

CHAPTER 7
CONTEMPT AND SANCTIONS

Chapter 7 - Contempt and Sanctions

7.01	Key Points.....	7.1
7.011	Definitions.....	7.1
7.012	Direct Criminal Contempt.....	7.2
7.013	Indirect Criminal Contempt	7.2
7.02	Authorities.....	7.3
7.03	Tips/Notes	7.3
7.04	Checklists/Forms.....	7.4
7.041	Direct Contempt Checklist.....	7.5
7.042	Indirect Contempt Checklist	7.6
Case Notes – Chapter 7		
	Contempt.....	7.7
	Contempt Procedure.....	7.7
	Indirect Contempt	7.8
	Direct Contempt.....	7.9

CONTEMPT AND SANCTIONS

7.01 KEY POINTS

- Defined as an offense against the lawful authority of the court
 - May be criminal, civil, direct or indirect
 - Cause in which contempt arises is not determinative of type or class of contempt
 - Must inform contemnor of the accusations
 - Judgment must be in writing, signed by the judge and include a recital of the facts on which the adjudication of contempt is based
 - Sentence may be imprisonment or fine, or both
 - Fine for civil contempt must bear reasonable relationship to damage suffered by party in whose favor contempt order was entered
 - No right to jury trial if confinement is for term of less than six (6) months

7.011 Definitions

- Criminal contempt is any contempt proceeding having as its purpose punishment for offensive conduct against the court, its judgments, orders or processes. This type of contempt is punitive rather than coercive in nature
- Civil contempt is any contempt which is coercive and imposed to compel obedience to court orders or to preserve or enforce the legal rights of parties. This type of contempt is coercive in its purpose rather than punitive
- Direct contempt is any contemptuous act committed in the presence of the court. The behavior must have occurred within the hearing, smelling or sight of the judge
- Indirect contempt is any contemptuous act not committed in the presence of the court or so close as to be detected by the use of the judge's senses

7.012 Direct Criminal Contempt - Procedure

- Contemnor may be punished summarily if the judge sees, hears or smells the contemptuous behavior

- Judge must inform the defendant of the accusations
- Judge must inquire whether the defendant can show cause why the defendant should not be adjudged guilty of contempt
- Judge must give defendant opportunity to present evidence of excuse or mitigation
- Judgment must recite the facts on which adjudication of guilt is based
- Judgment must be signed by judge and entered into the record
- Sentence must be pronounced in open court
- Court must follow procedure set out in Rule 3.830, Fla. R. Crim. P. to insure due process to the accused. Failure to follow any step in the procedure will result in reversal

7.013 Indirect Criminal Contempt - Procedure

- Judge on own motion or upon affidavit by person having personal knowledge of the facts may sign and issue order to show cause to institute proceeding against contemnor
 - Order to show cause must state the essential facts constituting the criminal contempt charged and requiring the contemnor to appear to show cause why he/she should not be held in contempt
 - Order to show cause must be personally served on the defendant
 - Order to show cause must specify the time and place of the hearing and allow a reasonable time for the defendant to prepare after service of the order
 - Defendant or counsel may file a motion to dismiss, a motion for a statement of particulars or an answer, which must be in writing. Failure to file a motion or answer is not to be deemed an admission of guilt.
 - Judge may issue order of arrest if judge has reason to believe the defendant may not appear in response to the order to show cause
 - If arrested, the defendant must be permitted bail pursuant to prevailing law
 - Defendant may be arraigned prior to hearing or at the time of hearing and any hearing shall follow the entry of a not guilty plea
- Judge may conduct a hearing without assistance of counsel or may be assisted by the state attorney or an appointed attorney

- Defendant or counsel is entitled to compulsory process to have witnesses attend and may testify in his or her own defense
- Judge determines all issues of fact and law
- If contemptuous behavior involves disrespect to or criticism of the judge the judge must disqualify him or herself from presiding over the contempt proceeding and another judge must be designated
- When the hearing is concluded, judge must sign and enter judgment of guilty or not guilty. A judgment of guilty must contain a recitation of facts constituting contempt
- Guilty defendant shall be permitted to advise whether there is reason not to pronounce sentence and, if none given, the defendant shall be afforded the opportunity to present evidence of mitigating circumstances
- Sentence shall be pronounced in open court in the defendant's presence
- Judgment must be in writing, reciting facts on which it is based, and signed by the judge

7.02 AUTHORITIES

Florida Statutes:

Section 38.22 - Gives courts the power to punish contempt

Section 900.03 - vests the county and circuit courts with criminal jurisdiction

Florida Rules of Criminal Procedure:

