

Settlement agreements that are reached by two parties going through a divorce are more than just contracts. When someone sues to enforce a contract entered with another party, the parties to the contract only have certain limited remedies available. The most frequently sought remedy for breach of contract is money damages. In other words, I promise to give you some item, and you promise to pay me X dollars. Or, I promise to do work for you for a given period of time, and you promise certain wages. The failure of either promise might entitle the other party to sue for the money they should have received. However, when parties are divorcing, they enter a divorce settlement agreement. These agreements are quite long and have to be very detailed to cover many parts of how the parties will distribute the assets of the marriage, the debts of the marriage, and the responsibilities involved in dividing the assets, separating households, and caring for the children or ongoing responsibilities that resulted from events during the marriage. Once the parties obtain a final divorce, that settlement agreement becomes an Order of the court. It is a contract while in the agreement stage, but once incorporated into a final decree of divorce which usually is done, the parties may file for contempt for the other party's failure to live up to the requirements of the agreement.

The most frequent filing for Contempt involves failure to pay alimony or child support. The amount of the unpaid support is known as the "arrearage." It is almost impossible for a court to eliminate prior unpaid obligations, but courts will frequently set up long-term payment plans that the judge feels there is some likelihood of ongoing compliance by the offending nonpaying or dilatory payor. In some situations, a court can retroactively adjust child support back to the date of the filing of modification actions (see Modification). However, many filings involve failure to provide insurance, failure to carry out responsibilities of establishing retirement accounts for the divorced spouse, and failure to pay for, or sell, property of the parties after the divorce such as taking care of real estate transactions that are required in the settlement agreement. And at times, a party will file contempt due to the other parent's verbal or written disparagement of the other parent. (See article: [Non-Disparagement Clauses are Serious in Divorce Settlement Agreements.](#))

Contempt also has as an important feature the ability of the court to impose a responsibility to pay attorney's fees on the offending party who fails to carry out his/her responsibilities. Rarely do courts make this a perfect situation. Clients often want the offending spouse who fails to live up to his or her obligation to pay all of their attorney's fees. We do ask for attorney's fees to be paid for our clients when the other side fails to live up to their obligations. Many times courts are helpful and order the other side to pay a substantial amount of fees. However, courts also look to any failures on both sides to live up to the agreement, and there is also some belief that each party has some responsibility to pay for his or her own lawyers. Moreover, even when the court orders attorney's fees to be paid, they often order it through the date of the hearing. Yet, the cases frequently drag out long beyond the hearing date because lawyers are continuing to complete tasks to finalize the case. Thus, even when the judge intends to order the offending party to pay all of the attorney's fees, there will frequently be time and expense beyond that timeframe for which the innocent party will be responsible. If the contempt is clear, we frequently find that a judge may order the payment of fees, but the net effect of the offending party paying the fees is often 60% to 80% responsibility of the offending party paying our fees. The client is still responsible for 100% of the fees regardless of whether the judge orders the other side to pay the fees and also once ordered to pay those fees, there is still no guarantee the offending party will actually pay those fees, and

thus the innocent party must again consider going to court.

The courts do have systems in place to help with enforcement of child support orders, and income deduction orders are frequently used. These require payors of child support to have the amount of support deducted from their paychecks by their employers and payments then submitted to the recipient parent by the employer. For more information on income deduction orders, see <http://www.georgiacourts.gov/csc/iwo/>

Filing for contempt through the employment of a private law firm requires a careful analysis of the amount to be recovered, the likelihood of having attorney's fees paid and to what degree, and the likely difficulty to be encountered. We are happy to help with that analysis at a consultation so that the client can make an informed decision of his/her risks going forward, the likely costs involved, and the possible recovery of attorney's fees and the amounts of the arrearage.