

1979 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-72, 1979 WL 29077

Office of the Attorney General

State of South Carolina

Opinion No. 79-72

June 5, 1979

***1 SUBJECT: Proper service of a rule to show cause for contempt of a Family Court child support order.**

In order to sustain a bench warrant for non-appearance, an alleged contemnor must receive personal service of a rule to show cause for contempt. If the affidavit of service indicates that the rule was not personally served, the Family Court may proceed under § 14–21–70 of the Family Court Act in order to arrest the non-appearing respondent. If the respondent makes a general appearance at the hearing, any service defects are cured and the Court may proceed with the rule to show cause.

TO: The Honorable B. J. Warshauer
Resident Judge
The Family Court of the Third Judicial Circuit

QUESTIONS:

Does South Carolina Code of Laws (1976) § 15–9–1030 remove contempt papers from the purview of Title 15, Chapter 9, Article 7 of the Code? If so, what constitutes proper service of a rule to show cause for contempt of a Family Court Order for child support?

AUTHORITIES CITED:

The Family Court Act of the 1976 Code of Laws of South Carolina, as amended, § 14–21–10 et seq.

Title 15, Chapter 9, Article 7 of the 1976 Code of Laws of South Carolina, § 15–9–910 et seq.

1976 Code of Laws of South Carolina, as amended: §§ 14–21–70, 15–9–920, 15–9–1010, 15–9–1020, 15–9–1030.
[Crocker v. Crocker](#) 208 S.E.2d 602 (Ga., 1974)

[Hornsby v. Hornsby](#) 198 S.E. 29, 187 S.C. 463 (1938)

[State v. Johnson](#) 152 S.E.2d 669, 249 S.C. 1 (1967)

17 C.J.S. Contempt § 79a(2)

60 C.J.S. Motions and Orders § 20(e)

DISCUSSION:

You have requested the opinion of this Office as to what constitutes proper service of a rule to show cause why a person should not be punished for contempt of court, and what constitutes service upon which a bench warrant may be issued

for failure to respond to the rule to show cause. Specifically in question is the proper method of service of a rule when a person is in violation of an order of the Family Court requiring that he make child support payments.

Title 15, Chapter 9, Article 7 of the 1976 Code of Laws of South Carolina, as amended, addresses the issue of service of legal papers in general. Various sections throughout this article provide for methods and manners of service as well as substitutes for personal service. If contempt citations are treated by this article exactly as other types of process, proper service could be effected not only through personal service but also by service on a person of discretion at the alleged contemnor's residence (§ 15–9–920) or, perhaps, even service by mail (§ 15–9–930). However, § 15–9–1030, the final section of Article 7, reads as follows:

The provisions of this article, other than those of §§ 15–9–1010 and 15–9–1020, shall not apply to the service of a summons or other process or of any paper to bring a party into contempt.

Section 15–9–1010 addresses service on Sunday and § 15–9–1020 deals with costs of service. Therefore, as to the question of proper manner and method of service, § 15–9–1030 effectively removes contempt papers from the purview of Title 15, Chapter 9, Article 7. Furthermore, there appears to be no portion of the South Carolina Code which specifically addresses the issue of proper service of a rule to show cause upon an alleged contemnor.

*2 Although the Code is silent on the issue of proper service of a rule to show cause for contempt, Corpus Juris Secundum addresses the issue in two separate articles:

Generally, the rule or order to show cause should be served in person on the party charged; such service is held indispensable if the contempt is criminal or consists of contumacy. In the case of a civil contempt, personal service of an order to show cause is not indispensable. 17 C.J.S. Contempt § 79a(2)

and,

While, generally, a rule or order to show cause should be served in person on the party charged, where the statutes or court rules provide a manner in which it should be served there must be compliance therewith. 60 C.J.S. Motions and Orders § 20(e)

Additional sources of general legal knowledge reiterate the Corpus Juris Secundum position that, absent contradicting court rules or statutory provisions, a rule to show cause requires personal service. In light of this and the fact that the South Carolina Code is silent on the issue of proper service of a rule to show cause for contempt, it is the opinion of this office that the Court must be presented with proof that the party was personally served before it may issue a bench warrant which is based solely on respondent's failure to appear. When presented with satisfactory proof of personal service, the Court may, in its discretion, issue a warrant for the arrest of a person who fails to respond to a rule to show cause. [NOTE: A refusal to receive an order to show cause has been held sufficient proof of a personal demand to authorize the issuance of or attachment for arrest.' 17 C.J.S. Contempt § 79a(2) citing [Graham v. Bleakie 2 Daly 55 \(NY\)](#)].

