

PART 21. CONTEMPT OF COURT

21.1 PROCEEDINGS IN CONTEMPT

Contumacious conduct defined. Contumacious conduct consists of verbal or non-verbal acts which (1) embarrass or obstruct the Court in its administration of justice or derogate from its authority or dignity, (2) bring the administration of justice into disrepute, or (3) constitute disobedience of a Court order or judgment. Any petition alleging contempt shall state whether it is civil or criminal in nature and the relief sought.

21.2 DIRECT CRIMINAL CONTEMPT

(a) Direct criminal contempt defined. Contumacious conduct constitutes a direct criminal contempt if it is committed in such a manner that no evidentiary hearing is necessary to determine the facts establishing such conduct and is committed in an integral part of the Court while the Court is performing its judicial functions.

(b) Court's alternatives. Upon the commission of an act constituting a direct criminal contempt, the Court may (1) summarily find the contemnor in contempt and impose sanctions instanter, (2) summarily find the contemnor in contempt and impose sanctions within a reasonable time, or (3) delay the finding of contempt and the imposition of sanctions until a later time. When the finding of contempt is delayed, the contempt proceeding shall be conducted in the same manner as an indirect criminal contempt as provided in Rule 21.3 of these rules.

(c) Conduct specified/statement in mitigation. Prior to an entry of a finding of contempt, the Court shall inform the contemnor of the specific conduct forming the basis of the finding. Prior to the imposition of sanctions, the Court shall permit the contemnor an opportunity to present a statement in mitigation.

(d) Sanctions. Upon a finding of direct criminal contempt, the Court may impose a fine not to exceed \$500, incarceration in a penal institution other than a penitentiary for a term not to exceed six (6) months, or both, unless the contemnor is afforded the right to trial by jury, in which case, if the jury finds the contemnor guilty of contempt, the Court is not limited in the fine or incarceration it may impose. The Court, in the exercise of its discretion, may impose such other sanctions as it deems appropriate.

(e) Written order required. Upon imposition of sanctions, the Court shall enter a written judgment order setting forth the factual basis of the finding and specifying the sanctions imposed.

(f) When referral to another judge required. Where a controversy between the judge and the contemnor is integrated with the alleged contumacious conduct and embroils the judge to a degree that the judge's objectivity can reasonably be questioned, referral to another judge on both the issue of contempt and the issue of an appropriate sanction is required. In this event, the judge before whom the alleged contempt transpired shall specify in writing the nature of the alleged acts of contempt, shall direct that a record of the proceedings surrounding the said acts be prepared, and shall transfer the matter to the appropriate assignment judge for reassignment. The judge hearing the proceedings after the reassignment shall base his findings and adjudication of the contempt charge solely on the transferred written charge and the record.

21.3 INDIRECT CRIMINAL CONTEMPT

(a) Indirect criminal contempt defined. A contumacious act constitutes indirect criminal contempt when it occurs outside the presence of the Court or in an area that is not integral or constituent part of the Court, or the elements of the offense are otherwise not within the personal knowledge of the judge. A contumacious act committed in the presence of the Court, but not summarily treated as a direct criminal contempt as provided in Rule 20.2 of these rules, may be prosecuted as an indirect criminal contempt.

(b) Petition for adjudication. An indirect criminal contempt proceeding shall be initiated by the filing of a petition for adjudication of indirect criminal contempt. The petition shall be verified and set forth with particularity the nature of the alleged contemptuous conduct. The charge may be prosecuted by the state's attorney or, if he declines, by an attorney appointed by the Court.

(c) Notice of hearing. If the Court finds that the petition sets forth allegations which support the charge, it shall set the matter for hearing and order notice to be given the respondent. Notice of the hearing and a copy of the petition shall be served and returned in the manner as provided in Supreme Court Rule 105(b) or returned in the manner as provided in Supreme Court Rule 105(b) or, if the Court so directs, the Clerk of the Court or petitioner's attorney may give notice by regular U.S. Mail, postage prepaid, to the respondent's last known address. If notice is made by regular U.S. Mail, proof of mailing notice shall be made part of the record. Notice by personal service shall be served not less than seven (7) days prior to the hearing and notice by U.S. Mail shall be mailed not less than ten (10) days prior to the hearing. The provisions of Rule 18.2 of these rules shall apply to this notice. If the respondent fails to appear after due notice, or if the Court has reason to believe the respondent will not appear in response to the notice, the Court may issue a bench warrant directed to the respondent. When a warrant issues, the Court shall set bail as authorized in criminal cases. The amount of bail shall be indicated on the order of attachment.

