

ALBUQUERQUE DIVORCE LAWYER BLOG

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ATTORNEYS AT LAW

No Right to Counsel for Child Support Contempt Cases Even When Jail is Possible!

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Amid all of the emotional and financial trauma that can be caused by a divorce or child custody battle, parties often forget that they are part of a court proceeding. Even though family law matters are civil, not criminal, failure to abide by the court's order can still get the non-compliant party in big trouble. In New Mexico, violation of family court order can result in a finding of civil contempt, which can result in punishment by fine and/or jail time.

Now, many people think that any time they face a punishment that involves jail time they are automatically entitled to counsel under the 6th Amendment and that if they can't afford an attorney one will be appointed for them. However, the United States Supreme Court recently ruled that parties to a civil contempt proceeding are not entitled to free counsel under the Sixth Amendment of the United States Constitution.

In *Turner v. Rogers*, a South Carolina man, Mr. Turner, owed the mother of his child, Ms. Rogers, nearly six thousand dollars in court-ordered child support. After a hearing at which Mr. Turner did not have counsel and at which he admitted that he hadn't paid the child support, the South Carolina court held Mr. Turner in contempt and sentenced him to one year in jail.

During his appeals, which eventually led to the Supreme Court, Mr. Turner argued that his Sixth Amendment right to counsel was violated when he was jailed after being held in contempt for his failure to abide by the court's child support because he was not provided with free counsel.

The Supreme Court disagreed and held that the Sixth Amendment right to counsel only applies to criminal proceedings, even if a civil proceeding (like the one Mr. Turner faced and that parties to a New Mexico family law case could also face) could lead to jail time.

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However, the Supreme Court also noted that under the due process clause of the Fourteenth Amendment, civil courts cannot impose a punishment of civil contempt when a party has clearly established that he or she cannot comply with the court's order. This means that parties facing a civil contempt action must be provided adequate notice that the finding of contempt could result in incarceration and must be provided a fair opportunity to present and dispute evidence about his or her ability to comply with the court's order.

The *Turner* ruling clearly provides that a party facing a contempt charge for failure to pay child support, must be given the opportunity for a hearing before they are held in contempt. However, parties can be held in contempt for violating any family court order, not just child support orders. And anybody facing possible jail time for civil contempt will be fully responsible for obtaining his or her own attorney. None will be appointed by the State.

Thus, anyone involved in a divorce, custody or child support proceeding would be wise to seek the guidance of an experienced divorce attorney. The possible consequences for a finding of contempt are too serious to go it alone unless this is absolutely the only option.

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