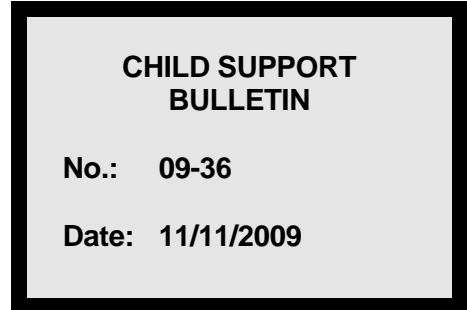


**WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES
Division of Family and Economic Security
Bureau of Child Support**

**To: Child Support Directors
Child Support Supervisors or Lead Workers
Child Support Attorneys**



**From: Director
Bureau of Child Support**

Subject: Obtaining Commitment Orders – Teasdale Court of Appeals Decision

Purpose

This Bulletin provides clarification and revision to policies related to the procedure for obtaining commitment orders following the Court of Appeals recent decision in **In re the Marriage of Meyer v. Teasdale**, Appeal No. 2008AP2827 (Wis. Ct. App. September 15, 2009).

Background

Mr. Teasdale appealed a warrant and commitment order entered after he failed to comply with the purge conditions of a remedial contempt of court order for failure to pay child support. The commitment order was obtained after a non-attorney child support agency specialist delivered to the judge an affidavit in support of a commitment order signed by the specialist along with the commitment order, which was signed by the judge. No notice was provided to the payer and no hearing was held subsequent to the contempt hearing on the request for an order for commitment.

The appellate court held that the procedures by which the agency obtained the commitment order were improper on several grounds:

- The affidavit was signed by the caseworker and not accompanied by any written motion. Although the court noted that the affidavit met the statutory requirements for a motion, it is a statutory requirement that any motion filed in court has to be signed by an attorney.
- The affidavit was delivered directly to the judge and not filed with the clerk of court.
- The agency failed to provide notice to the payer or provide an opportunity to be heard before being committed to jail for allegedly failing to comply with purge conditions.

The order was reversed and remanded to the circuit court with directions to vacate the warrant and commitment order.

Policy

The Court of Appeals noted that the Child Support Agencies (CSA) procedures appeared to have persisted over a period of time, in multiple counties, and constituted the unauthorized practice of law. The purpose of this bulletin is to ensure that CSA staff understands that an attorney needs to be involved in any enforcement action that involves a court proceeding, and to establish policy related to the provision of notice and hearing rights in the pursuit of a commitment order consistent with the court's decision in *Teasdale*.

Post-Teasdale Notice and Hearing Requirements

The court in *Teasdale* held that a payer who has been found in contempt is entitled to an opportunity to request a hearing before being committed to jail for allegedly failing to comply with purge conditions. The court's decision does not require that there be a hearing in every case, only that the payer be given an opportunity to request a hearing. The payer's notice may be accomplished by mailing a copy of the affidavit of noncompliance and proposed order to the payer at the payer's last known address along with a cover letter explaining that the order will be signed unless the payer requests a hearing within 10 business days of the date the notice was mailed. We have been advised by legal counsel that the request to the court may also be a letter signed by the agency attorney along with an affidavit demonstrating noncompliance. A sample letter and order are attached to this bulletin.

Note: Although Wisconsin statute requires a minimum, five day notice and permits three days for mailing for a total of eight (8) days, BCS recommends using 10 days to ensure adequate notice is provided.

CSA must work with the agency attorney to add language to remedial contempt orders providing that the payer may be committed by affidavit from the child support agency unless they send a written request for a hearing within 10 business days of receiving the affidavit of noncompliance mailed to their last known address.

CSA's may elect to schedule hearings when seeking commitment orders, in which case notice should be provided to the payer by motion and notice of motion.

Affidavit In Support of Warrant and Commitment Order

The affidavit in support of a warrant and commitment order may be signed by a child support caseworker who has personal knowledge of the facts, but an accompanying motion must be signed by an attorney and filed with the clerk of courts. If only an affidavit is used, the affidavit must be signed by an attorney and filed with the clerk of courts. In either situation, the payer must be advised of the right to a hearing before a commitment order is entered.

Pre-Teasdale Warrants and Orders to Stay Commitment

Any existing bench warrants issued for the arrest of a payer for violation of the purge conditions in a remedial contempt order in which notice was not provided to the payer must be withdrawn. CSAs must consider their past practices and stay or withdraw outstanding warrants until proper notice is provided to the payer.

Prior to the *Teasdale* decision, it had been the practice in some counties to include language in orders to stay civil commitments providing that failure of the respondent to comply with the conditions of the stay would result in the stay being lifted and the payer being committed *without further notice*. In order to comply with the notice requirements in *Teasdale*, no stays should be lifted without providing the payer with notice of a right to a hearing, as outlined in this bulletin.

KIDS Document Changes

BCS is making changes to KIDS contempt order, affidavits and the *Teasdale* decision. Text changes will be made within a few weeks. Additional KIDS documents and document bundles will be created during 2010.