INDIANA CONTEMPT PROCEDURE

Direct Criminal Contempt

Statute

I.C. § 34-47-2

Characteristics

1. Behavior occurs within the presence of the court.[1]
2. Judge witnesses behavior first-hand.
3. Conduct:
   a. Behavior disrupts proceedings; or
   b. Witness refuses to testify unless refusal is based upon privilege.[2]

Procedure

- Judge should **deal with contempt behavior immediately** and summarily.
- Proceedings are **commenced by and before judge** who witnessed contemptuous behavior.[3]
- Sanctions can occur at later time as long as judge is able to maintain authority and dignity of court.[4]
- **Make a record**
  1) Specifically describe the conduct that was witnessed.
  2) Specifically describe the disruption to court proceedings caused by the conduct (to establish necessity of immediate action).
  3) Allow contemnor to explain any extenuating circumstances that may justify the contemptuous behavior.

❖ **Entry of Judgment:**
  1) Proof beyond reasonable doubt not required[5].
  2) Punishment: reasonable determinate sentence or fine (without jury trial or waiver, 180 day maximum[6])

❖ Produce **written record of proceeding** signed by judge:
  1) Judges statement of contemnor's conduct;
  2) Contemnor's answer or explanation;
  3) Affidavits of others who witnessed events; and
  4) Entry of Judgment.

Case and Statue Citations

[1] *State v. Hetzel*, 552 N.E.2d 31, 34 (Ind. 1990); see also *Warr v. State*, 877 N.E.2d 817 (Ind. Ct. App. 2007); Rice v. State, 874 N.E.2d 988 (Ind. Ct. App. 2007).

[2] *Fowler v. State*, 829 N.E.2d 459, 470 (Ind. 2005) (citing *Bryant v. State*, 256 Ind. 587, 589, 271 N.E.2d 127, 128 (1971); *McIntyre v. State*, 460 N.E.2d 162, 165 (Ind.Ct.App.1984).

[3] *Johnson v. State*, 426 N.E.2d 104, 106 (Ind. Ct. App. 1981), cited with approval by *Lehman v. State*, 777 N.E.2d 69 (Ind. Ct. App. 2002).

[4] *Smith v. State* 893 N.E.2d 1149 (Ind. Ct. App. 2008).

[5] *Skolnick v. State*, 180 Ind. App. 253, 274, 388 N.E.2d 1156, 1170 (1979).

[6] *Holly v. State*, 681 N.E.2d 1176, 1177–78 (Ind. Ct. App. 1997). (citing *Codispoti v. Pennsylvania*, 418 U.S. 506, 511, 94 S.Ct. 2687, 2691, 41 L.Ed.2d 912 (1974) and *Cheff v. Schnackenberg*, 384 U.S. 373, 380, 86 S.Ct. 1523, 1526, 16 L.Ed.2d 629 (1966)).

Indirect Criminal Contempt

Statue

I.C. § 34-47-3

Characteristics

1. Willfulness
2. Deliberate intention to either[1]:
   c. To disrespect the judge; or
   d. To defy the authority of the court.
   ❖ Examples[2]
3. Conduct occurs outside judge's presence, or judge's knowledge of incident is not first-hand or immediate.[3]

Procedure

- New, separate cause of action
- Action is prosecuted in name of State[4]
- Rule to Show Cause is required
- Often requires appointment of special judge[5]
- **Due Process Requirements:**
  1. Service of **Rule to Show Cause** and **Order to Appear**[6]
  2. **Representation by Counsel**[7]
     a. Right advisement
     b. When indigent, court-appointed counsel.
  3. **Trial by Jury**[8]
     a. Determined by length of sentence actually imposed.
     b. Sentence exceeding 6 months invokes right to trial by jury.
- **Standard of proof:** the evidence must show that contemnor acted with **willful and intentional disobedience**.[9]
- Duties of Defendant – I.C. § 34-47-3-6
  1. Defendant is required to answer Rule to Show Cause.
  2. If defendant fails to appear or refuses to answer, trial court may proceed to attach and punish defendant for contempt.
- **Sanctions:**
  1. Fine;
  2. Imprisonment; or
  3. Both

  Judges discretion; must be *reasonable*
- **Defenses:**
  1. Inadequate notice as to facts constituting contempt[10]
  2. Inability to obey (burden of proof is on defendant)[11]
  3. Inability to pay (burden of proof is on defendant)[12]

Case Law and Statutes

Hancz v. City of South Bend, 691 N.E.2d 1322 (Ind. Ct. App. 1998).

