

## ***Checklist for Conducting Indirect Civil Contempt Proceedings<sup>1</sup>***

This checklist is appropriate for use in an indirect civil contempt proceeding under [MCL 600.1701](#) *et seq.*, and [MCR 3.606](#). Different rules may apply in other cases, such as a contempt proceeding for nonsupport.

In most cases, the judge who presided over the case that gave rise to the contempt charge may conduct the contempt proceedings. See generally [MCL 600.1711](#); *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 212 (1966). Some exceptions apply. See e.g., [MCL 600.1731](#); [MCR 2.003\(4\)](#); *In re Contempt of Warriner*, 113 Mich App 549, 554-555 (1982). There is no right to jury trial. *Cross*, 377 Mich at 211.

1. Determine that the affidavit accompanying the ex parte motion:

states with specificity factual allegations that will support a finding of contempt.

contains the required verification by a person with personal knowledge of the facts alleged.

**Note:** In an appropriate case, the court may take judicial notice of its own records when initiating proceedings. *In re Albert*, 383 Mich 722, 724 (1970).

2. Before issuing a bench warrant or an order to show cause, determine that the alleged conduct constitutes civil contempt.

3. “The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.” [MCR 3.606\(C\)\(1\)](#).

Ensure the bench warrant discharges the defendant from arrest on execution and delivery to the arresting officer a bond (a) in the penalty endorsed on the bench warrant to the officer and the officer’s successors; (b) with two sufficient sureties; and (c) with a

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<sup>1</sup> See the Michigan Judicial Institute’s [Contempt of Court Benchbook](#) for more information on contempt proceedings.

condition that the defendant appear on the return day and await the order and judgment of the court. [MCR 3.606\(C\)\(2\)](#).

Ensure the bond, if one was taken, has been returned by the executing officer and filed with the bench warrant. [MCR 3.606\(C\)\(3\)](#).

4. Conduct a pretrial hearing.

Determine that the file contains a motion, affidavit, proof of service showing personal service, and a bench warrant or an order to show cause.

Inform the alleged contemnor of the charges.

Inform the alleged contemnor that the charge must be proven by a preponderance of the evidence, or that evidence of the alleged contempt must be “clear and unequivocal.” Compare *In re Contempt of Calcutt*, 184 Mich App 749, 757 (1990) with *Jaikins v Jaikins*, 12 Mich App 115, 121 (1968).

Inform the alleged contemnor of the possible sanctions. See [MCL 600.1715](#).

Inform the alleged contemnor that if he or she is indigent, the court may not jail the alleged contemnor unless counsel has been appointed or waived. Appoint counsel *if required*. See *Mead v Batchlor*, 453 Mich 480, 505-506 (1990); *Turner v Rogers*, 564 US \_\_\_, \_\_\_ (2011).

Ask the alleged contemnor how he or she wishes to plead.

Set date for trial if necessary. The alleged contemnor must be given a reasonable opportunity to prepare a defense or explanation. See *In re Contempt of Robertson*, 209 Mich App 433, 438 (1995).

Consider setting bond if the alleged contemnor was arrested on a bench warrant. See [MCL 600.1735](#).

5. Conduct a nonjury civil trial at which the following procedures apply:

The alleged contemnor is “given a reasonable opportunity to meet the charges by defense of explanation.” *In re Contempt of Robertson*, 209 Mich App at 438.

The Michigan Rules of Evidence apply. See [MRE 1101\(a\)](#).

The contempt is proven by a preponderance of the evidence, or by “clear and unequivocal” evidence. Compare *In re Contempt of Calcutt*, 184 Mich App 749, 757 (1990) with *Jaikins v Jaikins*, 12 Mich App 115, 121 (1968).

6. State your factual findings and conclusions of law on the record or in a separate written opinion. Include the following:

facts that constitute contempt.

the standard of proof applied.

a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.

the sanctions imposed.

the reasons for imposing the sanctions. See [MCR 2.517](#); *In re Contempt of Calcutt*, 184 Mich App at 758.

7. **Contempt proceedings for nonpayment.** Comply with the provisions of [MCR 6.425\(E\)\(3\)](#) before sentencing a person to a term of incarceration for nonpayment. [MCR 3.606\(F\)](#).

8. If the alleged contemnor is found guilty, impose sanctions. See [MCL 600.1715](#); [MCL 600.1721](#).

conditional jail sentence.

fine of not more than \$7,500.

costs and expenses of the proceedings.

damages to injured party, including attorney fees.

9. Sign and enter an order adjudging the contemnor guilty of civil contempt. The order of commitment must specify that the jail term must end when the person performs the required act or duty, or no longer has the power to perform the act or duty, and pays the fine, costs, and expenses of the proceeding. See [MCL 600.1715\(2\)](#).

