#### Your Superhero Toolbelt:

Using the Civil Contempt Process to Enforce Child Support

# What is civil contempt?

- An action to enforce a court's order.
- Unlike criminal nonsupport, there is no Missouri statute regarding civil contempt for failure to pay child support.
- Federal Rules of Civil Procedure (FRCP) Rule 70: a party that fails to comply with a judgment by a court can be charged with contempt and subsequently penalized.
- RSMO 210.843(3) "Willful failure to obey any judgment or order of the court entered pursuant to this section is a civil contempt of court."
- RSMO 476.120: "Punishment for contempt. Punishment for contempt may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court."

### What is civil contempt?

The purpose of a civil contempt order is to compel a party to comply with the relief granted by the court. *Emmons v. Emmons* 310 S.W.3d 718, 722 (Mo.Ct.App.2010) The movant must prove the contemnor:

- Had an obligation to perform or refrain from an action as required by a court order
- Intentionally or willfully failed to meet the court ordered obligation
- The party found in contempt has two options:
  - Purge the contempt by complying with the court order, which then makes the case moot
  - Appeal, but not until judgment is final until
    - The contemnor is incarcerated, or;
    - the trial court takes evidence as to whether the contempt has been purged and then reissues a warrant of commitment.
    - Carothers v. Carothers, 337 S.W.3d 21 (Mo. Banc 2011)

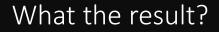
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#### What is civil contempt?

The movant must prove the alleged contemnor had an obligation to perform an action and failed to meet the obligation.

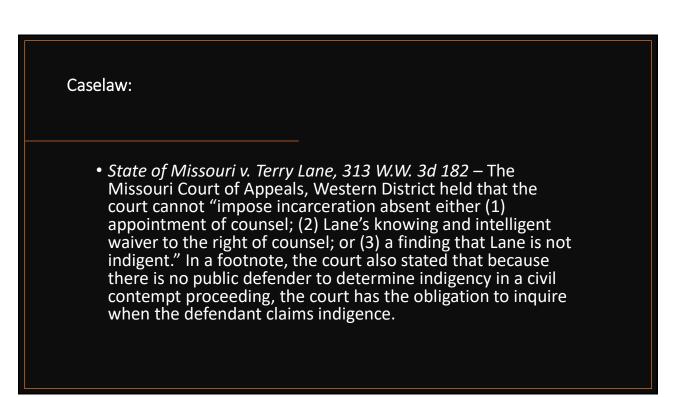
The alleged contemnor then has the burden of proving the failure to act was not due to his/her own intentional and contumacious conduct.

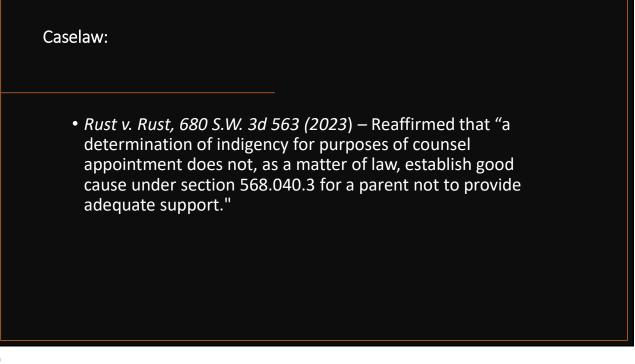
Who do we represent?
RSMO 454.513 – Our client is the State of Missouri, Department of Social Services, Family Support Division.
Generally, the noncustodial parent believes we represent the custodial parent.
Opposing counsel still, at times, needs to be reminded of this.



- Unlike other civil penalties, the contemnor can be incarcerated.
- The contemnor is punished only for so long as they refuse to perform the required action of the court. In our cases, that is to make a payment towards the alleged child support arrearage.

## Caselaw: • *Turner v. Rogers, 465 U.S. 431 (2011)* – There is no constitutional right to counsel in a civil contempt case, but there must be adequate safeguards in place to ensure due process. As a result, 45 CFR 303.6(c)(4) was updated to require state child support agencies establish procedures to ensure that the case has been screened to determine whether the facts support a finding that a parent has the present ability to pay or comply with the support order **prior to** filing the contempt.

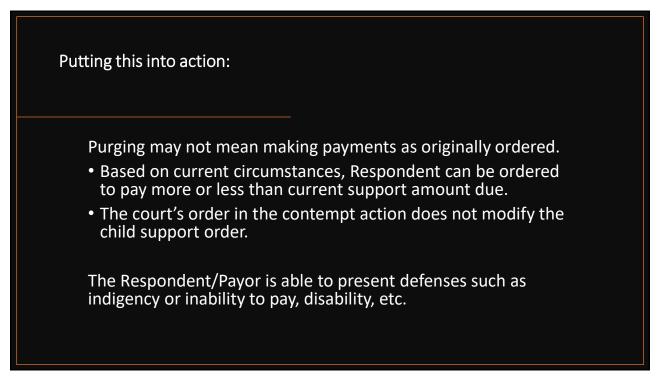




What does this all mean?