Rule 3.830 - Direct Criminal Contempt

Rule 3.840 - Indirect Criminal Contempt

7.03 TIPS/NOTES

7.04 CHECK LISTS/FORMS

CHECKLIST-DIRECT CONTEMPT

[Acts or behavior which occurs within the “presence” of the judge]

<p>CRIMINAL: “punish” for offensive conduct against the court, its judgments, or orders, or process. Rule 3.830, F.R.Crim.P.</p>	<p>CIVIL: “compel” or “coerce” obedience to orders entered for benefit of or to pre-serve or enforce the rights of parties.</p>
<p>1. Initiated by court order which is based on personal knowledge or on motion directed to the court; may be invoked forthwith upon occurrence or contemptuous conduct</p> <p>2. Summary procedure may be used and writ-</p> <p>3. Inform defendant of accusations</p> <p>4. Ask if defendant can show cause why he or she should not be adjudged guilty of contempt and sentenced for the conduct</p> <p>5. Judgment must:</p> <p>6. Sentencing:</p> <p>Y may be confinement, fine or both</p> <p>Y <6 months confinement if found guilty following a non-jury verdict</p> <p>Y >6 months - <1 year after jury verdict</p> <p>Y jail sentence must be for fixed period</p> <p>Y may not sentence to hard labor</p> <p>Y maximum fine is \$500 (' 775.02, F.S)</p>	<p>1. Initiated by court or motion of a party or person with standing; may be invoked</p> <p>2. Summary procedure may be used</p> <p>3. Inform respondent of accusations</p> <p>4. Ask if respondent can show cause why he or she should not be adjudged guilty of contempt and sentenced for the conduct</p> <p>5. Judgment must:</p> <p>Y be signed by the judge</p> <p>Y recite facts on which findings are based</p> <p>Y make specific findings of respondent’s ability to comply with the court’s order and that the respondent failed to comply</p> <p>6. Sentencing:</p> <p>Y may be confinement, fine or both</p> <p>Y <6 months confinement if found guilty following a non-jury verdict</p> <p>Y >6 months - <1 year after jury verdict</p> <p>Y confinement to county jail exclusively</p> <p>Y jail sentence must be for a fixed period</p> <p>Y may not sentence to hard labor</p> <p>Y jail sentence must contain a meaningful purge provision</p>

CHECKLIST-INDIRECT CONTEMPT

[Acts or behavior which occurs outside the “presence” of the judge]

CRIMINAL: “punish” for offensive conduct against the court, its judgments, or orders, or process. Rule 3.830, F.R.Crim.P.	CIVIL: “compel” or “coerce” obedience to orders entered for benefit of or to pre-serve or enforce the rights of parties.
<ol style="list-style-type: none"> 1. Initiated by court order which is based on affidavit of person with knowledge of facts 2. Court may sign and issue order to show cause which shall <ul style="list-style-type: none"> ✓ allege essential facts constituting the contemptuous conduct ✓ direct defendant to appear and show cause why he/she should not be held in contempt of court ✓ specify time and place of hearing allow-reasonable time to prepare for defense 3. Defendant may file answer, one of following defensive motions, or do nothing: <ul style="list-style-type: none"> ✓ motion to dismiss order to show cause ✓ motion for statement of particulars ✓ answer by denial, explanation or defense ✓ do nothing; failure to plead cannot be considered an admission of guilt 4. Court may order arrest of defendant to ensure 5. Arraignment may be held at time of hearing 6. Hearing on merits: <ul style="list-style-type: none"> ✓ judge determines issues of fact and law ✓ judge may conduct hearing or with assistance of prosecutor ✓ defendant’s due process rights must be honored, including, right to counsel, right to compulsory process, right to testify or not to testify on own behalf 	<ol style="list-style-type: none"> 1. Initiated by motion of party or person who has 2. Service of motion and notice of hearing must <ul style="list-style-type: none"> ✓ be made on the respondent or his or her counsel of record ✓ state with specificity in the motion the acts alleged to be contemptuous ✓ state with specificity in the notice of hearing the time and place for hearing 3. Hearing on the merits <ul style="list-style-type: none"> ✓ inform respondent of accusations ✓ moving party has initial burden of proof ✓ burden shifts to respondent to show excuse or inability to perform once non-compliance is admitted or established 4. Judgment must: <ul style="list-style-type: none"> ✓ be in writing ✓ be signed by the judge ✓ recite facts on which findings are based ✓ if respondent is found guilty, must make specific findings of respondent’s ability to comply with the order and failure do so 5. Sentencing <ul style="list-style-type: none"> ✓ may be confinement, fine or both ✓ <6 months confinement if found guilty following a non-jury ✓ >6 months - <1 year after jury verdict ✓ confinement to county jail exclusively ✓ jail sentence must be for fixed period ✓ may not be sentenced to hard labor ✓ jail sentence must contain a meaningful purge provision

