

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 21, 2015

Opinion No. 15-36

Orders of Contempt for Violating Court Order and Failure to Appear

Question 1

If a person has been properly served with a motion or petition for civil contempt based on an alleged failure to comply with a court order but then fails to appear on the date designated in the notice for the court hearing and fails to file a response or otherwise defend, may the court enter an order of contempt by default without providing further notice or conducting a hearing?

Opinion 1

Yes. A court has authority to enter a default judgment of contempt in a proceeding for civil contempt¹ if the alleged contemnor fails to respond or appear, as long as the alleged contemnor has been provided with proper notice and the opportunity to respond.

ANALYSIS

Civil contempt actions are brought to enforce the private rights of a litigant. Every Tennessee court is vested with the power to punish for contempt. Tenn. Code Ann. § 16-1-103. That power is limited to imposing sanctions for the conduct specified in Tenn. Code Ann. § 29-9-102, which includes willful misbehavior in the presence of or near the court if that behavior obstructs the administration of justice, Tenn. Code Ann. § 29-9-102(1), and willful disobedience of a court order, rule, decree, process, or command. Tenn. Code Ann. § 29-9-102(3). Thus, willful failure to appear without just cause in response to a petition or motion for contempt constitutes contempt. *See, e.g.*, Tenn. Code Ann. § 29-9-108 (empowering local judges to impose contempt sanctions on persons who fail to appear in response to a citation on the day designated for the hearing).

When a party against whom a judgment for affirmative relief is sought fails to plead or otherwise defend as provided by the Tennessee Rules of Civil Procedure the court may enter judgment by default. Tenn. R. Civ. P., Rule 55.01. Although Rule 55.01 makes certain exceptions—for example, default judgments may not be entered against unrepresented infants or incompetent persons—it contains no prohibition on the entry of an order of civil contempt by default. Rule 55.01 also specifies certain procedures that must be followed before a default

¹ This Opinion does not deal with criminal contempt proceedings. In criminal contempt proceedings the sanctions that may be imposed are punitive in nature, and the contemnor is thus entitled to due process protections that are different from and far greater than the procedural safeguards in civil contempt actions. *State ex rel. Flowers v. Tenn. Trucking Assn. Self-Ins. Trust*, 209 S.W.3d 602, 611 (Tenn. App. 2006).

judgment may be entered. Most notably, the party against whom the default judgment is rendered must have been served with written notice at least 5 days in advance of the scheduled hearing date. *Id.*

Thus, as long as the proper procedure is followed—and with certain limitations specified in Rule 55—a court may enter a civil contempt order by default if the alleged contemnor fails to appear or otherwise defend. The alleged contemnor must have been provided with adequate notice of the allegation and “the *opportunity* to respond.” *State ex rel. Flowers v. Tenn. Trucking Assn. Self-Ins. Trust*, 209 S.W.3d 602, 611 (Tenn. App. 2006) (emphasis added). If the alleged contemnor is given notice and then chooses not to avail himself of the opportunity to respond by failing to appear or file a written response, the court may enter a default judgment of civil contempt and award appropriate relief. *See State v. Thomason*, 2006 Tenn. App. LEXIS 205, *3 (Tenn. Ct. App. March 27, 2006) (noting without criticism that the trial court had entered a default contempt judgment against father after finding that he had been properly served but had failed to appear for the hearing on mother’s petition that he should be held in contempt for failure to pay child support as ordered).

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