



## **I.C.R. 42. Contempt.**

### **Idaho Criminal Rule 42. Contempt**

This rule governs all contempt proceedings brought in connection with a criminal proceeding. It does not apply to contempt charged under Idaho Code § 18-1801, or any other criminal statute.

**(a) Definitions.** The following definitions apply to this rule.

- (1) *Petitioner.* A petitioner is the person or legal entity initiating a nonsummary contempt proceeding.
- (2) *Respondent.* A respondent is the person or legal entity alleged to have committed an act of contempt.
- (3) *Contemnor.* A contemnor is a person or legal entity adjudged to have committed an act of contempt.
- (4) *Summary Proceeding.* A summary proceeding is one in which the contemnor is not given prior notice of the charge of contempt and an opportunity for a hearing to determine whether the charge is true.
- (5) *Nonsummary Proceeding.* A nonsummary proceeding is one in which the contemnor is given prior notice of the contempt charge and an opportunity for a hearing.
- (6) *Civil Sanction.* A civil sanction is one that is conditional. The contemnor can avoid the sanction entirely or have it cease by doing what the contemnor had previously been ordered by the court to do. A civil sanction can only be imposed if the contempt consists of failing to do what the contemnor had previously been ordered by the court to do.
- (7) *Criminal Sanction.* A criminal sanction is one that is unconditional. The contemnor cannot avoid the sanction entirely or have it cease by doing what the contemnor had been previously ordered by the court to do. A suspended sanction with probationary conditions is a criminal sanction, as is a sanction that includes provisions that are both conditional (civil) and unconditional (criminal). A criminal sanction may be imposed for any contempt.

**(b) Summary Proceedings.** A summary proceeding may be used only if the contempt was committed



in the presence of the court.

(1) *Presence of the Court.* A contempt is committed in the presence of the court if:

(A) the conduct occurs in open court in the immediate presence of the judge;

(B) the judge has personal knowledge, based on personally observing and/or hearing the conduct, of the facts establishing all elements of the contempt; and

(C) the conduct disturbs the court's business.

(2) *Requirements Before a Sanction May Be Imposed.* The court may summarily impose a sanction for contempt that is committed in its presence. Before doing so, the court must:

(A) give the contemnor notice of the alleged contempt, which can be oral; and

(B) give the contemnor a brief opportunity to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) *Order Announcing Sanction.* Promptly after announcing the sanction, the court must enter in the record a written order, signed by the judge, which:

(A) states that the judge saw and/or heard all of the conduct constituting the contempt and that it was committed in the actual presence of the court;

(B) recites each of the specific facts on which the contempt conviction rests;

(C) adjudges that the contemnor is guilty of contempt; and

(D) sets forth the sanction for that contempt.

Before imposing incarceration as a sanction for summary contempt, the court should consider whether a lesser sanction would be effective. If the sanction includes incarceration, the court may immediately remand the contemnor into custody to begin serving the period of incarceration and later file the written order. If the sanction includes a civil sanction, the written order must recite precisely what the contemnor must do in order to avoid the sanction or have it cease.



**(c) Nonsummary Proceedings; Commencement.** Nonsummary contempt proceedings may be commenced only as provided herein.

(1) *Order to Show Cause.* If the alleged contempt consists of failing to appear in court, the contempt proceedings may be commenced by an order to show cause directed to the respondent. The order to show cause must be supported by an affidavit unless it is prepared by or at the direction of the judge and the facts recited in it are based on the judge's personal knowledge and/or on information from the court file contained in documents prepared by court personnel. The order to show cause must:

(A) notify the respondent of the charge of contempt;

(B) recite all facts constituting the alleged contempt, other than that the respondent's failure to appear in court was willful; and

(C) set a time, date, and place for the respondent to appear to answer to the charge of contempt.

The order to show cause may be prepared by the court or by a party at the court's direction.

(2) *Motion and Affidavit.* All contempt proceedings, except those initiated by an order to show cause for the failure to appear in court, must be commenced by a motion and affidavit. The affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

**(d) Nonsummary Proceedings; Service.**

(1) *Respondent a Party to the Pending Action.* If the contempt proceedings are initiated in connection with a pending action to which the respondent is a party, the order to show cause or the motion, affidavit and written notice of the time, date and place to appear may be served on the respondent as provided in Rule 5(b) of the Idaho Rules of Civil Procedure, unless the court orders personal service.

(2) *Respondent Not a Party to the Pending Action.* If the respondent is not a party to the pending action in which the contempt proceedings are brought, service must be as provided in Rule 4 of the Idaho Rules of Civil Procedure.



**(e) Nonsummary Proceedings; Warrant of Attachment and Bail.**

(1) *Warrant of Attachment.* The form of the warrant may be the same as a warrant of arrest. A warrant of attachment must not be issued unless the court determines:

(A) there is probable cause to believe that the respondent committed the contempt, and

(B) there are reasonable grounds to believe that the respondent will disregard a written notice to appear.

(2) *Bail.* When issuing a warrant of attachment, the court must set a reasonable bail, to be endorsed on the warrant at the time it is issued.

(3) *Warrant of attachment when contempt is for nonpayment of an ordered sum.* When issuing a warrant of attachment for contempt regarding the nonpayment of any sum ordered by the court, the court may endorse on the warrant that on payment of a specified sum of money, not exceeding the amount owing, the contempt will be purged, the defendant must be released, and the defendant need not appear in court in the contempt proceeding.

(4) *Execution and Return.* The execution and return of the warrant must be in the same manner as a warrant of arrest.

