

1983 WL 181774 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 3, 1983

***1 SUBJECT: Clerks—Contempt—Support, Non-payment**

Clerks of Court may issue process on behalf of the Family Court to bring Respondents before the Court on the issue of non-payment of support obligations when those payments are made through the Clerk of Court's Office.

David H. Maring
Chief Judge
Family Court of the Fifteenth Judicial Circuit

QUESTION:

Can a Clerk of Court bring a Respondent before the Family Court concerning non-payment of support obligations when these payments are made through the Clerk of Court's Office?

OPINION:

Yes. A Clerk of Court is a ministerial officer of the Court and performs duties that are set out by statute or imposed by the Court. He may not perform judicial functions without statutory or Constitutional authority. However, he may perform non-discretionary acts. 15 A Am.Jur.2d, Clerks of Court §§ 21 et seq. Clerks of Court ordinarily maintain Court records and receive money in their official capacity. In South Carolina, Clerks of Court are responsible for receiving and distributing support payments ordered by the Family Courts. Failure to make these payments may subject an obligor to charges for contempt of Court.

The power to punish for contempt is inherent and is an essential element of judicial authority. Civil contempt proceedings are generally held to be remedial and civil in nature and are used to enforce a duty or coerce a person to do the thing required. Ordinarily, when a contempt is not committed in the Court's presence, due and reasonable notice must be given of the proceeding. Notice is generally sufficient when it fairly and fully enables a person to know the specific acts with which he is charged and allows a reasonable time to prepare his defense. The sufficiency of the notice is at the discretion of the Court, subject to due process requirements. 17 C.J.S. Contempt §§ 62(6) et seq.

A South Carolina Case, Hornsby vs. Hornsby, 198 S.E. 29, 187 S.C. 463 (1938), quoted 13 C.J. 68:

... before a person can be found guilty of contempt not committed in the presence of the Court, he must have due and reasonable notice of the proceeding. A rule to show cause, an attachment, or other process should issue (Emphasis added).

In Family Court proceedings concerning non-payment of a support obligation, the Clerk of Court may issue process on behalf of the Court to bring a person before the Court. This should be performed as a non-discretionary duty and not as a judicial or quasi-judicial function, as no specific statutory authority has been provided to allow the Clerk to issue the contempt order itself. The form used by the Clerk should be sufficient to give the obligor notice of the charges against him and should contain sufficient information upon which the Court may issue an order. This information may be provided by affidavit, verified petition or other method to ensure that due process requirements are met.

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