

## PART 7. CONTEMPT OF COURT

**Rule 7.1 Contumacious Conduct Defined.** Contumacious conduct consists of verbal or non-verbal acts that (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.

### **Rule 7.2 Direct Criminal Contempt**

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

(b) **Court's Alternatives.** On the commission of an act constituting direct criminal contempt, the Court may (1) summarily find the contemnor in contempt and immediately impose sanctions, (2) summarily find the contemnor in contempt and impose sanctions within a reasonable time, or (3) delay the finding of contempt and 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 proceeding.

(c) **Conduct Specified; Statement in Mitigation.** Before entering a finding of contempt, the Court shall inform the contemnor of the specific conduct forming the basis of the finding. Before imposing sanctions, the Court shall permit the contemnor an opportunity to present a statement in mitigation.

(d) **Sanctions.** On finding direct criminal contempt without a jury, the Court may impose a fine not to exceed \$500 and/or sentence the contemnor to a term not to exceed six months in a penal institution other than a penitentiary. If the contemnor exercises his or her right to a jury trial and the jury finds the contemnor guilty of contempt, the Court is not limited in the fine or sentence of incarceration it may impose. The Court, in the exercise of its discretion, may impose other sanctions as it deems appropriate.

(e) **Written Order Required.** When imposing sanctions, the Court shall enter a written judgment order setting forth the factual basis of the finding and specifying the sanctions.

(f) **When Referral to Another Judge Required.** When 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 reasonably can be questioned, the judge must refer the issues of contempt and any appropriate sanction to another judge. In this event, the judge before whom the alleged contempt transpired shall specify in writing the nature of the alleged acts of contempt, direct that a record of the proceedings surrounding the acts be prepared, and transfer the matter to the appropriate assignment judge for reassignment. The judge hearing the proceeding after the reassignment shall base

his or her findings and adjudication of the contempt charge solely on the transferred written charge and the record.

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

### **Rule 7.3 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 an integral or constituent part of the Court or if the elements of the offense are otherwise not within the personal knowledge of the Court. A contumacious act committed in the presence of the Court, but not summarily treated as a direct criminal contempt, may be prosecuted as 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 or she declines, by an attorney appointed by the Court.

(c) **Notice of Hearing.** If the Court finds the petition sets forth allegations that support the charge, it shall set the matter for hearing and order notice be given to the respondent. Notice of the hearing and a copy of the petition shall be served and returned in the manner as provided in S. Ct. R. 105(b) or, if the Court allows, the Clerk or petitioner's attorney may give notice by regular mail to the respondent's last known address. If notice is made by regular mail, proof of mailing shall be made part of the record. Notice by personal service shall be served not less than seven days before the hearing, and notice by regular mail shall be mailed not less than 10 days before the hearing. The notice shall include, in addition to the time, date, and place of hearing, the following words in bold type or underlined: "Your failure to appear at this hearing may result in the issuance of a warrant for your arrest." If the respondent fails to appear after 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.** On the first appearance of the respondent, the Court shall inform the respondent of his or her rights to (1) notice of the charge and of the time and place of the hearing, (2) an evidentiary hearing, including the right to subpoena witnesses, confront the witnesses against him or her, and respond to the charge, (3) be represented by an attorney and, if indigent, have an attorney appointed for him or her, (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, before the hearing begins, declares that a sentence of incarceration of more than six

months and/or a fine of more than \$500 may be imposed as a sanction on a finding of guilty.

(c) **When Referral to Another Judge Required.** When 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 reasonably can be questioned, the judge must refer the issues of contempt and any appropriate sanction to another judge. In this event, the judge before whom the alleged contempt transpired shall specify in writing the nature of the alleged acts of contempt, direct that a record of the proceedings surrounding the acts be prepared, and transfer the matter to the appropriate assignment judge for reassignment. The judge hearing the proceeding after the reassignment shall base his or her findings and adjudication of the contempt charge solely on the transferred written charge and the record.

(f) **Statement in Mitigation.** Before imposing sanctions, the Court shall permit the contemnor an opportunity to present a statement in mitigation.

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

(h) **Written Order Required.** When imposing sanctions, the Court shall enter a written judgment order setting forth the factual basis of the finding and specifying the sanctions.

(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 7.2(g).

#### **Rule 7.4 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) **Civil Contempt Petition.** Except as provided in these Rules, a rule to show cause for indirect civil contempt shall be issued only on a verified petition that clearly sets forth the facts on which the petition is based or on testimony of the complaining party. Any verified petition or testimony shall make at least a *prima facie* showing that the respondent is in contempt. The petitioner may give notice to the respondent before presenting a petition to the Court for issuance of a rule to show cause but is not required to give notice unless otherwise directed by the Court.

(c) **Issuance.** The Court may immediately issue a rule to show cause, on its own motion or on the motion of a party, for the respondent's failure to respond to or comply with a citation, subpoena, court order, or other mandatory process that has been served on the respondent by any method authorized by law. On a showing of exigent circumstances

or of previous failure to respond or comply with the process and orders of the Court, the Court may issue an attachment for contempt.

**(d) Response and Burden of Proof.** No later than three days before the hearing on the rule to show cause, 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. Allegations in the petition not specifically denied shall be deemed admitted, and the remaining allegations must be proven by a preponderance of the evidence. If the basis of the charge of civil contempt is the respondent's failure to make ordered payments to the Clerk or the State Disbursement Unit, the records of the Clerk shall be *prima facie* evidence of the amount paid and disbursed by the Clerk or the State Disbursement Unit.

**(e) Service of Rules.** A rule to show cause shall be personally served on the respondent unless otherwise ordered by the Court. Unless otherwise ordered by the Court, a rule to show cause shall be served on the respondent not less than five days before the hearing. A notice of the hearing on a rule to show cause shall include, in addition to the time, date, and place of hearing, the following words in bold type or underlined: "Your failure to appear at this hearing may result in the issuance of a warrant for your arrest."

**(f) Hearing.** The hearing on a rule to show cause shall be heard in open court.

**(g) Failure to Appear.** If the respondent has been personally served with the rule to show cause or has been served with the rule to show cause by an alternate method approved by the Court and does not appear, the Court may, in addition to any other appropriate action:

(1) Continue the hearing to a date certain and either issue an attachment with bond or give notice by mail of the continued date; or,

(2) Proceed to hearing if the complaining party appears; or,

(3) Discharge the rule to show cause if the complaining party does not appear.

**(h) Written Order Required.** On an adjudication of civil contempt, the complaining party or the Court shall prepare a written judgment order specifying the contumacious conduct, the sanctions imposed, and the means by which the contemnor may purge himself or herself of the contempt. A copy of the judgment shall be provided to the contemnor.

**(i) Bond Forfeiture.** If the respondent does not appear after posting bond on an attachment, the Court may declare the respondent's bond forfeited and may proceed as in cases of failure to appear.

**(j) Setting Bond.** Bond on attachments shall not be oppressive and shall be solely for the purpose of securing the respondent's appearance.

**(k) Disposition of Bond.** No bond or portion of a bond posted on an attachment for contempt shall be paid to the complaining party unless:

(1) The respondent agrees in writing that the bond deposit, or some portion of it, be paid to the complaining party; or,

(2) The Court orders the bond deposit, or some portion thereof, be paid to the complaining party after notice and hearing on the complaining party's motion requesting turnover.