPARING THE MOTION FOR ENFORCEMENT

The contents of a motion to enforce are largely controlled by statute. TFC § 157.002 sets forth the requirements of the motion:

Contents of Motion.

(a) A motion for enforcement must, in ordinary and concise language:

(1) identify the provision of the order allegedly violated and sought to be enforced;

(2) state the manner of the respondent's alleged noncompliance;

(3) state the relief requested by the movant; and

(4) contain the signature of the movant or the movant's attorney.

(b) A motion for enforcement of child support:

(1) must include the amount owed as provided in the order, the amount paid, and the amount of arrearages;

(2) if contempt is requested, must include the portion of the order allegedly violated and, for each date of alleged contempt, the amount due and the amount paid, if any;

(3) may include as an attachment a copy of a record of child support payments maintained by the Title IV-D registry or a local registry; and

(4) if the obligor owes arrearages for a child receiving assistance under Part A of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq.), may include a request that:

(A) the obligor pay the arrearages in accordance with a plan approved by the court; or

(B) if the obligor is already subject to a plan and is not incapacitated, the obligor participate in work activities, as defined under 42 U.S.C. Section 607(d), that the court determines appropriate.

(c) A motion for enforcement of the terms and conditions of conservatorship or possession of or access to a child must include the date, place, and, if applicable, the time of each occasion of the respondent's failure to comply with the order.

(d) The movant is not required to plead that the underlying order is enforceable by contempt to obtain other appropriate enforcement remedies.

(e) The movant may allege repeated past violations of the order and that future violations of a similar nature may occur before the date of the hearing.

The motion will control relevancy and thus testimony at trial. Texas Rules of Evidence 401 and 402. Therefore, careful drafting is important. The motion will serve as both the formal request for civil relief and as a charging instrument for criminal and/or civil contempt. *Ex parte Sanchez*, 703 S.W.2d 955 (Tex. 1986); *Ex parte Oliver*, 736 S.W.2d 277 (Tex. App. – Fort Worth 1987, orig. proceeding).

TYPES OF CONTEMPT

There are two basic types of contempt – criminal (also known as punitive) and civil (also known as coercive or remedial). Each of these two types is defined by the punishment imposed. For criminal contempt, the punishment is incarceration in the county jail for a time certain (with a maximum of 180 days per violation) and/or a fine (with a maximum of $500 per violation). Texas Government Code § 21.002. For civil contempt, the punishment is for an indefinite period of time, until the contemnor performs or stops performing a specific act or acts, the idea being that the contemnor holds the keys to his own jail cell. *Hicks v. Feiock*, 485 U.S. 624 (1988).

For example, a sentence of "180 days and day to day thereafter until the

respondent pays the arrearage of $4,000.00, the attorney's fees of $750.00, and the court costs of $58.00" includes a criminal sentence of "180 days" and a civil sentence of "day to day thereafter until the respondent pays the arrearage of $4,000.00, the attorney's fees of $750.00, and the court costs of $58.00." The usual practice, however, would be to release the respondent upon payment of the above amounts even if the respondent has not served the full 180 days, and possibly probating the remaining criminal sentence conditioned on his timely payment of the future ongoing support.

The motion to enforce must be clear as to what type of punishment is being requested (criminal or civil or both), including how many days (a total of 180 days or less is a good idea so the respondent does not have the right to a jury trial) and/or the amount of any fine ($500 or less, or again, the respondent has a right to a jury trial).

Contempt can be further classified into two categories based on when the offensive acts occurred. Direct contempt is when the contemptuous acts occur in the presence of the judge. If someone is disrespectful to the court, the court has the authority to hold that person in direct contempt and assess a fine or incarcerate the person. There are special rules related to direct contempt, which are beyond the scope of this paper. If the acts occurred in the past and must be proven to have occurred, then the contempt is constructive. This is the case in child support and visitation violations.

SERVICE OF THE MOTION

The motion must be personally served on the respondent accompanied by an order to appear at a "show cause" hearing. TFC § 157.061, 157.062. Some courts have their own show cause orders that they will attach to your motion and the order that you prepared and submitted with your motion will not be signed. Some courts include in the show cause order warnings to the respondent regarding their rights. Check the court file to see which show cause order the judge signed.

If the respondent is represented by counsel on another matter (for example, a modification or pending divorce), the question arises regarding whether to personally serve the respondent or to serve their attorney. Per Rule 4.02 (a), Texas Disciplinary Rules of Professional Conduct, you're not supposed to communicate directly with a party who is represented by counsel, but TFC § 157.062 (c) says the respondent to an enforcement motion must be personally served. What should you do?

The best practice is to send a copy of the motion to the attorney and ask if he will accept service or if you should personally serve his client. Be aware, however, that unless the respondent is personally served, you will not be able to get a capias if he fails to appear. We have filed motions to enforce where we requested personal service on the respondent (to comply with TFC § 157.062 (c)) and also sent a copy to the attorney.

