JUDGING AND ENFORCING : COURTS AND COMPLIANCE pdf

1: Compliance Court

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While applicable South Carolina civil or criminal code sections set limits on conduct for all citizens or some class of citizens, a family court order sets rights and responsibilities for the parties subject to that particular order. And the consequences of not following such orders are powerful: An adult who wilfully violates, neglects, or refuses to obey or perform a lawful order of the court may be proceeded against for contempt of court. An adult found in contempt of court may be punished by a fine, a public work sentence, or by imprisonment in a local correctional facility, or any combination of them, in the discretion of the court, but not to exceed imprisonment in a local correctional facility for one year, a fine of fifteen hundred dollars, or public work sentence of more than three hundred hours, or any combination of them. The tool of contempt sanctions puts police powers in the hands of private citizens. Ultimately, if one party does not follow a family court order, the other party may be able to have that party incarcerated. Yet, while it may occasionally surprise our clients, family court orders are not self-enforcing. Knowing how to enforce family court orders or defend enforcement of these orders is a skill every family court practitioner must master. The tool for enforcement is a rule to show cause. Except for direct contempt of court, contempt of court proceedings shall be initiated only by a rule to show cause duly issued and served in accordance with the provisions hereof. The rule to show cause shall be signed by the issuing judge with the date of issuance and shall require the responding party to appear in court, at a clearly stated date, time and place, to show cause why the responding party should not be held in contempt and why permissible relief requested by the moving party should not be granted. No rule to show cause shall be issued unless based upon and supported by an affidavit or verified petition, or unless issued by the judge sua sponte. The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act s or omission s which constitute contempt, and the specific relief which the moving party is seeking. Such court order, decree or judgment shall be attached to the affidavit or certified petition. The rule to show cause, and the supporting affidavit or verified petition, shall be served, in the manner prescribed herein, not later than ten days before the date specified for the hearing, unless a different notice period is fixed by the issuing judge within the rule to show cause. In an emergency situation, the notice period of ten days may be reduced by the issuing judge. The rule to show cause shall be served with the supporting affidavit or verified petition by personal delivery of a duly filed copy thereof to the responding party by the Sheriff, his deputy or by any other person not less than eighteen 18 years of age, not an attorney in or a party to the action. If at the contempt proceeding the responding party intends to seek counsel fees and costs, or other appropriate relief permitted by law, then he shall serve a return to the rule to show cause prior to the commencement of the hearing, unless a Family Court judge requires a return to be served at some other time. The contempt hearing shall be an evidentiary hearing with testimony pursuant to the Rules of Evidence, except as modified by the Family Court Rules. The moving party shall satisfy the burden of proof required by law for the specific nature of contempt before the court. Once the moving party establishes a prima facie case, the respondent is entitled to present evidence of a defense or inability to comply with the order. If requested, the Court may allow reply testimony. The Court may impose sanctions provided by law upon proper showing and finding of willful contempt, and may award other appropriate relief properly requested by a party to the proceeding. The form for family court rules to show cause, SCCA, can be downloaded at: Due process would have appeared to have required such notice but previously such information was sometimes lacking in the affidavit or petition. Rules to show cause now have to be served ten days before the hearing unless the court order issuing the rule specifies otherwise. Rule 14 also notes a requirement that a return be filed if the defending party is seeking counsel fees and costs: Left unresolved is how long prior to the commencement of the hearing such a return must be served. Is service as the parties are walking into the courtroom sufficient? Finally, Rule 14 makes reply testimony discretionary, whereas I would have previously considered it mandatory if requested. Miller , S. The determination of

whether contempt is civil or criminal depends on the underlying purpose of the contempt ruling. The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature. The relief cannot undo or remedy what has been done nor afford any compensation and the contemnor cannot shorten the term by promising not to repeat his offense. If the relief provided is a sentence of imprisonment, it is punitive if the sentence is limited to imprisonment for a definite period. If the sanction is a fine, it is punitive when it is paid to the court. The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. Those who are imprisoned until they obey the order, carry the keys of their prison in their own pockets. The distinction between civil and criminal contempt is critical, because criminal contempt triggers additional constitutional safeguards. Civil contempt must be proved by clear and convincing evidence. In a criminal contempt proceeding, the burden of proof is beyond a reasonable doubt. Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence. Prosecutions for serious criminal contempts [in which the court wishes to sentence the defendant to imprisonment of more than six months] are subject to the jury trial protections of the Sixth Amendment. A civil contempt finding is purgeable: Abate , S. Elements of Civil Contempt Proof Because civil contempt carries serious sanctions, there are numerous procedural protections afforded a party who has allegedly violated a contempt order. Lindsay , S. Padgett , S. Mullins , S. Boyter , S. Whetstone , S. Abate, supra, S. The failure to support the rule to show cause by an affidavit or verified petition is a fatal defect. Lynch , S. Shannon , S. Bass , S. Thus, any verified complaint or affidavit in support of the rule should plead the existence of the court order and the facts establishing non-compliance. When requested by either party a rule must proceed via testimony. Elvis , S. Because live testimony is required for rules, make sure the rule is set for enough time to handle the matter. Few things anger judges more than too little time being set for a hearing thus backing up their dockets. Henderson , S. Oliver , S. After father presented a prima facie case, mother presented no evidence or testimony. Because father had made a prima facie case and mother presented no evidence, the Court of Appeals found that the family court had erred in failing to find mother in contempt. Finally, a finding of contempt does not require the imposition of sanctions. Sutton , S. In circumstances in which the Plaintiff wants the order enforced but cannot prove a willful violation, a motion to enforce the order is more likely to achieve the desired goal. Motions for supplemental proceedings to enforce or interpret a final order are the proper method of enforcing a final order where the non compliance may be excusable or the order lacks sufficient clarity to find a party in contempt. Supplemental proceedings also allow for discovery if requested. Further there are often circumstances in which the Plaintiff is required to undertake an action before the Defendant is required to undertake an action. If these bills have not been presented to the Defendant a rule is improper, even if the bills have not been paid and even if the Defendant is aware of the bill. Rather the Plaintiff needs to comply with the order by supplying the Defendant the medical bills and then provide the Defendant the proper time to pay before seeking enforcement. Finally, there may be circumstances in which the Defendant did not have notice of the order being enforced. However, when it is unclear that the Defendant ever received notice of the order make sure the order is served and wait for a subsequent violation before attempting to enforce the order. However, in Upchurch v. Upchurch , S. An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case. However, the moment the order is filed by the clerk of court, it becomes the judgment of the court, and fixes the rights of the parties. Stated otherwise, the effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court. See also, Metts v. Mims , S. Additional Goals other than Enforcement In prosecuting a rule, a Plaintiff may have legitimate goals in addition to enforcement of the court order. Those additional goals create strategic considerations on the timing of when the rule will be

