

## CHAPTER 295.

## CONTEMPTS IN CIVIL ACTIONS.

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295.01 Contempt power of courts and judges. Every court of record and every judge of such court at his chambers shall have power to punish by fine and imprisonment, or either, any neglect or violation of duty or any misconduct by which the rights or remedies of a party in an action or proceeding pending or triable in such court or before a court commissioner for the same county may be defeated, impaired, impeded or prejudiced in the following cases:

(1) All attorneys, counselors, clerks, registers, sheriffs, coroners and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services for any misbehavior in such office or trust or for any wilful neglect or violation of duty therein; for disobedience of any process of such court or of any lawful order thereof, or of any lawful order of a judge of such court or of any officer authorized to perform the duties of such judge.

(2) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.

(3) Parties to actions, attorneys, counselors and all other persons for the nonpayment of any sum of money ordered by such court to be paid in cases where by law executions cannot be awarded for the collection of such sum; and for any other disobedience to any lawful order, judgment or process of such court. And the powers of such court to punish, as in this chapter provided, for nonpayment of money may be exercised by the judge or judges thereof in vacation.

(4) All persons for assuming to be officers, attorneys or counselors of any court and acting as such without authority; for rescuing any property or person which shall be in the custody of any officer, by virtue of process issued from such court or judge or judges thereof in vacation; for unlawfully detaining any witness or party to an action while going to, remaining at or returning from the court where such action shall be noticed for trial; and for any other unlawful interference with the process or proceedings in any action.

(5) All persons summoned as witnesses or garnishees for refusing or neglecting to obey such summons or to attend or to be sworn, or to answer as such witnesses or garnishees.

(6) Persons summoned as jurors in any court for improperly conversing with any party to an action to be tried at such court or with any person in relation to the merits of such action; for receiving communications from any such party or from any other person in relation to the merits of such action without immediately disclosing the same to the court.

(7) All inferior magistrates, officers and tribunals for disobedience of any lawful order or process of a superior court or for proceeding in any action or proceeding contrary to law after such action or proceeding shall have been removed from their jurisdiction; and

(8) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any party or to protect the rights of any such party.

Inability of an alleged contemnor to obey a judgment, if not brought on himself, may be a defense to a charge of contempt. State ex rel. Ignasiak v. Franklin, 268 W 295, 67 NW (2d) 308.

A refusal to pay in accordance with the provisions of a divorce decree is contumacious only when brought about wilfully and with intent to avoid payment, and imprisonment should not be ordered if it is made to appear that the default is the result of in-

ability to pay. Even though there was enough in the record to suggest that the defendant may have been guilty of wilfully refusing to comply with an order, the trial court was not justified in finding the defendant guilty of contempt and ordering his imprisonment without first granting to him the right to explain that his failure to pay had been caused by his inability to do so. Howard v. Howard, 269 W 334, 69 NW (2d) 493.

**295.02 Summary punishment.** When any such misconduct shall be committed in the immediate view and presence of the court it may be punished summarily by fine or imprisonment, or both, as hereinafter provided. For that purpose an order must be made by the court stating the facts which constituted the offense and bring the case within the provisions of this section, and particularly and specifically prescribe the punishment to be inflicted therefor.

**295.03 Prison or house of correction for refusal to pay costs.** When any order of the court or a judge shall have been made requiring the payment of costs or any other sum of money and proof by affidavit shall be made of the personal demand of such sum of money and of a refusal to pay it the court or judge may issue a warrant to commit the person so disobeying to prison or a house of correction until such sum and costs and expenses of the proceedings shall be paid. Where an order of the court, or a judge, in an action for divorce, requires the payment of a sum or sums of money, and personal service of such order has been made upon the defendant, no proof of personal demand of such sum of money and a refusal to pay shall be required before the defendant is punished as provided in this section.

**295.04 Order to show cause; attachment.** In a case specified in either section 295.02 or 295.03 the court may, in its discretion, and in all other cases the court shall, upon being satisfied by affidavit of the commission of the misconduct, either make an order requiring the accused party to show cause at some reasonable time to be therein specified why he should not be punished for the alleged misconduct or shall issue an attachment to arrest such party and to bring him before such court to answer for such misconduct. Such order to show cause may be made or attachment may be issued by any judge in vacation, but must be made returnable to the court.

**295.05 Order, when made; attachment.** Such an order to show cause can only be made in an action or special proceeding in the same court, but it may be made either before or after the judgment in the action or the final order in the special proceeding, and is equivalent to a notice of motion; and the subsequent proceedings thereon shall be taken in the action or special proceedings as upon a motion made therein. When an attachment shall be issued it shall be deemed an original special proceeding against the accused in behalf of the state upon the relation of the complainant.

**295.06 Undertaking to answer.** When an attachment shall be issued according to the provisions of this chapter the court or judge issuing the same may, in its or his discretion, direct by indorsement thereon the sum in which the defendant may give an undertaking for his appearance to answer.

**295.07 Custody of person attached.** Upon arresting any person upon an attachment to answer for any alleged misconduct the officer shall keep such person in his actual custody and bring him personally before the court to which the same is returnable, and keep him in his custody until such court shall have made some order in the premises unless such defendant entitles himself to be discharged as prescribed in section 295.08. But when, from sickness or any other cause, the defendant is unable to attend court that fact shall be a sufficient excuse for not bringing him before the court. The officer need not in any case confine any person so arrested in any prison or otherwise restrain him of his liberty, except so far as shall be necessary to secure his personal attendance.

