

# CONTEMPT REFRESHER

Judge Ross Ewing  
Fayette Family Court

Now with bonus judge Traci Brislin!



Judge Ewing going to his  
happy place while reading  
your “Motion for Contempt”





# ON THE MENU TODAY...

01

**Definition of Contempt**

No spoilers

02

**Types of Contempt**

Direct or Indirect, Civil or Criminal

03

**Applicable Standards**

Burdens of proof, process requirements

04

**Constitutional Issues**

Still a thing!

# What is contempt?

“Contempt is the willful disobedience toward, or open disrespect for, the rules or orders of a court.” *Commonwealth v. Burge*, 947 S.W.2d 805 (Ky. 1996).

“Contempt is for the court to decide; it is not a weapon to be used by the parties.” *Buell v. Buell*, 2023-CA-1182-MR (Ky.App. May 31, 2024).



**IS THIS  
CONTEMPT?**



Judge Ewing minding his own  
business because your email  
is neither a rule nor an order  
of the court.





Please stop.

...but what if the email is from  
the Court??

# Are all court orders court orders?

“Contempt is the willful disobedience toward, or open disrespect for, the rules or orders of a court.” *Commonwealth v. Burge*, 947 S.W.2d 805 (Ky. 1996).

# Are all court orders court orders?

In juvenile status offense court, indirect contempt powers may only be used to enforce “valid court orders” (statutory term of art) and not pre-adjudication order. *C.S. v. Commonwealth*, 559 S.W.3d 857 (Ky.App. 2018). Turns on issue of statutory interpretation, but statute also says it doesn’t diminish court’s inherent authority?

If you are in juvenile court, go down this rabbit hole!

# TWO AXES OF CONTEMPT

Civil or Criminal

Direct or Indirect



# Civil or Criminal

## Civil

“Civil contempt consists of the failure of one to do something under order of court, generally for the benefit of a party litigant. Examples are the willful failure to pay child support as ordered, or to testify as ordered. While one may be sentenced to jail for civil contempt, it is said that the contemptuous one carries the keys to the jail in his pocket, because he is entitled to immediate release upon his obedience to the court's order.” *Burge* at 808.

## Criminal

“Criminal contempt is conduct which amounts to an obstruction of justice, and which tends to bring the court into disrepute. It is not the fact of punishment but rather its character and purpose, that often serve to distinguish civil from criminal contempt. If the court's purpose is to punish, the sanction is criminal contempt.” *Id.*



# Direct or Indirect

## Direct

“A direct contempt is committed in the presence of the court and is an affront to the dignity of the court. It may be punished summarily by the court, and requires no fact-finding function, as all the elements of the offense are matters within the personal knowledge of the court.” *Burge* at 808.

## Indirect

“Indirect criminal contempt is committed outside the presence of the court and requires a hearing and the presentation of evidence to establish a violation of the court's order. It may be punished only in proceedings that satisfy due process.” *Id.*





# Thus, 4 corners of contempt!

## Direct Criminal

Example:  
Party acts out in court

## Indirect Criminal

Example:  
Party violates no contact order

## Direct Civil

Example:  
Witness refuses to answer

## Indirect Civil

Example:  
Party fails to pay  
child support as ordered



# Thus, 4 corners of contempt!

## Direct Criminal

Standard of Proof = Beyond a Reasonable Doubt

Goal = To Punish Willful Disobedience or Open disrespect for Court or order

Where/When = Within the Court's presence (sight or sound)

Procedure = May summarily adjudicate and punish so long as the sentence is less than six months.

Counsel = not required

Example = party acts out during the proceeding

## Indirect Criminal

Standard of Proof = Beyond a Reasonable Doubt

Goal = To Punish will disobedience or open disrespect for court's orders

Where/When = Outside of Court's presence

Procedure = Due Process Required (Notice, Hearing, Separate Sentencing). Cannot sentence to more than 6 months without a jury.

Counsel = required or a waiver required

Example = Party violates a no contact order

## Direct Civil

Standard of Proof = Clear and convincing

Goal = To compel compliance with a Court Order or requirement generally for the benefit of a litigant

Where/When = in the presence of the Court

Procedure = the act must be doable (not impossible) but can be summarily adjudicated. A purge is required. Purge must be something the litigant can do. No jury required so long as the litigant carries "the keys to their prison in their own pockets."

Counsel = not required.

Example = A witness refuses to answer a question

## Indirect Civil

Standard of Proof = Clear and convincing Burden is on the person seeking enforcement.

Inability to comply must be proven by the person asserting the defense by clear and convincing standard after the petitioner has met the burden of proving contempt.

Goal = to compel compliance with an Order generally for the benefit of a litigant


Where/When = outside of Court's presence

Procedure = due process required (notice, opportunity to be heard, separate sentencing) purge is required.

Counsel = required or a waiver required

Example = Failure to pay restitution as ordered





Wow. I wonder who is  
responsible for this work  
of staggering genius?

