

**DOES THE MERE ISSUANCE OF A RULE  
TO SHOW CAUSE IN A CONTEMPT PROCEEDING  
SHIFT THE BURDEN TO THE ALLEGED CONTEMNOR**

Violation of a provision of a dissolution judgment is typically addressed by a petition for a finding of contempt and the subsequent issuance of a rule to show cause. See Illinois Supreme Court Rule 296. The alleged contemnor can defend against the contempt petition by demonstrating that his non-compliance was not willful. In Re The Marriage Of Tatham, 293 Ill.App.3d 471, 688 N.E.2d 864 (5<sup>th</sup> Dist. 1997). This note addresses the issue of when and under what circumstances the burden shifts to the accused to provide a lack of willfulness.

Contempt proceedings can be either criminal or civil in nature. If punitive sanctions are sought then the action is criminal in nature. If the remedy is coercive so as to compel the performance of a particular act, then the action is civil in nature. In Re The Marriage Of Betts, 200 Ill.App.3d 26, 558 N.E.2d 404, (4<sup>th</sup> Dist. 1990).

In the case of criminal contempt proceedings, because of the privilege against self incrimination, the burden of proof can never be transferred to the accused requiring him to show cause why he should not be held in contempt of court (i.e., a lack of willfulness). Instead, the burden is on the petitioner to prove the charges in the petition beyond a reasonable doubt. In Re The Marriage Of Cummings, 222 Ill.App.3d 943, 584 N.E.2d 900 (2<sup>nd</sup> Dist. 1991); In Re The Marriage Of Doty, 255 Ill.App. 3d 1087, 629 N.E.2d 679 (5<sup>th</sup> Dist. 1994).

Submitted By:  
Jay A. Frank, Esq.  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611  
Telephone: (312) 828-9600  
Facsimile: (312) 828-9635

When civil contempt is involved, there is persuasive authority that the burden shifts to the alleged contemnor to demonstrate that his non-compliance was not willful only after there has been a showing that a court order has been violated. The filing of a verified petition alleging a violation, and even the issuance of a rule to show cause, might not be sufficient to transfer the burden absent a specific finding of the violation of a court order. A contempt petition is a method of notifying the court that an Order may have been violated. The petition initiates the contempt proceedings, but does not establish that a violation has occurred. The rule to show cause is a method by which the court brings the parties before it for a hearing, and notifies the alleged contemnor of the time and place of the hearing. However, the rule is not a finding that a violation has occurred. In Re The Marriage Of LaTour, 241 Ill.App.3d 500, 608 N.E.2d 1339 (4<sup>th</sup> Dist. 1993); In Re The Parentage of Melton, 321 Ill.App.3d 823, 748 N.E. 2<sup>nd</sup> 291 (1<sup>st</sup> Dist. 2001). Thus, the showing of a violation of the court order is a task separate from the filing of the petition and the issuance of the rule.

There are at least several cases holding that the burden does shift to the accused upon the issuance of the rule. See, for example, In Re Keon C., a Minor (Hall vs. Clark), 344 Ill.App.3d 1137, 800 N.E.2d 1257 (4<sup>th</sup> Dist. 2003). But it is not clear in these cases just what evidence was presented by the Petitioner when the Court issued the rule.

Submitted By:  
Jay A. Frank, Esq.  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611  
Telephone: (312) 828-9600  
Facsimile: (312) 828-9635

Therefore, the safest course for the Petitioner is to (i) present testimony or other evidence that a violation of the judgment has occurred, (ii) obtain a finding from the court to this effect, and (iii) then have the rule duly issue.

Submitted By:

Jay A. Frank, Esq.  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611  
Telephone: (312) 828-9600  
Facsimile: (312) 828-9635