

MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2019 ANNUAL CONFERENCE




## County Attorney Round Table

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## Civil contempt and ability to pay determinations

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Federal final rule  
[§ 303.6(c)(4)]



- A state must establish guidelines for the use of civil contempt in IV-D cases:
  - Screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
  - Provide the court with such information regarding the noncustodial parent's ability to pay or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and
  - Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the contempt action.

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**Screening checklist**



- Initial Criteria:
  - Arrears balance of at least 3 times obligation
  - Attempt to contact: phone or mail
  - Address verified and lives in MN
  - Notice of obligation
  - Not in active bankruptcy
  - Not in compliance with payment plan
  - Not incarcerated, inpatient treatment
  - Not on cash assistance
  - Order registered for enforcement if UIFSA case

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**Screening checklist**



- Initial Criteria:
  - Income withholding not in place: discuss if receiving partial payments
  - Judgments not expired
  - Review prior contempt history: remember not to include same timeframes from prior contempt
  - Arrears only case: is there a court ordered payback?
  - Attempt to contact CP for information

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**Screening checklist**



- Ability to Pay:
  - Work history
  - Education history
  - Criminal history
  - Mental health or chemical dependency
  - Physical disability
  - Immigration status
  - Review past order history
  - Review other child support case history

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**First Stage Hearing**

- Ability to pay: the obligations of the child support order
- 518A.71: The obligor is presumed to have an income from a source sufficient to pay the maintenance or support order. A child support or maintenance order constitutes prima facie evidence that the obligor has the ability to pay the award. If the obligor disobeys the order, it is prima facie evidence of contempt.
- Burden on Obligor to show inability to comply
  - Obligor not found to have sustained burden when does not make a good faith effort (Hopp v. Hopp, 156 N.W.2d 212)

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**First Stage Hearing**

- What do you point out to show has not met their burden?
  - Job history
  - Earning potential
  - No physical/mental disability
  - Monthly expenses
  - Other items: trips, car, cigarettes, alcohol, cell phone
  - Fail to modify obligation
- Others?

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**Second Stage Hearing**

- Obligor shows compliance or excusable nonperformance (Mahady v. Mahady, 448 N.W.2d 888)
- Ability to comply with stay/purge terms
- Needs to make reasonable effort to comply. Can't claim inability simply by refusing to try (Putz v. Putz, 645 N.W.2d 343; Barrett v. Barrett, 2003 WL 21652243)
  - Not purge contempt by allowing "the means of complying with that order to pass through his hands and out of his control" (Ryerson v. Ryerson, 260 N.W. 530)

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**Second Stage Hearing**

- Administrative seek work order presumption: §518A.64, subd. 2(3): failure to comply with the order is evidence of a willful failure to pay support
- Imputed income: Ok to base terms on imputed income as long as still appropriate amount based on current facts (Quance v. Quance, 2001 WL 32802)
- Not required to determine how Obligor will get the money, only that can meet the terms (Crockarell and Ramsey County v. Crockarell, 631 N.W.2d 829)

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**Second Stage Hearing**

- Also ability to pay in setting the purge or release conditions ("keys to the jail cell")
- Court must find Obligor currently has ability to meet this condition
  - Schubel v. Schubel, 584 N.W.2d 434

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**Enforcement of Foreign Support Orders**

Chuck Weber  
Hennepin County

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**Law**

- UIFSA
- Agreements with foreign jurisdictions
  - Hague Convention on the International Recovery of Child Support
  - Bi-lateral agreements
    - Between the US and a foreign jurisdiction.
    - Between individual states and foreign jurisdictions.
  - NO agreement
    - US Constitution
    - Full Faith and Credit v. Comity

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**UIFSA**

- A foreign court's child support order, like another state's order, properly registered in Minnesota, is "enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state."  
Minn. Stat. § 518C.603(b).
- Law of the foreign country governs (as to most issues)  
Minn. Stat. § 518.604

**\*Foreign court order is subject to scrutiny under US Const.**

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**Hague Convention (2007)**

- 29 Countries
- Object: effective international recovery of Child Support
- Examples of details
  - Enforced up to age 21 (even if receiving country has lower age)
  - Necessity of a Central Authority
  - Minimum requirements of applications – uniform documents
  - May include spousal maintenance (if also child support request)
  - No modification by receiving country  
(unless CP no longer a resident of issuing county)
  - Choice of law
    - Enforcement and procedure - receiving country
    - Laws of establishment / findings of fact – sending country
  - refusal to register – only if finding that the order is "manifestly incompatible with public policy"

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## Contested Enforcement of Foreign Order (518C.607)



1. the issuing tribunal lacked personal jurisdiction;
2. the order was obtained by fraud;
3. the order vacated, suspended, or modified by a later order;
4. the issuing tribunal has stayed the order pending appeal;
5. there is a defense under the law of this state to the remedy sought;
6. full or partial payment has been made;
7. statute of limitations (518C.604) precludes enforcement of arrearages; or
8. the alleged controlling order is not the controlling order.

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## CASE STUDY



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## From Israel




- Request to Minnesota to enforce an arrears only case.
- Sent to HC to enforce
- Agency registered with court
- Obligor challenged on 6 of the 8 bases; including:
  - **Personal Jurisdiction**

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- Israel and US have a bi-lateral agreement.
- Similar to Hague convention.
- Israel has a specific individual contact for US cases.
- A Caseworker's Guide to Processing Cases with Israel
  - <https://www.acf.hhs.gov>

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### Basic Timeline



- Dissolution
- Adoption
- CS for Grandmother
- Mod of CS
- Request to TX (no registration)
- Request to MN

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### The Hiccup: Personal Jurisdiction



- NCP claims he did not know about actions with Grandmother.
- Israeli court order notes he was not present @ hearings.
- Israeli law for service
  - Certified mail - out of country
  - Alternative service - presence unknown
- Bi-lateral agreement requires: cert of enforceability
- No cert of enforceability included in Israeli documents
- No info on manner of service anywhere

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**Hearing**

- Court ordered a brief a briefing schedule and set an evidentiary hearing.
- Prior to hearing requested
  - Cert of enforceability.
  - Statement re manner of service.
- Did not receive.
- Took testimony. Made arguments.
- Record held open to submit requested docs.
- Court took all other issues under advisement.

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**Result**

- Advised Israeli contact of court deadline
- Sent cert of enforceability that wasn't
- Again requested new certificate and record of service
- Received:
  - **Nothing**
- Informed court and council
- Court issued order denying registration.

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**Uniform Parentage Act**

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## Contact Info



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