The respondent is entitled to ten days notice of the hearing. TFC § 157.062(c). Failure to provide this notice is not jurisdictional, but is a procedural irregularity that can rise to the denial of due process. *Ex parte Waldrep*, 783 S.W.2d 332 (Tex. App. – Houston [14th Dist.] 1990, orig. proceeding); *Ex parte Boyle*, 545 S.W.2d 25 (Tex. App. – Houston [1st Dist.] 1976, orig. proceeding); *Ex parte Sturdivant*, 544 S.W.2d 512 (Tex. App. – Texarkana 1976, orig. proceeding); *Ex parte Davis*, 344 S.W.2d 153 (Tex. 1961). If the respondent has been served less than ten days before the court date, it is easy to avoid any problems by simply swearing the respondent to reappear at a later date, unless the respondent (and his attorney if he has one) will waive the ten days notice.

Even if he is served with the order to appear less than ten days before the hearing date, the respondent still must appear in court on the hearing date, or a capias may be issued for his arrest. The ten days applies to whether the court may conduct the hearing, not whether the respondent must appear as ordered. Do not make the mistake of telling your client they do not have to show up in court if they are served less than ten days before the hearing date.

TFC § 157.065 provides that if a party has been ordered under Chapter 105 to provide the court and the state case registry with the party's current mailing address, notice of a hearing on a motion for enforcement may be served by mailing a copy of the notice to the respondent, together with a copy of the motion, by first class mail to the last mailing address of the respondent on file with the court and the registry.

We advise against using this form of "service." Most people who don't pay their child support don't update the court and state case registry with their address. Although it is authorized by the code, it is unlikely to give the respondent actual notice of the hearing, and he is unlikely to show up. If the respondent does not show up, the court cannot grant a capias for his arrest (because he was not personally served) and cannot hold him in contempt (because a person cannot be held in contempt in absentia). The court may grant a default judgment for arrearages (including interest), attorney's fees, and income withholding, which is likely to be set aside if the respondent files a motion for new trial. The better practice is to personally serve the respondent.

If the motion for enforcement is joined with another claim, the respondent is entitled to the running of the answer date prior to a hearing (Monday following the expiration of 20 days). TFC § 157.062 (d); *Ex parte Hathcox*, 981 S.W.2d 422 (Tex. App. – Texarkana 1998, orig. proceeding).

If a procedural problem occurs, the movant's attorney may make a tactical decision to avoid contempt and seek only a money judgment and payout order, with no jail time or fine. If the moving party is only seeking civil remedies in the motion to enforce, the respondent does not have the criminal due process protections. *Ex parte Hathcox*, 981 S.W.2d 422 (Tex. App. – Texarkana 1998, orig. proceeding); *Ex parte York*, 882 S.W.2d 931 (Tex. App. –

Waco 1994, orig. proceeding); *Ex parte Dabau*, 732 S.W.2d 773 (Tex. App. – Amarillo 1987, orig. proceeding); *Crawford v. Gardner*, 690 S.W.2d 296 (Tex. App. – Dallas 1985, no writ); *Ridgway v. Baker*, 720 F.2 1409, CA 5 (Tex.) 1983. It is only when the respondent is placed in risk of jeopardy of freedom that the criminal requirements of due process are invoked. *Ex parte Sanchez*, 703 S.W.2d 955 (Tex. 1980).

Another decision the prosecuting attorney will have to decide is if discovery should be attached. Perhaps the most outrageous thing a defense attorney can do is respond to discovery requests in a criminal contempt case. As long as the respondent has not requested any affirmative relief, responding to discovery requests is not necessary and is arguably malpractice. The protections against giving evidence against one's self as to the issues of the criminal proceeding being prosecuted are constitutional, whereas discovery rules are only civil rules of procedure.

The defense may consider sending discovery or disclosure requests to the prosecuting attorney, if exculpatory and/or mitigating evidence exists or if there is an issue regarding offsets or credits – for example, in a case where the child lived with respondent for part of the time period for which enforcement is sought. This is not typically done and may work to the respondent's disadvantage and cause additional attorney's fees to be assessed against the respondent if the movant's attorney has to expend time responding to the defense attorney's discovery or appearing in court on discovery motions.

PRE-TRIAL MATTERS

If the respondent appears at the show cause hearing without an attorney, the court must inform the respondent of his right to counsel and the right to the appointment of counsel if he is indigent. TFC § 157.163; *Ex parte Acker*, 949 S.W.2d 314 (Tex. 1997). The respondent also has the right to remain silent, to have a record made, and to a jury trial if his criminal exposure is more than 180 days and/or $500 fine. Although not specifically required by the TFC, courts typically inform the respondent of these rights when they advise the respondent of the right to counsel. Courts address the requirement of giving the respondent his rights in different ways. Some courts encourage the parties to settle the case as in usual family law cases and then advise the respondent of his rights before an agreement is accepted or before a hearing begins, while other courts do not allow the movant's attorney to even speak with the respondent in court until the respondent is given his rights on the record. Check with the court staff to make sure you know the court's procedure.

The respondent may waive his right to counsel and negotiate with the movant's attorney, or he may request that an attorney be appointed to represent him. According to TFC § 157.163(d), the court shall require the respondent to file an indigency affidavit and may hear evidence to determine

the issue of indigency. Again, courts have varying procedures regarding this and varying standards for determining who is "indigent" for purposes of appointed counsel. A respondent may be considered indigent in one court but another respondent with the same facts may be considered not indigent in a different court.

