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# CONTEMPT

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Information in this chapter is taken from the Texas Center for the Judiciary Bench Book chapter on Contempt. This version does not include information on a judges' actions in court when witnessing contempt, drafting orders, enforcing orders, and appellate remedies. Please contact the [Texas Center for the Judiciary](#) for access to its bench book, additional and detailed guidance, and associated forms.<sup>17</sup>

## A. Introduction

Texas law recognizes two kinds of contempt and two different types of remedies:

- Direct contempt occurs in the presence of the court during court proceedings and is immediately punishable by the court; and
- Indirect or constructive contempt occurs outside the court's presence, and dictates stricter procedural standards

The remedies for contempt are similarly divided into two categories:

- Civil or coercive; and
- Criminal or punitive

The remedy used by the court, not the conduct of the contemnor, defines the contempt remedies as civil or criminal. Although the term "contempt of court" conjures images of unchecked authority, in reality, the power is limited. A high percentage of contempt judgments are set aside by appellate courts. Exacting standards apply.

## B. Direct Contempt

The essence of direct contempt is that the offending conduct obstructs or tends to obstruct the proper administration of justice.<sup>18</sup> Direct contempt is characterized by an unwarranted interruption of orderly court proceedings and for the most part is unrelated to the issues on trial. The interruption diverts attention from the trial and delays the proceedings until the interruption is addressed by the court. Direct contempt can be addressed by the court immediately unless the contempt involves an officer of the court.<sup>19</sup> However, the power to punish immediately for direct contempt flows from observing the conduct and the exigency of the situation. Once the immediate need to maintain decorum or address the interruption has passed, the power to punish summarily also ends.<sup>20</sup> Examples of Direct Contempt include:

- Refusal to obey a specific court order during trial proceedings;
- Expressing improper remarks or indifference to the court's actions; or
- Disobeying the judge's instruction to cease a disturbance in court.

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## C. Indirect Contempt

Indirect or constructive contempt occurs outside the court's presence and does not involve a disruption of orderly court proceedings. Unlike direct contempt, in constructive contempt the issue generally does relate to the case on trial and is most often characterized by a dispute between the parties to the litigation regarding enforcement of a court order. Constructive contempt does not interfere with or interrupt court proceedings since it is the very focus of court proceedings scheduled to address it. Although time is important, it does not have the urgency of direct contempt and, consequently, the law imposes much more stringent procedural standards on constructive contempt hearings. Examples of Indirect or Constructive Contempt:

- Having a conversation with a juror after trial begins;
- Secreting assets from a court-appointed receiver; and
- Failure to obey a court order.

## D. Remedies for Contempt

[Texas Gov't Code § 21.001\(a\)](#) gives courts the inherent power to maintain control of court proceedings and enforce lawful orders through the power of contempt. Although all contempt proceedings are quasi-criminal, it is the character of the relief which the proceeding will afford that defines the proceeding as civil or criminal.<sup>21</sup> On a finding of contempt, the court may respond to the contempt by applying the civil/coercive remedy sanction, or the criminal/punitive sanction, or a combination of both.

## E. Civil / Coercive

Civil contempt, more accurately known as coercive contempt, has the purpose of securing compliance with a court order. To be enforceable by coercive contempt the order must be clear and unambiguous.<sup>22</sup> Due process standards apply in indirect contempt proceedings to assure that the contemnor is offered adequate safeguards. Due process for civil or coercive contempt requires:

- Full and complete notice of the conduct with which the contemnor is charged;<sup>23</sup>
- Adequate notice of the court order alleged to have been violated;<sup>24</sup>
- Ample time to prepare and respond to the allegation;<sup>25</sup>
- Reasonable notice of the time and date of the contempt hearing;<sup>26</sup>
- The right to appointed counsel if the alleged contemnor is indigent;<sup>27</sup>
- The right to a jury trial if the potential punishment exceeds 6 months in jail;<sup>28</sup>
- The right to be advised by the court of the right to a jury if punishment could exceed 6 months in jail;<sup>29</sup> and
- The ability to comply with the court order.<sup>30</sup>

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## F. Criminal / Punitive

The nature of criminal contempt is punitive, to punish past errant behavior, and is most commonly assessed in direct contempt cases. It is an unconditional sentence for punishment or deterrence.<sup>31</sup> Criminal contempt proceedings for contumacious and disruptive conduct during court proceedings may be dealt with immediately by the judge, unless committed by a court officer.

