

**PROCEDURAL GUIDELINES
FOR CONTEMPT PROCEEDINGS
IN DAVIDSON COUNTY CHANCERY COURT, PART IV
(Russell T. Perkins, Chancellor)**

Contempt Generally

Generally, contempt of court is the willful violation of a court order or other conduct which constitutes contempt under the law of Tennessee.¹ In exercising its statutory authority and its inherent authority to manage its dockets, this Court prefers that parties seeking contempt sanctions proceed by sworn petition or sworn motion, accompanied by service of process. *See* Tenn. Code Ann. § 29-9-102; Tenn. R. Civ. P. 65.06; *Hodges v. Tennessee Att’y Gen.*, 43 S.W.3d 918, 921 (Tenn. Ct. App. 2008). Unless there is a statute or procedural rule that specifically permits the Court to enter a Show Cause Order or a similar Order, parties should not attempt to have the Court enter a Show Cause Order or any other Order which might be interpreted as an effort to shift the burden of proof and/or the burden of going forward to the party against whom a finding of contempt is sought.

When an Order of Contempt is being sought on the basis of an alleged willful failure to obey a discovery order, the petitioning party should attempt to comply with Local Rule § 22.08, requiring counsel to certify that she/he has conferred with opposing counsel in a good faith effort to resolve the discovery dispute and that the effort has not been successful.

Given its seriousness, the Court will not consider a petition for contempt on its regular motion docket. Rather, parties seeking an Order of Contempt should request a special setting for the hearing, which will be an evidentiary hearing, unless the parties agree to have a non-evidentiary

¹ The range of potential sanctions available in contempt proceedings, including attorney’s fees or other sanctions, is provided in the applicable substantive law and is not specifically addressed by these procedural Guidelines.

hearing. Generally speaking, the contempt hearing should not occur until the contempt petition has been pending at least thirty days.

Criminal Contempt

Although a petition seeking either civil contempt or criminal contempt may result in a person being incarcerated, a civil contempt petition focuses upon compliance and contemplates that a person can cure or purge his/her contempt and be released from custody. On the other hand, a criminal contempt petition seeks to vindicate the sanctity and integrity of court orders by imprisoning the convicted offender for a set sentence in circumstances where the contempt cannot be cured or purged.² A person against whom criminal contempt is sought has the right to the constitutional protections available to criminal defendants generally, except, for example, the right to a jury trial. It is the responsibility of the party seeking contempt, in the first instance, to ascertain whether a particular effort to have someone held in contempt is civil or criminal. The Court, however, has the ultimate responsibility of determining whether a contempt proceeding is civil or criminal.

When the petitioner is seeking criminal contempt, the petitioner must comply with the Tennessee Rules of Criminal Procedure (including, but not limited to, Tenn. R. Crim. P. 11 & 42) and state and federal constitutional protections regarding notice, burden of proof, and other requirements. On the question of notice, a Criminal Contempt Petition must have, in the body of the Petition or in an appended attachment, a written Notice of Criminal Contempt. The Notice of Criminal Contempt shall, at a minimum:

- 1) State the time and place of the hearing;

² To determine whether a contempt petition is criminal or civil, a party should consult Tennessee substantive law, not these Guidelines. See *Konvalinka v. Chattanooga–Hamilton Cty. Hosp. Auth.y*, 249 S.W.3d 346 (Tenn. 2008).

- 2) Allow the person alleged to be in criminal contempt a reasonable time to prepare a defense; and
- 3) State the essential facts constituting the criminal contempt charge and describe it as such, taking care to list Tenn. Code Ann. § 29-9-101, *et seq.* or any other statutory basis for the criminal contempt charge.³

Additionally, there shall be a written Notice of Rights in the body of the Petition for Criminal Contempt, or in an appended attachment, that advises the person alleged to be in criminal contempt that, as a result of the charge of criminal contempt, he/she has certain constitutional rights and that the party pursuing the criminal contempt charge is hereby giving notice of those rights:

- 1) The right to be represented by counsel and, if you are unable to afford counsel through a showing of indigence, counsel shall be appointed to you pursuant to Tenn. Sup. Ct. R. 13 and Tenn. Code Ann. § 40-14-202. A party seeking to proceed *in forma pauperis* should complete and file an appropriate Affidavit of Indigency;
- 2) The right to have guilt proven against you beyond a reasonable doubt with the burden of proof being on the plaintiff;
- 3) The right against self-incrimination, which includes the right to remain silent as to the allegations of criminal contempt filed against you;
- 4) The right to a presumption of innocence until such time as the allegations of guilt are proven against you beyond a reasonable doubt;
- 5) The right to have notice of the nature of the charge against you, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided

³ See Tenn. R. Crim. P. 42.

- by law; and, if applicable, that a different or additional punishment may result by reason of any prior convictions or other factors which may be established in the present action if convicted;
- 6) The right to plead not guilty or to persist in that plea if it has already been made; you have the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right not to be compelled to incriminate yourself;
 - 7) The right to notice of these proceedings; the notice shall state the time and place of hearing, allow a reasonable time for the preparation of a defense, and include the essential facts constituting the criminal contempt charged against you and describe it as such;
 - 8) The right to admission to bail as provided in Tenn. R. Crim. P. 32; and
 - 9) All other rights afforded to any other individual charged with violation of a criminal statute, with the exception of the right to trial by jury. *See* Tenn. Code Ann. § 29-9-103; *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968); *Sliger v. Sliger*, 181 S.W.3d 684 (Tenn. Ct. App. 2005).

The foregoing information is to serve as notice to Defendant of his/her constitutional and procedural rights in compliance with Tennessee statutes, the Tennessee Rules of Criminal Procedure, and the case law of the State of Tennessee regarding criminal contempt.

Russell T. Perkins, Chancellor
Davidson County Chancery Court, Part IV
Adopted December 14, 2021