[2] *McCormack v. Lemond,* 274 Ind. 505, 413 N.E.2d 228 (1980); *In re Contempt of McLaren,* 850 N.E.2d 400 (Ind. 2006); *In re Contempt of Fox,* 796 N.E.2d 1186 (Ind. 2003); *In re Hatfield*, 607 N.E.2d 384 (Ind. 1993); *In re Cowen*, 539 N.E.2d 24 (Ind. 1989); *In re Toomey*, 532 N.E.2d 608 (Ind.1989); *LaGrange v. State*, 153 N.E.2d 593 (Ind. 1958); *Curtis v. State*, 625 N.E.2d 496, 498 (Ind. Ct. App. 1993); *In re Nasser*, 644 N.E.2d 93 (Ind. 1994).

[3] *In re Nasser*, 644 N.E.2d 93 (Ind. 1994).

[4] *Allison v. State*, 187 N.E.2d 565, 570 (Ind. 1963); *In re Crumpacker*, 431 N.E.2d 91 (Ind. 1982).

[5] See I.C. § 34-47-3-7 for procedure for the nomination of special judge; *Davidson v. State*, 836 N.E.2d 1018 (Ind. Ct. App. 2005).

[6] *Peterson v. State*, 468 N.E.2d 556, 558 n.1 (Ind. Ct. App. 1984). See I.C. § 34-47-3-5 for specific requirements for Rule to Show Cause pleading.

[7] *Cooke v. United States*, 267 U.S. 517 (1925).

[8] *Holly v. State*, 681 N.E.2d 1176 (Ind. Ct. App. 1997) (citing *Codispoti v. Pennsylvania,* 418 U.S. 506, 511, 94 S.Ct. 2687, 2691, 41 L.Ed.2d 912 (1974) and *Cheff v. Schnackenberg,* 384 U.S. 373, 380, 86 S.Ct. 1523, 1526, 16 L.Ed.2d 629 (1966).

[9] *Jones v. State*, 847 N.E.2d 190, 199 (Ind. Ct. App. 2006).

[10] *Showalter v. Brubaker*, 650 N.E.2d 693, 701 (Ind. Ct. App. 1995).

[11] *State ex rel. Thrasher v. Hayes*, 177 Ind. App. 196, 204, 378 N.E.2d 924, 929 (1978); *Thomas v. Woollen*, 255 Ind. 612, 614, 266 N.E.2d 20, 22 (1971).

[12] *Smith v. Indiana State Bd. of Health*, 158 Ind. App. 445, 303 N.E.2d 50 (1973)

Civil Contempt

Statue

I.C. § 34-47-3

Characteristics

1. Intentional act or omission that violates the terms of a court order made for the benefit of the opposing party.
2. The offense is to opposing party, not against the dignity of the court.
3. The objective is to coerce contemnor into compliance.