(d) Explanation of rights. Upon the first appearance of the respondent, the Court shall inform the respondent of his rights to (1) notice of the charge and of the time and place of hearing thereon; (2) an evidentiary hearing, including the right to subpoena witnesses, confront the witnesses against him and make a response to the charge; (3) counsel and, if indigent, to the appointment thereof; (4) freedom from self-incrimination; (5) the presumption of innocence; (6) the right to be proven guilty only by proof of guilt beyond a reasonable doubt; and (7) trial by jury if the Court, prior to the commencement of the hearing, declares that a sentence of incarceration of more than six (6) months, a fine of more than \$500, or both, may be imposed as a sanction upon a finding of guilty.

(e) When referral to another judge required. Referral of the petition to another judge for the hearing on the issues of contempt and the imposition of sanctions is required where a controversy between the judge and the alleged contemnor is integrated with the alleged contumacious conduct and embroils the judge to the degree that the judge's objectivity may be reasonably questioned.

(f) Statement in mitigation. Upon an adjudication of contempt, the judge shall afford the contemnor the opportunity to make a statement in mitigation prior to the imposition of any sanction.

(g) Sanctions. The Court, in the exercise of its discretion, may impose sanctions as it deems appropriate.

(h) Written order required. Upon adjudication of contempt, the Court shall enter a written judgment order setting forth the factual basis for the finding and specifying the sanctions imposed.

(i) Appeal. An appeal from a judgment of indirect criminal contempt may be taken as in the case of direct criminal contempt as specified in Rule 20.2(g) of these rules.

21.4 CIVIL CONTEMPT

(a) Civil contempt defined. A contumacious act constitutes a civil contempt if (1) the act consists of the failure to obey a Court order or judgment, and (2) coercive rather than punitive sanctions are sought to compel compliance with the order or judgment.

(b) Petition for adjudication. A civil contempt proceeding arising out of a civil case shall be initiated by the filing of a petition for adjudication of civil contempt unless the act is committed in the presence of the Court. The petition shall be verified and shall set forth with particularity that portion of the Court order that is alleged to have been violated and the nature of the violation. If the Court finds that the petition sets forth allegations which support the charge, it shall set the matter for hearing and order that notice be given to the respondent.

(c) Notice. Notice of the hearing and a copy of the petition shall be served on the respondent and made of record in the manner specified in Rule 21.3 (c) of these rules. If, after notice, the respondent fails to appear, the Court may order a body attachment to issue and may set bail as further provided in that paragraph.

(d) Response/burden of proof. No later than three (3) days prior to the hearing, the respondent may file a written answer denying, with specificity, any of the allegations together with any affirmative defense. Subsequent written or oral denials and affirmative defenses may be made only with leave of Court. Those allegations of the petition not specifically denied may be deemed admitted and the remaining allegations in issue shall be proven by a preponderance of the evidence. If the basis of the charge of civil contempt is the failure of the respondent to make Court ordered payments to the Clerk of Court, the records of the Clerk shall be prima facie evidence of the amount paid and disbursed by the Clerk.

(e) Method of hearing. Civil contempt proceedings shall be tried before the Court without a jury.

(f) Sanctions. If the Court finds the respondent in civil contempt, it may continue the matter for a reasonable time before the imposition of sanctions or it may impose sanctions forthwith. Prior to the imposition of sanctions, the contemnor shall have the right to make a statement in mitigation. Sanctions may include a continuing fine and/or incarceration in a penal institution other than a penitentiary. The sanctions imposed shall remain in full force and effect until the respondent purges himself of contempt or is otherwise discharged by due process of law. The Court may assess reasonable costs and attorney's fees in favor of the aggrieved party.

(g) Written order required. Upon an adjudication of civil contempt, a written judgment order shall be entered specifying the contumacious conduct, sanctions imposed, and the means by which the respondent may purge himself. A copy of the judgment shall be provided the contemnor.

(h) Appeal. An appeal from a judgment of civil contempt may be taken as in civil cases. Upon the filing of a notice of appeal, the Court may fix bond and may stay the execution of any sanction imposed pending the disposition of the appeal.