The defendant/respondent must be made aware they have a right to counsel and that, if indigent, counsel will be appointed.

Putting this into action:	
Upon the Motion for Contempt, the court enters an order for	
the non-compliant party to appear and show cause as to why the court's order was not followed. This Order to Show Cause must be served upon the party at least 7 days prior to the hearing. (Check local court rules – Jackson County is 10 days)	
The State must prove that the Respondent failed to comply with the order and now has the present ability to purge the alleged contempt.	



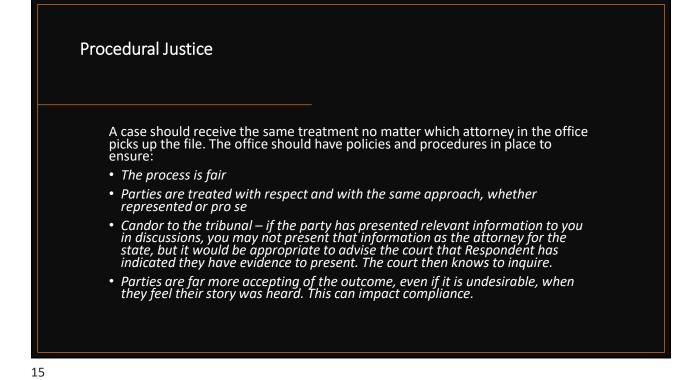
Putting this into action:

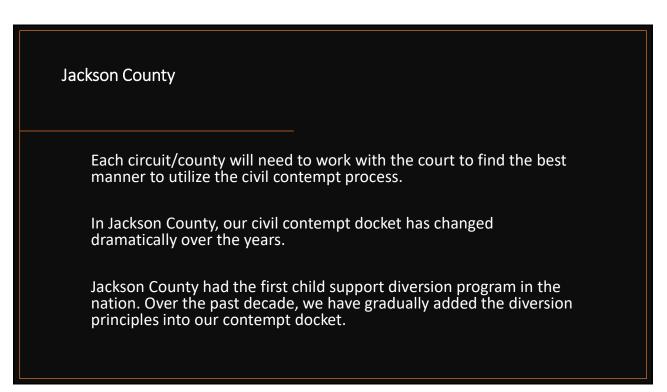
If the Court enters a Judgment of Contempt, there must be <u>findings</u> that the Respondent has the present ability to pay (purge the contempt) and must then also include the present ability to pay in the <u>order</u>. Lyons v. Sloop, 40 S.W. 3d 1 (Mo. App. 2001)

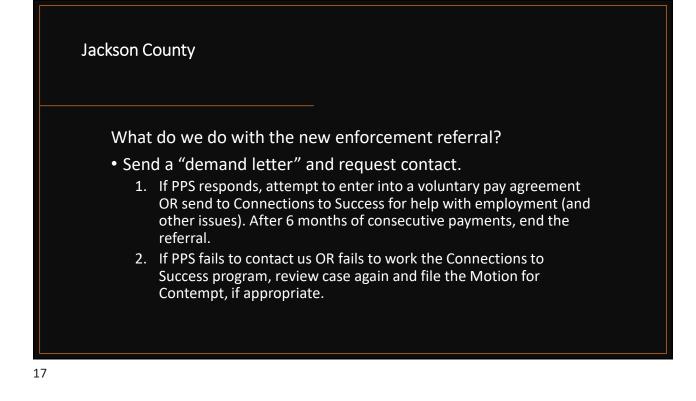
#### **Reality of Contempt:**

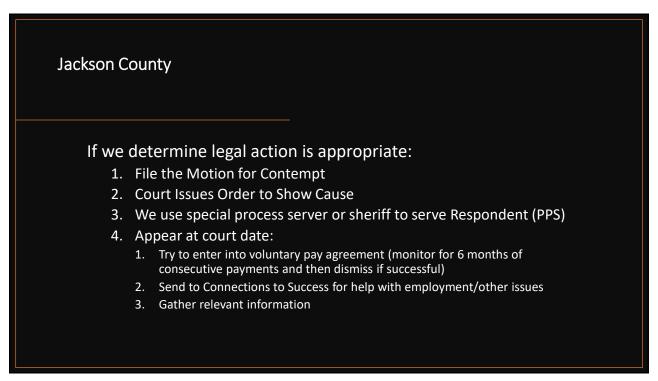
We deal primarily with pro se litigants. They are not indigent, but the generally cannot afford counsel.

