

Contempt of Court in Family Law Cases - The Basics

Introduction

This publication gives general information about Washington law concerning contempt in family law cases. It covers only the type of contempt most commonly used in family law cases, here called “coercive civil contempt”.¹ The main goal of “coercive civil contempt” is to have a person who is violating a court order obey that order in the future.²

- If you are thinking of filing a Motion for Contempt because another party is not following the court order in your case, read this publication and our packet called *Filing a Contempt Motion in a Dissolution Action* or *Filing a Contempt Motion in a Parentage Action*.
- If you have been served with a Petition or Motion for Contempt and an Order to Show Cause, read this publication and our packet *Responding to a Motion for Contempt in a Family Law Action*.

This publication is not a substitute for individual legal advice. It does not tell you how the law will be applied in your case.

What Is Contempt?

Contempt is the intentional disobedience of a court order.³

What Behavior Can Lead To Contempt?

A violation of the residential time in a parenting plan or residential schedule might be contempt. For example, contempt may be found

- where one parent refuses to allow visitation stated in the parenting plan, or
- where one parent will not return the child to the other at the end of visitation, or
- where one parent refuses to use his/her residential time,⁴ or
- where one parent fails to make reasonable efforts to require a child to visit the other parent at the times stated in the parenting plan.⁵

¹ In many places in this publication you will find footnotes like this. They help identify the sources of law used. You may use them to learn more about the law yourself by going to the law library. Some may also be helpful in identifying the law to the judge when you are in court. The general contempt law is at RCW 7.21. Additional parts of the family law statutes identify particular procedures in particular case. [I think this may need to be clarified since the family law statutes deal not only with “procedures” but have substantive provisions. Perhaps it should read “The family law statutes are located in RCW Title 26 and are divided into chapters that deal with specific areas of family law. For example, laws on divorce (dissolution) are located at RCW 26.09 ...] For example for violations of parenting plans, see RCW 26.09.160. For child support and spousal maintenance orders, see RCW 26.18.050. This publication does not cover other kinds of contempt, such as contempt committed in the courtroom and a contempt request filed by the government with the sole purpose of punishing a person for violating a court order.

² *In re Application for Writ of Habeas Corpus of Parent*, 112 Wash. 620 (1920).

³ RCW 7.21.030(b).

⁴ RCW 26.09.184 (5) and (6), *In re James*, 79 Wn. App. 436 (1995).

⁵ *Rideout v. Rideout*, 150 Wn. 2d 337 (2003)

Contempt can happen by action (such as violating a restraining order) or by failure to act (such as not paying ordered child support or spousal maintenance).

Contempt can be used to force one party to deliver property to the other when an earlier court order required the delivery.⁶ It can be used during a divorce, parentage, or third party custody action to enforce final orders from a court or an administrative agency. It can be used to enforce temporary orders and restraining orders.

Contempt is not available for all violations. For instance, contempt cannot be used to obtain property settlement payments, unless they are related to child support or maintenance.⁷ Contempt cannot be used once a court order has ended or been modified.⁸

Contempt is a severe remedy and should not be used routinely. Contempt is also not always the best or most effective remedy, and sometimes it can just make conflict worse. Courts often hesitate to find a person in contempt unless the violation is serious.

What Can The Court Do If It Finds Contempt?

Because the goal in coercive civil contempt is to have the party follow the court order in the future, the court can order many different remedies to accomplish this goal.⁹ For example, depending upon the violation, the court can order the other party to get counseling or to complete a parenting class, or can order a person to look for work a certain number of hours a week. The court can also order future hearings to see whether the party is now obeying the order. For violation of a parenting plan, the court can order that one parent receive additional make up residential time with the children, award attorneys fees, order a civil penalty, or order greater penalties for the second contempt violation in three years.¹⁰ If the judge believes the person is unlikely to be able to obey the order in the future, s/he may tell the person to file a motion to modify (change) the court order so that they do not continue to violate it.

The court can also enter a judgment for money due under the order (for example, back child support).

The court can order jail time but only as a last resort and only to require someone to obey the court order, not to punish them.¹¹

If the person is found in contempt, the contempt order must show what action the person can take to purge (cure) the contempt.¹²

What Must Be Proved To Show That Contempt Has Occurred?

Before finding a person in contempt, the court will need to find:

- There is a valid court order in effect,¹³

⁶ *State ex rel. Sargent v. Superior Court for King County*, 71 Wash. 495 (1913).