A green iguana is the central figure, wearing dark sunglasses and a light-colored bikini bottom. It is reclining on a lounge chair with orange and white stripes. To its right is a glass of iced tea with a lemon slice and a straw. The background is a bright blue swimming pool. The text "Thank you, Judge Fryman!" is overlaid on the right side of the image.

Thank you,  
Judge Fryman!

# PRO TIP: WORK BACKWARDS!

Think about what you want the court to do and why.  
This will lead you to the right square.

Due Process requirements vary but can be found in  
each square – follow them and see that the court does  
the same!

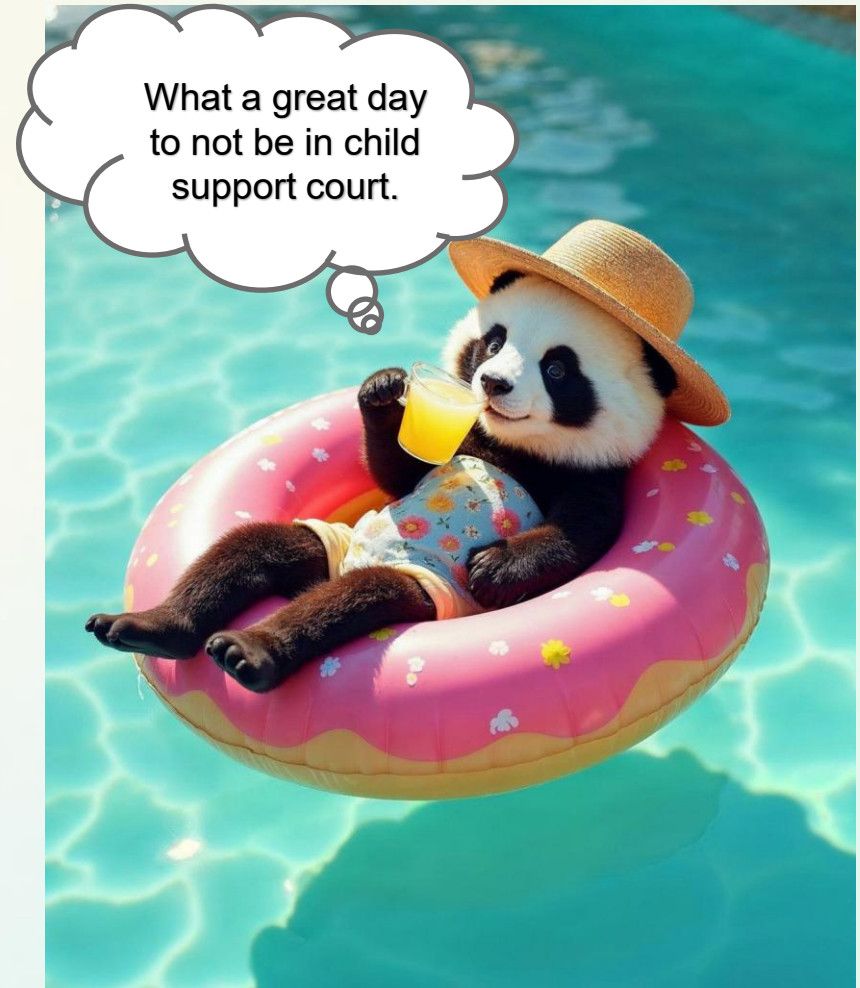


# SPECIAL RULES FOR INDIRECT CONTEMPT: especially child support

Burden shifting paradigm. *Ivy.*

Purge must be supported by record. *Nienaber.*

Each failure to pay is a sperate contempt and must be adjudicated and addressed on its own merits(?)  
*Crandell.*



# Other Constitutional Limits?

“The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such a manner as shall be prescribed by law.” Ky. Const. § 18.

“This provision restricts imprisonment for a debt owed in order to prevent the resurgence of debtor prisons. That is exactly what the circuit court did in this case, as there was no legal basis for its actions perpetrated under the guise of contempt.” *Sidebottom v. Watershed Equine, LLC*, 564 S.W.3d 331, 334 (Ky.App. 2018).

“There is simply no legal authority that would allow the circuit court to impose an arbitrary time limit to pay a judgment or face immediate imprisonment. In fact, the Kentucky Supreme Court specifically distinguished legal actions and the use of contempt to collection money judgments in *Rudd v. Rudd* [in 1919].” *Id.*

# Other Constitutional Limits?

*Sidebottom* only cited twice since, neither for the proposition of constitutional limitations.

Facts are unusual enough to be distinguishable from many common indirect civil contempt scenarios.

But 2/3 of that panel and the trial court judge are all now justice of the Kentucky Supreme Court!

Ky. Const. § 18 has not been cited since *Sidebottom*; was not addressed in *Burge*. Rarely addressed at all.

Remember, even if constitutionally permitted, the sanction is still up to the discretion of the court. Contempt belongs to the court and not the parties.

Judge Ewing trying to vacation....

but still wondering whether incarceration  
for indirect contempt for failure to pay is  
constitutionally viable. ☹️



# QUESTIONS?

Judge Ross Ewing  
Fayette Family Court

