

CONTEMPT ACTIONS IN JUVENILE COURT (2020)
NEIL P. AGARWAL, LL.M., J.D., M.B.A., M.L.I.S., C.P.A.

AKRON BAR ASSOCIATION

GENERALLY FOUR TYPES OF CONTEMPTS

<u>Contempt Actions</u>	<u>Criminal</u>	<u>Civil</u>
<u>Direct</u>	R.C. 2705.01	R.C. 2905.01
<u>Indirect</u>	R.C. 2705.02	R.C. 2705.02

State v. T.F., 9th Dist. Lorain No. 17CA011175, 2019-Ohio-1039, ¶¶6-9.

Contempt of court may be generally defined as disobedience of a court order or conduct that brings the administration of justice into disrespect or impedes a court’s ability to perform its functions. Contempt proceedings are regarded as sui generis, neither wholly civil nor wholly criminal actions. It is well-established that an alleged contemnor must be afforded due process. **What constitutes due process in a contempt proceeding depends to a large extent upon whether the contempt is direct or indirect, and whether it is civil or criminal.**

Contempt may be classified as either civil or criminal, depending on the character and purpose of the contempt sanctions. If sanctions are primarily designed to benefit the complainant through remedial or coercive means, then the contempt proceeding is civil. Criminal contempt involves offenses against the process of the court and its sanctions therefore are punitive in nature. **If the contempt is civil, then the offending party is entitled to only those due process protections afforded parties in civil actions, whereas, if it is criminal, the party is entitled to the due process protections normally afforded defendants in criminal actions. Criminal contempt must be proven beyond a reasonable doubt, and the court must consider the totality of the circumstances and ascertain whether the contemnor had the intent to obstruct the administration of justice or disobey an order of the court. The contemnor is presumed innocent and cannot be compelled to testify against him or herself....**

Additionally, contempt is either direct or indirect, depending on where it happens. Indirect contempt occurs outside the presence of the court. Contrarily, direct contempt is disrespectful behavior that occurs in the presence of the court, or near the presence of the court, and disrupts the administration of justice.

Petersheim v. Petersheim, 2017-Ohio-8782, 100 N.E.3d 1019 (9th Dist.), ¶12.

If sanctions are primarily designed to benefit the complainant through remedial or coercive means, then the contempt proceeding is civil. **Remedial civil contempts serve to compensate plaintiffs for damages suffered because of the defendant’s disobedience of a court order. The plaintiff must prove his or her loss as he or she would in any legal action for damages. Coercive civil sanctions are imposed when the defendant is engaged in an ongoing violation of a court’s order.** Their purpose is to induce the defendant to stop the ongoing contemptuous behavior. Defendants imprisoned under a coercive civil sanction are said to carry the keys to their prison in their own pocket. As soon as they purge the contempt by stopping the ongoing violation, they are released. Criminal contempt, on the other hand, is usually characterized by an unconditional prison sentence or fine. Its sanctions are punitive in nature, designed to vindicate the authority of the court.

Morrow v. Becker, 9th Dist. Medina No. 11CA0066-M, 2012-Ohio-3875, ¶48.

While both types of contempt contain an element of punishment, courts distinguish criminal and civil contempt not on the basis of punishment, but rather, by the character and purpose of the punishment. Punishment is remedial or coercive and for the benefit of the complainant in civil contempt. Prison sentences are conditional. The contemnor is said to carry the keys of his prison in his own pocket, since he will be freed if he agrees to do as ordered. Criminal contempt, on the other hand, is usually characterized by an unconditional prison sentence. Such imprisonment operates not as a remedy coercive in its nature but as punishment for the completed act of disobedience, and to vindicate the authority of the law and the court. **Therefore, to determine if the sanctions in the instant cause were criminal or civil in nature, it is necessary to determine the purpose behind each sanction: was it to coerce [Father] to obey the [child support order], or was it to punish [him] for past violations?**

McDerment v. McDerment, 9th Dist. Lorain No. 18CA011369, 2019-Ohio-2609, ¶28.

To establish contempt, the moving party must establish a valid court order, knowledge of the order by the defendant, and a violation of the order.

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.

- **Rules of Evidence do not apply. [Evid.R. 101(C)(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.

State v. T.F., 9th Dist. Lorain No. 17CA011175, 2019-Ohio-1039, ¶13:

A summary proceeding under R.C. 2705.01 is not authorized, however, simply because the contemnor's conduct constitutes direct contempt, but only when there is a need to immediately vindicate the court's authority and restore order to the proceedings before the court. **For a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court's immediate presence, but the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct.** Knowledge acquired from the testimony of others, or even from the confession of the accused, would not justify conviction without a trial in which there was an opportunity for defense. Consequently, when contemptuous conduct occurs only in the court's constructive presence, and the judge does not have personal knowledge of it acquired by his own observations:

Due process of law requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses [on] his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent "demoralization of the court's authority" before the public. **If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires that the accused be accorded notice and a fair hearing as above set out.**

For direct contempt proceedings that require the taking of testimony, such notice may be informally given, provided the court advises the accused of the object of the hearing in accord with due process of law. It is not sufficient that the contemnor learns from the terms of the resulting judgment, as such knowledge comes too late.