Procedure

- Filed **in the same civil matter** out of which it arises.[1]
- Initiated by **verified** motion.
  1. Motion must specifically identify the command or prohibition language in the trial court's order that is alleged to be violated;[2]
  2. Motion must specifically describe behavior that violates the court's order
  3. Motion must be accompanied by affidavits of aggrieved person (if facts are not stated in verified motion) and witnesses to the behavior, if applicable.[3]
- **Due Process rights:**
  4. Service of **Rule to Show Cause** and **Order** to Appear
     a. I.C. § 34-47-3-5 lists requirements for Rule to Show Cause
     b. Contemnor should be **ordered to appear** rather than noticed to appear
     c. Court does not have jurisdiction over matter until proper service is established.
  5. **Right to Counsel**
     a. Advisement of right
     b. Appointment of Counsel when defendant is indigent:
        1) Required when possibility of incarceration exists.[4]
        2) When physical liberty is not at stake, case by case determination.[5]
  6. **Remedy**
     a. No punitive remedy -- Imprisonment is an appropriate only when it is clearly coercive in attempting to compel compliance.[6]
     b. Imprisonment order must specify that jail term ceases when contemnor complies with order.
     c. Order cannot anticipate future contempt.[7]
     d. Order cannot punish for past contempt.[8]
     e. Award of attorney fees and damages are recoverable if related to the damage suffered by moving party.[9]
        1) Damage award must be supported by evidence.[10]

Case Law and Statutes

[1] *State ex rel. McMinn v. Gentry*, 229 Ind. 615, 100 N.E.2d 676, 678 (1951); *Denny v. State*, 203 Ind. 682, 182 N.E. 313, 321 (1932).

[2] *Hays v. Hays*, 216 Ind. 62, 22 N.E.2d 971, 972 (1939); *Nicholas v. Nicholas*, 482 N.E.2d 770, 771 (Ind. App. 1985).

[3] *Hays v. Hays*, 216 Ind. 62, 22 N.E.2d 971 (1939).

[4] *In re Marriage of Stariha*, 509 N.E.2d 1117, 1121 (Ind. Ct. App. 1987)

[5] *See In re Marriage of Stariha*, 509 N.E.2d 1117, 1120 (Ind. Ct. App. 1987) (citing *Lassiter v. Department of Social Services* (1981), 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640, and *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18.

[6] *Branum v. State*, 822 N.E.2d 1102 (Ind. Ct. App. 2005); *Pickett v. Pelican Service Associates*, 495 N.E.2d 245, 247 (Ind. Ct. App. 1986); *Denny v. State*, 203 Ind. 682, 182 N.E. 313 (1932).

[7] *Thomas v. Woollen*, 255 Ind. 612, 266 N.E.2d 20, 23 (1971); *Caito v.Indianapolis Produce Terminal, Inc.*, 162 Ind. App. 590, 320 N.E.2d 821, 826-27 (1974).

[8] *Flash v. Holtsclaw*, 789 N.E.2d 955 (Ind. Ct. App. 2003); *Hancz v. City of South Bend*, 691 N.E.2d 1322 (Ind. Ct. App. 1998); *see also KLN v. State*, 881 N.E.2d 39 (Ind. Ct. App. 2008).

[9] *Denny v. State*, 203 Ind. 682, 182 N.E. 313, 318 (1932); *Thomas v. Woollen,* 255 Ind. 612, 266 N.E.2d 20, 22 (1971).

[10] *City of Gary v. Major*, 822 N.E.2d 165 (Ind. 2005)

Witness – Failure to Appear for Testimony after Service with Notice to Appear

Statue

I.C. § 34-47-1

Trial R 45(F)

Characteristics

1. Witness fails to appear in court on the date and time given in the notice to appear.
2. Proof of **personal service** of subpoena either by sheriff's return or by affidavit of person who completed service.
   - **Note:** pre-payment of witness fees may be required if witness is required to appear in county outside his/her county of residence.

Procedure

1. Evidence that witness was **personally served** with subpoena is required, copy service is not sufficient:
   a. Sheriff's return following service by sheriff; or
   b. Affidavit of person who completed service
2. A court may proceed against a person who fails to appear as a witness for contempt of court as though IC 34-47-2 (direct contempt) and IC 34-47-3 (indirect contempt) were not in force.[1]
3. Best practices:
   a. Before ordering attachment, the court should inquire as to whether anyone has information that might justify the witness' non-appearance.
   b. Alternative to attachment: continuance of trial or hearing, and issuance of a Rule to Show Cause pursuant to procedure for indirect contempt

Case Law and Statutes

[1] I.C. § 34-47-1-1(c)