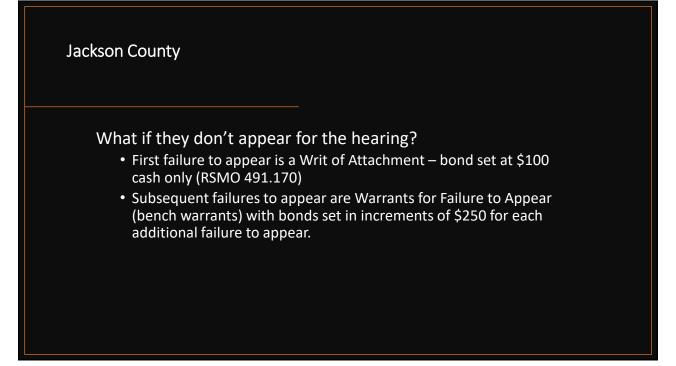
- We must educate about the process to be effective
- We must make it clear we represent the State and not either party
- Parties come to us with:
  - Lack of knowledge of the legal process
  - Lack of knowledge of the child support system
  - Different educational levels
  - Possible substance abuse issues
  - Possible mental health issues
  - Trauma
  - Fear
  - Anger
  - Relationship issues within the family

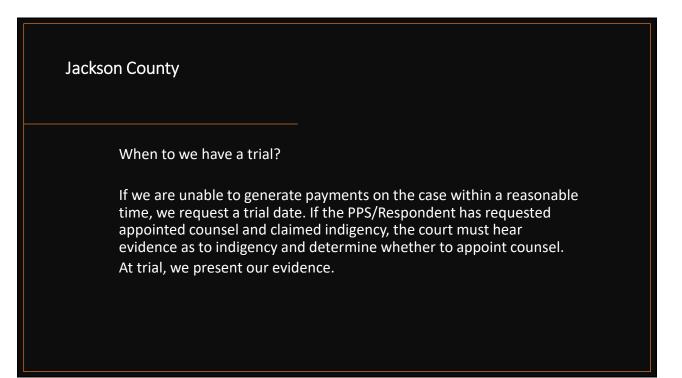


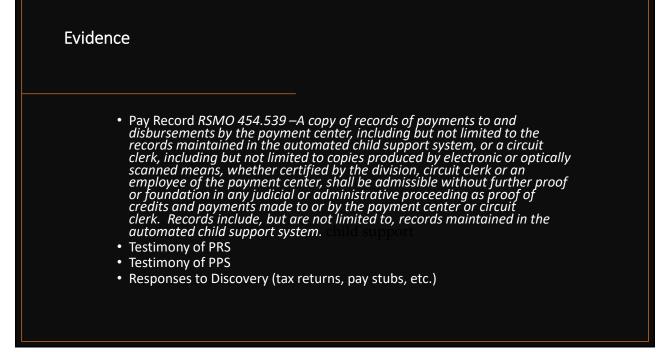


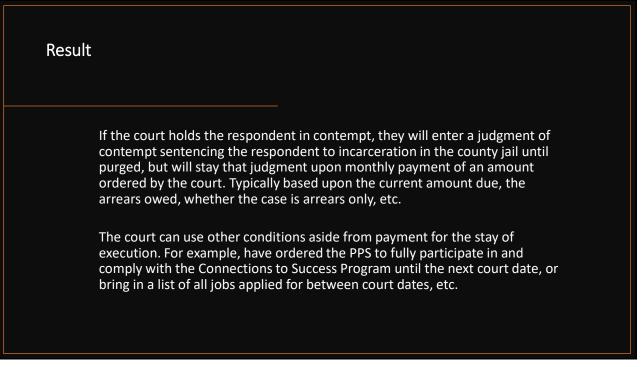


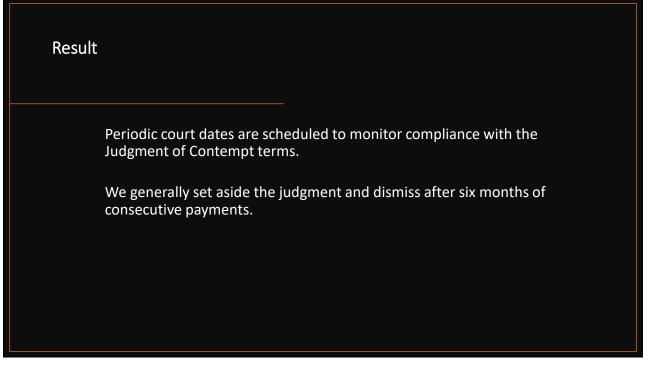


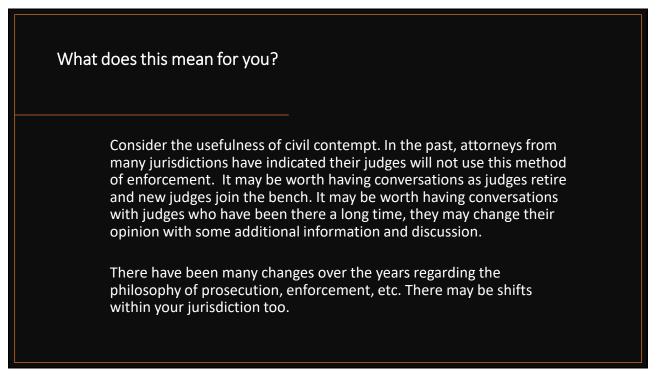














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