



A GUIDE TO CONTEMPT PROCEEDINGS

Judge David Johnson

Circuit Judge, 26th Judicial Circuit, Russell County, AL



JURISDICTION

- 1. Jurisdiction over the Proceeding
- 2. Jurisdiction over the Subject Matter
- 3. Jurisdiction over the person

Applicable Statutes and Rules

- § 12-13-9 Powers of the Probate Court as to Punishment for Contempt

This code section applies to Criminal Contempt Findings

- 1. Non-Lawyer Judge- 24 hrs confinement and \$20 fine
- 2. Lawyer Judge- 5 days confinement and \$100 Fine
 - See §12-11-30(5)

Rule 70A of the Alabama Rules of Civil Procedure

- This Rule controls all of the contempt proceedings that you will handle.
- This Rule contains all the definitions and procedures you will need.

READ THIS RULE

Other Relevant Statutes

- §12-1-7- Powers of Courts as to preservation of order, enforcement of judgments, etc., generally.
- §12-1-8- Cases in which courts may issue attachments and inflict summary punishment for contempt
- §12-1-10- Punishment by courts for contempt

The Four Types of Contempt

- 1. Direct Contempt
- 2. Indirect or Constructive Contempt
- 3. Criminal Contempt
- 4. Civil Contempt.

The Four “REAL” Types of Contempt

- 1. Direct Criminal Contempt
- 2. Direct Civil Contempt
- 3. Indirect Criminal Contempt
- 4. Indirect Civil Contempt

Direct Contempt

- 1. Misconduct in Open Court
- 2. In the Presence of the Judge
- 3. That disturbs the court's business

YOU MUST WITNESS THIS IN COURT

Indirect (Constructive) Contempt

- Everything Else

Criminal Contempt

- 1. Obstructs the administration of justice and is committed in the court's presence or so near as to hinder the court's proceedings OR
- 2. Willful disobedience or resistance to a lawful writ, subpoena, process, order, rule, or command
- 3. The purpose of Criminal Contempt is to **PUNISH** for accomplished conduct
- 4. Punishment is up to 24 hrs and \$20 fine for non-lawyer Probate Judge or 5 days and \$100 for lawyer Probate Judge

Civil Contempt

- 1. Willful, continuing failure or refusal to comply with a courts lawful writ, subpoena, process, order, rule, or command, where compliance is POSSIBLE
- 2. The purpose of civil contempt is to COMPEL or COERCE compliance
- 3. Sanctions for civil contempt may be incarceration or fines or attorney fees, and are not statutorily limited. If someone is incarcerated you must periodically review the contemnor's ability to purge the contempt.

“Real” Contempt #1

Direct Criminal Contempt

Example: During a hearing a witness or person in the gallery gets up and starts yelling.

“Real” Contempt #2

Direct Civil Contempt

Ex. A witness who has been properly subpoenaed and sworn in refuses to testify.

“Real” Contempt #3

Indirect Criminal Contempt

Ex. A party is ordered to have no contact with a witness, but the party decides to call the witness anyway.

“Real” Contempt #4

Indirect Civil Contempt

Ex. A party is ordered to turn over an accounting of how funds have been spent, but they refuse to do so.

Direct Criminal Contempt Checklist

- 1. Did you personally observe the contemptuous behavior in open court?
- 2. Does the behavior fit the definition of criminal contempt?
- 3. Inform the party they are being found in direct criminal contempt, and why.
- 4. Allow them a chance to explain or provide mitigating evidence.
- 5. Sentence in open court immediately, or within 7 days. The person must be present when sentenced.
- 6. Does the sentence comply with §12-13-9? 24 hrs and \$20; or 5 days and \$100
- 7. File a written and signed order that recites what happened, what specific type of contempt is being found, and the punishment.

Direct Civil Contempt

- 1. Did you personally observe the contemptuous behavior in open court?
- 2. Does the behavior fit within the definition of civil contempt?
- 3. Inform the party they are being found in direct civil contempt, why they are, and how they may purge the contempt.
- 4. Allow them a chance to explain or provide mitigating evidence.
- 5. Sentence immediately, or within 7 days of conclusion of proceeding. The person must be present at sentencing.
- 6. File a written and signed order that gives the specific facts, the type of contempt, the punishment ordered, and the action required to purge the contempt.
- 7. Schedule a periodic review to allow an incarcerated contemnor to purge the contempt .

Indirect Criminal Contempt

- 1. Was a proper petition seeking a finding of contempt filed?
- 2. Does the alleged behavior fit within the definition of criminal contempt?
- 3. Set the matter for a hearing. (Always make sure the alleged contemnor was served with the order that states the date, time, and location for the hearing)
- 4. In Criminal contempt proceedings they party has the right to counsel, and if they are indigent and request counsel you must appoint them counsel.
- 5. At the hearing allow each party the opportunity to reasonably present evidence.
- 6. Did the moving party prove to you beyond a reasonable doubt that the contemnor willfully violated your order?
- 7. Does the sentence comply with §12-13-9? 24 hrs and \$20 or 5 days and \$100
- 8. File a written and signed order giving the facts, the specific type of contempt and the punishment ordered.

Indirect Civil Contempt

- 1. Was a proper petition seeking a finding of contempt filed?
- 2. Does the alleged behavior fit the definition of civil contempt?
- 3. Set the matter for a hearing. (Always make sure the alleged contemnor was served with the order that states the date, time, and location for the hearing)
- 4. At the hearing allow each party the opportunity to reasonably present evidence.
- 5. File a written and signed order that gives the facts, the specific type of contempt, the sanction ordered, and the specific action required to purge the contempt.
- 6. Schedule a periodic review to allow an incarcerated contemnor to purge themselves of contempt, or to determine if due process requires their release.

Other Issues Regarding Contempt

- 1. Stacking
- 2. Judicial Recusal
- 3. Standard of Review by Appellate Court
- 4. Indigency of the Contemnor
- 5. Direct or Indirect, when in doubt
- 6. Award of Attorney Fees
- 7. Banning a lawyer- Don't Do It