

**INSTRUCTIONS FOR FILING A *PRO SE* PETITION FOR RELEASE
FROM INCARCERATION FOR CHILD SUPPORT DEBT¹**

The attached petition may be used by *indigent* parents who have been jailed for nonpayment of child support debt following *civil* child support contempt proceedings initiated by the Georgia Department of Human Services (DHS). The only relief requested in the petition is release from incarceration due to an inability to pay. By filing this petition, you are *asking* a judge to release you from custody; it will be up to the judge to decide when you will be released. The attached petition does not challenge the finding of contempt or any other aspect of the underlying child support order. Moreover, incarcerated parents who have the ability to pay their purge fee should *not* use this form.

This form was created by attorneys at the Law Office of the Southern Center for Human Rights (SCHR). **SCHR does not represent you in your child support case or any other matter. SCHR cannot represent you in a hearing on this petition or provide you with legal advice about your case. SCHR cannot file this petition for you. Please do not send your petition to SCHR.** Using this petition does not create an attorney-client relationship, nor is it meant to be legal advice.

If you sign and file this document, you are swearing under oath that everything in it is true with respect to your case. Read each and every sentence of this form carefully and make sure that it is true with respect to your case before filing this form petition.

DISCLAIMER: The information in this document applies only in the State of Georgia. In July 2013, the information contained in this document was correct. The law changes rapidly and the information in this document may no longer be correct. This document provides general information only. This is not legal advice and cannot replace legal advice. Anyone seeking specific legal advice should contact an attorney. Viewing the website of the Southern Center for Human Rights or sending an e-mail message through our website does not create an attorney-client relationship.

This petition is styled as a “*pro se*” petition, meaning that the person who files it is not represented by a lawyer. If you *are* represented by a lawyer, you should speak with your attorney before using this petition.

The instructions below describe the steps necessary to fill out the petition. There are several blank spaces on the form. You should fill in these blank spaces to the best of your ability or the court may not accept the petition.

A. COMPLETE THE PETITION

CASE CAPTION

The case caption is located on the first page of the petition.

NAME OF COUNTY: At the very top of the first page, fill in the blank space with the *name of the county* of the court that issued the child support contempt order in your case. (Write in the name of the county of the superior court that issued your contempt order, even if you are incarcerated in a different county).

CASE NUMBER: At the top of the first page, fill in the superior court case number for your child support contempt case. If you have been held in contempt in more than one child support case, you may wish to complete one petition for each case. Your case number can be found on the contempt papers that should have been served on you before you were jailed. If you don’t have access to those papers, you might have a friend or family member contact the superior court clerk’s office to ask for your case number.

PARTIES: You are the defendant. Fill in your name on the first page, above the line that reads “name of incarcerated parent.” Fill in the name(s) of your child or children above the line that reads “name(s) of child(ren).”

INTRODUCTION/FIRST PARAGRAPH

On page 1, write in your full name in the blank space in the first sentence of the petition where it says “I, _____, the Defendant in this matter...”

STATEMENT OF FACTS

The statement of facts is located on page 2 of the petition.

PARAGRAPH 1: Indicate whether you are incarcerated in a county jail or work release center by circling “county jail” or “work release center.”

PARAGRAPH 2: Fill in the month and date of your arrest for child support debt.

PARAGRAPH 3: Fill in the amount of your purge fee. If you do not know the amount of your purge fee, you may write “unknown” in the blank.

LEGAL ARGUMENT

This section states the legal basis for your petition for release. The legal claim raised in this petition is that under *Hughes v. Dep’t of Human Res.*, 269 Ga. 587, 502 S.E.2d 233 (1998), you should be released because you lack the ability to pay your purge fee. You do not need to fill out anything in this section.

CONCLUSION

The conclusion is on page 4. Sign your name on the “Defendant” line, and write the date on which you mailed the petition to the court.

B. GET THE PETITION NOTARIZED

Sign the page marked “Verification of Petition” (page 5) in front of a notary public. Someone at the jail or work release center should be able to notarize the petition for you. By signing the “Verification of Petition,” you are swearing under penalty of perjury that everything in the petition is true and correct. If you are unable to find someone to notarize the petition at your jail/work release center, you can still file the petition with the court even though it is not notarized.

C. COMPLETE THE CERTIFICATE OF SERVICE

You should provide a copy of your petition to the opposing party – that is, the local DHS child support office that oversees your case. The “Certificate of Service” is a document that certifies that you have sent a copy of the petition to the opposing party. On the page marked “Certificate of Service,” write in the address of the local DHS office in the blank provided. By signing this form, you are telling the court that you have served DHS with a copy of your petition.

