

STATE COURT  
Direct Contempt Procedures Checklist  
(occurring within "presence" of judge)

**CRIMINAL**

(To punish for offensive conduct against the court, its judgments, orders, or process (Criminal Rule 3.830))<sup>1</sup>

1. Initiated by order of the court which is based upon personal knowledge or upon motion directed to court; proceedings may be invoked forthwith upon occurrence of contemptuous conduct
2. Summary procedure is appropriate and written charges or affidavits are not necessary
3. Inform Δ of accusation
4. Inquire of Δ whether any cause can be shown why Δ should not be adjudged guilty of contempt and sentenced therefor
5. Allow Δ found guilty to present evidence of excuse or mitigating circumstances
6. Sentencing
  - a. must be pronounced in open court in presence of Δ
  - b. may be confinement, fine, or both
  - c. sentence based on non-jury verdict shall not exceed six months
  - d. confinement must be to county jail exclusively for fixed period not to exceed one year, §775.02, Fla. Stat.
  - e. fine may not exceed \$500.00, §775.02, Fla. Stat.
7. Judgment must
  - a. be in writing
  - b. be signed by judge
  - c. recite facts upon which findings are based

<sup>1</sup>Alves v. Barnett Mort. Co., 688 So.2d 459 (Fla. 4th DCA 1997).

**CIVIL**

(To compel obedience to orders made by court for benefit of parties, or to preserve or enforce rights of parties)<sup>1</sup>

1. Initiated by court or on motion of party or person having standing; proceedings may be invoked forthwith upon occurrence of contemptuous conduct<sup>2</sup>
2. Summary procedure is appropriate<sup>2</sup>
3. Inform respondent of accusation
4. Inquire of respondent whether cause can be shown why Δ should not be adjudged guilty of contempt and sentenced therefore
5. Sanctions
  - a. may be confinement, fine, or both
  - b. attorneys fees and costs may be assessed
  - c. confinement must be to county jail exclusively
  - d. sentence of confinement should be for indefinite period
  - e. sentence to confinement must contain a meaningful purge provision
6. Judgment must
  - a. be in writing
  - b. be signed by judge
  - c. recite facts upon which findings are based
  - d. specifically find the ability of respondent to comply with the order

<sup>1</sup>Johnson v. Bednar, 573 So.2d 822 (Fla. 1991).

<sup>2</sup>Miller v. Carson, 550 F.Supp. 543 (M.D. Fla. 1982).

STATE COURT  
Indirect Contempt Procedures Checklist  
(occurring outside the "presence" of judge)

CIVIL

**CRIMINAL**  
(Criminal Rule 3.840)

1. Initiated on order of the court which is based on affidavit of any person having knowledge of the facts<sup>1</sup>
2. Order to show cause shall
  - a. allege essential facts constituting the contempt
  - b. direct Δ to appear and show cause why Δ should not be held in criminal contempt
  - c. specify time and place of hearing, allowing reasonable time for preparation of defense (R. 3.840(a))
3. Δ may file an answer, one of the following defensive pleadings, or do nothing
  - a. motion to dismiss order to show cause
  - b. motion for statement of particulars
  - c. answer by denial, explanation, or defense
  - d. do nothing; failure to plead is not an admission of guilt (R. 3.840(b))
4. Court may order arrest of Δ if necessary to ensure appearance; Δ has right to bail (R. 3.840(c))
5. Arraignment on Order: at time of hearing or prior thereto upon request (R. 3.840(d))
6. Hearing on merits of order<sup>2</sup>
  - a. all issues of law and fact shall be tried by the judge
  - b. judge may conduct hearing with or without assistance of prosecuting attorney or specially appointed attorney
  - c. Δ's due process rights must be honored, including right to counsel, right to compulsory process, and right to testify or refuse to testify
7. Sentencing
  - a. inform Δ of charge and judgment and inquire of Δ whether any cause can be shown why sentence ought not to be imposed
  - b. allow Δ to present evidence of excuse or mitigating circumstances
  - c. must be pronounced in open court in presence of Δ
  - d. may be confinement, fine, or both
  - e. sentence based on non-jury verdict shall not exceed six months
  - f. confinement to county jail exclusively for fixed period not to exceed one year §775.02, Fla. Stat. (R. 3.840(g))
8. Judgment must
  - a. be in writing
  - b. be signed by judge
  - c. recite facts upon which findings are based; failure to do so may invalidate judgment (R. 3.840(f))

<sup>1</sup>Mix v. State, 827 So.2d 397 (Fla. 2d DCA 2002).

<sup>2</sup>Andrews v. Walton, 428 So.2d 663 (Fla. 1983).

1. Initiated on motion of party or person with standing<sup>1</sup>
2. Service of motion and notice of hearing<sup>2</sup>
  - a. must be made on respondent or his counsel
  - b. motion must specify acts claimed to be contemptuous
  - c. notice of hearing must specify time and place
3. Hearing on merits<sup>3</sup>
  - a. inform respondent of accusation
  - b. initial burden of proof is on moving party
  - c. once non-compliance with order is admitted or established, burden shifts to respondent to show excuse or inability to perform
4. Judgment must<sup>4</sup>
  - a. be in writing
  - b. be signed by judge
  - c. recite facts upon which findings are based
  - d. specifically find the ability of respondent to comply with the order
5. Sanctions
  - a. may be confinement, fine, or both<sup>5</sup>
  - b. sentence of confinement should be indefinite period
  - c. confinement must be to county jail exclusively
  - d. sentence to confinement must contain a meaningful purge provision<sup>2</sup>
  - e. attorneys fees and costs may be assessed

<sup>1</sup>Smith v. Smith, 464 So.2d 1287 (Fla. 5th DCA 1985).

<sup>2</sup>Allman v. Johnson, 488 So.2d 884 (Fla. 5th DCA 1986);  
Parsons v. Wennet, 625 So.2d 945 (Fla. 4th DCA 1993).

<sup>3</sup>Picirro v. Picirro, 734 So.2d 527 (Fla. 4th DCA 1999).

<sup>4</sup>Lazzarra v. Lazzara, 785 So.2d 716 (Fla. 4th DCA 2001).

<sup>5</sup>Boca Raton Towing, Inc. v. Boca Raton Towing & Recover, Inc., 722 So.2d 531 (Fla. 4th DCA 1999);  
Alves v. Barnett Mortgage Co., 688 So.2d 459 (Fla. 4th DCA 1997).