## G. Burden of Proof

The burden of proof for a punitive contempt order must be based on proof beyond a reasonable doubt.<sup>32</sup> There is a division of authority on the burden of proof required in cases addressing civil or coercive contempt. [Tex. Fam. Code § 105.005](#) provides for a preponderance of the evidence, but one Court of Appeals has held that in contempt proceedings to enforce child support, the obligor parent must prove the inability to pay by a preponderance of the evidence.<sup>33</sup> However, the 5th Circuit has said in a civil contempt proceeding that the movant bears the burden of establishing the elements of contempt by clear and convincing evidence.<sup>34</sup> Another court has held the standard to be clear and convincing for civil contempt, and at least one court has held that contempt for a violation of a written court order requires proof beyond a reasonable doubt.<sup>35</sup>

## H. Jury

Case law has held that there is no general right to a jury trial in cases of contempt.<sup>36</sup> However, offenses considered ‘serious’ entitle the person charged to the 6th Amendment right to a jury.<sup>37</sup> Under Texas law, punishment of six months incarceration or less and a fine of \$500 or less is considered a petty offense, insufficient to trigger the right to trial by jury.<sup>38</sup> Punishment exceeding six months’ incarceration entitles the contemnor to a jury, and the judge must advise the contemnor of the right to jury.<sup>39</sup> At what point in the contempt proceeding the case is determined to be serious or petty is subject to conflicting authority. One Court of Appeals has held that “if confinement may exceed six months,” then the contempt offense is serious and constitutional safeguards (i.e., the right to a jury) should be given.<sup>40</sup> However, another Court of Appeals has held that the actual punishment imposed determines whether the character of the contempt is serious or petty.<sup>41</sup>

## I. Authority

### References to contempt in the Texas Family Code

- [Tex. Fam. Code § 157.001\(b\)](#) – Motion for Enforcement
- [Tex. Fam. Code § 157.424](#) – Relation to Motion for Contempt
- [Tex. Fam. Code § 105.001\(f\)](#) – Temporary Orders Before Final Order
- [Tex. Fam. Code § 81.004\(a\)](#) – Contempt for Nonpayment of Fee

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## Statutory Limitations on Contempt – Texas Gov't Code 21.002

- Punishment is limited to six months in county jail and/or fine of up to \$500;
- Cumulative punishment cannot exceed 18 months; and
- Court officers held in contempt are entitled to a personal recognizance bond and another judge to determine the validity of the contempt.

**Court Officers** – Texas Gov't Code 21.002(d) requires that an officer of the court held in contempt by a trial court shall, upon request, be released on personal recognizance until a *de novo* determination of guilt or innocence by another judge assigned by the regional administrative judge. Court officers include:

- Attorneys;
- Court Reporters;
- Attorneys Ad Litem; and
- Receivers

## J. Orders of Contempt

Orders of contempt must:

- Be in writing, definite, and certain;<sup>42</sup>
- Clearly state in what respect the court's earlier order was violated;<sup>43</sup>
- Notify the contemnor of how he violated the previous order;<sup>44</sup>
- Be signed by the judge within a short, reasonable time after finding of contempt;<sup>45</sup>
- If it is punitive, it must specify the exact punishment imposed;<sup>46</sup> and
- If it is coercive, it must clearly state what the contemnor must do to purge himself of contempt.<sup>47</sup>

If the contemnor is to be incarcerated, the orders of contempt must be accompanied by an order of commitment, and no person may be held for contempt without a written order of commitment. Orders of commitment must provide the precise punishment assessed or, in the case of coercive contempt, the things contemnor must do to be purged of contempt.<sup>48</sup>