CHECKLIST-INDIRECT CONTEMPT

PROCEDURE

[Acts or behavior which occurs outside the “presence” of the judge]

CRIMINAL: “punish” for offensive conduct against the court, its judgments, or orders, or process. Rule 3.830, F.R.Crim.P.	CIVIL: “compel” or “coerce” obedience to orders entered for benefit of or to pre-serve or enforce the rights of parties.
<p>7. Judgment must:</p> <ul style="list-style-type: none">✓ be in writing✓ be signed by the judge✓ recite facts on which findings are based; failure to do so may invalidate <p>8. Inform defendant of charge and judgment</p> <ul style="list-style-type: none">✓ inquire whether cause can be shown why sentence ought not be imposed✓ allow defendant to present evidence or mitigating circumstances <p>9. Sentencing:</p> <ul style="list-style-type: none">✓ must be pronounced in open court w/ D present✓ may be confinement, fine or both✓ <6 months confinement on non-jury verdict✓ >6 months - <1 year after jury verdict✓ confinement to county jail exclusively✓ may not sentence to hard labor	

Chapter 7 -- Contempt

Contempt Procedure

Contempt is an extremely important power that should never be abused. It is extremely important that due process rights be observed, and it is critical in the exercise of contempt power that it never be used by a judge in a fit of anger, in an arbitrary way, or for the judge's own sense of justice.

Inquiry Concerning a Judge re: Daniel Perry, 641 So. 2d 366 (Fla. 1994), 19 F.L.W. S426 (6/16/94)

Contempt is a common law crime in Florida, and section 38.22 allows the court to punish for contempt but contains no penalty provision. Under §775.02, the maximum fine for a crime that does not contain a sentence provision is \$500, and the maximum imprisonment is 12 months.

(See this case for discussion of the distinctions between civil and criminal contempt.)

Kramer v. S., 800 So. 2d 319 (2d DCA 2001), 26 F.L.W. D2661 (11/9/2001)

A proceeding seeking to hold defendant in criminal contempt must be recorded at public expense under rule 2.070(b). A proceeding in which a defendant is sentenced for criminal contempt must be on the record under rule 3.721. Due process right require that criminal contempt proceedings be recorded.

Criminal contempt proceeding are proper in failure to pay child support cases only when the defaulting party has continually and willfully failed to pay or has acted affirmatively to divest himself of assets or property.

When waiving counsel in a criminal contempt proceeding, the court must follow the requirements of rule 3.111(d).

A person found guilty of indirect criminal contempt can get no more than 6 months in jail without the benefit of a jury to hear the case. With a jury, or if the defendant waives a jury, the maximum sentence is one year.

A waiver of counsel for contempt must be in court and on the record or must be in writing before two attesting witnesses. Before accepting a waiver, the court must make a thorough inquiry to determine if the waiver is voluntary and intelligent, and the defendant must be informed of the dangers of self-representation.

Written findings of fact are required in a judgment unless sufficient oral findings are made on the record.

Indirect criminal contempt proceedings must be initiated by service of an order to show cause that meets the requirements of rule 3.840(a).

Blalock v. Rice, 707 So. 2d 738 (2d DCA 1997), 22 F.L.W. D2169 (9/10/97)

Court errs in finding entire state attorney's office in contempt for repeatedly announcing that cases were ready for trial when in fact they were not. Contempt may be proper as to the individual attorneys involved, but not the entire SAO.

(See this case for extensive discussion of indirect vs. direct contempt procedure).

In re Contempt Adjudication of the Broward County State Attorney's Office, 577 So.

7.7

2d 967 (4th DCA 1991)

In finding defendant guilty of indirect contempt, oral findings read into the record are sufficient to support the judgment.

(See this case for discussion of the differing requirements between the findings needed to support direct and indirect criminal contempt).

Gidden v. S., 613 So. 2d 457 (Fla. 1993), 18 F.L.W. S95 (2/4/93)

Due process requires that before a person may be convicted and sentenced to jail, she must be afforded reasonable notice of the charges against her and an opportunity to be heard, which includes at a bare minimum the right to examine the witnesses against her, the right to offer testimony, and the right to counsel.