The statute gives no guidelines for determining indigency, nor does any rigid standard exist for determining indigency. *In re Pruitt*, 6 S.W.3d 363 (Tex. App. – Beaumont 1999, orig. proceeding). The court cannot look to the finances of the respondent's family to pay for an attorney. *In re Luebe*, 983 S.W.2d 889 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). However, there is no authority prohibiting the court from considering the respondent's current spouse's financial situation.

There is a substantial argument that the indigency hearing process is unconstitutional, since the respondent must give testimony (he has the burden at the indigency hearing) related to his possible affirmative defense (inability to pay) without aid of counsel for the purpose of securing his constitutional right to appointed counsel if indigent. This situation is even more questionable when opposing counsel is afforded an opportunity to cross examine the obligor or review the indigency affidavit.

Some trial courts treat the indigency hearing as a "protected proceeding" and do not allow evidence from the indigency hearing to be used against the respondent at trial. However, there is no statutory authority for this position. There is also an argument that amendments to the Code of Criminal Procedure provided by Senate Bill 7 from the 2001 Legislature (indigent defense pool and related warnings, applicable to district courts hearing criminal cases) require additional warnings to be given to respondents in criminal contempt cases. This issue has not yet been tested in the appellate courts.

If the court determines that the respondent is indigent, the court shall appoint an attorney to represent him. TFC § 157.163(f); *Ex parte Berryhill*, 750 S.W.2d 368 (Tex. App. – Beaumont 1988, orig. proceeding). The court-appointed attorney is then entitled to at least ten days to prepare for trial, although this can be waived. TFC § 157.163(h). The court-appointed defense attorney's appointment is limited to the allegation of contempt in the motion, and does not extend to filing a motion to modify if the respondent's child support is set too high or filing a motion to enforce visitation if the respondent is being denied visitation. TFC § 157.163(i). The appointment does extend to bringing a habeas corpus if one is appropriate. *Cudd v. Bass*, 771 S.W.2d 3 (Tex. App. – Houston [1st Dist.] 1989, no writ).

Prior to trial, defense counsel can file special exceptions to pleading errors in the motion to enforce. The special exceptions must be heard prior to trial, and if any are granted, the case will be reset for the movant to amend the motion. TFC § 157.064. An amended motion need only be served under the provisions of Rule 21, TRCP (provided an appearance has been made). *Jones v. Ignal*,

798 S.W.2d 898 (Tex. App. – Austin 1990, writ denied); *Jordan v. Middleton*, 762 S.W.2d 339 (Tex. App. – San Antonio 1988, no writ).

Alternatively, defense counsel can permit the movant to go forward on the defective pleadings, object to relevance at trial, and request an instructed verdict. This approach is very risky. If defense counsel fails to make the appropriate objections, or if the court overrules these objections, the evidence comes in.

Occasionally, the underlying order will not be enforceable by contempt on its face, like for failing to pay a bill ordered discharged by respondent in the final decree of divorce. Incarceration under criminal or civil contempt will not lie for the payment of a debt. Texas Constitution, Article 1, Section 18; *Ex parte Davila*, 718 S.W.2d 281 (Tex. 1986). Additionally, the underlying order may be too vague and ambiguous to enforce as a matter of law. *Ex parte Slavin*, 412 S.W.2d 43 (Tex. 1967). A motion to dismiss should be made prior to trial if the order is unenforceable as a matter of law. Even if the order is not enforceable by contempt, the court may still grant a money judgment for the arrearage and order the respondent to make payments toward the judgment.

Prior to trial, defense counsel can also make such motions as to abate, for mediation, or a special appearance for want of proper service. If a proper motion is not made, any defects in service are waived. TFC § 157.063.

IF THE RESPONDENT DOES NOT APPEAR AT THE HEARING

If the respondent fails to appear, upon proof of proper service, the court should grant a capias for his arrest. TFC § 157.066. Some courts grant writs of attachment instead. *Viggiano v. Emerson*, 794 S.W.2d 564 (Tex. App. – Amarillo 1990, no writ); *Ex parte Crawford*, 684 S.W.2d 124 (Tex. App. – Houston [14th Dist.] 1984. The court sets a bond when the capias is granted. The prosecuting attorney should request a cash bond to be set in the amount of the arrearage, so if the respondent is picked up and posts the bond, the money can be forfeited to the obligee. TFC § 157.101 et. seq.

Once the judge signs the capias order, the movant's attorney must pay the district clerk's office to issue the capias. TFC § 157.103. There may be additional fees if the respondent is arrested in another county and must be transported to the county where your case is pending.

When the respondent is arrested pursuant to the capias, he should be brought before the court on or before the first working day after the arrest. He may be restrained for a maximum of five days before a hearing. TFC § 157.105.

RIGHT TO JURY TRIAL

If the punishment requested is incarceration for more than 180 days and/or a fine of more than $500, the respondent is entitled to a jury trial. *Ex parte Gunther*, 758 S.W.2d 226 (Tex. 1988); *Ex parte Griffin*, 682 S. W.2d 261 (Tex. 1984). The respondent can waive his right to a jury trial as in criminal cases.