heard, whether a new action should be filed, the type of contempt sought, and where the rule should be filed. For example, Defendants frequently live in a different state than where the order was issued. The alternative is to file the rule in South Carolina, obtain service over the out-of-state Defendant, and then hope the Defendant actually appears in court. On the other hand, sometimes the Plaintiff wants to make the Defendant a fugitive from South Carolina. Certainly, final hearings are much easier when the Defendant cannot appear. When there is ongoing domestic litigation, filing a rule against an out-of-state Defendant when there is reason to believe the Defendant will fail to appear frequently leads to the Defendant being made a fugitive at the time of trial when the Defendant fails to show up for the rule hearing. Sometimes, a rule can be used to encourage settlement or modification of an existing final order. I frequently use civil contempt proceedings to apply pressure to resolve the underlying litigation or to get a party to agree to modify a final custody or visitation order. Often it is the only way to get opposing parties to think realistically about their situation. Seeking civil contempt before a final hearing and then negotiating to waive the contempt claim in return for resolution of the underlying case or using the threat of civil contempt to negotiate a modification of custody or visitation has resolved many a family court case. Other times, a finding of civil contempt is desired to prevail on contested issues as part of the underlying litigation. Setting a rule to be heard before trial rather than at the time of trial means that a different court and different court order will result from the civil contempt proceeding and from trial.

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A failure to abide by a court order, other than an order for payment of money, constitutes civil contempt of court. In order to find contempt of court, a three-part test must be met: In United Nurses of Alberta v. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court. The notion that contempt proceedings are essential for upholding the dignity of the courts and sanctioning those who choose to defy the court is found throughout the case law. Surgeoner3, a family law case, Blair J. A society which countenances such conduct is a society tottering on the precipice of disorder and injustice. The need for the sanction of contempt proceedings is of significant importance in the field of family law. Civil versus Criminal Contempt There are two types of contempt: Generally, the difference between the two lies in the public nature of the act of defiance of the court. However, it is not as simple as an act of contempt being deemed public that it is then necessarily deemed criminal. Indeed, all contempt proceedings are quasi-criminal in nature. Even with civil contempt, a perpetrator can be imprisoned,7 and may be subjected to other penalties available for criminal offences such as fines or community service. As a result, a person subject to contempt proceedings â€" whether criminal or civil â€" is afforded criminal law protections: If a court finds that a sincere attempt was made to abide by the order, then it is not likely to find contempt, although the court can order other remedies for the wrong, such as the imposition of a fine or an order of costs. The Parole Board has no jurisdiction over civil contemnors. The reason is that the purpose of the incarceration in contempt proceedings is to punish but also to compel compliance. To allow the Parole Board jurisdiction over the person would undermine the purposes of contempt penalties. The analogy is drawn between purging contempt and mitigating factors in sentencing, again on the basis that contempt is quasi-criminal in nature. In other words, based on the evidence before this Court.. The appellant failed to properly account to the judge and even with a second accounting could not remedy the spending. The appellant was able to settle the matter with the respondent and apologized before his sentence for contempt. The judge ordered the appellant to be sentenced for 21 days. The Court of Appeal upheld the stiff sentence on the basis that the sentence underscored the seriousness of the act of contempt. Cutting Edge Films Inc. The order of contempt was as against the CEO of the debtor corporation. The Court found that the motion judge did not explain under which rule the order had issued. The contempt order was overturned. This brief decision underlines the importance of a Court clearly outlining the basis on which a contempt order is made. It is consistent with the gravity of contempt orders. Just as the party alleging contempt must do so beyond a reasonable doubt, so must a Court finding a party in contempt clearly explain the basis on which the finding was made, in a manner that reflects the high burden of proof. Justice Ricchetti was issued on March 25, The motion was for contempt as well as other remedies. By March , the hearing of the motion, the estate trustees had still failed to account for their spendings in respect of the estate. In deciding on whether to issue the contempt finding, Justice Ricchetti considered three points: The Court was also asked to provide injunctive relief enjoining the estate trustees from dealing with the property of the deceased. In spite of the fact that the estate trustees had co-mingled the estate monies with their own and spent from the estate monies for their own use, the Court refused to grant an injunction. In the recent decision of Re. In January the Court had previously ordered the son to provide a full inventory of assets owned by his mother and jointly with him, as well as a full accounting of all dealings with the joint assets. After the son failed to provide the inventory and accounting, several further orders were made, until finally a motion was brought for contempt. A court exercises its contempt power to uphold the dignity and process of the court, thereby sustaining the rule of law and maintaining the orderly, fair and impartial administration of justice. Costs in Contempt Proceedings On contempt motions, courts can order costs on a solicitor-client basis as a reflection