D. FILE THE PETITION IN COURT AND SEND A COPY TO THE LOCAL DHS CHILD SUPPORT OFFICE

File your petition in the superior court that issued your child support contempt order. You may file your petition with the court by mailing it to the clerk of the superior court that issued your contempt order. (You can usually find the address of the clerk's office in the blue/government pages in the local telephone book. Or, you can ask someone at the jail to give you the address). Alternatively, you can arrange for a family member or friend to bring your petition to the clerk's office in person. If possible, keep a copy of the petition for your records.

The decision to grant or deny your petition is entirely up to the judge in your case. After receiving your petition, the judge may or may not bring you into court for a hearing, and may or may not grant your petition.

Before filing the petition with the court, please make sure that you:

- ✓ fill in your name, the name(s) of your child(ren), and the case number on page 1 of the petition;
- ✓ fill in your name on page 1 (in the first paragraph) of the petition;
- ✓ fill in the blanks on page 2 of the petition;
- ✓ sign and date the petition on page 4;
- ✓ notarize the petition (if possible) on page 5;
- ✓ complete the certificate of service on page 6.

**IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA**

_____)	
GEORGIA DEPARTMENT OF HUMAN)	
SERVICES, ex rel., _____)	
_____)	
[name(s) of child(ren)],)	
)	
Plaintiff,)	CASE NO.:
)	_____
v.)	
)	
_____)	
_____)	
[name of incarcerated parent])	
)	
Defendant.)	
_____)	

**DEFENDANT’S PRO SE PETITION FOR RELEASE FROM
INCARCERATION FOR CHILD SUPPORT DEBT¹**

I, _____, the Defendant in this matter, hereby file this Petition for Release From Incarceration pursuant to *Hughes v. Dep’t of Human Res.*, 269 Ga. 587, 502 S.E.2d 233 (1998), because I am indigent and unable to pay my child support purge fee to my secure release from custody. Under *Hughes*, a court may not continue to incarcerate a parent for civil contempt of a child support order “when the [parent] lacks the ability to purge himself.” *Id.* at 587-88, 502 S.E.2d at 234. I respectfully ask this Court to order my immediate release from

¹ This *pro se* form was drafted by attorneys at the Law Office of the Southern Center for Human Rights (SCHR), but SCHR does not represent me in this matter.

incarceration because I do not have funds with which to pay my purge. In support of this Petition, I further state as follows:

STATEMENT OF FACTS

1. I am currently incarcerated in the county jail/work release center for contempt of a court order requiring me to pay child support.
2. I have been continually incarcerated for nonpayment or underpayment of child support since _____, 20__.
3. This Court ordered me incarcerated for contempt of a child support order; however, the Court also ordered that I can purge myself and obtain release from incarceration by paying a purge fee in the amount of \$_____.
4. I do not have funds with which to pay the amount required.
5. I do not have property with which to pay the amount required.
6. I am unable to borrow or otherwise procure funds with which to pay the purge fee.
7. The evidence demonstrates that I am unable to purge myself.

LEGAL ARGUMENT

This Court must immediately release me from incarceration because the uncontroverted evidence demonstrates that I am unable to pay my child support purge fee. Under Georgia law, a trial court “may not continue incarceration for

civil contempt when the [parent] lacks the ability to purge himself.” *Hughes*, 269 Ga. 587, 502 S.E.2d at 234.

In *Hughes*, a trial court found a parent in civil contempt for failure to pay child support and committed the parent to jail. *See id.* Two months later, the defendant filed a petition for release from incarceration alleging that he did not have the funds or property with which to pay the purge fee. *See id.* At a hearing on his petition, the evidence showed that Hughes had no money or property. *See id.* The trial court denied the defendant’s petition because the defendant “had allowed his support obligation to accrue for six years,” but the Supreme Court of Georgia reversed and ordered the defendant released from jail. *Id.*

In ordering the *Hughes* defendant released, the Supreme Court recognized that the purpose of civil contempt – to coerce payment – is not served when a child support debtor is unable to pay his purge fee. *See id.*² **The *Hughes* court further explained that a child support debtor who cannot pay must be released immediately – the very “moment” it appears there is an inability to pay:**

Imprisonment under civil sanctions is always conditional and a party found in contempt may apply for release at any time upon a showing of inability to pay. As we have long held, the moment it appears that there is *inability*, it would clearly be the duty of the judge to discharge the party.