HOW MUCH IS OWED?

A child support payment not timely made constitutes a final judgment for the amount due and owing, including interest. TFC § 157.261. The court shall confirm the amount of arrearages and render a cumulative arrearage judgment, consisting of unpaid child support not previously confirmed, the balance owed on previously confirmed arrearages (or lump sum or retroactive support judgments), and interest on the arrearages. TFC § 157.263.

The present rate for interest on child support arrearages is six percent. TFC § 157.265. The interest rate has changed several times in the past, so prior judgments may accrue interest at a different rate – if there is a prior child support judgment (before January 1, 2002, the effective date of the present statute), be sure to check what interest rate was previously ordered. TFC § 157.268 sets forth the order of priority for application of payments.

The movant's attorney should have the arrearage judgment amount calculated before coming to court on the hearing date. The easiest way to calculate the principal arrearage is to figure out the total amount of child support due during the time period for which enforcement is sought and subtract the total amount of the payments made during that time period, rather than figuring out month by month how much was due and how much was paid.

There are computer programs that will calculate interest according to the statute. The movant is entitled to the interest that accrued through the date of the hearing, so the attorney must be prepared with the amount. Many attorneys come to court with no idea of how much the interest is, or take the arrearage and multiply it by six percent (that's wrong, don't do it!). Interest can be calculated by hand if you do not have access to an interest program, but if the arrearage accrued over a long time period and/or many payments have been made, it is extremely difficult to do, and even harder to do correctly. If there has been a previously confirmed arrearage, the interest calculation is even more difficult since the prior judgment may accrue interest at a different rate.

Defense counsel should be sure and check the movant's calculations to make sure they are correct and that the respondent has been given credit for all payments made.

Remember, the respondent cannot be held in contempt if he is current at the time of the hearing, although he may still be responsible for the movant's attorney's fees and costs of court if he was not current at the time the motion was filed. TFC § 157.162(d)(e).

The amount of the judgment is not related to whether or not the respondent is held in contempt or the amount of the contempt violations. For example, a respondent may owe arrearages totaling $4,268.92 and be found in contempt for failing to pay the court-ordered amount of $350.00 on eight separate violation dates. However, it is a good idea to attach an accounting showing how the arrearage was calculated (usually the trial exhibit) to the contempt order to avoid any confusion.

AGREEMENTS

Most contempt cases resolve by agreement. An agreed judgment of contempt should include the following elements:

1. Confirmation of the arrearage for a given time frame (principal plus interest);

2. A finding of contempt for specific violations of the underlying order;

3. A jail sentence for each of the specific violations (to run concurrently if served), which is suspended based on the respondent's compliance with certain terms;

4. Terms of suspension, including:

    a. payment of ongoing periodic child support as previously ordered;
    b. payment of lump sums and/or periodic payments toward the arrearage, including start date and frequency;
    c. payment of attorney's fees and costs (either to movant's attorney or directly to movant);

5. Judgments for arrearages, attorney's fees, and costs, with interest at 6% per annum;

6. Wage withholding order for child support and arrearages (and a separate one if periodic payments are ordered to be paid toward attorney's fees and costs); and

7. Compliance dates.

Many contempt hearings (and incarcerations) could be prevented if agreements are reached. Regardless of the outcome of the contempt hearing (immediate incarceration or suspension of commitment), it may be better for the

respondent if he can select the terms under which he will pay back the money he owes. Remember, the court cannot reduce or modify the amount of the arrears at the contempt hearing (TFC § 157.262(a)), except to rule on any offsets to which the respondent may be entitled (TFC § 157.008(d) and (e); § 157.262(f)).

RECORD OF THE HEARING

A record of the contempt hearing must be made by a court reporter or as provided by TFC, Chapter 201, except if the parties agree to an order (usually this means if they submit a written agreed order signed by all parties and attorneys) or if the motion does not request incarceration and the parties waive the requirement of a record at the time of hearing, either in writing or in open court, and the court approves the waiver. TFC § 157.161; *Ex parte Fain*, 750 S.W.2d 344 (Tex. App. – Beaumont 1988, orig. proceeding).

THE MOVANT'S CASE

The moving party must prove all the required elements in its case in chief. It cannot rely on the respondent to prove up the case. In fact, the respondent need never be sworn. *Ex parte Werblud*, 536 S.W.2d 542 (Tex. 1976). The respondent can elect to remain silent during the prosecution's case in chief and then testify at the defense case in chief. *Ex parte Bryce*, 981 S.W.2d 887 (Tex. App. – Houston [1st Dist.] 1998, orig. proceeding). However, the defense attorney should be careful about advising their client to invoke his fifth amendment rights, since (absent mistake by the movant's attorney) the respondent will probably go to jail if all the judge hears is from the movant. Most respondents want to explain their situation to the judge, and most judges want to hear from the respondent as well.

The movant must show the following elements at a minimum:

1. Jurisdiction of the court
2. Existence of the order for which enforcement is sought
3. Right of the movant to bring the motion
4. Specific violations of the order by the respondent
5. Relief requested

Items one and two can be proven by asking the court to take judicial notice of the order in the court's file or offering into evidence a certified copy of the order to be enforced.