of the policy that the party bringing the motion is assisting the court in the enforcement of its orders and ought not to be penalized financially for doing so. Lacroix Estate26 the Court of Appeal overturned a ruling of the Superior Court of Justice that found an estate trustee in contempt for failing to make a payment as ordered pursuant to the Succession Law Reform Act. In the judgment, Morden J. Kapis29 in which Wright J. The bottom line is, if you are looking for enforcement of an order to pay money, no matter what the circumstances are, you are best to avoid contempt proceedings and proceed with other avenues as outlined in Rule These avenues, for the enforcement of orders for the payment of recovery of money, are addressed below. In cases where an order provides that it can be enforced through a writ of seizure and sale, no further leave is required of the court to issue such a writ. That order, if so issued is effective for one year after the date of the order. A party with an order for payment or recovery of money may enforce the order by garnishment of debts payable to the debtor by other persons. If there is more than one person, the creditor will have to issue multiple notices of garnishment. For instance, in Metropolitan Toronto Municipality v. In another example, in Assaf Estate Re. Nor is spousal support garnishable. However, to grant such an order, a court must be satisfied that other enforcement measures are not effective and are not likely to be effective. The statutory basis of certificate of pending litigation is found at section of the Courts of Justice Act. The test a plaintiff must meet for a certificate of pending litigation is a there is a serious question to be tried; b the plaintiff will suffer irreparable harm if the certificate of pending litigation is not granted; and c the balance of convenience favours the granting of the certificate of pending litigation. A certificate of pending litigation can be sought in respect of property even if the property itself is not directly claimed by the plaintiff. It is sufficient if the interest in the land is in question. This is particularly the case where the interests of an incapable person are implicated. This rule allows a person who appears to have a financial interest in an estate to bring various motions for assistance from the court, as follows: All of these orders for assistance except for the order for further particulars Rule These orders for assistance are helpful and bring about goals that are similar to those achieved with contempt, in that they have real repercussions for the responding party. For instance, if a person is required to accept an appointment as an estate trustee50 and then fails to file an application for a certificate of appointment as directed, that person will be deemed to have renounced his or her right to be appointed. A beneficiary witness to the will who fails to satisfy the court that he or she did not exercise undue influence over the testator51 may lose entitlement under the will, and a former spouse who fails to file an appearance in the will action52 may be deemed in default. In instances where persons are required to file a statement of assets or pass accounts, a failure to do so can subsequently be dealt with by a contempt motion on the basis that an order has issued. A party can also seek injunctive relief as outlined in more detail below, or disclosure orders that require banks or other institutions to provide the financial information that is sought. The important point is that armed with one of these orders for assistance, the applicant can then take steps to steer the matter him or herself, and find means â€" through contempt, injunctive relief, or disclosure orders â€" that allow him or her to obtain the information and relief sought. Even Before the Proceeding Begins Rule Canada Attorney General ,53 and is as follows: This standard has been adopted by the Canadian courts. Generally, it is a low threshold. It is a requirement based in equity. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Although the court may look at whether the responding party will have funds to pay damages, the fact that the party may not have the funds will not automatically lead to a finding of irreparable harm. Usually, however, a court will find the potential for damages is sufficient, so the evidence of irreparable harm must be clear and unequivocal. In Manitoba Attorney General v. A determination of which of the two parties would suffer the greater harm from the granting of the refusal of an interlocutory injunction, pending a decision on the merits. Undertaking as to Damages Rules The rule also provides that the court can dispense with this requirement. In public interest cases, courts have dispensed with this requirement. This is not the case for private interest cases, where the requirement is strictly upheld. These orders are highly intrusive and require the defendant to permit entry to its private premises so that the plaintiff can locate and secure property, most frequently documents and confidential information. The moving party requires: First the defendant has to have committed a fraud with respect to certain property in order to defeat a claim against him or her, and second, the injunction must relate

to that property that was fraudulently disposed of. Although traditionally these injunctions were granted in cases where the defendant had behaved in a fraudulent manner in respect of the property in dispute, further cases have expanded the application of Mills injunctions to instances where the fraud was not directly related to the asset in question in the action. In general, one must proceed very carefully with ex parte motions, as the courts are cautious about granting such orders on the basis that there is potential for misuse of the mechanism. It may be that an injunction is necessary and it might not unduly prejudice the rights of the defendant, but at this time such a belief is mere conjecture. Both sides of the story are necessary for a proper determination. For this reason I do not believe that the injunction should be given on an ex parte basis. The onus on the moving party in ex parte motions is very burdensome. If a court is not satisfied that a motion could only have proceeded ex parte then a court is not likely to grant such a motion. The onus is high on the moving party. Counsel for the moving party is obligated to give a fair and balanced statement of the facts of the motion as well as the facts upon which the moving party relies in bringing the motion without notice. Counsel for the moving party is further obliged to canvass the applicable law. Time Limitations on Without Notice Injunctions Injunctions brought by motion without notice are granted for a limited time, of up to ten days. If a party brings an application to extend an order granted on a without notice basis, the presiding judge can re-consider all the criteria for the original order.

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3: Enforcing a Custody Order - custody_famlaw_selfhelp

Part II aims to fashion a democratic role for courts as well as examining alternative compliance methods, while Part III applies the analysis to specific rights, firstly equality, and then the traditional socio-economic rights to housing, education, and welfare.

Such research would help achieve a deeper understanding of the effectiveness of arbitration in resolving international commercial disputes. Arbitration awards may be complied with or may be wholly or partly enforced or may be abandoned. The focus of the article is on compliance with and enforcement of final arbitration awards. Improving timely voluntary compliance with international arbitration awards would positively impact the real efficacy of arbitration in resolving international commercial disputes. Demonstrating that the majority of award debtors comply with arbitral awards without the need for subsequent, often prolonged, enforcement proceedings would improve user confidence in arbitration and would enhance the perception that the system works. Yet our knowledge of whether arbitration awards are complied with, and our understanding of why compliance occurs, are scanty. Much of what we know is largely based on anecdotal evidence. Most anecdotal evidence available suggests that rates of spontaneous compliance with final arbitration awards are good and that abandonment of final awards is rare. Yet not all instances of voluntary compliance with awards are positive. Problems with our current understanding of compliance behaviour, barriers to improving it and possible solutions are outlined. The limited empirical evidence available suggests that enforcement success rates are excellent. Yet within this pool of information there are indications that enforcement rates in reported judgments are dropping and that enforcement rates overall are worse than seen in surveys of reported judgments. It is noted that not all refusals of enforcement applications by domestic courts erode confidence in the system of international commercial arbitration. Indeed, the fact that enforcement applications are regularly refused where awards are unsound should improve party trust in the system of arbitration. A brief mention is made of activities aimed at improving enforcement rates in certain jurisdictions by increasing domestic court familiarity with the NYC. The article concludes that much more could be done to improve our understanding of the ultimate fate of arbitration awards. Detailed empirical study of compliance with and abandonment of awards, together with the assessment of success rates in both reported and unreported enforcement applications, is overdue. Empirical research of this behaviour would enable us to better demonstrate the efficacy of arbitration. And research results might usefully inform efforts to improve the effectiveness of arbitration in resolving international commercial disputes. Rising Complexity, Growing Concern It would appear that arbitration is likely to remain the common method of resolving commercial disputes arising from cross-border trade and investment for some time. And all indications are that commercial arbitration caseloads seen by leading international arbitration centres are rising. Brower II and Jeremy K. Much of the concern expressed seems to arise from the unfavourable comparison of the practice-driven international legal system with experience of more centralized and legislated domestic legal processes. This said, concerns as to the lack of certainty of outcome in international commercial arbitration also arise from practical causes. These causes may require imaginative and possibly even radical solutions if they are to be overcome. Over time, in a manner typical to practice-driven legal systems, answers to general problems in international commercial arbitration will be found for specific cases and these answers, if recognized as generally useful, will then be more widely adopted. For instance, with careful drafting of contracts and choice of sensible arbitration rules, lawyers should be able to overcome at least some of the grounds for problematic multiple jurisdiction. And, should public pressure for transparency and public involvement in disputes of a public nature continue, solutions would eventually be found for such cases. The problem faced by the noblesse, and the arbitration institutions for which they sometimes serve, is that the development of new law or practice by customary processes is generally, but importantly not always, very slow. To improve confidence in the system, without engaging in difficult structural reform, a particularly rapid response to problems in terms of identification, understanding and suggesting solutions for general adoption needs to be developed. Some crisis of confidence in the appropriateness of arbitration for those affected is