⁷ *In re Marriage of Young*, 26 Wn. App. 843, 615 P. 2d 508 (1980). But it can be used to order that property awarded actually be delivered. *State ex rel. Sargent v. Superior Court*, 71 Wash. 495 (1913)

⁸ Except that unpaid child support can, in some circumstances, be collected through contempt even after the child becomes an adult, RCW 26.18.050(5).

⁹ *In re James*, 79 Wn. App. 436 (1995)

¹⁰ RCW 26.09.160 (2)–(6)

¹¹ Jail time as punishment is a different kind of contempt.

¹² *In re Detention of Rebecca K* 101 Wn. App. 309 (2000), *King v. DSHS*, 110 Wash 2nd. 793 (1988)

- The other person knows of the court order,
- The facts show a plain violation of the order,¹⁴
- Notice of the contempt hearing and a chance to be heard have been given, and
- Contempt is an appropriate remedy for the violation.

If the contempt is for a parenting plan violation,

- there must be evidence that the violation was in bad faith or,
- there must be evidence that the person violating the plan engaged in intentional misconduct, or
- the court must find that prior sanctions have not led to compliance with the order.¹⁵

Refusal to perform a duty in the parenting plan is assumed to be in bad faith; a person is presumed to have the ability to obey the parenting plan. If the party does not obey it, s/he must show inability or a reasonable excuse.¹⁶

How Do I Decide If Contempt Is Appropriate In My Case?

If you are interested in filing for contempt, here are some of the questions to consider before you begin filling out the contempt forms:

- Is the order still in effect? For example, temporary orders and *some* restraining orders end at a specific date or when a final order is entered. Contempt is not available to enforce an order that has ended (except that child support orders can be enforced through contempt even after the child becomes an adult).
- Does the other person know of the court order? Has that person been served with a copy of it? If not, was that person present in court when the order was signed?¹⁷ If not, notice may not be sufficient. Without proper notice of an order, the court will not consider a contempt motion for violating it. (For restraining orders, having a law enforcement officer read a certified copy of the order to a person is sufficient to give notice of the order to that person).¹⁸
- Have you met any responsibilities you have under the order to trigger the other person's duty in the same area? For example, if you are allowed visitation only upon completion of a drug treatment program, and now you have asked for visitation and been refused, have you completed the program ordered and have you shown the other party you completed it?

¹³ Child support orders can be enforced by contempt even after the child is an adult, unless back due support has been paid in full. RCW 26.18.050(5).

¹⁴ *In re Marriage of Humphreys*, 79 Wn. App. 596 (1995).

¹⁵ RCW 26.09.160(2)(b).

¹⁶ *Rideout v. Rideout*, 150 Wn. 2d.337 (2003).

¹⁷ *In re Koome*, 82 Wn. 2d 816, 821 (1973)

¹⁸ RCW 26.09.300(2)

- Does the order clearly describe the other person’s responsibilities?¹⁹ If not, then contempt is not a realistic remedy until the court order is clarified or modified and until you can prove your case.
- Do you expect the other person to deny a violation? If the answer is “yes,” do you have enough proof of the violation? If you cannot show by your own or your witnesses’ first-hand knowledge that the other party violated the order, then the court will not be able to find the other person in contempt.
- Does the other person have a reasonable excuse for the violation? In most contempt cases concerning parenting plans or child support, once you have shown the order is valid and the other person knows of the order but has violated it, the court will then expect the other person to show a reasonable excuse (for parenting plan violations) or show inability to obey despite reasonable efforts (child support and parenting plan cases). If you expect the other party will succeed in showing this, a contempt motion may just be a waste of time.
- Is contempt the most suitable remedy? When someone fails to follow a court order, often there is more than one kind of legal action you can take. To know which action is the most suitable in your case, it is best to obtain individual legal advice.

What Alternatives Do I Have To Contempt?

Other *possible* legal remedies that might be used to enforce an order include:

Demand letter: Send the other party a letter explaining the violations and asking them to correct them. (Keep a copy of the letter if you send one and send it by regular and certified mail). A letter can sometimes lead to an agreed solution, and it can show that you are being reasonable. It can also help show that the other party knows of the court’s order and that you are unhappy with his/her behavior. The letter should be specific, polite, and business-like in tone.

Motion to Clarify: This can be used when a court order is vague or unclear; for example, when the order just says “reasonable visitation” and the parties do not agree on what is reasonable.