There is an exception to this rule for charges of misconduct that occurs in open court in the presence of the judge that disturbs court business, where all of the essential elements of the misconduct occur before the judge. In such a case, immediate punishment is essential to prevent the demoralization of the court's authority before the public.\

The failure of a witness to appear for trial is not direct criminal contempt.

(See this case for extensive discussion of the distinctions between civil, indirect criminal, and direct criminal contempt, and the procedural requirements of each.)

•**Kelly v. Rice, 800 So. 2d 247 (2d DCA 2001), 26 F.L.W. D2392 (10/5/2001)**

Indirect Contempt

Court properly found an ASA in contempt for getting into a fight with defense counsel in the elevator after court under circumstances where a juror saw the fight.

Milian v. S., 764 So. 2d 860 (4th DCA 2000), 25 F.L.W. D1868 (8/9/2000)

Attorney's act of using profane language toward another attorney in the hallway following a hearing does not constitute indirect contempt. However, when counsel includes a threat or intimidation against the other lawyer in the course of representing her client, the contempt adjudication is proper.

Hoeffler v.S., 696 So. 2d 1265 (4th DCA 1997), 22 F.L.W. D1745 (7/2/97)

A defendant who is merely negligent in getting to court late cannot be found in indirect criminal contempt.

Werner v. S., 740 So. 2d 591 (5th DCA 1999), 24 F.L.W. D1940 (8/20/99)

(See **Flanagan v. S., 840 So. 2d 379 (1st DCA 2003), 28 F.L.W. D767 (3/18/2003)** for discussion of the sufficiency of an order to show cause in a case in which a witness was found in indirect criminal contempt for acts occurring during trial.)

Direct Contempt

Court errs in adjudicating defendant guilty of criminal contempt without asking defendant to show cause why he should not be found guilty and in failing to give him a chance to present mitigating evidence.

Marshall v. S., 764 So. 2d 908 (1st DCA 2000), 25 F.L.W. D1944 (8/14/2000)

Counsel cannot be found in contempt for violating guidelines or directions by the court concerning trial conduct. Before an order of contempt can be issued, the attorney must be found to have violated some direction or admonition beyond merely providing a written list of prohibited acts.

(See this case for extensive discussion of criminal contempt in the context of an attorneys closing argument.)

Thomas v. S., 752 So. 2d 679 (1st DCA 2000), 25 F.L.W. D393 (2/9/2000)

Under rule 3.830 governing direct contempt, a defendant need not be appointed counsel, nor does it require that a formal hearing be held on the charges. However, the judgment of contempt must include a recitation of the factual basis of the adjudication, and failure to include it is reversible error.

Williams v. S., 698 So. 2d 1350 (1st DCA 1997), 22 F.L.W. D2223 (9/16/97)

Two instances of profanity direct at the court, separated only by the finding of guilt on the first instance, constitutes one contempt, not two.

Williams v. S., 599 So. 2d 255 (1st DCA 1992)

For a witness to be held in direct criminal contempt based on purported perjurious testimony, it must be shown that (1) the alleged perjury had an obstructive effect, (2) there was judicial knowledge of the falsity, and (3) the testimony was pertinent to the issue at hand. A very strict standard is required to prove judicial knowledge of the falsity of the testimony. That standard is met only when the witness admits testifying falsely or other circumstances demonstrate beyond question that the testimony was false.

A routine credibility determination will not support a judicial determination of false testimony.

Before finding a witness in direct criminal contempt, the provisions of rule 3.830 must be scrupulously followed.

•Rhoads v. S., 817 So. 2d 1089 (2d DCA 2002), 27 F.L.W. D1385 (6/12/2002)

Court properly finds defense counsel in contempt when he directly refuses to approach the bench despite being ordered several times to approach. The fact that the court's ruling on evidentiary issues may have been incorrect is not a proper basis to ignore the rulings.

Soven v. S., 622 So. 2d 1123 (3d DCA 1993), 18 F.L.W. D1749 (8/10/93)

When a witness subpoenaed to testify before the state attorney refuses to answer and takes the fifth, the court properly holds her in contempt and orders her incarcerated until

she agrees to answer. The subpoena confers use and derivative use immunity under §914.04, and refusal to testify after being granted immunity is contempt.

When testimony is compelled under a grant of immunity, other jurisdictions that may be able to prosecute the defendant must respect the grant. The witness cannot refuse to testify after receiving immunity based on a claim that other jurisdictions may not respect the grant and might use the compelled testimony against her.

•**Costello v. Fennelly, 681 So. 2d 926 (4th DCA 1996), 21 F.L.W. D2335 (10/30/96)**