probably inevitable. This is likely where, even though solutions may be readily evident, a quick fix is not readily available. For instance, contracts are often difficult to renegotiate and one assumes that even for sophisticated parties it will be many years before all of their contracts are carefully drafted so as to best avoid facing the hydra of multiple jurisdiction. Treaties are even more durable than normal commercial contracts. Suffice it to say that the full ramifications of treaty-based multiple jurisdiction, that particularly resilient hydra, have yet to unfold. Clearly, in avoiding or ameliorating a general crisis of confidence, managing user expectations will be important. Highlighting the strong points of international commercial arbitration and publicizing sensible solutions to problems that are suggested and made available for adoption will assist in maintaining confidence. But greater empirical understanding of the increasingly fluid status quo is required. Too much of what we currently know is based on, at best, anecdotal evidence. In order to know just how serious the problems we face are, and whether or not major reforms are needed to resolve them, we first need to improve our empirical understanding of how the system works and does not work in practice â€" a daunting task given the complexity and volume of information that even highly focused studies need successfully to digest. Voluntary Compliance With Final Arbitral Awards To be comfortable with proposing the use of arbitration to resolve disputes with business counterparties, businesspeople want confidence that the arbitral process is likely to be effective in delivering the desired resolution of their disputes. In considering likely effectiveness, businesspeople will assess factors such as the likely length of proceedings, whether the process is likely to be cost efficient and the other alternatives available. Effectiveness in relation to arbitration is often ultimately measured by the likelihood of achieving a readily enforceable award. For instance, whilst it is true that an award may be ineffective if it is not enforceable both in theory 16 and in practice, 17 nonetheless an award may be complied with in the absence of real enforcement options. And awards may be effective despite being in practice unenforceable, such as where they clarify disputed contracts or facilitate ongoing business relationships. An important and largely overlooked element for consideration in respect of effectiveness is party behaviour in complying with arbitral awards voluntarily, or spontaneously. From the perspective of the prospective claimant, the most desirable arbitration is one that promises to be both fair and efficient, 18 at the end of which timely compliance by the award debtor without the need for subsequent enforcement actions is likely. Businesses seek to maximize profit through reducing expenditure and increasing income 19 and evidence of good compliance rates would be a powerful marketing tool for arbitration. Demonstrating high rates of compliance would answer the concerns of many over certainty of outcome in modern international commercial arbitration. Evidence of widespread spontaneous compliance with arbitral awards would do much to improve confidence in the effectiveness of international commercial arbitration. Understanding why parties do or do not spontaneously comply with awards might well be useful in helping us improve spontaneous compliance in practice. Provisionally it would seem that the availability of effective means of enforcement, a desire to avoid publicity in connection with disputes and to maintain a good business reputation, might all motivate spontaneous compliance by award debtors. Yet these may not be the only factors at play that we need to understand. For example, might spontaneous compliance, usually seen as a positive sign in the world of international commerce, mask serious misconduct, including money-laundering? Moreover, studies of enforcement statistics alone cannot give us a comprehensive picture of the effectiveness of arbitration. Some awards are abandoned and in some cases parties arrive at post-award settlements before enforcement applications are brought. The ICC Court currently indicates that: It also, again anecdotally, seems that many of those final awards that are not complied with are then pursued through enforcement actions, which are largely successful in respect of a sample of reported cases. Moreover, trends in voluntary compliance, perhaps correctly, are seen as an indicator of user satisfaction with the arbitration process. Improving our Understanding of Voluntary Compliance From the foregoing it can be seen that current evidence of voluntary compliance and of trends in compliance, say, of a rise or fall in spontaneous compliance rates, is scanty at best. Few empirical studies have been conducted on compliance. Importantly, in attempting to determine rates of compliance, first one needs to decide what counts as compliance. For instance, will partial compliance count, and if so in what circumstances? In his study, Peerenboom assessed enforcement through recovery rates and found that there was some recovery in 52 per cent of foreign awards and 47 per cent of awards in China.

