

# CONTEMPT

## FOUR TYPES OF CONTEMPT

### 1. Direct Criminal [R.C. 2705.01]

- A court may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.
  - The court must have personal knowledge of the act.
  - With summary punishment, no charges are filed, and no notice or hearing is required.



Person should be warned that he/she will be found in contempt if conduct continues.

- Rules of Evidence do not apply. [Evid.R. 101(D)(4)]
- Sentence serves as punishment to vindicate the court and should be unconditional (no purge condition) and must be commensurate with the completed act of disobedience committed.
  - Examples of sentencing may include jail time, fine, written apology, etc.
- Examples:
  - Attorney disobeying an order of the court during a trial.
  - A party yelling obscenities at the court during a hearing.



The offense must occur to obstruct the administration of justice. For example, if the hearing concluded, an argument can be made that the offense does not obstruct the administration of justice.

### 2. Direct Civil [R.C. 2705.01]

- A court may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.
  - The court must have personal knowledge of the act.
  - Summary punishment.

- Sentence is remedial or coercive in nature (a purge condition is given).
  - The contemnor can purge the contempt by complying with the order of the court.
- Example: A person on the witness stand refuses to answer a question and is sentenced to jail until he agrees to answer the question.

### 3. Indirect Criminal [R.C. 2705.02]

- A person guilty of any of the following acts may be punished for contempt:
  - Disobedience of a lawful order;
  - Misbehavior of an officer of the court in the performance of official duties;
  - Failure to obey a subpoena duly served or a refusal to be sworn, or to answer as a witness;
  - Willful failure to submit to genetic testing or submit a child to genetic testing, as required by an order issued under R.C. 3111.41.
- Hearing [R.C. 2705.03]
  - Written charges must be filed with the clerk of court.
  - A hearing is required. However, the court may issue a warrant to secure the party's appearance for hearing.
  - Proof beyond a reasonable doubt.
  - Intent is an essential element. Reckless or indifferent regard for the court's order.
- Sentence serves as punishment to vindicate the court and should be unconditional (no purge condition) and must be commensurate with the completed act of disobedience committed.
- Example: An attorney fails to show up at a court hearing and does not call to inform the court. The judge, after a hearing on the contempt charge, finds the attorney in contempt and sentences him to one day in jail.

#### 4. Indirect Civil [R.C. 2705.02]

- This is an act that occurs outside the presence of the court.
  - Example: Non-payment of child support order
- Written pleading must be filed.
- A hearing is required; however, the court may issue a warrant to secure the party's appearance for hearing.
- The burden of proof is on the moving party – clear and convincing evidence.
  - Intent is irrelevant
- Sentence must have a purge condition that can be met in order to avoid the penalty



Purge condition must be more than compliance with the current order



In a contempt that occurred in front of a magistrate, the summary proceeding must be heard by a judge and not a magistrate.



Imposition of sentence should be approved by a judge and not a magistrate.

#### CONTEMPT FOR FAILURE TO PAY SUPPORT OR COMPLY WITH PARENTING TIME OR VISITATION ORDER [R.C. 2705.031]

1. Any party who has a legal claim to any support order for child, spouse, or former spouse may initiate an action for contempt.



Check local rules to determine who is responsible for sending summons to ensure compliance.

2. Any parent or person with rights to any parenting time or visitation order may initiate an action for contempt.

3. Certain notices must be included in the summons served on the contemnor.

[See R.C. 2705.031(C)]



Check local practice for acceptable methods of service in contempt proceedings.

4. Service on the party is required for contempt proceedings. [Civ.R. 4-4.6]
5. There is a right to counsel in cases where incarceration is a possible sanction.
  - Although technically the right to counsel applies only to the contempt proceeding and not necessarily the purge hearing, the Ohio Public Defender's Office will reimburse for appointed counsel in purge hearings as well.

#### DEFENSES TO INDIRECT CONTEMPT CHARGES

1. Inability to comply
  - Obligor must prove by preponderance the inability to comply and must be without fault in creating the inability.
2. Laches
  - Obligor must prove the unreasonable lengthy delay caused material prejudice.
  - This defense normally fails in child support cases because a delay in enforcing the order normally serves as a benefit rather than a detriment.
3. Obligation was reduced to judgment
  - Check your appellate jurisdiction. There is a split between appellate jurisdictions as to whether contempt charges may continue after a money obligation is reduced to judgment.
4. Protection of the children (failing to follow visitation orders)
  - The need to protect children from harm may be a defense, but ultimately it is up to the court to decide whether the belief that the children were in danger was reasonable.

5. Purge after the contempt motion was filed

- While not technically a defense, if the order was followed after the filing of the motion, but before hearing, then the respondent may not be held in contempt. However attorney's fees (and court costs) may be awarded.

**ADDITIONAL REMEDIES/CONSIDERATIONS**

[R.C. 3109.051(K)]

If a person is found in contempt for failing to comply with any order or decree granting parenting time, companionship, or visitation rights, then court costs and reasonable attorney's fees shall be assessed, and the court may award reasonable compensatory parenting time or visitation if the compensatory time is in the best interest of the child.



Modification of the existing order is NOT a remedy for contempt. Modification only may be accomplished after notice and hearing on a motion to modify.

