

MINNESOTA JUDICIAL TRAINING UPDATE :**CONTESTED CHILD SUPPORT CIVIL CONSTRUCTIVE CONTEMPT HEARINGS :**

Note: most of these cases are resolved by agreement but if you find yourself having to preside over a contested hearing, these are the basic standards and rules you need to know.

1) INITIAL CONTEMPT HEARING (Hopp hearing) :

(Contemnor has right to a court appointed attorney)

a) What was the act ordered?

b) Did party fail to perform act?

c) Did party have ability to perform act?

- i) Moving party has burden of production to show grounds for contempt
- ii) A child support or spousal maintenance order is *prima facie* evidence that the Contemnor has the ability to pay the award. *MS 518A.71 (2000)*. MN law creates a presumption that the Contemnor has an income sufficient to pay the amount in the support order and the order constitutes *prima facie* evidence that Contemnor has the ability to pay the award (*MS 518.24*)
- iii) Disobeying the award is *prima facie* evidence of contempt.

d) Burden (preponderance of evidence) is on contempt party, party may present evidence; burden is to prove inability to comply with the order.

- i) Take evidence or parties may stipulate to facts.

e) If Court finds party failed to meet above burden, Court finds party in “conditional civil contempt.”

- i) Court finds that “Conditional confinement” is “reasonably likely to produce compliance with order.”
 - (1) PURPOSE: To compel future compliance; not to punish past failure
- ii) Make finding that Contemnor has the current ability to meet purge conditions set by court;
- iii) Impose jail sanction and set purge conditions (i.e. usually 90, 120 or 180 days).

f) Purge conditions must be clear, set deadlines.

g) If party fails to purge contempt, Party has right to a final contempt hearing (Mahady hearing) on questions of performance or excusable non-performance of purge conditions before jail sanction can be executed.

2) FINAL CONTEMPT HEARING (Mahady hearing):

(Contemnor has right to a court appointed attorney)

- a) **Burden on Contemnor (preponderance of evidence) to show compliance or an inability to meet the purge conditions. (At a minimum Contemnor must show good faith effort to comply with purge conditions)**
- b) **Did party fail without excuse to comply with purge conditions?**
- c) **Did party have ability to comply?**
- d) **Take testimony or parties may stipulate to facts. Failure or refusal to testify could result in court drawing an unfavorable inference against non-testifying party.**
 - i) If Contemnor fails to meet burden, court may impose immediate confinement but must still set purge conditions. Restate that Contemnor is in constructive civil contempt, execute jail sanction, reiterate purge conditions, give party the key to his own release.
 - ii) Make finding that Contemnor has the ability to meet the ongoing purge conditions. This finding must relate to Contemnor's financial circumstances at the time of imposition of confinement, not time of the initial contempt finding.
 - iii) Court's findings of fact are subject to reversal only if clearly erroneous subject to an "abuse of discretion standard;" *i.e.*, Was the order arbitrary and unreasonable or is there support in the record;
 - iv) It is proper for the court to look at a Contemnor's earning capacity and disregard any inability to pay that is voluntary on the part of the Contemnor.

NOTE: "A person found in contempt may not purge himself by showing that he has voluntarily placed himself in a position where he is unable to conform to the court's order, when he has allowed the means of complying with that order to pass through his hands and out of his control." Ryerson v. Ryerson 194 Minn. 350, 351-52; 260 N.W. 530, 530-31 (Minn. 1935).

Source: Hopp v. Hopp, 279 N.W.2d 170 (Minn. 1968); Mahady v. Mahady, 448 N.W.2d 888 (Minn.App. 1988); Burdstrand v. Burdstrand C2-01-1200 (Minn. App., March 12, 2002); MS 518A.72