Unhappy settlements seem particularly likely in circumstances where it becomes increasingly evident that the award debtor does not in fact have the means fully to comply with the award. In the main, compliance information must be provided directly by successful parties or their legal representatives. In other cases, awards are delivered but abandoned by award creditors, for instance where it becomes clear that the award debtor is bankrupt and there is little point in pursuing an enforcement action. In still other cases, the parties arrive at a post-award settlement that may involve partial compliance with the award. Direct contact with the successful party or its legal representatives will be the most reliable way of gathering compliance information. There are some obvious practical problems in conducting a direct survey of parties to completed arbitrations and their legal representatives. Without trying to be exhaustive in this respect, confidentiality issues as well as simple apathy or reluctance to take the time to respond to questions on the part of parties and their representatives would be a significant hurdle. Time-lag between the conclusion of proceedings and the point at which compliance may be assessed will delay survey results. Such delays raise other challenges, for instance organizational and personnel changes within the organizations that have been the subject of arbitrations, may hinder or preclude the gathering of useful information. Finally, not only is defining compliance and gathering evidence of compliance difficult, but both compliance and enforcement behaviour is complex â€" more so than is recognized by generalized statistics. Any study or survey would need to be sufficiently detailed to take into account the complexity of modern arbitration. For example, problems may arise from generalizing the behaviour of parties located in different jurisdictions. Much relevant information on disputes, parties to disputes and arbitration awards is in the hands of international arbitral institutions, and these institutions are well placed to approach parties to determine their general satisfaction with their arbitral experience and with the end result of the process. Without broad participation from arbitral institutions, building an accurate overall or comparative picture would be especially difficult. The goal of improving spontaneous compliance with arbitration awards and demonstrating widespread spontaneous compliance in practice should be in the interests of all stakeholders to international commercial arbitration, not least facilitating institutions. Without sharing information, institutions will only have access to parties to disputes that they themselves have facilitated, limiting opportunities for relative comparison. Naimark has noted in respect of the field of international commercial arbitration as a whole: Also, it may well be in the interests of arbitration institutions to retain control of information in respect of compliance at least in the short term â€" after all it would hardly do for the world to discover that the Empress, in fact, has no clothes. Generalized results could be published on the agreement of participants and might enable confidential benchmarking, participating peer review and the development of best practice standards. In addition to understanding compliance problems and causes of these problems, understanding the factors motivating compliance would also be important in informing efforts to improve compliance behaviour. One might expect ready award compliance by award debtors if arbitrators regularly gave awards that award debtors, or all parties to the concluded arbitrations, were likely to be happy with. Keer and Richard W. Of the remaining 34 per cent of cases, the results were widely distributed, with awards from 10 per cent to 90 per cent of the amount claimed. So why else might award debtors comply with awards? It would appear that compliance often results, in part, from a desire of parties to get on with business with each other and with the world at large. The cost of not complying with an international arbitration award in terms of loss of trust and business with both current and future business counterparties will in some cases outweigh the cost of complying with the immediate award. If confidentiality is a priority for an award debtor, then avoiding a public enforcement case may be a key motive in complying with an award. Moreover, it would seem that the more effective the means of enforcement, the more likely voluntary compliance is to occur. Award debtors may believe that compliance will be cheaper than resisting enforcement. Particularly following the recent trend 43 towards the enforcement of awards annulled in the country where they were rendered, 44 award debtors will be aware that even should they succeed in repelling an enforcement application, they will have succeeded only within the jurisdiction where enforcement was sought and it may remain open to the award creditor to seek to enforce the award elsewhere. This means that award debtor organizations with assets in many NYC countries may find compliance preferable to the possibility of multiple enforcement actions in several jurisdictions. Spontaneous compliance is more likely in matters where the

losing party is convinced that an award is sound and that any enforcement action is likely to be successful. Here, the reputation of the tribunal that decided the dispute, the reputation of the facilitating organization where one was involved and the track record of courts in likely enforcement jurisdictions may affect perceived enforceability, impacting rates of spontaneous compliance. Spontaneous or voluntary compliance with arbitration awards has thus far been treated as behaviour that should be sought from international commercial arbitration award debtors. Spontaneous compliance with the award is, after all, a more efficient and effective result of arbitration than satisfaction of an award after lengthy and costly enforcement proceedings.

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4: Human Rights Transformed: Positive Rights and Positive Duties - Oxford Scholarship

Judging the Effectiveness of Arbitration through the Assessment of Compliance with and Enforcement of International Arbitration Awards Quentin Tannock LL.B (Hons), LL.M (Cantab), MCIArb.

Advanced Search Abstract Climate change is a persistent, pervasive and pernicious problem. Each branch of government, including the judiciary, has a role to play in tackling climate change. Courts can make a meaningful contribution by: Each branch of governmentâ€"the legislature, executive and judiciaryâ€"have a role to play in tackling climate change and its consequences. The nature and extent of the role necessarily varies depending on the functions exercised by the branch of government. The function of the legislature is to legislate, to create both statutes and subordinate legislation such as regulations, to mitigate the causes of climate change and to adapt to the consequences of climate change for the planet and its people. The function of the executive is to execute the laws, both legislation made by the legislature and the common law made by the courts, concerning climate change and its consequences. The executive applies and implements the laws, enforces compliance with the laws and takes action to punish non-compliance with the laws. The function of the judiciary is to judge, to resolve disputes by adjudication. Judging disputes involves finding, interpreting and applying the laws. In this comment, I want to sketch some of the ways in which the judiciary can make such a contribution. My comments are framed at the conceptual level, with only such elaboration of detail as is necessary to explain the points being made. First, an attribute of a democratic society that upholds the rule of law is the equality of all persons before the law. All persons are to be treated as having an equal capacity for acquiring and enjoying rights, and an equal capacity for becoming subject to legal duties and liabilities. Courts can ensure equality before the law. Any person with a justiciable claim is entitled to bring proceedings in a court of competent jurisdiction and have it heard and determined. This accessibility is a hallmark of the judicial branch of government. As Sax observes, a great strength of litigation is that the citizen: The citizen asserts rights which are entitled to enforcement, he is not a mere supplicant. Courts cannot and do not brush aside, defer consideration of, or filibust about the concerns and claims of people, unlike the political branches of government. Again, in the words of Sax: The traditional legal process is particularly responsive to this problem of citizen initiative. Pleadings are filed, testimony taken, requests for particular relief are put forward and must be attended upon. It is not in the nature of the judicial processâ€"as it so often is with complaints made elsewhere in the governmental systemâ€"for a matter to be shelved, put off for interminable study, or met with a form letter noting that some official is glad to hear of the matter and will certainly give it his consideration someday, maybe. The concept of the rule of law can embrace many requirements. In so doing, courts uphold and enforce democracy. They hold the executive to account for its decisions and conduct that contravene the law and enforce the constitutional and legislative will as embodied in authoritative texts. Courts can order a reluctant or prevaricating executive to make decisions to mitigate the causes of climate change or to adapt to the consequences of climate change, and to make these decisions in accordance with law. The rule of law requires that persons other than the government who are subject to the lawsâ€"the governedâ€"follow the laws. Upholding the rule of law requires enforcement of the law. Courts can hold the private sectorâ€"the industries and businesses whose activities contribute to climate changeâ€"to account and enforce compliance with the law. The rule of law also requires that the laws should conform to standards designed to enable the law to guide effectively the conduct of the government and the governed, so that they understand what they can and cannot do, how they can do it and what are the sanctions if they do not comply. These standards include clarity, certainty, predictability and effectiveness. The principle of good governance is essential to the rule of law. In the climate change context, it requires the enactment and enforcement of clear and effective laws that support sustainable developmentâ€"development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Courts can promote good governance by upholding and enforcing such laws. Courts have authority, are well respected and have earned public trust and confidence. This means that when courts speak through their judgments, their words, reasons and orders are taken seriously. By their decisions and orders, courts force the political branches

