

XVIII. CONTEMPT

A. Code Sections: O.C.G.A. §15-11-11, 15-11-79, 15-11-83, 15-11-5, 15-1-4, 15-6-8(5)

B. Uniform Juvenile Court Rules 18.1, 18.2, 24.13(f), 25.3, 26.2(B)

C. Procedure

1. Contempt Generally. The nature of a contempt proceeding is defined by whether the contempt is considered by the court to be criminal or civil. That determination is dependent upon the type of sanction imposed by the court.

Disrespectful conduct committed in the presence of the court (direct contempt) and disrespectful conduct committed outside the actual presence of the court (indirect contempt) which obstructs the administration of justice becomes criminal contempt when the sanctions imposed are unconditional in nature and intended to punish affronts to the integrity of the court.

Compelling an individual's compliance with a court order or preventing a party from committing a particular act requires a civil contempt proceeding. Civil contempt sanctions are conditional in nature in that they are intended to remedy noncompliance with the court's order.

It is important to understand that the criminal versus civil distinction is not based on the type of hearing within which the contumacious conduct occurred, but rather is based on what the particular sanction is intended to accomplish (remedy/conditional or punish/unconditional).

2. Civil Contempt.

a. Due process requires that a rule nisi and written notice to the contemnor be issued which fairly and fully informs the accused of the specific acts of contempt with which he is charged and allows sufficient time to prepare a defense. Crocker v. Crocker, 132 Ga. App. 587 (1974). An opportunity to be heard shall occur prior to a finding of civil contempt. Moody v. State, 131 Ga. App. 355 (1974).

b. Notice pursuant to a rule nisi may only be expressly waived, such as through the voluntary appearance of the contemnor. Crocker v. Crocker, 132 Ga. App. 587 (1974).

c. A trial court cannot order incarceration pursuant to a self-effectuating order regarding future acts without benefit of a hearing. Floyd v. Floyd, 247 Ga. 551 (1981). A party can consent to a finding of an automatic violation, but the imposition of an automatic sanction is a violation of due process. Burke v. Burke, 263 Ga. 141 (1993).

d. Civil contempt must be established by a preponderance of the evidence. Wagner v. Commercial Printers, Inc., 203 Ga. 1 (1947).

e. Failure to appear as directed by a subpoena requires written notice and a hearing prior to a finding of contempt. Moody v. State, 131 Ga. App. 355 (1974).

f. A hypothetical example of a civil contempt arising in juvenile court may occur when the father of a child has been ordered by the juvenile court judge to participate in counseling with his child pursuant to O.C.G.A. §15-11-11(a)(8). If, after a reasonable time, the father has not participated in therapy with the child, the court, after notice to the father, may hold a contempt hearing to decide an appropriate remedy to compel the father to obey the order of the court. The court may fashion any reasonable remedy including incarcerating the father until he agrees to attend counseling or actually schedules counseling, or may consider releasing him from jail for a counseling session or two to insure his active participation in counseling.

3. Criminal Contempt.

a. Direct Criminal Contempt.

During a trial, a trial judge, has the power, when necessary, to maintain order in the courtroom, to declare conduct committed in the judge's presence and observed by the judge to be contemptuous and, after affording the contemnor an opportunity to speak in his or her own behalf, to announce punishment summarily and without further notice or hearing. The carrying out of the punishment announced during trial may be postponed until after trial. Dowdy et. al. v. Palmour, 251 Ga. 135, 141-142 (1983). A judge's refusal to allow a defendant a separate hearing does not deprive the defendant of his due process rights. In Re McLarty, 152 Ga. App. 399 (1979), Spruell v. State, 148 Ga. App. 99 (1978).

(1) In a summary contempt proceeding, upon the court verbally finding as a matter of fact certain conduct to be contumacious, the judge must *as soon as possible* create a written record that preserves the following: (i) the notice to the perpetrator of the offensive conduct subject to being viewed as contemptuous due to its actual or imminent adverse impact; (ii) a detailed description of the bad acts committed or omitted by the perpetrator despite a contemporaneous warning by the court to refrain; (iii) an explanation of the deleterious impact on the court's operations or its integrity; (iv) a recitation of the perpetrator's reasons given as justification for the questionable conduct; (v) a finding of fact by the judge of direct conduct interfering with the court's administration of justice, or imminently threatening such consequences; (vi) an order declaring the respondent in contempt of court and imposing a statutorily authorized sanction. In Re Shafer, 216 Ga. App. 725 (1995). Upon appellate review, failure to provide a record by which any rational trier of fact would have found the essential elements of the offense beyond a reasonable doubt is reversible error. In Re Smith, 205 Ga. App. 857 (1992.).