² *See also In re Lawrence*, 279 F.3d 1294, 1300 (11th Cir. 2002) (“[W]hen civil contempt sanctions lose their coercive effect, they become punitive and violate the contemnor’s due process rights.”) (internal quotations omitted).

Id. (internal quotations omitted). *See also Corriher v. McElroy*, 209 Ga. 885, 885, 76 S.E.2d 782, 783 (1953) (stating that a judge “must” discharge the party in contempt “the moment” it appears there is an inability to pay).³

In my case, as in *Hughes*, the “uncontroverted evidence” demonstrates that I am unable to purge myself. *Id.* at 587, 502 S.E.2d at 234. I do not have funds with which to pay the amount required. I do not have property with which to pay the amount required. I am unable to borrow or otherwise procure the funds to pay the purge fee. Accordingly, under Georgia law, this Court must release me from custody.

CONCLUSION

For the foregoing reasons, and any additional reasons deemed just and proper by the Court, I respectfully ask the Court to release me from incarceration.

Respectfully submitted this ____ day of _____, 2017.

Defendant

³ The Georgia Court of Appeals later held that *Hughes* applies with equal force to child support debtors who may be incarcerated in work release centers. *See Gallaher v. Breaux*, 286 Ga. App. 375, 378, 650 S.E.2d 312, 315 (2007) (stating that a trial court may not continue to incarcerate a parent in a work release center where evidence showed that the parent “lacked the ability to purge himself.”). Once an indigent parent incarcerated in a work release center establishes his inability to pay, the trial court has “no authority to continue his incarceration.” *Id.* at 378, 650 S.E.2d at 316.

VERIFICATION OF PETITION

I, _____, do hereby swear and affirm under penalty of perjury that I have reviewed the attached petition and that the factual information contained therein is true and correct to the best of my knowledge.

Defendant

This ___ day of _____, 2017.

Sworn to and subscribed before me

This _____ day of _____, 2017

Notary Public

My Commission expires: _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of this **PETITION FOR RELEASE FROM INCARCERATION** upon the Department of Human Services, Division of Child Support Services at the following mailing address:

This ___ day of _____, 2017.

Defendant

**INSTRUCTIONS FOR FILING A *PRO SE* MOTION TO APPOINT
COUNSEL IN CIVIL CHILD SUPPORT CONTEMPT PROCEEDINGS¹**

The attached motion may be used by *indigent* parents who face incarceration without counsel in civil child support contempt proceedings where the Georgia Department of Human Services (DHS) is a party and is represented by counsel. The only relief requested in the attached motion is the appointment of counsel. Parents who can afford to hire counsel should *not* use this form.

This motion does not preclude a finding of willful contempt and the issuance of an incarceration order. Nor does it challenge previous contempt orders or any aspect of the underlying child support order.

It will be up to the judge to decide whether to appoint counsel or not.

This form was created by attorneys at the Law Office of the Southern Center for Human Rights (SCHR). **SCHR does not represent you in your child support case or any other matter. SCHR cannot represent you in any contempt action or provide you with legal advice about your case. SCHR cannot file this motion for you.** We would appreciate a copy of your motion, and any decision on the motion, for our files. Using this motion does not create an attorney-client relationship, nor is it meant to be legal advice.

Read each and every sentence of this form carefully and make sure that it is true with respect to your case before filing this form motion. This motion is styled as a “*pro se*” motion, meaning that the person who files it is not represented by a lawyer. If you *are* represented by a lawyer, you should not file this motion.

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The instructions below describe the steps necessary to fill out the motion. There are several blank spaces on the form. You should fill in these blank spaces to the best of your ability or the court may not accept the motion.

A. COMPLETE THE MOTION

CASE CAPTION

The case caption is located on the first page of the motion.

NAME OF COUNTY: At the very top of the first page, fill in the blank space with the *name of the county* of the court that issued the child support contempt order in your case. (Write in the name of the county of the superior court where your contempt case is pending, even if you live or are incarcerated in a different county).

CASE NUMBER: At the top of the first page, fill in the superior court case number for your child support contempt case. If you have more than one child support case, you may wish to complete one motion for each case. Your case number can be found on DHS' Motion for Contempt or the court's Order to Show Cause (or other court papers scheduling your contempt hearing). If you don't have access to those papers, you may contact the superior court clerk's office to ask for your case number.