of government and the private sector to also take the problem of climate change seriously. Courts elevate the importance of, and the weight to be attributed to, the problem of climate change and demand that the problem and the solutions to it be given earnest thought and attention. Courts, by hearing and determining climate change litigation, dispel any attempt by the political branches of government or the private sector to deny the existence of climate change or its anthropogenic causes or to trivialise its significance. In so doing, courts are not usurping the functions of the political branches of government, but rather uphold and enforce the law and make the theoretical processes of democracy work more effectively in practice. Citizens can make representations to their elected legislative representatives and to the executive, thereby exercising a basic citizen right of representative democracy. The manner, extent and terms of the laws that our society makes relating to climate change and its consequences reflect a choice of public values and a conception of identity of our society. Insofar as the laws give the executive discretionary powers, such as regulating the sources and sinks of greenhouse gas emissions, the laws require normative choices to be made, which may be more or less bounded depending on the terms of the laws. Litigation about climate change-related legislation or executive decisions and conduct can foster this public debate about the values and identity, during the pendency of the proceedings, both at the court hearing and in the public domain and after the judicial adjudication of the proceedings, especially if there is a judicial remand to the legislature or executive demanding further action. Clean air and water, public beaches and open space are treated as essentially free goods. Greenhouse gas emitters pollute the atmosphere without paying the full costs of preventing or reducing the pollution, or preventing, controlling, abating or mitigating damage to the environment or people caused by the pollution, or making good any resultant environmental damage such as rehabilitation or restoration of the environment damaged or making reparation for irremediable injury. This offends the polluter pays principle. This principle provides that the person who causes environment harmâ€”the polluterâ€”should pay the costs of the environmental harmâ€”the pollution. The principle addresses the economic problem of externalities, which are the uncompensated side effects of human action. One of the outputs of the production of the polluter the pollution is an input in the consumption or production of another person or the environment without accompanying payment of compensation. The polluter pays principle, by requiring the polluter to take responsibility for the external costs arising from its pollution, allocates these costs to the polluter. The polluter must internalise the costs as a cost of doing business. Courts that uphold and enforce compliance with laws that directly or indirectly regulate the sources or sinks of greenhouse gas emissions, thereby mitigating climate change, or remedy and restrain non-compliance with such laws, implement the polluter pays principle. The polluter is held to account for, and must pay the costs of, the pollution. In this way, courts through their decisions and orders put a price on the environment and environmental quality. Seventhly, courts can assist in the progressive and principled development of climate change law and policy. Judicial interpretation of legislation, both primary and subordinate, involves law making, although this is interstitial and incremental. A court can, by interpretation of the legislation, flesh out the skeletal framework both in meaning and in application to the facts of the dispute before the court. Eighthly, courts are institutionally committed to acting on the basis of reasoned argument. Court decisions should also be published and available for public scrutiny, which fosters rational debate. In the political and ideological debate about climate change and its consequences, such rationality and logic is sorely needed. The arguments of the noisiest and most strident debaters are rarely rational or logical. Courts are also institutionally capable of resolving rationally conflicts in public values and competing normative standards that underlie climate change disputes. Adjudication of such disputes involves selection of the more defensible normative standard and its use to determine the dispute. The more defensible normative standard is that which can be shown rationally to be preferable to competing normative standards. A normative standard can be shown to be preferable, not by the imposition by the decision maker of his or her subjective conviction or by unquestioning deference to an external standard such as religion, but rather by rational discourse. The form in which this rational discourse ought to be organised and conducted can be explained by reference to the manner in which adversarial litigation is organised and conducted by a court. The court, also acting rationally, is charged with the task of determining the better argument. Habermas contends that legal argument in the court is in essence the same as all arguments:

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Argument in the law court contains essential elements that can be grasped only on the model of moral argument, generally of discussion concerning the rightness of normative standards. Thus all arguments, be they related to questions of law and morality or to scientific hypotheses or to works of art, require the same basic form of organisation, which subordinates the eristic means to the end of developing intersubjective conviction by the force of the better argument. Courts, being institutionally committed to acting on the basis of reasoned argument, are inherently capable of adjudicating conflicts involving the rightness of normative standards. The reliability of expert evidence may be in contest. The court, through its reasons for judgment, can make sense of the science and make findings based on the most reliable scientific evidence. Sunstein makes a similar point when discussing how governments should respond to public fear. He argues that well-functioning governments should aspire to be deliberative democracies. Responsiveness to public fear should be complemented by a commitment to deliberation in the form of reflection and reason giving. They can partner the legislature and the executive to promote the rule of law for the benefit of the planet and its people. Published by Oxford University Press. For Permissions, please email:

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5: Office of Court Compliance @ The Philadelphia Courts - First Judicial District of Pennsylvania

Opponents of Toledo's lead-safe rental law scored a win Friday when a Lucas County judge granted a preliminary injunction halting enforcement two weeks before the first compliance deadline of.

If you have a disability and require reasonable accommodations to file a claim, participate in a court proceeding, or use any service provided by The First Judicial District of Pennsylvania, complete the Request for Reasonable Accommodation Form and return it to the ADA Coordinator s for the applicable Court, Division or Department. A current copy of the ADA Coordinator list is available at http: Please call if you cannot determine the name of your ADA Coordinator. Requests for reasonable accommodation must be made at least three business days in advance of the court activity. Because some accommodations require additional time, as much notice as possible is requested. On occasion, the court activity may be postponed until an accommodation is provided. Updates will be posted on the internet page and will also be distributed to vendors. Additionally, a new ITB will be released. Pertinent dates are as follows: Friday, October 19, Proposals Due: The Due Date will be released shortly. The Date will be released shortly. Request for Proposal RFP: All other terms and conditions of the RFPs remain the same. In accordance with all terms and conditions of each respective RFP, your organization is invited to submit a response. Please note that although each RFP is independent, the resulting services are complimentary within the project. All proposals must be submitted in five 5 copies to: Proposals for each of the above listed RFPs must be received in a sealed envelope at the above address no later than 3: Late proposals will not be considered regardless of the reason. All questions should be submitted in writing to Stephanie B. Answers to any questions raised will not be official until verified, in writing, by the issuing office. Thursday, October 11, Proposals Due: Written questions must be submitted no later than 3:

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6: PART 70 - GENERAL RULES ABOUT ENFORCEMENT OF JUDGMENTS AND ORDERS - Civil Proce

Knowing how to enforce family court orders (or defend enforcement of these orders) is a skill every family court practitioner must master. The tool for enforcement is a rule to show cause. In , South Carolina implemented Family Court Rule 14, setting forth procedures for Rules to Show Cause.