Item three can be satisfied by the child support recipient identifying herself in her capacity as the payee, or the "friend of the court" in their appointed capacity, or the Attorney General's Office under their assignment.

The fourth element may be shown by a trial exhibit showing dates and amounts of payments due and payments made (usually admitted as a shorthand

rendition, should it be in an admissible form), or by a date by date, amount by amount, question and answer format, and for visitation enforcement, testimony that actual visitation attempts have been made. The movant's attorney should also offer a printout from the child support registry as evidence of payments made. However, the printout is not sufficient to prove specific violations.

The fifth element may be satisfied by testimony about the form of punishment or relief requested in the pleadings. The court can only grant relief within the bounds of the pleadings. *Ex parte Smith*, 981 S.W.2d 909 (Tex. App. – Houston [1st Dist.] 1998, orig. proceeding).

Some courts may also require proof of the following:

1. Identification of the respondent as the person with the duty to perform
2. Past ability of respondent to have paid on each violation date (for criminal contempt)
3. Present ability of respondent to pay (for civil contempt)

Some courts believe identification of the respondent is an element of the movant's case. The only case that supports this position is *Ex parte Harris*, 581 S.W.2d 545 (Tex. App. – Fort Worth 1979, orig. proceeding). Later cases have declined to follow *Harris* and most courts will not require identification of the respondent as part of the movant's prima facie case. *Ex parte Snow*, 677 S.W.2d 147 (Tex. App. – Houston [1st Dist.] 1984, orig. proceeding); *Ex parte McManus*, 589 S.W.2d 790 (Tex. App. – Dallas 1979, orig. proceeding). The better practice is to identify the respondent to avoid any problems relating to this issue.

Some courts require the moving party to prove past ability to pay in order to establish criminal contempt. Some courts also require the moving party to prove present ability of the respondent to pay some or all of the arrearage before they will grant civil contempt. This is a highly contentious area of contempt law. Clearly, inability to pay is an affirmative defense that must be pled and proven by the respondent. TFC § 157.008(c); also see *Hicks v. Feiock*, 485 U.S. 624 (1988); *Ex parte Roosth*, 881 S.W.2d 300 (Tex. 1994); *Ex parte Johns*, 807 S.W.2d 768 (Tex. App. – Dallas 1991, orig. proceeding). Even those judges that believe that ability to pay is not an element of the movant's case prefer that the movant put on such evidence. The authors strongly encourage all prosecuting attorneys to put on evidence during their case in chief of the respondent's ability to pay, both past and present. This evidence is always relevant to punishment, even if not required for guilt/innocence.

The burden of proof that the movant is required to meet as to each criminal contempt element is "beyond a reasonable doubt," the criminal standard. *Ex parte Chambers*, 898 S.W.2d 257 (Tex. 1995). For civil contempt, motions to revoke, or at a compliance hearing, the civil standard applies (preponderance of

evidence). The other remedies requested in the motion to enforce (such as money judgment, attorney's fees, bond for security, etc.) must also be proven under the same standard as in other civil cases.

The movant should also put on evidence regarding attorney's fees and court costs. If the court finds that the respondent has failed to make child support payments, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to the arrearages, although the court may waive this requirement for good cause shown and if the court states the reasons supporting that finding. TFC § 157.167(a) and (b). Note that the statute does not require that the respondent be held in contempt before he can be ordered to pay attorney's fees and costs, merely that he has failed to make payments. Be sure you prove up your attorney's fees properly, rather than just stating the total amount.

THE DEFENSE'S CASE

The defense should focus their attack on each element missed by the prosecution by using a motion for verdict (also known as motion for directed verdict, motion for instructed verdict, or motion for judgment). TRCP, Rule 268. Counsel for movant may respond by requesting leave to reopen their case in chief to address the shortcomings, however the court might not allow this. TRCP, Rule 270.

At this point, defense counsel must weigh respondent's case carefully, since to proceed can allow movant's attorney an opportunity to cure any defect in their case in chief that may be of use at a habeas proceeding. Further, by making the motions for verdict, defense counsel has pointed out potential weaknesses in the prosecution's case. A decision to proceed further would give the movant's attorney the opportunity to cure the defects in their case.

The respondent does have certain affirmative defenses. TFC § 157.008. TRCP, Rule 94 and Chapter 27.02 of the Texas Code of Criminal Procedure require the pleading and proving of affirmative defenses. Affirmative defenses should be included in the respondent's answer if they apply. However, most courts will allow the respondent to put on evidence of affirmative defenses even if they have not been pled, but don't count on it.

If the obligee voluntarily relinquished to the obligor actual possession and control of a child for a time period in excess of the court-ordered periods of possession, and actual support was supplied by the obligor, the obligor is entitled to an offset up to the amount of the periodic payments previously ordered. TFC § 157.008(a), (b), (d), (e). The statute requires that the respondent not only prove that the child lived with him, he must also prove that he provided actual support, although most courts will grant the offset without specific proof of actual support, inferring that if the child lived with the obligor, he must have spent money to support the child. The movant's attorney should ask their client about where the child has lived before the motion is filed. If the child has lived with someone other than the movant or respondent (for example, with

their grandmother, or a teenage child moves out on their own), that is a potential problem as well. Many courts will not order the respondent to pay child support which came due while the child was not living with the movant.