**(f) Nonsummary Proceedings; Initial Appearance of Respondent.**

(1) *Advice to Respondent.* At the respondent's first appearance in court to answer to the charge of contempt in nonsummary proceedings, the court must inform the respondent:

(A) of the charge(s) of contempt against the respondent;

(B) of the possible sanctions for contempt;

(C) that the respondent is not required to make a statement and that any statement made may be used against the respondent;

(D) of the respondent's right to a trial;



(E) of the respondent's right to confront the witnesses against the respondent, including watching the witnesses testify in court and questioning them; and

(F) of the respondent's right to bail, if the respondent has been arrested under a warrant of attachment.

(2) *Additional Advice in Order to Impose Incarceration as a Sanction.* If the respondent appears without counsel and the court desires to have the option of imposing incarceration as a sanction, the court must inform the respondent that the respondent has the right to be represented by an attorney and that if the respondent desires an attorney and cannot afford one, an attorney will be appointed at public expense.

**(g) Nonsummary Proceedings; Plea.** The respondent must admit or deny the charge of contempt after being informed of the applicable rights.

(1) *Admission of Contempt.* Before an admission of the charge can be accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:

(A) the respondent was informed of the nature of the charge(s) of contempt;

(B) the respondent was informed of the maximum sanctions, including the possibility, if applicable, that sanctions for multiple contempts could be consecutive;

(C) the voluntariness of the admission; and

(D) the respondent was advised that by admitting the contempt, the respondent would be waiving the applicable rights specified in subsection (f) above.

(2) *Denial of Contempt.* If the respondent denies the charge of contempt, the matter must be set for a trial. The respondent must be given at least 14 days to prepare for trial, unless otherwise ordered by the court.

**(h) Nonsummary Proceedings; Defenses to the Contempt.** Defenses to the charge of contempt must be raised as follows:

(1) *Written Response.* In order to assert an affirmative defense to the contempt, the respondent must file and serve a written response within 7 days after entering a plea denying the contempt charged,



unless otherwise ordered by the court. Defenses include:

(A) the respondent was unable to comply with the court order at the time of the alleged violation (only a defense to a criminal sanction),

(B) the respondent lacks the present ability to comply with the court order (only a defense to a civil sanction),

(C) the respondent was unaware of the order allegedly violated,

(D) the court lacks personal jurisdiction over the respondent, or

(E) the court lacked jurisdiction to issue the order allegedly violated.

(2) *Burden of Proof Regarding Affirmative Defenses.* In order to prevent a civil sanction from being imposed, the respondent must prove the affirmative defense by a preponderance of the evidence. In order to prevent a criminal sanction from being imposed, there need only be a reasonable doubt as to whether the respondent is guilty of the contempt.

**(i) Nonsummary Proceedings; Trial.**

(1) *Court Trial or Jury Trial.* The trial will be before the court without a jury, provided that if the respondent is charged with multiple counts tried in one proceeding, the court cannot impose consecutive criminal sanctions totaling more than 6 months in jail unless the respondent was given, or voluntarily waived, the right to a jury trial.

(2) *Trial Rights Required to Impose a Criminal Sanction.* The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights:

(A) a public trial,

(B) compulsory process,

(C) the presumption of innocence,

(D) the privilege against self-incrimination,



(E) the right to call and cross-examine witnesses,

(F) the right to testify in his or her own behalf,

(G) the right to exclude evidence that was obtained in violation of the respondent's Fourth Amendment rights,

(H) the right to counsel, if applicable, and

(I) the right to a unanimous verdict if there was a jury trial.

**(j) Nonsummary Proceedings; Burden of Proof.**

(1) *Civil Sanction.* In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all of the elements of contempt have been proved and that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(2) *Criminal Sanction.* In order to impose a criminal sanction, the trier of fact must find that all of the elements of contempt have been proved beyond a reasonable doubt.

**(k) Nonsummary Proceedings; Findings of Fact.** If the contempt allegation is tried to the court without a jury, the court must make specific findings of fact. In order to impose either a civil sanction or a conditional (civil) provision as part of a criminal sanction, the findings must include the facts on which the court bases its determination that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

**(l) Nonsummary Proceedings; Imposition of Sanctions.** If the respondent admits the contempt or is found in contempt following a trial, the court may impose sanctions as permitted by law, under the following conditions:

(1) *Right to Counsel.* The court cannot impose incarceration as a sanction unless the contemnor was represented by counsel or had knowingly and voluntarily waived the right to counsel.

(2) *Right to Call Witnesses and Speak Regarding the Sanction.* The court cannot impose a criminal sanction without first giving the contemnor the right to call witnesses in mitigation of the sanction and the right to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.



(3) *Written Order.* The court must issue a written order reciting the conduct on which the contempt conviction rests; adjudging that the contemnor is guilty of contempt; and setting forth the sanction for that contempt. If the sanction is civil or includes a conditional provision, the order must specify precisely what the contemnor must do in order to avoid that sanction or have it cease.

**(m) Nonsummary Proceedings; Attorney Fees.** In any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code § 7-610, regardless of whether the court imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding costs and fees is as provided in Rule 54(e) of the Idaho Rules of Civil Procedure, except that the determination of the prevailing party is based on who prevailed in the contempt proceeding.

**(n) Other Rules of Criminal Procedure.** Rules regarding discovery and other rules of criminal procedure, to the extent that they are not in conflict with this rule, apply to nonsummary contempt proceedings.

([Adopted February 22, 2017, effective July 1, 2017](#) [1].)

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### Links

[1] <https://isc.idaho.gov/./rules/ICR/ICR-38-44.1-Adoption-Newly-Formatted-ICR-022217.pdf>