



## **Response to Turner v. Rogers**

### **Case before the US Supreme Court**

It is extremely rare for a contempt case, dealing with non-payment of child support, to reach the United States Supreme Court; however, such a case will be heard by the Court in its 2011 Spring Term. The issues raised in the case of *Michael D. Turner, Petitioner v. Rebecca L. Rogers, et al., Respondents* (also sometimes referred to as *Turner v. Price*, based on the respondent's maiden name), Docket Number 10-10, are significant and may affect the way some states conduct child support enforcement hearings.

The core issue that Mr. Turner has raised before the U.S. Supreme Court is whether an indigent respondent must be appointed legal counsel in a child support civil contempt proceeding in which incarceration is a possible outcome. The case is scheduled for oral argument before the U.S. Supreme Court on March 23, 2011.

NCSEA supports custodial parents receiving the financial support that has been ordered. In enforcing support orders, there are a number of tools available to child support agencies and courts. These tools include such best practices as ensuring orders are realistically based upon ability to pay, working with workforce development agencies to provide assistance to noncustodial parents regarding employment training and job placement, and providing referrals to resources that can alleviate problems such as alcohol or drug abuse that may interfere with regular employment.

When a noncustodial parent has the ability, but is unwilling, to pay support, civil contempt may be an appropriate enforcement tool. Because of the possibility of incarceration, such proceedings should ensure that there is an inquiry into, and findings about, the noncustodial parent's ability to pay support. The majority of states believe that due process requires the appointment of counsel to an indigent defendant, who can ensure that such an inquiry is made and that appropriate evidence is presented. States have also developed financial affidavits that solicit information regarding income and assets, and employment affidavits that solicit information regarding efforts to obtain employment.

NCSEA supports balanced, fair procedures that result in outcomes that improve the lives of children. In some cases, that means providing supportive services for parents who are struggling; in other cases that means imposing consequences for parents who avoid their obligations to their children. Across the nation contempt is viewed as an enforcement action of last resort. In all cases, NCSEA supports practices that provide due process to parents and maintain the integrity of the child support process.

#### Facts of Case

In 2003 a South Carolina court issued a child support order against Mr. Turner. When he failed to make timely payments, the Clerk of Court issued a "rule to show cause" against Mr. Turner, requiring him to appear in court to explain why he should not be found in civil contempt of court. Although Ms. Rogers had an open case with the South Carolina child support agency, the rule to show cause was not brought by the agency. Mr. Turner

appeared at the court hearing; he was not represented by a lawyer. Ms. Rogers also appeared at the hearing without legal counsel. The South Carolina IV-D agency did not appear. At the court hearing, Mr. Turner informed the court that he had been unable to pay the child support due to incarceration, drug addiction, unemployment, and injury. The court did not advise Mr. Turner of his right to be represented by legal counsel. Without making any inquiry or findings about his ability to pay the arrears, the court found Mr. Turner in willful contempt of court for his failure to pay the court ordered child support and sentenced him to 12 months in a detention center; the contempt order stated that Mr. Turner could purge himself and be released by full payment of the arrearage owed.

After the hearing, a pro bono attorney filed an appeal on behalf of Mr. Turner to the South Carolina Court of Appeals, alleging that Mr. Turner had a right under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment to have appointed counsel in the contempt proceeding. Before the Court of Appeals ruled, the South Carolina Supreme Court granted discretionary review of the appeal. The South Carolina Supreme Court affirmed the ruling of the trial court, holding that Mr. Turner was not constitutionally entitled to appointment of counsel in a civil contempt case.

### NCSEA Observations & Child Support Best Practices

NCSEA has not filed an amicus brief in *Turner v. Rogers*. However, as an association that advocates for children by promoting sound policy, we note the following:

- The position held by the South Carolina Supreme Court is a minority position. The majority of courts that have considered this issue have determined indigent defendants do have a right to appointment of counsel in civil contempt proceedings which may result in incarceration.
- Before a court finds someone in contempt with the possibility of incarceration, due process requires at a minimum that the court inquire as to the person's ability to pay. States have developed a number of best practices to facilitate this inquiry. In addition to appointed counsel, best practices include the development of financial affidavits that elicit information about the alleged contemnor's income and assets.
- Many courts have adopted practices to work more effectively with parents who owe child support by employing "problem solving" practices and procedures. The Juvenile and Family Law Department of the National Council of Juvenile and Family Court Judges (NCJFCJ) has taken a lead in this effort, and its work is supported by the Administration for Children and Families, Office of Child Support Enforcement. Among these practices is the establishment of realistic and enforceable child support orders, and improved access to the courts for timely modification of orders when circumstances change.
- A NCJFCJ Project Advisory Group of family court judges and Title IV-D child support directors has shared its expertise and developed easy to use tools for the judiciary. Judicial bench cards will provide information about the type of resources that might be available to assist the obligated parent to become employed and to alleviate other problems that may make it difficult for the parent to be regularly employed. Such resources may include alcohol and drug abuse support or treatment organizations, job skills and literacy programs, and local employment placement services. NCSEA has included such training as part of its mission of providing development for child support professionals.
- State child support agencies have established strong linkages with state and local workforce development agencies to provide assistance to parents who have child support obligations to obtain employment training and job placement, providing the parent with a means of paying court-ordered child support.

- Child support agencies have historically been charged with assisting parents with modifying child support orders. As economic conditions have worsened, child support agencies have become more proactive in reaching out to parents who are unemployed to offer the opportunity for the review and possible adjustment of child support orders. Through this review, parents who have lost employment and do not have the means to pay the court ordered child support may receive a reduced child support order. Additionally, child support authorities can refer the parent to available employment resources to aid in the parent becoming employed.