PARTIES: You are the defendant. Fill in your name on the first page, above the line that reads "name of non-custodial parent." Fill in the name(s) of your child or children above the line that reads "name(s) of child(ren)."

INTRODUCTION/FIRST PARAGRAPH

On page 1, write your full name in the blank space in the first sentence of the motion where it says "I, _____, the Defendant in this matter..."

STATEMENT OF FACTS

The statement of facts starts on page 2.

PARAGRAPH 1: Fill in your age.

PARAGRAPH 2: Fill in the highest grade you completed in school. If you received your GED, you may indicate that in the blank provided.

PARAGRAPH 6: In the first blank, fill in the name of the county of the superior court where your child support order originated. This should be the same county listed in the case caption on page 1. In the second blank, fill in the date of your upcoming contempt hearing. If you are unsure of the date, you may contact the superior court clerk's office to ask for the next contempt hearing date in your case.

LEGAL ARGUMENT

This section provides some legal basis for your motion to appoint counsel. You do not need to fill out anything in this section.

CONCLUSION

The conclusion is on page 5. Sign your name on the "Defendant" line, fill in your current mailing address, and write the date on which you mailed or delivered the motion to the court.

B. COMPLETE THE CERTIFICATE OF SERVICE

You must provide a copy of your motion to the opposing party – that is, the local DHS child support office that oversees your case. The "Certificate of Service" is a document that certifies that you have sent a copy of the motion to DHS. On the page marked "Certificate of Service," write in the address of the local DHS office in the blank provided. By signing this form, you are telling the court that you have served DHS with a copy of your motion.

C. FILE THE MOTION WITH THE CLERK OF COURT AND SEND A COPY TO THE LOCAL DHS CHILD SUPPORT OFFICE

File your motion in the superior court where your child support contempt case is pending. You may file your motion with the court by mailing it to the clerk of the superior court. (You can usually find the address of the clerk's office in the blue/government pages in the local telephone book.). Alternatively, you can bring your motion to the clerk's office in person. If possible, keep a copy of the motion for your records.

The decision to grant or deny your motion is up to the judge in your case. After receiving your motion, the judge may or may not bring you into court for a hearing, and may or may not grant your motion.

**IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA**

)
GEORGIA DEPARTMENT OF HUMAN)
SERVICES, ex rel., _____)

)
[name(s) of child(ren)],)
)
Plaintiff,) CASE NO.:
) _____
)
v.)
)
_____,)
[name of non-custodial parent])
)
Defendant.)
_____)

DEFENDANT’S PRO SE MOTION TO APPOINT COUNSEL¹

I, _____, the Defendant in this matter, file this Motion to Appoint Counsel to represent me in my civil contempt proceeding and any future contempt proceeding initiated by the Department of Human Services (DHS) in which I face incarceration for child support debt.

¹ This *pro se* form was drafted by attorneys at the Law Office of the Southern Center for Human Rights (SCHR), but SCHR does not and cannot currently represent me in this matter.

STATEMENT OF FACTS

1. I am _____ years old.
2. The last grade I completed in school was the _____ grade. I have no legal training or expertise.
3. I am indigent and cannot afford a lawyer.
4. I have been ordered to pay child support, but am currently in arrears.
5. DHS, through its lawyer, filed a Motion for Contempt asking that I be jailed for child support debt.
6. I must appear in _____ County Superior Court on _____ [date] to show why I should not be held in contempt and sent to jail.
7. At my contempt hearing, DHS will be represented by a government-funded lawyer who may call witnesses, introduce evidence, cross-examine me, and cite legal authority in support of its contempt motion.
8. While DHS will have the benefit of state-funded counsel at my contempt hearing, unless this Court appoints counsel, I will have no lawyer to represent me because I cannot afford one.

LEGAL ARGUMENT

In *Turner v. Rogers*, 131 S. Ct. 2507 (2011), the United States Supreme Court suggested that counsel may be required for indigent parents facing jail for child support debt when *the State is represented by counsel, and the indigent*

parent represents himself. Id. at 2520 (citing *Johnson v. Zerbst*, 304 U.S. 458, 462-463) (1938) (“[T]he average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel.”)).

