

payment be made to the officer designated in the administrative order.

(b) Payments to Public Officer.

(1) If the court so directs, the payments shall be made to the officer designated.

(2) The officer shall keep complete and accurate accounts of all payments received. Payments shall be made by cash, money order, cashier's check, or certified check. The officer shall promptly disburse the proceeds to the party entitled to receive them under the judgment or order.

(3) Payment may be enforced by the party entitled to it or the court may establish a system under which the officer issues a motion for enforcement and a notice of hearing in the form approved by the supreme court. The motion and notice shall be served on the defaulting party in person or by mail. At the hearing the court shall enter an appropriate order based on the testimony presented to it.

Commentary

1995 Adoption. This rule is a remnant of Florida Rule of Civil Procedure 1.611, which contained several unrelated issues. Those issues are now governed by separate rules for automatic disclosure, simplified dissolution procedure, and this rule for central governmental depository.

RULE 12.615 CIVIL CONTEMPT IN SUPPORT MATTERS

(a) Applicability. This rule governs civil contempt proceedings in support matters related to family law cases. The use of civil contempt sanctions under this rule shall be limited to those used to compel compliance with a court order or to compensate a movant for losses sustained as a result of a contemnor's willful failure to comply with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the court are criminal in nature and are governed by Florida Rules of Criminal Procedure 3.830 and 3.840.

(b) Motion and Notice. Civil contempt may be initiated by motion. The motion must recite the essential facts constituting the acts alleged to be contemptuous. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served by mail provided notice by mail is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the hearing and must contain the following language: "FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 48 HOURS BEFORE A HEARING IS HELD." This notice must also state whether electronic recording or a court reporter is provided by the court or whether a court reporter, if desired, must be provided by the party.

(c) Hearing. In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision (c)(1) of this rule, the court shall,

(A) if the alleged contemnor is present, determine whether the alleged contemnor had the present ability to pay support and willfully failed to pay such support.

(B) if the alleged contemnor fails to appear, set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment and direct that, upon execution of the writ of bodily attachment, the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

(d) Order and Sanctions. After hearing the testimony and evidence presented, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor had the present ability to pay support, and that the alleged contemnor willfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision (e) of this rule.

(e) Purge. If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration for more than 48 hours to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. Upon incarceration, the contemnor must be brought before the court within 48 hours for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) Review after Incarceration. Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.

(g) Other Relief. Where there is a failure to pay support or to pay support on a timely basis but the failure is not willful, nothing in this rule shall be construed as precluding the court from granting such relief as may be appropriate under the circumstances.

Commentary

1998 Adoption. This rule is limited to civil contempt proceedings. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Rules of Criminal Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the due process rights of alleged contemnors are protected. A court that adjudges an individual to be in civil contempt must always afford the contemnor the opportunity to purge the contempt.

RULE 12.620. RECEIVERS

Receivers shall be governed by Florida Rule of Civil Procedure 1.620.

RULE 12.625. PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS

Proceedings against sureties on judicial bonds shall be governed by Florida Rule of Civil Procedure 1.625.

RULE 12.630. EXTRAORDINARY REMEDIES

Extraordinary remedies shall be governed by Florida Rule of Civil Procedure 1.630.

RULE 12.650. OVERRIDE OF FAMILY VIOLENCE INDICATOR

(a) Application. This rule shall apply only to proceedings instituted pursuant to 42 U.S.C. § 653, which authorizes a state court to override a family violence indicator and release information from the Federal Parent Locator Service