

WHAT IS AN INDIRECT CRIMINAL CONTEMPT?

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According to Black's Law Dictionary, "contempt" is defined as "A willful disregard or disobedience of a public authority." The definition of "contempt of court" is:

Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or dignity. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful order or fail to comply with a undertaking which he has given.

Contempt of court can be characterized as civil or criminal. Criminal contempts are further divided into direct and indirect. Bruzzi v. Bruzzi, 322 Pa. Super. 346, 352; 481 A.2d 648, 651 (1984). The court must also look at the purpose of the contempt proceeding. If there is a refusal to do or a refrain from doing an act ordered and the benefit is primarily to a private party, the proceedings for contempt are for enforcement and therefore, the contempt is civil in nature. On the other hand, if the purpose of the proceeding is to vindicate the authority or dignity of the administration of justice, the proceedings for contempt are to punish and therefore, the proceeding for contempt is criminal. Id. at 352, 481 A.2d at 651.

The next determination of a criminal contempt is whether it is direct or indirect. An act of misconduct by a person that occurs within the presence of the court or so near that it interferes with the business of the court is a direct criminal contempt. Id. at 354, 481 A.2d at 652. An act of misconduct by a person that occurs outside of the presence of the court or has been specified by statute is an indirect criminal contempt.

Why is the determination of the character of contempt proceeding important? The character of the contempt proceeding determines what safeguards are in place for the defendant of the contempt proceeding. "As with those accused of any crime, "one charged with indirect criminal contempt is to be provided the safeguards which statute and criminal procedures afford." Commonwealth v. Padilla, 2005 PA Super332, 5, 885 A.2d 994 , 996(Pa Super.2005)

The rights of a person charged with certain indirect criminal contempts can be found in the PA statute 42 Pa. C.S. §4136 and is as follows:

- (a) GENERAL RULE.—A person charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court shall enjoy:
 - (1) The rights to bail that are accorded to persons accused of crime.

- (2) The right to be notified of the accusation and a reasonable time to make a defense, if the alleged contempt is not committed in the immediate view or presence of the court.
 - (3) (i) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the contempt is alleged to have been committed.
 - (ii) The requirement of subparagraph (i) shall not be construed to apply to contempts:
 - (A) Committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.
 - (B) Subject to 23 Pa.C.S. §6114 (relating to contempt for violation of order or agreement).
 - (C) Subject to 75 Pa.C.S. § 4108 (c) (relating to nonjury criminal contempt proceedings).

Under the Protection from Abuse Act (PFA), 23 Pa.C.S. §6101 et. al., a person violating a provision of §6108(a)(1), (2), (3), (4), (6), (7), (9) can be charged with an indirect criminal contempt under §6114. A police officer or sheriff may file charges of indirect criminal contempt alleging a violation of a PFA order or a plaintiff may file a private criminal complaint charging an indirect criminal contempt alleging a violation of a PFA order. If the defendant is found guilty of violation of a protection order, the sentence for contempt under §6114 may include a fine and/or imprisonment. Under 23 Pa. C.S. §6114 (b) (3), the defendant shall not have the right to a jury trial; however, the defendant is entitled to counsel.

Why should a person charged with indirect criminal contempt for violation of a protective order retain counsel? Counsel for the defendant will defend your rights you are entitled by Pennsylvania Constitution and Statutes.

In addition to the rights already discussed therein, a defendant charged with indirect criminal contempt must also be found guilty of the violation beyond a reasonable doubt. In order to be found guilty of the violation, the Commonwealth or plaintiff must “prove: 1)...Order was sufficiently definite, clear, and specific...”, 2) the contemnor had notice of the Order, 3) the act constituting the violation must have been volitional; and 4) the contemnor must have acted with wrongful intent.” Commonwealth v. Ashton, 2003 PA Super194, 824 A.2d 1198, 1202 (Pa.Super 2003). An attorney knowledgeable in the area of family law, such as attorneys with Hoffmeyer & Semmelman, LLP will meet with you to understand your specific needs and will work diligently for your best results.