

ARTICLES

Oregon's Contempt Procedure For Failure to Truthfully Answer Judgment Debtor Interrogatories

DECEMBER 30, 2022

By [Curtis A. Welch](#)

Industries

Construction

**Published in the Oregon State Bar's Construction Law
Newsletter**

Construction lawyers are often faced with having to collect a judgment for a client. However, many of us have learned that sometimes the effort in obtaining the judgment pales in comparison to the effort needed to collect the judgment. Fortunately, a lawyer has many tools for collecting a judgment. One of the more important tools is the use of judgment debtor interrogatories under ORS 18.270. Under ORS 18.270(1), “[a]t any time after a judgment is entered, a judgment creditor may serve written interrogatories relating to the judgment debtor’s property and financial affairs on a judgment debtor.”

Many of us have also learned that a judgment debtor may choose to be untruthful in their responses to judgment debtor interrogatories. This article discusses the enforcement process when a judgment debtor is untruthful in their answers to judgment debtor interrogatories.

I. Judgment Debtor's Statutory Duty to Truthfully Answer Judgment Debtor Interrogatories

Under ORS 18.270(2), a judgment debtor “must answer all questions under oath.” Under ORS 18.270(1), a “judgment debtor’s failure to answer the interrogatories truthfully shall subject the judgment debtor to penalties for false swearing as provided in ORS 162.075 (False Swearing) and for contempt of court as provided in ORS 33.015.” Further, ORS 18.270(3) provides that a judgment debtor’s failure to comply with the provisions of ORS 18.270 “is contempt of court and the judgment creditor may commence proceedings under the provisions of ORS 33.015”.

Pursuant to ORS 33.015(2), contempt of court “means the following acts, done willfully: . . . (e) violation of a statutory provision that specifically subjects the person to the contempt power of the court.” Thus, under ORS 18.270(3) and ORS 33.015(2), the willful failure to truthfully answer judgment debtor interrogatories is contempt of court.

The term “willfully” as used in ORS 33.015(2) was discussed in *State v. Mohammed*, 301 Or. App. 367, 370 (2019), where the court held: “[w]illfully’ for the purposes of ORS 33.015(2) meant, and means, intentionally and with knowledge that the act or omission was forbidden conduct.” (citing *State v. Nicholson*, 282 Or. App. 51, 62 (2016)).

The willful mental state can be inferred. *Elizabeth Lofts Condo. Owners’ v. Victaulic Co.*, 293 Or. App. 572, 580 (2018). In the *Elizabeth Lofts* case, the court referenced the following principle: “A trier of fact can infer a willful mental state from facts showing a knowing violation. The Oregon courts have often stated that intent is rarely susceptible to proof by direct evidence.” *Id.*

II. Procedure/Order to Show Cause

The judgment creditor’s initial step in seeking an order of contempt due to a judgment debtor’s failure to truthfully answer judgment debtor interrogatories is for the judgment debtor to obtain an order requiring the judgment debtor to appear before the court and show cause why the debtor should not be held in contempt of court for such conduct. The motion must be supported by a declaration setting out the facts supporting the judgment creditor’s contention that the judgment debtor failed to truthfully answer the interrogatories.

As a side note, there is no obligation to confer before filing the motion for order to show cause. A judgment debtor’s counsel advanced such an argument in a recent Oregon circuit court case, which argument was expressly rejected by the assigned judge, who held that a motion for order to show cause for contempt is not subject to the conferral requirement under UTCR 5.010.

Even though the order to show cause is commonly issued through an ex parte appearance, such as is done in Multnomah County (See Multnomah County Supplemental Local Rule 2.501(1)(d)), the motion and declaration should be as sufficiently detailed and supported as though it is a contested pretrial motion set on the civil motion docket. Certification that the judgment debtor interrogatories were properly served on the debtor should be attached as an exhibit, as should the judgment debtor interrogatories, and the debtor's answers to those interrogatories.

Additional exhibits that may be attached include documents obtained from third party sources or other investigation that demonstrate the falsity of the debtor's interrogatory answers. For example, a debtor may have stated in their interrogatory answers that they have no income or a very limited income. The debtor's bank records produced by the debtor's bank, sometimes obtained by the judgment creditor's subpoena served on the bank, can clearly refute such an answer by the debtor.

In connection with the motion, the judgment creditor must follow the provisions of UTCR Chapter 19, including the requirement under UTCR 19.020(1)(a) that the initiating instrument, i.e. the motion for order to show cause, must include in the caption either the word "remedial" or the word "punitive".

UTCR 19.020(1)(b) requires that the judgment creditor state in the motion the following: "The maximum sanction(s) that the party seeks"; "[w]hether the party seeks a sanction of confinement"; and "[a]s to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive."

