

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

This checklist is appropriate for use in an indirect criminal contempt proceeding under [MCL 600.1701](#) *et seq.*, and [MCR 3.606](#). Different rules may apply in other cases, such as a contempt proceeding on an alleged violation of a personal protection order. See [MCL 600.2950](#); [MCL 600.2950a](#); [MCL 764.15b\(6\)](#); [MCR 3.708](#).

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). Unless the possible penalty exceeds six months' incarceration, there is no right to jury trial. See *People v Goodman*, 17 Mich App 175, 178-179 (1969).

1. If the action has not been initiated by a prosecutor, private party, or Friend of the Court, appoint a prosecutor. If the prosecutor declines to handle the case, a disinterested private attorney may be appointed as special prosecutor. See *In re Contempt of Henry*, 282 Mich App 656, 667 (2009); *DeGeorge v Warheit*, 276 Mich App 587, 600 (2007); *In re Contempt of Barnett*, 233 Mich App 188, 192 (1998).

2. 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. See *In re Albert*, 383 Mich 722, 724 (1970).

3. Before issuing a bench warrant or an order to show cause, determine that the alleged conduct constitutes criminal contempt. The bench warrant or order to show cause must inform the defendant that he or she is charged

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

with criminal contempt. See [MCR 3.606\(A\)](#); *Ann Arbor v Danish News Co*, 139 Mich App 218, 232 (1984).

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 defendant of the charges.

Inform the defendant that the alleged contempt must be proven “beyond a reasonable doubt.” See *DeGeorge*, 276 Mich App at 592.

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

Inform defendant that if he or she is indigent, the court may not jail respondent 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 defendant how he or she wishes to plead.

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

Set bond if defendant was arrested on a bench warrant. See [MCR 3.606\(C\)](#).

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

Defendant is given an opportunity to examine opposing witnesses and produce witnesses. See *DeGeorge*, 276 Mich App at 592.

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

The privilege against self-incrimination applies. See *Gompers v Bucks Stove & Range Co*, 221 US 418, 444 (1911); *Jaikins v Jaikins*, 12 Mich App 115, 121 (1968).

Defendant has a presumption of innocence. *DeGeorge*, 276 Mich App at 592.

The prosecutor or special prosecutor proves “beyond a reasonable doubt” that defendant engaged in a willful disregard or disobedience of the authority or orders of the court. See *DeGeorge*, 276 Mich App at 592.

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.
  - a finding that defendant is guilty of criminal contempt “beyond a reasonable doubt.”
  - 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\(D\)\(3\)](#) before sentencing a person to a term of incarceration for nonpayment. [MCR 3.606\(F\)](#).
- 8.** If defendant is found guilty, impose sanctions. See [MCL 600.1715](#); [MCL 600.1721](#).
- fixed jail sentence of up to 93 days.
  - fine of not more than \$7,500.
  - probation.
  - damages to injured party, including attorney fees.
- 9.** Sign and enter an order adjudging the contemnor guilty of criminal contempt.