Inability to pay is a defense to contempt. The obligor must prove that he lacked the ability to provide support in the amount ordered, lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed, attempted unsuccessfully to borrow the funds needed, and knew of no source from which the money could have been borrowed or legally obtained. TFC § 157.008(c); *Ex parte Englutt*, 619 S.W.2d 279 (Tex. App. – Texarkana 1981, orig. proceeding).

The respondent may also plead payment as an affirmative defense. TRCP, Rule 94 and 95. The defense attorney should review the movant's calculations to make sure their client has been given credit for all payments made. If the respondent has made direct payments to the obligee (not through the child support registry) these may not be reflected in the motion prepared by the attorney. Beware, however, that many courts will not give the respondent credit for direct payments if the child support is ordered to be paid through the registry or if the decree contains the provision that any payments made outside the registry are to be deemed gifts. The movant's attorney should ask their client about direct payments before the motion is filed. In most cases it would be appropriate for the movant to give the respondent credit for direct payments that have been made.

Defense counsel can also seek to introduce evidence that goes to punishment. Since the hearing is not bifurcated as in criminal cases, any evidence necessary for the court to impose a sentence less than the movant is asking for needs to be introduced at this hearing. There has been some past success at receiving a finding of no contempt by destroying the willful and wanton (mens rea) embodied in the notion of contempt. Examples of such evidence may include extended periods of unemployment where partial payments were consistently made, extended periods of hospitalization, attempts to meet the financial needs of the child in other ways (taking care of the child in lieu of day care, paying for extracurricular activities, providing food and diapers). This approach is very dangerous for the defense attorney. Usually the defense ends up proving a past ability to pay, rather than proving an affirmative defense.

THE JUDGE RULES

The court will render its findings and sentence. The sentence can be immediate incarceration for 180 days or less per violation (to run concurrently) and thereafter until certain amounts are paid or the sentence can be suspended for a period of time not to exceed ten years. TFC § 157.212; *Ex parte*

Duncan, 796 S.W.2d 562 (Tex. App. – Houston [1st Dist.] 1990, orig. proceeding).

The respondent can also be found not guilty. A finding of not guilty is not appealable, since jeopardy attaches at the commencement of testimony by the first witness. *Ex parte Harwell*, 538 S.W.2d 667 (Tex. App. – Waco 1976, orig. proceeding).

It is incumbent on movant's counsel to get a complete rendition. It is helpful to have a crib sheet with the elements of the contempt order handy to clarify any areas the court may have overlooked. It is very important for the order to be written properly.

The court should assess a separate sentence for each offense and run them concurrently. If one punishment is assessed for all violations, then if a habeas is filed, and the respondent shows that one of the counts was improper, the whole punishment fails. *Ex parte Guetersloh*, 935 S.W.2d 110 (Tex. 1996); *Ex parte Jordan*, 787 S.W.2d 367 (Tex. 1990). However, if the sentences are separate for each violation, and one of the counts was improper, the court of appeals can sever the void part of the order and deny the habeas. *Ex parte Arnold*, 926 S.W.2d 622 (Tex. App. – Beaumont 1996, orig. proceeding).

The trial court cannot limit the running of good time credit as part of its punishment. The award of good time credit is up to the sheriff. *Ex parte Roost*h, 881 S.W.2d 300 (Tex. 1994); *Ex parte Hall*, 854 S.W.2d 656 (Tex. 1993); *Ex parte Acly*, 711 S.W.2d 627 (Tex. 1986).

COMMUNITY SUPERVISION

In certain cases, it may be appropriate for the respondent to be placed on community supervision instead of being incarcerated. The court may order this or the parties may agree to it (subject to the court's approval). Community supervision is not appropriate in all cases where commitment is suspended. Most contemnors do not need to be supervised, and the respondent's money could be better spent paying the child support instead of paying supervision fees.

If the respondent is placed on community supervision, the order may include any or all of the conditions set forth in TFC § 157.211. The community supervision period may not exceed ten years. TFC § 157.212.

If a motion to revoke community supervision is filed pursuant to TFC § 157.214 (a prosecuting attorney, the Title IV-D agency, or a party affected by the order may file a verified motion alleging specifically that certain conduct of the respondent constitutes a violation of the terms and conditions of community supervision), and alleges a prima facie case that the respondent has violated a term or condition of community supervision, the court may order the respondent's arrest, and the respondent shall be brought promptly before the court. TFC § 157.215.

Provisions for the hearing on the motion to revoke community supervision are set forth in TFC § 157.216. The court shall hold a hearing on or before the first working day after the respondent is arrested, but if the court is unavailable on that date, the hearing shall be held not later than the first working day after the date the court becomes available; however, the hearing may not be held later than the third working day after the respondent is arrested. After the hearing, the court may continue, modify, or revoke the community supervision.

Of course you may file a motion to revoke without a request for the respondent's arrest, and have the respondent served as discussed above for a regular motion to enforce. Be careful about requesting the respondent's arrest – he may be picked up while you are on vacation, in trial in another court, or have an important deadline to meet, and you will have to drop everything when the court calls to tell you that your prisoner is there.

