

**Contempt**

Presented By:  
Chancellor Melissa Thomas Willis

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**Authority**

**Statutory**

- TCA 29-9-102

**What is required?**

- All behavior must be WILLFUL
  - Misbehavior of any persons (including officers of the court acting in their official capacity) in the presence of the court or so close thereto that the administration of justice is required

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**TCA § 29-9-102**

The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases:

- (1) The willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice;
- (2) The willful misbehavior of any of the officers of such courts, in their official transactions;
- (3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts;
- (4) Abuse of, or unlawful interference with, the process or proceedings of the court;
- (5) Willfully conversing with jurors in relation to the merits of the cause in the trial of which they are engaged, or otherwise tampering with them; or
- (6) Any other act or omission declared a contempt by law.

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### I didn't mean to...

- What is willful CIVIL contempt -
  - Acts/failures that are voluntary and the product of free will
- What is willful CRIMINAL contempt –
  - Willful denotes a culpable state of mind – an action taken for a bad purpose

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### Civil vs.. Criminal...

It's not just a label

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### CIVIL CONTEMPT

- Individual refuses/fails to comply with a court order and an action is brought to enforce private rights
- BURDEN OF PROOF: Preponderance of the Evidence
- If the moving party establishes contemptuous behavior, the contemtor bears the burden of proving he/she is unable to comply with the order as of the time of the hearing.
- Remedies: Imprisonment or Compensatory Damages

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## CRIMINAL CONTEMPT

- Intended to preserve power and authority of the court
- Burden of Proof: Beyond a reasonable doubt
- Sentencing:
  - *State v. Woods*, 91 S.W.3d 769 (Tenn. Ct. App. 2002)
    - Court must consider severity of violations and determine least severe measure for punishment
  - *Baker v. Baker*, No. M2010-01806-COA-RCV, 2012 WL 764918 (Tenn. Ct. App. Mar. 9, 2012)
    - Court of Appeals may modify sentence if deemed excessive

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## What will you see?

- Attorney alleges civil and criminal contempt
  - Issues –
    - Different burdens of proof
    - Rule 42 b Notice
  - *Cooner v. Cooner*

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## That's not what the order said...

- The violation must be a clear and unambiguous violation of the order
- If the order is ambiguous, it is construed in favor of the person facing the contempt charge

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### Direct v. Indirect

- Direct Contempt
  - acts committed in presence of the court and may be punished summarily
- Responsibility of the Judge
  - Be specific in terms of what you saw or heard that constituted the contempt
  - Written findings and have it made part of the record - TRCP 42(a)
- Indirect Contempt
  - Any contempt not witnessed by the judge
  - Example – violation of court order
  - Responsibility of the Judge
    - Be specific as to your findings
    - Order remains valid unless reversed on appeal even if erroneous (question of law)
      - Void for lack of jurisdiction

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### WHAT WOULD YOU DO?

But it happened right in front of me!

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### Is the standard different?

- A litigant is disrespectful of the Court or criticizes the Judge
  - You have the power: TCA 29-9-101, et seq.
  - Recusal?
    - Judge is disqualified to continue unless defendant consents
    - Recusal is preferred unless it would cause prejudicial or injurious delay
- An attorney or officer of the Court engages in conduct you find disrespectful or critical
  - Revisit TCA § 29-9-102
    - willful misbehavior of any officer in their official transaction

Is a finding of contempt the only option?

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**CHILD SUPPORT**

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- TCA § 29-9-104 – civil contempt “defendant holds the keys to the jail”
- TCA § 36-5-104 – punishment by imprisonment not to exceed 6 months in the county jail –
  - Failure to pay must be willful
  - Inference that the obligor had the ability to pay.

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**Authority to Appoint**

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- Tennessee Supreme Court Rule 13
  - The court SHALL appoint counsel for INDIGENT defendants in contempt proceeding if the defendant is in jeopardy of incarceration
- Tennessee Attorney General Opinion 04-142 (9/1/2004)
  - Specific to child support actions
  - “right to counsel” when there is threat of incarceration within the meaning of Tennessee Supreme Court Rule 13(d)

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**Post Conviction Relief and Criminal Contempt**

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- TCA § 29-9-102 a finding of criminal contempt is not the same as the conviction of a criminal offense.
- Criminal contempt statutes authorize sanctions/punishment but do not provide the authority to “convict” that individual.
  - *Baker v. State*, 417 S.W.3d 428 (Tenn. 2013)

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## Unethical Behavior

### True or False -

Unethical behavior in the presence of the Court is punishable by contempt.

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	<i>Civil Contempt</i>	<i>Criminal Contempt</i>
<b>Burden of Proof</b>	Preponderance.	Beyond a reasonable doubt.
<b>Appellate Review</b>	De Novo with presumption of correctness.	Only overturn when evidence is insufficient to support the finding.
<b>Willful Act</b>	Acts that are intentional or voluntary rather than accidental or inadvertent.	A willful act is one done for bad purpose.
<b>Remedy</b>	Imprisonment ordered is remedial/coercive and done to compel compliance with court's order.	10 days in jail & \$50 fine per violation.
<b>Right to Counsel</b>	Yes, facing jail.	Yes.
<b>Notice</b>	Defendant must be notified and have an opportunity to respond.	Defendant must be given explicit notice that they are charged with criminal contempt and informed of facts giving rise to the charge.

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