The AG exercises supervisory authority over the courts because they, and the appellate tribunal for immigration cases the Board of Immigration Appeals , are housed within the Executive Office for Immigration Review, which is a Justice Department agency. As of July 31, , pending cases in Immigration Court nationwide reached nearly three-quarters of a million , cases. This is a 38 percent increase compared to the , cases pending at the end of January when President Trump took office. This happens most often in non-detained removal cases, which constitute the vast majority of immigration hearings. There are two aspects of this practice that deserve scrutiny. Sometimes, when an alien presents a highly sympathetic picture to the judge, but transparently lacks any legitimate entitlement to relief from removal, the judge will nonetheless "reserve decision". Often the straw the judge grasps at is an application for relief that, if not downright specious, is the next thing to it. This allows the judge to pronounce that he or she will be reserving decision to ponder the application, and then simply bury the case in a stack of files because he or she is reluctant to order the inevitable outcome of deportation because the alien is sympathetic. While this is entirely understandable from a human point of view, it is a systemic wrong. No system of due process can long survive when judges allow their feelings to intervene in the outcome of cases that must in the end be decided by the dictates of law. The fix to this one seems easy enough: Require by policy that judges must issue reserved decisions within a fixed period of time say 30 or 60 days and then ensure that the automated system that tracks immigration court cases flags those that are coming up on â€” or have exceeded â€” the time frame. Notice of Adverse Decisions. Once the decision that was "reserved" in open court has been made and reduced to writing, present practice is to simply mail it out to the parties. The consequence of that is profound: That process buys the alien a significant amount of run time in which to abscond. Instead, at this juncture many aliens simply disappear into another part of the country to continue living and working illegally as they were before first apprehended. The statistics tell the story powerfully. There are hundreds of thousands of aliens on the streets of American cities at this moment who have absconded from their hearings and who are considered fugitives by Immigration and Customs Enforcement, the Homeland Security agency charged with enforcing their actual, physical removal from the United States. Immigration court evasions reveal weak authority and weak enforcement". So the solution to this problem, in the immigration context, is once again to emulate the criminal court system. The AG should issue policy guidance stating that when an immigration judge reserves decision and later reduces it to writing, the decision cannot be mailed or disseminated in advance. Instead, the judge must convene a hearing at which both the alien and the government are obliged to attend in order to find out what that decision is. In this way, if the decision is to deny relief, the government has the opportunity to consider whether the alien should at that moment be taken into custody to ensure his or her presence for removal. After all, a prime condition of release is the likelihood of flight â€” and when the immigration judge has just ordered removal, an alien is clearly a heightened flight risk.

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7: Basic Information on Enforcement | Enforcement | US EPA

When a judge makes an order about child custody and visitation, it becomes a court order and it has the force of law. It is very important that you: Keep a copy of your current court order in a safe place. If there are other people involved in your visitation, like if you exchange the children at.

Unfortunately, divorce and parenting cases often leave at least one of the former spouses or partners embittered and revengeful, and it is common for these individuals to take it out on their former spouse or former partner by ignoring court orders and decrees. Refusing to pay spousal support alimony or child support or refusing to allow the other parent to have time with his or her child are common ways this anger manifests itself. Sometimes, though, a parent or former spouse believes they are justified in disobeying court orders. Whatever the reason, when a former spouse disobeys domestic court orders and decrees, it is often necessary to return to court for Enforcement of those orders. These kinds of circumstances are never fun, but when you have a qualified family law attorney like Melissa Graham-Hurd , on your side, pursuing enforcement of court orders or decrees can be effective, efficient and minimally stressful. Graham-Hurd has a passion for seeing families enjoy the best possible resolution to family matters. Withholding support or parenting time is never a positive situation for a family, so Ms. Graham-Hurd is always swift to take action when a client is being denied their rights guaranteed by a court. Contact Ohio family attorney Melissa Graham-Hurd to schedule an initial consultation. That initial order, commanding an appearance at an assigned date and time, is almost always granted upon motion. These Motions for Contempt are heard by a magistrate, at a hearing which is held anywhere from four to six weeks after the Motion is filed. Service of the motion on the other party can be accomplished by certified mail service or personal service. Also, if imprisonment is sought as a punishment for failure to abide by the orders, the person must be personally served. Sometimes the parties can agree to modify the orders to better serve their needs, or more importantly, to serve the needs of any children involved. The parties can call witnesses, cross-examine the witnesses, and produce documentary evidence as well as challenge the evidence produced from the other party, at the hearing, which is called an Evidentiary Hearing, and is like a Trial. After the hearing, the magistrate will make a Decision in writing, and it will be mailed to the attorneys for the parties or to the parties themselves if they are appearing at the trial of the matter without counsel. A transcript of the hearing before the magistrate must be filed with the memorandum on the objection. There will be a charge for the transcript by the court reporter. The judge will decide whether the magistrate was correct or not, and issue a Finding. If a person is found to be in contempt of court, that finding can be civil in nature, criminal in nature, or mixed. If the contempt criminal in nature, the court will seek primarily to punish the person for disobedience by fine, imposition of costs and fees, or by jail term, or a combination of punishments. Contact Ohio divorce attorney Melissa Graham-Hurd to schedule an initial consultation to discuss your court orders and how best to secure compliance.

8: Remedies for Non-Compliance with Court Orders | WEL Partners Blog

If your judge's law clerk is not available, ask to speak with the court clerk's office. Step 2 File a motion for enforcement or contempt, depending on the instructions you receive from the court.