At this point, attention should be drawn to the Family Court Act of the 1976 Code of Laws of South Carolina, as amended, § 14–21–10 et seq. and § 14–21–70. Although some Courts have been reluctant to invoke this statute, § 14–21–70 clearly provides that a person who is proved to be in violation of a Family Court order or agreement to pay support is subject to an arrest warrant 'with or without notice':

Where a respondent shall neglect or refuse to obey an order for support or upon agreement signed by the respondent and approved by the court, and the court is satisfied thereof by competent proof, it may, with or without notice, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged by law.

When a alleged contemnor fails to appear for a rule to show cause hearing and the affidavit of service indicates that he was not personally served, the Court may, under the provisions of § 14–21–70, use the scheduled time to conduct a hearing to determine whether there is ‘competent proof’ that the respondent has failed to obey an order of support. If the Court is satisfied by the proof presented, the Court may issue a warrant for arrest. This arrest warrant would not be based on failure to respond to the rule to show cause but rather on the provision of § 14–21–70.

*3 Having addressed the issue of non-appearing respondents, it should be noted that the appearance of the alleged contemnor without objection to the manner of service cures any defects in service of the rule to show cause and negates the personal service requirement. According to 60 C.J.S. Motions and Orders § 20(e), Appearance and answer to a rule to show cause have been held sufficient to confer jurisdiction regardless of the sufficiency of service.’ 17 C.J.S. Contempt 79a(2) is more specific:

Where the alleged contemnor is present in court, and is allowed to make a defense, service on him of notice to show cause is not required, but such appearance and defense must be voluntary, and defects in service are waived where defendant appears at the hearing and makes no objection to the service.

The main purpose of the personal service requirement where a person is charged with contempt for conduct outside the presence of the Court is due and reasonable notice of the proceeding. See [Hornsby v. Hornsby](#) 198 S.E.2d 29, 187 S.C. 463 (1938). [NOTE: [Hornsby](#) was most recently cited for this proposition in the criminal contempt case of [State v. Johnson](#) 152 S.E.2d 669, 249 S.C. 1 (1967)].

A more recent Southeastern case on point is [Crocker v. Crocker](#) 208 S.E.2d 602 (Ga., 1974) In this case, the Georgia Court of Appeals held:

In cases of constructive contempt of court, where the alleged contumacious conduct is disobedience to a mandate of the court, not an act in the presence of the court or so near thereto as to obstruct the administration of justice, the law requires that a rule nisi issue and be served upon the accused, giving him notice of the charges against him, and that he be given an opportunity to be heard. 208 S.E.2d 602, 604.

The [Crocker](#) opinion modifies the notice requirement with the caveat that . . . when a contemnor voluntarily appears . . . it is not required that he be served with a rule nisi. See e.g. [People v. Knapp](#) 4 Misc.2d 449, 157 N.Y.2d 820. 208 S.E.2d 602, 604

When a rule to show cause for contempt is issued, the personal service requirement exists to insure that the respondent has notice of the hearing. When said respondent makes a general appearance and does not raise the question of proper service, his presence indicates that he had notice of the proceeding and removes the necessity of personal service, thereby allowing the Court to proceed with the rule to show cause.

CONCLUSION:

In light of § 15–9–1030, service of a rule to show cause for contempt, and other contempt papers, is removed from the purview of Title 15, Chapter 9, Article 7 of the 1976 Code of Laws of South Carolina, which provides for service of legal papers in general. There appears to be no substitute provision which specifically deals with service of a rule to show cause for contempt. Absent such provision, personal service of a Rule to Show Cause for contempt is the only proper service and only personal service subjects the alleged contemnor to the sanctions of a bench warrant for failure to appear. However, if the respondent makes a general appearance, any defects in service are cured and the hearing may proceed.

*4 Where a bench warrant for failure to appear may not be in order, the Court may invoke § 14-21-70 which provides for an arrest warrant with or without notice when the Court has competent proof that a support order is not being obeyed. Use of this section may be feasible when numerous attempts are made to personally serve a rule to show cause for contempt and the Court has reason to believe that the respondent actually has constructive knowledge of the proceedings.

Martha L. McElveen
Staff Attorney

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