

CORRECT PROCEDURE IN DIRECT SUMMARY CRIMINAL CONTEMPT AND INDIRECT CONTEMPT OF COURT



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GENERAL

Contempt of Court has been defined by the Georgia Courts as “disregard for or disobedience of the order or command of the court, but it also includes interruption of the proceedings by disorderly behavior or insolent language, either in its presence or so near thereto as disturb its proceedings or impair due respect for the authority, justice, or dignity of the court.” See Wood v. State, 103 Ga. App. 305 (rev’d 370 U.S. 375 (1962)).

Most of us refer to contempt as being criminal or civil, and there are some specific definitions relating to these terms. However, in the legal sense of the word, contempt is either DIRECT or INDIRECT.

DIRECT CONTEMPT

Direct contempt is contempt committed in the presence of the court, or so near thereto as to disturb the court proceedings, or obstruct the administration of justice. Typically, the sanction for direct contempt is summary in nature and is also punitive, carrying with it the possibility of jail time and/or a fine.

INDIRECT CONTEMPT

Indirect contempt has been defined as contempt committed outside of the presence of, or away from, the court, but near enough thereto as to obstruct the administration of justice. See Adams v. State, 89 Ga. App. 882 (1954). The purpose of indirect contempt punishment is remedial in nature, that is, the contemtor is ordered to “purge” himself/herself of contempt by the performance of a specified task. The process

CORRECT PROCEDURE - DIRECT SUMMARY CRIMINAL CONTEMPT

The following is a brief outline of the correct procedure to follow in declaring direct or summary contempt:

1. Party commits an act of disrespectful conduct in court.
2. The court warns party of the dangers of committing same conduct again.
3. Similar or another act of disrespectful conduct is committed.
4. The court gives the opportunity to the party to explain his/her conduct.
5. The court declares party in contempt of court.
6. The court immediately sentences through unconditional fine, a period of incarceration, or community service.
7. The court, as soon as possible, creates a written record or order which includes the following:
 - a. **Notice to the perpetrator of the offensive conduct and the court's view of it as contumacious.**
 - b. A description of the bad acts committed, despite a contemptuous warning by the court not to commit said acts.
 - c. An explanation of the deleterious impact upon the court's integrity or its operation.
 - d. A recounting of the offender's reasons justifying the offensive behavior.
 - e. A finding of fact by the court of direct conduct actually interfering or threatening immanent interference with the court's administration of justice.

8. The offending party has no right to a trial by jury, although there is no error if the court seeks the aid of a jury in deciding the factual aspect of a contempt matter.

The standard of proof in an indirect (civil) contempt matter is preponderance of the evidence.

CORRECT PROCEDURE – INDIRECT CRIMINAL CONTEMPT OF COURT

As aforementioned, there may be times when the sanction to be levied is punitive in nature, but the contempt is committed outside the presence of the court. There may also be occasions when the court before whom the contempt is being committed has involved itself in the controversy, or is in a position to be a witness in the case. In both of these instances, the court should refer the case to another judge for hearing, and that judge should follow the procedure outlined in this presentation under the subheading titled INDIRECT CONTEMPT OF COURT.

Since the sanction is for purposes of punishment, the standard of proof is beyond a reasonable doubt.