III. Remedial or Punitive Sanctions

Under ORS 33.045(3)(b), a fine is remedial "if it is for continuing contempt and the fine accumulates until the defendant complies with the court's judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court's judgment or order." Under ORS 33.045(3)(a), a fine is punitive "if it is for a past contempt." Only a city attorney, a district attorney or the state attorney general may initiate a proceeding seeking a punitive sanction. ORS 33.065(2). In contrast, under ORS

33.055(2)(a), "a person aggrieved by an alleged contempt of court" may initiate a proceeding to impose remedial sanctions. Thus, a judgment creditor is authorized to seek a remedial sanction related to a debtor's contempt. It should be noted that although confinement is one of the authorized remedial sanctions under ORS 33.105(1), the burden of proof

for imposition of a remedial sanction of confinement is proof “beyond a reasonable doubt.” ORS 33.055(11).

Other remedial sanctions authorized under ORS 33.105(1) are “[p]ayment of a sum of money to compensate a party for loss, injury, or costs suffered by the party as the result of a contempt of court”; “[a]n amount not to exceed \$500 or one percent of the defendant’s annual gross income, whichever is greater, for each day the contempt of court continues”; “[a]n order designed to insure compliance with a prior order of the court, including probation”; “[p]ayment of all or part of any attorney fees incurred by a party as the result of contempt of court”; and a sanction other than those listed under ORS 33.105(1)(a) through (e) “if the court determines that the sanction would be an effective remedy for the contempt.”

Under ORS 33.055(11), the burden of proof for the imposition of a remedial sanction other than confinement “shall be by clear and convincing evidence.”

In regards to service of the order to show cause, the court may authorize that it may be served by a method other than personal service, if the court finds that the defendant cannot be personally served. ORS 33.055(5)(a). Language authorizing service by means other than personal service should be set forth in the order itself.

IV. Evidentiary Hearing

Assuming the court grants the creditor’s motion for order to show cause, and the order is served personally on the debtor, or otherwise in accordance with the court’s order, a hearing is then held for the purpose of determining if the debtor should be held in contempt. The hearing is tried to the court (ORS 33.055(6)); the debtor ordinarily has no right to a jury trial in the matter. ORS 33.055(7). The one exception to that rule is “when a statute or constitution provides a specific right to a jury trial in a contempt proceeding and a party claims that right.” UTCR 19.050(3). The debtor is entitled to be represented by counsel at the hearing. ORS 33.055(8).

The hearing often takes the form of an evidentiary hearing, with the judgment creditor presenting testimony and evidence demonstrating that the debtor was untruthful in their answers to the interrogatories. Should the debtor testify, the judgment creditor is given the right to cross examine the debtor. Similarly, the debtor may cross examine the creditor’s witnesses.

The court may allow opening statements and closing arguments. The judgment creditor, depending on the size of the judgment at issue, may also submit a trial or hearing brief. Likewise, so may the judgment debtor.

To establish that the debtor acted willfully, and to do so by clear and convincing evidence, information from third party sources is often helpful. For example, a creditor may introduce into evidence bank records showing the existence of bank accounts that the debtor denied existed. Such records are particularly useful when it is shown that sums of money had been deposited by the debtor in those allegedly non-existent accounts. Another type of evidence is tax returns subpoenaed from an accountant or bookkeeper for the debtor, which contradict a debtor's interrogatory answer that the debtor has limited income.

A commonly used judgment debtor interrogatory requires the debtor to identify persons and entities who owe monies to the debtor. Bank records that show payments to the debtor from third parties, occurring after the date of the debtor's answers to the interrogatories, are clearly helpful in establishing the willful requirement for contempt where the debtor claims in their interrogatory answer that they are not owed money by anyone.

Unlike responses given in a judgment debtor's examination, a debtor has time to review and reflect on their answers to judgment debtor interrogatories. The court is likely to take that practical factor into account when deciding whether the debtor willfully provided false answers to interrogatories.

Should the court find the debtor in contempt, the court technically has discretion whether to impose sanctions, but often will impose sanctions. As noted above, the sanction sought by the creditor is set forth in the motion for order to show cause.

Should the court impose the sanction under ORS 33.105(1)(e) of requiring the debtor to make payment of all or part of the creditor's attorney fees incurred as a result of the debtor's contempt, the creditor's attorney will need to submit a statement of attorney fees under ORCP 68, and the debtor will have the opportunity to respond. See *In re Marriage of Young*, 172 Or. App. 108, 112 (2001).

V. Conclusion

As is apparent from the above discussion, it is a time-intensive process for a creditor to enforce their right to receive truthful answers to judgment debtor interrogatories. Before initiating that process, the judgment creditor's attorney should consider the size of the judgment at issue, as well as analyzing information as to whether the judgment debtor may have significant assets that the judgment debtor is trying not to disclose.



There is also the issue of accountability to factor into a decision by the creditor. A judgment debtor should not be permitted to treat responses to judgment debtor interrogatories as an exercise in how to hide assets and income by providing false or incomplete information. Doing so not only undermines the legal process, but it also increases the expense to the creditor, which expense should ultimately be borne by the judgment debtor.

[Construction Law Newsletter – Fall 2022.pdf](#)

Related Attorneys

Curtis A. Welch

Special Counsel

503.972.2529

cwelch@sussmanshank.com