While Georgia courts had not previously appointed counsel in child support contempt proceedings, very recently, in July 2014, the Georgia Supreme Court addressed such right to counsel. In Miller v. Deal, the Georgia Supreme Court held that “due process may require the appointment of counsel for an indigent parent in a civil proceeding in which the parent is threatened with incarceration.” 2014 WESTLAW 3396506, *4 (July 11, 2014). Moreover, the *Miller* Court held that “perhaps there is even a ‘presumptive’ right to appointed counsel in [civil contempt] proceedings if the parent is opposed by government lawyers.” *Id.* Finally, *Miller* held that the constitutional right to counsel in child support contempt proceedings is not waived “simply by failing to insist upon counsel in proceedings in which no one advised them that they could ask for counsel” *Id.* *2. *Accord Crain v. Crain*, 2012 WESTLAW 6737836, *2-3 (Ohio App. 2 Dist Dec. 28, 2012) (right to counsel in “contempt proceedings on child support arrearages” where “agency was represented by counsel”).

My request for counsel is well supported by many other cases holding that an indigent parent facing jail in a civil contempt proceeding has a right to counsel where the person seeking incarceration is represented by counsel.² The Eleventh Circuit Court of Appeals has likewise said that “[t]he right to counsel exists” in a civil contempt proceeding “if the litigant may lose his physical liberty if he loses the litigation.” *See United States v. McAnlis*, 721 F.2d 334, 337 (11th Cir. 1983) (“not disput[ing]” that a right to counsel exists at civil contempt proceedings where imprisonment is possible, but finding a waiver of that right).

² *See, e.g., Pasqua v. Council*, 892 A.2d 663, 666, 674 (N.J. 2006) (holding state and federal due process clauses mandate the appointment of counsel to assist parents found to be indigent and facing incarceration at child support enforcement hearings brought by state probation division); *Peters-Riemers v. Riemers*, 663 N.W.2d 657, 664-665 (N.D. 2003) (finding right to counsel where custodial parent seeking contempt was represented by private lawyer); *Black v. Div. of Child Supp. Enforcement*, 686 A.2d 164, 166-68 (Del. 1996) (finding due process requires appointment of counsel to indigent parents who face incarceration in civil child support contempt proceedings initiated by the state, where state was represented by a lawyer from Attorney General’s office); *Mead v. Batchlor*, 460 N.W.2d 493, 503 (Mich. 1990) (“[S]ince the state’s representative at such a hearing is well versed in the laws relating to child support, fundamental fairness requires that the indigent who faces incarceration should also have qualified representation.”); *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984) (holding that counsel must be appointed for indigent defendants facing incarceration for civil contempt for child support debt regardless of whether the complaining party is represented by private or state-funded counsel); *McNabb v. Osmundson*, 315 N.W.2d 9, 10 (Iowa 1982) (finding right to counsel for indigent defendant in child support contempt hearing in state-initiated case brought by County Attorney); *Rutherford v. Rutherford*, 464 A.2d 228, 234-237 (Md. 1983) (finding right to counsel under state and federal law where custodial parent was represented by private counsel, but alleged contemnor had no lawyer).

The presumptive right to counsel is not overcome here because I am opposed by experienced legal counsel, the factual and legal issues in my case are complex for a non-lawyer, and I face incarceration if found in contempt. As the defendant, to avoid jail, I must show, through testimony and evidence, the *absence* of a willful failure to pay. *See Cross v. Ivester*, 215 Ga. App. 760 (2012). *See also Nesbitt v. Nesbitt*, 241 Ga. 351, 352 (1978) (“[once] appellant presented a case of failure to pay child support . . . the burden shifted to the defendant to show “he has in good faith exhausted all of the resources at his command and has made a diligent and bona fide effort to comply with the decree awarding alimony or child support.”). I will be opposed by a lawyer who: (a) has experience prosecuting child support contempt cases, (b) knows how to call witnesses and introduce evidence, (c) knows the legal standards, and (d) has a simple burden of showing nonpayment.

By contrast, I have no legal training and no experience examining witnesses, introducing evidence, or making legal arguments. I am at risk of unjust incarceration because I do not have a lawyer. *See Turner*, 131 S. Ct. at 2518 (“Given the importance of the [liberty] interest at stake, it is obviously important to assure accurate decision making in respect to the key ‘ability to pay’ question.”).

CONCLUSION

For these reasons, and any other reasons deemed proper by the Court, I ask the Court to appoint counsel in this contempt proceeding and all future contempt proceedings initiated by DHS in which I face jail for child support debt.

Respectfully submitted this ____ day of _____, 2017.

Defendant

Defendant's Mailing Address

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of this **MOTION TO APPOINT COUNSEL** upon the Department of Human Services, Division of Child Support Services at the following mailing address:

This ___ day of _____, 2017.

Defendant