

approved 3/15/12

The Court, having reviewed the decision and opinion in *McKinstry vs Genessee County Circuit Judges*, 669 F SUPP 801 (ED Mich, 1987), which held an indigent contemnor in civil nonsupport contempt proceedings may not be jailed unless counsel has been waived or appointed; and, being further advised in the premises, directs the following procedure be observed until further order of this Court or the Michigan Supreme Court:

1. A nonsupport show cause hearing notice mailed by the Friend of the Court shall be accompanied by a financial statement form to be completed by the alleged contemnor. The completed statement must be filed by the alleged contemnor with the Friend of the Court before the hearing providing the Court with a periodic record of the payer's claimed financial status.
2. If such a show cause order is initially returnable to the Friend of the Court Referee, or the hearing is directed to be held before the referee by the Court, the referee, at the conclusion of the hearing, will advise the parties that any recommendation and/or determination is appealable to the Circuit Court.
3. At any nonsupport show cause hearing held by a Circuit Judge, including those on appeal from the referee's recommendation/determination, the Court's questions of the payer will continue to touch upon assets, income, earning capacity, efforts to secure employment, liabilities, expenses and the support account status.
4. At the conclusion of the show cause hearing held before the Court, the judge will make a specific finding as to whether or not the payer is indigent.
5. If the payer is not found to be indigent, an appropriate finding and disposition will be made on the question of contempt. Jail may be one of the sanctions employed.
6. If the payer is found to be indigent and jail is not a sanction to be employed, an appropriate finding and disposition on the contempt issue will be made. The payer will not be jailed and counsel thus will not be appointed.
7. If the payer is found to be indigent and jail appears necessary, the Court will advise the payer of his/her right to court appointed counsel. Unless counsel is waived, the payer will be referred to the COUNSEL DOCKET for a hearing with assigned counsel. The payer will be instructed to appear at a designated time prior to the hearing to confer with counsel. The payer will further be advised that counsel is being appointed because jail may be necessary and that the rescheduled hearing can be cancelled if a specific sum is paid on the account prior to the scheduled conference with counsel.
8. The Circuit Court Administrator will establish a rotation system for appointed counsel in civil nonsupport contempt proceedings. Under this system, the judge assigned to hear Friend of the Court matters on the first scheduled motion day of each month will conduct the counsel docket. All matters assigned to the counsel docket by not later than five (5) days prior to the hearing of the counsel docket will be scheduled for such day. An attorney from the rotation list, approved by the Chief Judge, will be assigned to all matters before the counsel docket during the assigned month. Counsel will be reimbursed as follows: The sum of \$200 for each rotation day appointed and the rate of \$50 per hour not to exceed four (4) hours. In addition, counsel shall be entitled to mileage to and from his/her place of business and the Court for attendance of the counsel docket.

9. At a bench warrant arraignment, the Court may require the respondent to post a cash bond and commit the payer to jail pending the posting of the bond. A respondent committed to jail and failing to post bond, will appear for an adjudicatory hearing at the next regular counsel docket day. Those posting bond will appear on the next regular Friend of the Court matters day.
10. The Office of the Friend of the Court shall provide counsel with a copy of pertinent Friend of the Court records including, but not limited to, a copy of the show cause notice, a copy of the referee's recommendation/determination (if any) and a copy of the financial statement referred to in paragraph number 1.

This procedure shall become effective May 1, 1988.

Dated: April 11, 1988

**JAMES C. KINGSLEY**  
*James C. Kingsley*  
JAMES C. KINGSLEY, P15983  
Chief Circuit Judge

A TRUE COPY ATTEST  
*[Signature]*  
DEPUTY CLERK