(2) Where the announcement of punishment is delayed, and where the contumacious conduct was directed toward the judge or where the judge reacted to the contumacious conduct in such manner as to become involved in the controversy, the judge may give the contemnor notice of specific charges, but the hearing, including the contemnor's opportunity to be heard, must be conducted by another judge. Dowdy, et. al. v. Palmour, 251 Ga. 135 (1983). Also, when a judge's involvement in circumstances leading up to a contempt proceeding could cause the judge's impartiality to be questioned, that judge should disqualify himself or herself in the trial of the contempt proceeding. In Re Crane, 253 Ga. 667 (1985).

b. Indirect Criminal Contempt.

(1) As with civil contempt, indirect criminal contempt shall not be punished without written notice in the form of a rule nisi and an opportunity for hearing. Moody v. State, 131 Ga. App. 355 (1974). Failure to appear in response to a subpoena or summons is a common example of indirect criminal contempt.

(2) When a child is taken into custody and released to a parent, guardian or other custodian prior to being placed in a detention facility pursuant to O.C.G.A. §15-11-47, and said custodian willfully fails to bring the child before the Court when requested, a finding of contempt is authorized pursuant to O.C.G.A. §15-11-5 upon notice and opportunity to be heard.

(3) Upon the Court's issuance of a summons directing the parent, guardian or other custodian to bring the child to the hearing on a filed petition held pursuant to O.C.G.A. §15-11-39, and said custodian willfully fails to appear personally at the hearing, the Court is authorized to make a finding of contempt pursuant to O.C.G.A. §15-11-5 upon notice and opportunity to be heard.

c. Standard of Proof.

The standard of proof required for a finding of criminal contempt is proof beyond a reasonable doubt. In Re Crane, 253 Ga. 667 (1985).

4. Sanctions.

a. Civil contempt is punishable by indefinite incarceration until a specific act is performed. Hopkins v. Hopkins, 244 Ga. 66 (1979).

b. In addition to all other inherent powers of the Court to enforce its lawful order, O.C.G.A. §15-11-5 provides specific sanctions for a parent, guardian, or other custodian willfully disobeying an order of the court or for obstructing or interfering with the proceedings of the Court. Upon a finding of contempt, the Court may consider imposing the following sanctions:

(1) Require the parent/guardian to make restitution not to exceed \$2,500.00 for any damage or loss caused by the child's wrongful act;

(2) Impose a fine not to exceed \$1,000.00;

(3) Reimburse the State for the costs of detention, treatment or rehabilitation of the child;

(4) Require the parent/guardian to perform court approved community service designed to contribute to the ability of the parent/guardian to provide proper parental care and supervision of the child;

(5) Require the parent/guardian to enter into a contract or plan as a part of the disposition of any charges against the child, so as to provide for the supervision and control of the child by the parent/guardian. See O.C.G.A. §15-11-5.

While O.C.G.A. §15-11-5 is silent regarding a limitation of criminal contempt power and incarceration of the contemnor, guidance may be sought from the limitations imposed on the following courts:

- (1) Superior Court - incarceration not to exceed 20 days (O.C.G.A. §15-6-8(5));
- (2) Magistrate Court - incarceration not to exceed 10 days (O.C.G.A. §15-10-2(7));
- (3) Probate Court - incarceration not to exceed 20 days (O.C.G.A. §15-9-34).

5. Right to Counsel.

a. Although no specific provision for legal representation exists in either case law or statutory authority, caution dictates that the opportunity for counsel should be provided for any non-summary contempt proceeding.

b. There is no statutory authority to award attorney's fees in contempt proceedings (Dekalb County v. Bolick, 249 Ga. 843 (1982)) unless expressly indicated by legislative authority. Minor v. Minor, 257 Ga. 706 (1987).

6. Right to Jury Trial on Issues of Contempt.

a. There is no constitutional right to a trial by jury in criminal contempt cases so long as the penalty imposed does not exceed six months. Taylor v. Hayes, 418 U.S. 488 (1974).

b. Pursuant to O.C.G.A. §15-1-4(b), no person shall be imprisoned for contempt for failing or refusing to pay over money under any *order, decree, or judgment of any court of law or any other court of this state* when he denies that the money ordered or decreed to be paid over is in his power, custody, or control until he has a trial by jury (subject to certain provisions) (emphasis added).

To the extent that the juvenile courts frequently place both minors and adults under orders requiring payment of money, that statute appears to be in conflict with O.C.G.A. §15-11-41(a) which indicates that *all* hearings shall be conducted by the Court without a jury (emphasis added).

An examination of case law history indicates that the jury prohibition within the juvenile courts was "intended for the benefit of the child to spare it from the unfavorable publicity of a public trial before a jury." Robinson v. State, 227 Ga. 140 (1971). When considering the extensive changes in confidentiality issues within the juvenile courts and the juvenile courts' jurisdiction over proceedings involving adults, juvenile court judges should anticipate demands for jury trial as well as the making of some new law on the issue in the near future.