PREPARING THE CONTEMPT ORDER

The order (whether agreed or rendered by the court) must meet the requirements of TFC § 157.166:

Contents of Enforcement Order.

(a) An enforcement order must include:

(1) in ordinary and concise language the provisions of the order for which enforcement was requested;
(2) the acts or omissions that are the subject of the order;
(3) the manner of the respondent's noncompliance; and
(4) the relief granted by the court.

(b) If the order imposes incarceration or a fine for criminal contempt, an enforcement order must contain findings identifying, setting out, or incorporating by reference the provisions of the order for which enforcement was requested and the date of each occasion when the respondent's failure to comply with the order was found to constitute criminal contempt.

(c) If the enforcement order imposes incarceration for civil contempt, the order must state the specific conditions on which the respondent may be released from confinement.

If the court orders that the respondent be incarcerated, the commitment order must be entered soon after incarceration. *Ex parte Amaya*, 748 S.W.2d 224 (Tex. 1988). Some courts will not permit you to leave the courtroom until you have submitted your commitment order. Some courts have form orders available for you to fill in the blanks, but be careful to fill it in completely and accurately. *Ex parte Levingston*, 996 S.W.2d 936 (Tex. App. – Houston [14th Dist.] 1999, orig. proceeding).

If the order imposes a civil sentence, it must provide conditions that the contemnor must satisfy to secure his release from jail or "purge his contempt". TFC § 157.166(c); *Ex parte Dustman*, 538 S.W.2d 409 (Tex. 1976).

Texas Government Code § 21.002 was recently amended to limit the amount of time a person may be confined for contempt of court (both criminal and civil) to no more than 18 months, although this specifically does not apply to child support contemnors. Texas Government Code § 21.002(f).

If the court suspends commitment, make sure to get an entry date for submission of the order. The order must set out the specific terms of suspension of commitment and also include any compliance dates. The order must include notice to the respondent if the movant intends to request additional attorney's fees at the compliance hearing. *Ex parte Crawford*, 684 S.W.2d 124 (Tex. App. – Houston [14th Dist.] 1984, orig. proceeding).

If the court orders the respondent to make periodic payments toward the arrearage, a new withholding order must be prepared and served on the respondent's employer. A new fee must be paid to the district clerk to serve the new withholding order. The respondent's current employer's payroll address must also be provided so the clerk sends the withholding order to the proper place.

COMPLIANCE HEARINGS

If the court suspends commitment or places a respondent on community supervision, the court may set compliance hearings (one or more) in the future to determine if the respondent has complied with the terms ordered by the court.

If the respondent is given notice in the contempt order of the date, time, and purpose of the compliance hearing, additional notice is not required. *Ex parte Crawford*, 684 S.W.2d 124 (Tex. App. – Houston [14th Dist.] 1984, orig. proceeding).

The only issue before the court at a compliance hearing is whether the respondent has complied with the terms of suspension, and if he has not, for the imposition of sentence.

There are no real defenses at the compliance hearing. *Ex parte Hart*, 520 S.W.2d 952 (Tex. App. – Dallas 1975, orig. proceeding). The judge may choose to continue the suspension of commitment or keep the respondent on probation, so an appeal to the judge's sympathy may be the defense's only hope.

The court cannot increase the punishment imposed at trial. *Ex parte Chunn*, 881 S.W.2d 913 (Tex. App. – Houston [1st Dist.] 1994, orig. proceeding).

The standard of proof at the compliance hearing is preponderance of the evidence. *Forest v. State*, 805 S.W.2d 462 (Tex. Crim. App. 1991).

The court of appeals recently stated in *Ex parte Ohiri* that a respondent was entitled to warnings regarding right to counsel at a compliance hearing. 95 S.W.3d 413 (Tex. App. – Houston [1st Dist.] 2002, orig. proceeding). The court further stated that a compliance hearing was similar to a hearing on a motion to revoke since one of the possible outcomes was incarceration. This may mean that the defenses available when responding to a motion to revoke are now available to respondents at compliance hearings, although this would be inconsistent with the holdings of prior cases (see above).

The "compliance hearing" was recently examined by the Texas Supreme Court in *In re Zandi*, 270 S.W.3d 76 (Tex. 2008). In *Zandi*, the respondent was ordered to appear in court every six months for a "review and status hearing." The respondent was incarcerated at the conclusion of one of these hearings and filed a petition for habeas corpus. The court clarified in its supplemental opinion on rehearing that they do not impose a requirement that the respondent be given other notice of the subsequent hearing besides the setting contained in the contempt or commitment order. *Zandi*, at 78. (This is consistent with *Crawford* and its progeny.) The court also said the respondent was entitled to written notice prior to the "compliance" hearing that the obligee intended to seek revocation, stating the reasons. *Zandi*, at 79.

What does *Zandi* mean?

Some judges interpret *Zandi* to mean that a formal motion to revoke (TFC § 157.214, see discussion below) must be filed before they can send the respondent to jail at a compliance hearing. This reasoning is not consistent with all the past cases where respondents were sent to jail as a result of a compliance hearing. Before proceeding with a compliance hearing (either prosecution or defense), try to find out how that particular judge might rule on this issue.