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.

State v. Urich, 9th Dist. Medina No. 18CA0078-M, 2019-Ohio-3138:

An action for indirect criminal contempt must be proven beyond a reasonable doubt. Moreover, the intent to defy the court is an essential element of indirect criminal contempt.

In cases of criminal contempt, the defendant is presumed innocent and he or she must be proved guilty beyond a reasonable doubt.

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

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.
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)]
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.

Abrams v. Abrams, 2017-Ohio-4319, 92 N.E.3d 368, (2nd Dist.), ¶22.

A person who seeks to satisfy the court that his or her failure to obey an order or judgment was entirely due to the person's inability to render obedience carries the burden of establishing that fact. An unsubstantiated claim of financial difficulties is insufficient to establish a person's inability to comply with a court order. Rather the inability to comply must be real and not self-imposed, nor due to fraud, sharp practices, or intentional avoidance.

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.

Sizemore v. Sizemore, 12th Dist. Warren No. CA2009-04-045, 2010-Ohio-1525, ¶15.

Maintaining the distinction between “judgments” and continuing “orders” of the court is particularly important in light of the different characteristics attributable to each remedy; while contempt is the proper remedy to enforce continuing “orders” to pay child support arrearages, child support arrearages that have been reduced to lump sum “judgments” are properly enforced through execution and levying proceedings. Once child support arrearages have been reduced to a lump sum judgment, contempt has no place in enforcing the outstanding obligation.

Brown v. Farley, 9th Dist. Summit No. 28710, 2018-Ohio-2543, ¶9:

Father's argument that the monthly payment schedule is unconstitutional because it exposes him to possible contempt sanctions is without merit. Article I, Section 15 of the Ohio Constitution states that “[n]o person shall be imprisoned for a debt in any civil action, on mesne of final process, unless in cases of fraud.” Generally speaking, an obligation to pay child support is considered an obligation to society that arises by operation of law and does not fall within the meaning of “debt” as contemplated by Article I, Section 15 of the Ohio Constitution. Father suggests that a child support obligation becomes a civil debt when it is reduced to a lump sum judgment. This Court recently decided *James v. Esterle*, 9th Dist. Lorain No. 16CA010988, 2017-Ohio-8621, wherein we held that a contempt action for failure to pay a lump sum judgment for child support arrearages did not violate Article I, Section 15 of the Ohio Constitution. *Esterle* involved a scenario where a magistrate issued a decision finding the obligor in contempt and sentencing him to 90 days in jail for failure to pay a lump sum judgment for child support arrearages. The trial court rejected the magistrate's decision and dismissed the contempt proceedings on the basis that the judgment constituted a civil debt for which imprisonment is prohibited under Article 1, Section 15 of the Ohio Constitution. On appeal, this Court reversed the trial court's order, concluding that the judgment at issue is not a debt subject to the proscriptions of Article 1, Section 15 of the Ohio Constitution, and therefore a contempt action for failure to pay is not prohibited.

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.

Juv.R. 40:

(C)(2) In performing the responsibilities described in Juv. R. 40(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(f): Imposing, subject to Juv.R. 40(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

(D)(8) Contempt in the Presence of a Magistrate.

(a) Contempt Order. **Contempt sanctions under Juv.R. 40(C)(2)(f) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.**

(b) Filing and Provision of Copies of Contempt Order. A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) Review of Contempt Order by Court; Bail. The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

King v. Carleton, 9th Dist. Lorain No. 13CA010374, 2013-Ohio-5781, ¶8.

Contempt of court consists of both a finding of contempt and the imposition of a penalty or sanction. Until the penalty or sanction is imposed by the court, the order is not a final, appealable order. The mere adjudication of contempt is not final until a sanction is imposed.

Pugh v. Pugh, 15 Ohio St.3d 136, 472 N.E.2d 1085 (1984):

In the case sub judice, appellant was ordered to serve two consecutive ten-day jail terms for violating two different terms of the separation agreement. However, both violations were brought out in one action for contempt.

Therefore, appellant may only be imprisoned for a maximum of ten days if he is found guilty of contempt. He cannot be imprisoned for each violation which composes the contempt charge. However, this ruling does not limit the number of contempt actions which may be brought. If appellant refuses to obey the orders of the court after serving his sentence, additional contempt proceedings can be initiated which list the appellant's violations.

Attorney Neil P. Agarwal has an undergraduate degree in Business Administration from Ohio State University (B.S.), a law degree from the University of Toledo (J.D.), a Masters of Tax Law from Case Western Reserve University (LL.M.), a Masters of Business Administration from Kent State University (M.B.A.), and a Masters of Library and Information Science from Kent State University (M.L.I.S.). He is also a certified public accountant (CPA), a licensed Ohio realtor, and an adjunct professor of business law at Kent State University and the University of Akron.

Attorney Agarwal was admitted to the practice of law in the State of Ohio in 1996. He is a member in good standing and admitted to practice in the United States Supreme Court, Ohio Supreme Court, U.S. District Court for the Northern District of Ohio, U.S. Sixth Circuit Court of Appeals, and is a member of the Akron Bar Association.

He is married to Attorney Shubhra Agarwal, where they have a joint law practice, *Law Offices of Agarwal & Agarwal*.