In the Supreme Court, the program shall be limited to commercial claims and tax certiorari, conservatorship, and mental hygiene proceedings in Monroe, Westchester, New York and Suffolk Counties. The papers, including exhibits, shall comply with the requirements of CPLR a and section Whenever a paper is filed that requires the payment of a filing fee, a separate credit card or debit card authorization sheet shall be included and shall contain the credit or debit card number or other information of the party or attorney permitting such card to be debited by the clerk for payment of the filing fee. The card authorization sheet shall be kept separately by the clerk and shall not be a part of the public record. The clerk shall not be required to accept papers more than 50 pages in length, including exhibits but excluding the cover page and the card authorization sheet. The clerk shall date-stamp the papers with the date that they were received. Where the papers initiate an action, the clerk also shall mark the papers with the index number. No later than the following business day, the clerk shall transmit a copy of the first page of each paper, containing the date of filing and, where appropriate, the index number, to the filing party or attorney, either by facsimile or first class mail. If any page of the papers filed with the clerk was missing or illegible, a telephonic, facsimile, or postal notification transmitted by the clerk to the party or attorney shall so state, and the party or attorney shall forward the new or corrected page to the clerk for inclusion in the papers. The appropriate clerk shall deem the UCS fax server to be subject to a technical failure on a given day if the server is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after The clerk shall provide notice of all such technical failures by means of the UCS fax server which persons may telephone in order to learn the current status of the Service which appears to be down. When filing by fax is hindered by a technical failure of the UCS fax server, with the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to technical failure shall be extended for one day for each day in which such technical failure occurs, unless otherwise ordered by the court. For purposes of this section: Except as otherwise provided in section A party may commence any action in the Supreme Court in any county provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph 1 of subdivision a of this section by electronically filing the initiating documents with the County Clerk through the NYSCEF site. Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically. Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing. Except for an unrepresented litigant, a party served with such a notice shall promptly record his or her consent electronically in the manner provided at the NYSCEF site or file with the court and serve on all parties of record a declination of consent. An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate.

Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action under CPLR When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice. Where procedurally permitted, upon court direction, an application by a party to the court, or a stipulation among the parties, a pending action may be converted to electronic form. Such direction, application, or stipulation must be served on all parties to the action and filed with proof of service. The County Clerk may require the parties to furnish previously filed hard copy documents in electronic form. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions hereinafter "filing agent" may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section of the Real Property Tax Law and who has been licensed to engage in such business as required by the jurisdiction in which the business is operated hereinafter "small claims assessment review filing agent" may also register as an authorized e-filing user, but solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section of the Real Property Tax Law in which he or she has been authorized to submit a petition. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form. An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph 4 of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed. In any action subject to e-filing, all documents required to be filed with the court by an e-filing party shall be filed and served electronically, except as provided in this section. A filing agent other than one employed by a governmental entity shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel. Documents that are required to be filed and served electronically in accordance with this section or paragraph 1 of subdivision c of section In the event a filer shall file and serve documents in hard copy pursuant to this sub paragraph, each such document shall include the notice required by the immediately following sub paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter. Where an action is subject to e-filing and a party other than an unrepresented litigant who is not participating in e-filing or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that states the reason why the document is being filed in hard copy form. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk. A document other than an order or judgment is filed when its electronic transmission or, in the

case of a petition that is e-filed by submission of a text file as provided in subdivision b 1 of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in i , ii or iii of paragraph 2 of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and the e-mail service addresses of all other participating parties in such action. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment. Unless otherwise directed by the court, any document placed in restricted status in response to such a request shall be returned to public view upon expiration of this five day period. The Chief Administrator of the Courts shall promulgate forms to implement this process. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those documents in hard copy form. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator. Except where the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrator, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if: A document shall be considered to have been signed by an attorney or party in compliance with section A judge, party or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form prescribed by the Chief Administrator. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision b 1 of this section, a hard copy of the petition, fully completed and signed as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected. The e-mail service address recorded at the time of registration is the e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site. It is the responsibility of each filing user to monitor that address and promptly notify the Resource Center in the event of a change in his or her e-mail service address. An e-filing party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date received, and the names of those appearing on the list of e-mail service addresses to whom that

notification is being sent. Each party receiving the notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision h 2 of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice of e-filing. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically and enter them. The County Clerk may affix a filing stamp to orders or judgments by stamping the original hard copy document before filing it electronically or by affixing a stamp to the document after it has been electronically filed. The filing stamp shall be proof of the fact of entry and the date and time thereof. The date of entry shall be the date shown on the stamp, except that if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR b 1 to 6. If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph 1 of subdivision d of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site. In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

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9: Compliance and Contempt Issues - Enforcement - Melissa Graham-Hurd

Annual Enforcement Results, for the previous fiscal year, are published yearly to show the results of EPA's enforcement activities. Enforcement and Compliance Data is the information that EPA uses to manage and assess performance of its enforcement and compliance assurance program.

Congress passes laws to address environmental problems. EPA issues regulations to implement the laws. Compliance assistance helps the regulated community understand and comply with regulations. Compliance monitoring assesses compliance through inspections and other activities. Enforcement actions are initiated when the regulated community does not comply, or cleanup is required. EPA works to ensure compliance with environmental requirements. When warranted, EPA will take civil or criminal enforcement action against violators of environmental laws. Learn more about our enforcement goals. EPA is integrating EJ into areas such as: What is the difference between Criminal and Civil Enforcement? Criminal and civil enforcement differ in: Environmental civil liability is strict; it arises simply through the existence of the environmental violation. It does not take into consideration what the responsible party knew about the law or regulation they violated. Environmental criminal liability is triggered through some level of intent. As a result of this distinction, most of the environmental crimes that EPA investigates involve "knowing violations" of the law. These are classified as felonies in all the federal environmental statutes except for the toxic substances and pesticide statutes. In a "knowing violation" the person or company is aware of the facts that create the violation. A conscious and informed action brought about the violation. In contrast, a civil violation may be caused by an accident or mistake. Burden of Proof To be found civilly liable for violating environmental laws the standard of proof is based upon "the preponderance of the evidence. Effectively, the standard is satisfied if there is a greater than 50 percent chance that the evidence is true. The defendant in a civil suit can either be found liable, following a trial, or reach a mutually agreed-upon settlement with the government. The defendant is then required to meet all of the terms of the settlement, but does not have to acknowledge that he violated the law. Criminal guilt must be established "beyond a reasonable doubt. When a criminal defendant pleads guilty or is convicted by a jury, there is no question of legal wrongdoing. He has legally committed the crime. In criminal prosecutions, a person can be sentenced to prison. It is the possibility of imprisonment that most distinguishes criminal law from civil law. If a civil defendant is found liable or agrees to a settlement, the result can be: Federal facilities enforcement ensures federal facilities comply with environmental regulations and statutes. These actions do not involve a judicial court process. An administrative action by EPA or a state agency may be in the form of: They are filed in court, against persons or entities that have failed to: These cases are filed by the U. Department of Justice on behalf of EPA. Learn more about Civil Cases and Settlement. Criminal Actions can occur when EPA or a state enforce against a company or person through a criminal action. Criminal actions are usually reserved for the most serious violations, those that are willful, or knowingly committed. A court conviction can result in fines or imprisonment.

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