If you are prosecuting an enforcement case, when you are writing the order in which commitment is suspended, be careful how you word the order for the respondent to appear at the compliance hearing. Make sure it is clear that the compliance hearing is to determine if the respondent has complied with the terms of suspension of commitment, and if he has not complied, that revocation will be sought at the compliance hearing.

Of course, to be safe, you can always file a motion to revoke prior to the compliance hearing, and have the motion to revoke heard on the date of the compliance hearing. However, this increases your costs, and if the respondent is not in compliance, you probably have not been paid and/or your client doesn't have any money to pay you. Also remember the respondent must be personally served with a new motion 10 days before the hearing, unless his attorney will accept service (see discussion on this topic above).

Filing a whole new motion may unnecessarily complicate your case, so think carefully about whether that's the best approach.

If you are defending a respondent at a compliance hearing, check the underlying order for your client to appear at the compliance hearing. Did he receive notice in the order suspending commitment? Is it clear what the hearing is for? Or you may be able to convince the judge that a motion to revoke is required to comply with the notice requirements in *Zandi*. If the movant filed a motion to revoke, check it carefully for any pleading errors, and remember that the statutory defenses apply (see below).

MOTIONS TO REVOKE

If the court suspends commitment or places a respondent on community supervision and does not set compliance hearing(s), or if the compliance hearings have passed and the respondent later fails to comply with the terms of suspension, the movant may file a motion to revoke. TFC § 157.214. New notice and hearing are required. *Ex parte Anderson*, 900 S.W.2d 333 (Tex. 1995). The respondent is entitled to the same protections (right to counsel, etc.) and the same defenses (inability to pay, etc.) as set forth above for a show cause hearing on a motion to enforce. TFC § 157.163(a); *Ex parte Castro*, 998 S.W.2d 935 (Tex. App. – Houston [1st Dist.] 1999, orig. proceeding). The standard of proof on a motion to revoke is preponderance of the evidence. Texas Code of Criminal Procedure, Chapter 42.12. Again, the court cannot increase the sentence imposed at the original trial. *Ex parte Goodman*, 742 S.W.2d 536 (Tex. App. – Fort Worth 1987, orig. proceeding).

LICENSE SUSPENSION

If the respondent is out of compliance with a payment plan for arrearages, the movant may be able to request license suspension, a remedy not usually available on the first filing of a motion to enforce. TFC, Chapter 232. Check TFC § 232.003 to see if the case is appropriate for license suspension.

License suspension is usually not a practical remedy for child support enforcement unless the obligor is a professional licensed by the state, in which case the threat of license suspension may be a good strategy. For most other obligors, the threat of jail is more effective than the threat of their driver's license being suspended.

APPEALING THE ASSOCIATE JUDGE

An obligor found in contempt by an associate judge can be detained in jail for up to 72 hours or placed on bond pending hearing on his appeal to the referring court. TFC § 201.007(a)(13); 201.013(c). The respondent cannot go to the associate judge for trial and, if the associate judge orders incarceration, file an appeal and avoid jail that day. A finding of no contempt by the associate judge can be appealed to the referring court without violating the rule against double jeopardy. *In re Office of the*

Attorney General, 215 S.W.3d 913 (Tex. App. – Fort Worth 2007, orig. proceeding). The movant may appeal any of the associate judge's other findings as well. TFC § 201.015.

POST CONVICTION HABEAS CORPUS

A post conviction habeas corpus is the legal mechanism to challenge an unlawful restraint of a person's freedom. The rules for bringing such an action are set forth in the Texas Rules of Appellate Procedure, Section Three, Rule 52 et seq. A habeas is filed as an original proceeding in either the Court of Appeals or the Texas Supreme Court.

In such a proceeding, the relator (the person bringing the habeas proceeding) must show that the order under which he is being restrained is void. He need not actually be incarcerated, only his liberty restrained. *Ex parte Crawford*, 506 S.W.2d 920, 921 (Tex. Civ. App. – Tyler 1974, orig. proceeding); *Ex parte Williams*, 690 S.W.2d 243, 244 (Tex. 1985); *In re Ragland*, 973 S.W.2d 769, 771 (Tex. App. – Tyler 1998, orig. proceeding); *Ex parte Brister*, 801 S.W.2d 833, 834-835 (Tex. 1990); *Ex parte Duncan*, 796 S.W.2d 562, 564 (Tex. App. – Houston [1st Dist.] 1990, orig. proceeding).

In most cases, the relator will have to serve his criminal sentence before the civil contempt can be challenged. *Ex parte Hogan*, 916 S.W.2d 82 (Tex. App. – Houston [1st Dist.] 1996, orig. proceeding).

The respondent can also bring a habeas in the trial court and present the same issues they would present to the Court of Appeals without the appellate pleading requirements. Sometimes this process is quicker than going to the appellate court, costs less, and the trial judge may appreciate the opportunity to correct their error before the court of appeals has the opportunity to do so. The respondent is taking the issue back to the same court that made the alleged error and put the respondent in jail, so be sure you have something new other than the issues or objections you raised at trial.

We hope this paper helps... good luck on your next contempt!