

# CONTEMPT

CFSC 2017

Judge Angela Arkin (Retired)  
Meghan Loftus, Assistant County  
Attorney, Arapahoe County CSS

# COLORADO RULE OF CIVIL PROCEDURE

## RULE 107 — DIRECT CONTEMPT

### Direct Contempt

- Occurs in the presence of the court and is so extreme no warning is necessary OR occurs in the presence of the court and has been repeated despite the court's warning to desist.
- Can only be brought by the Judicial Officer witnessing the behavior.
- Can go to immediate sentencing after stating the facts which support the direct contempt, no hearing on the contempt is necessary. Sentencing can be remedial or punitive.
- Examples: Obligor comes to court drunk, Obligor continues yelling/talking over the Judicial Officer after being told to stop.

# INDIRECT CONTEMPT

## **Indirect Contempt** – What CSS's contempts are

- Occurs outside the presence of the court.
- Obligor must be personally served 21 days prior to the advisement hearing.
- Advisement hearing is held for the Judicial Officer to inform Obligor of his/her rights pursuant to C.R.C.P. Rule 107, the party alleging the contempt does not have to be present.
- A contempt hearing generally does not occur at the advisement hearing, but could with agreement from all parties.
- If Obligor does not appear, a bench warrant can issue.

# SANCTIONS/SENTENCING

- Purpose of a contempt is to remedy non-compliance with the court's orders.
- For either direct or indirect contempt, remedial or punitive sanctions may be imposed.
- For indirect contempt, the type of sanction must be pled in the motion.
- “Remedial and punitive sanctions may be combined by the court, provided appropriate procedures are followed relative to each type of sanction and findings are made to support the adjudication of both types of sanctions.”  
C.R.C.P. Rule 107(e).

# SANCTIONS/SENTENCING - FINDINGS THE COURT MUST MAKE

## REMEDIAL

- The court must make findings outlining the sanctions in effect until the contempt is purged and the action(s) that will purge the contempt.
- Must plead sanctions and remedies sought in the motion for contempt.

## PUNITIVE

- The date to pay or the date to appear for remand on a jail sentence can be delayed, but NOT for the purpose to remedy.
- A punitive sanction CANNOT be suspended.
- The Obligor has the right to make a statement in mitigation prior to the sentence being imposed.

# SANCTIONS AND SENTENCING - JAIL

## Remedial

Incarceration until an act within the power of the Obligor to perform is done (i.e. incarceration until the contempt amount is paid so long as the Court finds Obligor has the money to pay)

## Punitive

Incarceration of up to 180 days

# PROCEDURE:

- File Verified Motion for Contempt Citation to Issue, Citation for Contempt, and Order to Issue Citation (the Contempt Documents)
- The Contempt Documents must be personally served on the Obligor at least 21 days prior to the advisement date.
- The Obligor must appear in court for his/her contempt advisement or a bench warrant will issue. The bond can be cash only to be posted only by the Obligor and subject to surrender and forfeiture to be applied toward the child support arrears if tendered (so long as Obligor is found guilty or admits the contempt).

# CONTEMPT ADVISEMENT:

- Obligor appeared in court and is given C.R.C.P. Rule 107 advisement form that sets forth his/her rights.
- If Obligor enters a **not** guilty plea the court will set a contempt trial date. The Obligor may: (1) apply for a court appointed attorney (CAC), OR (2) represent him/herself, OR (3) hire a private attorney.
- If Obligor enters a guilty plea s/he enters into a Deferred Sanctions Agreement (DSA) and the court will set a compliance review hearing about 3 months out to make sure there is compliance with the DSA. (Arapahoe's procedure)



IF THE OBLIGOR ENTERS A **NOT**  
GUILTY PLEA...

CONTEMPT TRIAL

# THE ASSISTANT COUNTY/CITY ATTORNEY (FILING PARTY) HAS THE BURDEN OF PROVING THE CONTEMPT MOTION....

## 1. VALID ORDER:

Typically a copy of the order marked as an exhibit is enough (or the court can take judicial notice of it).

# PROVING CONTEMPT....

2. The Obligor has knowledge of the order

- ❖ Obligor signed order, attended the hearing or filed subsequent pleadings with the court regarding child support
- ❖ Proof of prior payments (FSR or affidavit from Obligee)
- ❖ Conversation with SOR (would need SOR's testimony)
- ❖ Conversations Obligor had with Obligee (would need Obligee's testimony)
- ❖ Copy of the order was mailed to or served on Obligor

# PROVING CONTEMPT

## 3. The Obligor failed to make payments

- ❖ Generally a copy of the FSR payment record is enough (C.R.S. § 26-13-114(10))
- ❖ It helps to have a sworn statement from Obligee or to have Obligee testify that s/he did or did not receive direct payments from Obligor during the contempt time period. Especially if Obligor's defense is that s/he made direct payments during the contempt time period.

# PROVING CONTEMPT - PUNITIVE

4A.

The Obligor HAD THE ABILITY TO COMPLY/PAY AT THAT TIME (in the past) AND DIDN'T (willfully failed/refused to make payments); and Obligor's conduct offensive to the authority and dignity of court.

Burden of proof: beyond a reasonable doubt

- ❖ DOL
- ❖ Employer verifications
- ❖ Prior sworn court testimony
- ❖ Financial Affidavits (covering contempt period)
- ❖ Conversations with SOR or Obligee (refusal to pay or promises to pay or info about Obligor working or having income)
- ❖ Internet searches: social media, Secretary of State - registration of businesses

# PROVING CONTEMPT - REMEDIAL

4B.

Obligor HAS THE PRESENT ABILITY TO COMPLY/PAY

Burden of proof: shifts to the Obligor to prove that s/he doesn't have the present ability to comply. In Re Marriage Lamutt, 881 P.2d 445 (Colo. App. 1994).

- ❖ Remedial contempt can be purged and Contempt Motion must include a statement requesting how Obligor can purge remedial contempt.
- ❖ If finding PRESENT ABILITY: court can impose fine or imprisonment until its performance. Court must specify how contempt can be purged. Marshall v. Marshall, 536 P.2d 845 (1975).

# QUESTIONS?

Excellent article:

Advice to Attorneys on Contempt, by Raymond N. Satter, *The Colorado Lawyer*,  
January 2012 issue