R. Thomas Corbin
Circuit Judge, 20th Judicial Circuit
1700 Monroe Street
Fort Myers, FL 33901
(239) 533-2500
DSoumastre@ca.cjis20.org

M E M O

Date: March 10, 2010

To: Vernon Fairchild, Esq.

Re: Form of Arrest Warrant in my cases - (RTC 3/10/2010)

Attached is the only form of arrest warrant that I will sign in any child support case assigned to me in a civil contempt proceeding, under Rule 12.615(e). Any other form will not be signed. Please include every detail of this form in any arrest warrant you send me in a child support case. Please adjust the margins and font size so that the warrant is only one page.

Except for the heading, this form is identical to one I have been using since 9/18/2009. I find that an older form I have used is in circulation and I have inadvertently signed some of the older forms. As you know, I set the purge amount at the monthly or weekly current amount previously ordered, since *Bowen v. Bowen*, 471 So.2d 1278 (Fla. 1985) and §61.14(5) create a presumption that the respondent can pay that amount. For any purge higher than that amount it must be proven at the civil contempt hearing that the respondent has the present, immediate ability to pay the higher amount. The order of civil contempt must name the source of the immediate payment available to the respondent, so that the record and the order identify how the respondent has the "keys to his own jail cell." *See, e.g., Hollander v. Vetrick*, 675 So.2d 1047 (Fla. 4th DCA 1996). This is almost never done in civil contempt hearings and orders so I set the purge at the presumed amount, that is, the current amount previously ordered.

If the respondent does not pay the purge, I find that the jail treats the older versions as "pay or stay" warrants, which are, of course, illegal warrants. A "pay or stay" order illegally converts the civil contempt proceeding into a criminal contempt proceeding, without due process of law to the respondent, which is, of course, illegal. *See* Rule 3.840 and *Pompey v. Cochran*, 685 So.2d 1007 (Fla. 4th DCA 1997). A "pay or stay" order also turns the jail into a debtors' prison occupied mainly by poor people. It is unconstitutional and illegal in any case, criminal or civil, to jail a debtor for a debt he cannot pay. *See, e.g., Johnson v. Felton*, 655 So.2d 1286 (Fla. 3d DCA 1995); *Pompey v. Cochran*, 685 So.2d 1007 (Fla. 4th DCA 1997); Rule 12.615; and *Manies v. State*, 621 So.2d 679 (Fla. 2d DCA 1993): "Revocation [of probation] [for failure to pay costs] is improper absent proof of the probationer's ability to pay." and *Stevens v. State*, 823 So.2d 319 (Fla. 2d DCA 2002): "Revocation of probation for failure to pay costs is improper absent evidence of the probationer's ability to pay ... The State presented no evidence demonstrating Stevens' ability to pay costs."

So, the jail's interpretation of my older form turns them into illegal orders that are contrary to law. The result is that the jail has held some of my respondents until they pay a sum that they do not have the ability to pay, which is, of course, an illegal detention in a civil contempt proceeding. I hope the first appearance judges have not also done this. This form requires the jail to bring the respondent back to first appearance every 24 hours if the purge is not immediately paid, as required by Rule 12.615(f). Since a respondent can be arrested in any county in Florida, the first appearance hearing is the only hearing where the continuing determination of an immediate ability to pay can be made.

Therefore, this form, I hope, keeps the jail and the first appearance judges from reading my warrants in an illegal manner. If the evidence at any first appearance hearing shows that the respondent does not have the present, immediate ability to pay the presumed amount that I set as a purge, then the first appearance judge should immediately release the respondent on my warrants.

RTC

cc: Family Division, Lee County & Lee County judges