**295.08 Discharge.** Such defendant shall be discharged from arrest upon such attachment, when there is an indorsement thereon as prescribed in section 295.06, upon executing and delivering to the officer making the same at any time before the return of the writ an undertaking, with two sufficient sureties, in the sum indorsed upon such attachment, to the effect that the defendant will appear on the return of such attachment and abide the order and judgment of the court thereupon.

**295.09 Habeas corpus.** If the party charged with misconduct be in the custody of any officer by virtue of an execution against his body or by virtue of any process for any other contempt or misconduct, instead of issuing an attachment the court or judge may award a writ of habeas corpus to bring the defendant before the court to answer for such misconduct; and upon the delivery of such writ to the officer having the custody of the defendant he shall bring him, on the return day of such writ, before the court to which the same is returnable, and detain him at the place where the court is sitting until the further order of the court.

**295.10 Return.** Upon the return day of an attachment or of such writ of habeas corpus the officer executing the same shall file the same and the undertaking, if any, taken by him of the defendant, together with a written return stating the manner in which he has executed such attachment or writ.

**295.11 How compelled.** The officer to whom any such attachment shall be delivered shall return the same by the return day specified therein; and in case of default an attachment may be issued against him of course, upon being allowed by the court or judge, upon proof of such default. The officer to whom such last-mentioned attachment shall be delivered shall execute the same by arresting and keeping the defendant in his custody, bringing him personally before the court and detaining him in such custody until the further order of the court without admitting him to bail.

**295.12 Interrogatories, filing of, and proceedings.** When any defendant shall have been brought into court by virtue of an attachment, or on such writ of habeas corpus, or shall have appeared upon the return of an attachment the court shall, unless he admits the offense charged, cause interrogatories to be filed specifying the facts and circumstances alleged against the defendant and requiring his answers thereto; to which the defendant shall make written answers on oath within such reasonable time as the court shall allow; and the court may receive any affidavits or other proofs, contradictory of the answers of the defendant or in confirmation thereof, and upon the original affidavits, such answers and such subsequent proof shall determine whether the defendant has been guilty of the misconduct alleged.

**295.13 Fine and imprisonment.** If, upon the hearing of an order to show cause or in such proceedings in case of an attachment, the court shall adjudge the defendant to have been guilty of the misconduct alleged and that the misconduct was calculated to or actually did defeat, impede or prejudice the rights or remedies of any party in an action or proceeding pending in such court, it shall proceed to impose a fine or to imprison him, or both, as the nature of the case shall require. A warrant of commitment must be issued accordingly.

**295.14 Indemnifying loss; fine.** If an actual loss or injury has been produced to any party by the misconduct alleged the court shall order a sufficient sum to be paid by the defendant to such party to indemnify him and to satisfy his costs and expenses, instead of imposing a fine upon such defendant; and in such case the payment and acceptance of such sum shall be an absolute bar to any action by such aggrieved party to recover damages for such injury or loss. Where no such actual loss or injury has been produced the fine shall not exceed two hundred and fifty dollars over and above the costs and expenses of the proceedings.

**295.15 Imprisonment and order of.** When the misconduct proved consists of an omission to perform some act or duty which is yet in the power of the defendant to perform he shall be imprisoned only until he shall have performed such act or duty and paid such fine as shall be imposed and the costs and expenses of the proceedings. In such case the order and warrant of commitment shall specify the act or duty to be performed and the amount of the fine and expenses to be paid.

**295.16 Term of.** In every other case, when no special provision is otherwise made by law, the defendant may be imprisoned for a reasonable time, not exceeding six months, and until the fine, if any, and the expenses of the proceedings are paid; and the duration of such imprisonment shall be expressed in the order and warrant of commitment.

**295.17 Indictment.** Persons proceeded against under the provisions of this chapter shall also be liable to an information or indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction shall be had on such information or indictment shall take into consideration the punishment before inflicted, in forming its sentence.

**295.18 Proceedings on default.** If the defendant, against whom an attachment shall have been issued and returned served, do not appear on the return day thereof the court may either award another attachment or may order the undertaking, taken on the arrest, to be prosecuted, or both.

**295.19 Action on undertaking; damages.** The order directing the undertaking to be prosecuted may direct any action to be brought thereon in the name of any party aggrieved; and such party may thereupon maintain an action in his own name and recover damages to the extent of the loss or injury sustained by him by reason of the misconduct for which the attachment was issued and his costs and expenses in prosecuting such attachment, not exceeding the sum specified in such undertaking.

**295.20 State, action by.** If there be no party aggrieved by the misconduct by which the attachment was issued the court, in case the defendant shall fail to appear according to the conditions of the undertaking taken on the arrest, shall order the same to be prosecuted by the attorney-general or by the district attorney for the county in which the undertaking was taken, in the name of the state, and in such action the state shall be entitled to recover the entire sum specified in such undertaking. From the money collected

in such action the court shall order such sum to be paid to the party prosecuting the attachment as it shall think proper to satisfy the costs and expenses incurred by him and to compensate him for any injury he may have sustained by the misconduct for which such attachment was issued, and the residue shall be paid into the state treasury to the credit of the school fund.

295.21 **Insufficient sureties, liability for.** After the return of an execution, issued upon any judgment obtained upon such undertaking unsatisfied in whole or in part an action to recover the amount of such judgment so remaining unsatisfied may be maintained by the plaintiff who recovered such judgment against the officer taking such undertaking, when it appears that at the time it was given the sureties were insufficient and the officer taking the same had reasonable grounds to doubt their sufficiency. If the state was the plaintiff in the action on the undertaking the action against the officer must be prosecuted by the attorney-general or district attorney in the name of the state, and the same disposition of the moneys collected in such action against such officer shall be made as directed in the preceding sections.