Motion/Petition to Modify: This can be used to ask the court to change rather than to enforce a court order. (If this is your situation, consult our website for a list of packets you might use).

Enforcement and collection: For many kinds of money, support, and property orders, collection actions such as wage assignment, garnishment, or foreclosure are more effective than contempt. In the case of child support (and spousal maintenance if there is also a child support order), collection services are available for free from the Child Support Division of DSHS.

¹⁹ The facts must show a plain violation of the order. *Johnston v. Beneficial Management*, 96 Wn. 2d 708, 713-714 (1982)

Dispute resolution: Many parenting plans contain a procedure other than court to be tried first if the parties disagree about the parenting plan. This procedure may be desirable or may be required in your case. Read your court order to see.

Criminal prosecution: Available in very serious cases.

Even where contempt is potentially available as a remedy, people may hesitate to use it because it is expensive, because the court may be reluctant to act, because it is hard to prove, or for other reasons.

What Are The Risks Of Filing For Contempt?

Even if contempt is available as a remedy, it may be too risky in a particular case. Think about these possible problems before you file your motion.

1. Defending a modification motion. Sometimes filing a Motion for Contempt will lead the other party to file a motion to change the court order; for example, the other party may try to reduce child support or ask for different residential time. If you are not prepared to spend time to defend against this type of motion, you should hesitate in filing for contempt.
2. Defending a contempt motion. Have you obeyed the Court's orders yourself? If you are not following the court order yourself, the other party may respond to your motion for contempt by filing a motion asking the court to hold you in contempt or may argue that your violation of the order prevents them from obeying it.
3. "Crying wolf." Is the violation an important one? Courts hesitate to hold a person in contempt for violation of a small item even if the violation is repeated.
4. Emotional cost. Going to court often creates hard feelings and may upset the children. Court action can also increase the risk of destructive conduct by the other party. Are these dangers in your case, and if so, do you want to proceed?
5. Risk of fees. In certain cases the court can or must charge the losing party with fees. For instance, in contempt for parenting plan violations, if the court finds you had no reasonable basis for the motion, it will order you to pay the other party's attorneys fees.²⁰

What Are The Defenses For Contempt?

The following are some of the possible defenses to a charge of contempt:

1. The Court order is invalid because the court lacked jurisdiction. "Lacked jurisdiction" means that the court had no authority to act (subject matter jurisdiction), or the party was not served with legal notice in the original case (personal jurisdiction). **The idea of jurisdiction is very different from the idea of a mistaken court order. A mistaken order is not a defense.**²¹
2. No violation of the order. For instance, if the motion asks for back due support, proof of payment is a defense.

²⁰ RCW 26.09.160(7).

²¹ *In re Marriage of Parker*, 78 Wn. App (1995).

3. Inability to obey the order through no fault of your own.²²
 - If the charge is not paying child support, and the obligated parent claims inability to pay, s/he must show diligence in seeking work, saving assets, or otherwise becoming able to comply.²³
 - If the charge is a parenting plan violation, a person is presumed to have the ability to follow the parenting plan and must prove lack of ability or reasonable excuse.²⁴
4. No knowledge of the order.²⁵
5. Improper service of the Order to Show Cause scheduling the contempt hearing, or not enough time to respond (this is only a temporary defense until proper notice is given).
6. The order is unclear or can seem to have more than one possible meaning. (But a person may then at least have some duty to try to obey the order as s/he interprets it and/or to seek clarification, not just to ignore the order).
7. The Court order has ended (for example, a temporary order that has expired or a parenting plan that has been modified).
8. A financial order is not related to support.²⁶
9. Occasionally, agreement not to enforce the order by the other person or delay in enforcing can be a defense; however, because the court has made the order, not the other party, it is very risky to agree to ignore an order or to rely on the other party saying they will not enforce it.

The following items are NOT likely to succeed as defenses:

1. Following another person's advice (including a lawyer's advice).
2. Disagreement with the order.
3. Mistake by the judge signing the order²⁷.
4. The other parent violating their responsibilities under the order (for example, if one parent fails to allow visitation, the other is not excused from paying child support).²⁸

What If The Other Party Is In The Military?

If the other party in your case is on active duty in the military, s/he may be able to have the court hearings stayed (stopped) while the active duty continues. If the case concerns child support or maintenance, however, the Division of Child Support may be able to

²² State v. Olsen, 54 Wn. 2d 272, 340 P. 2d 171 (1959), State v. Mecca Twin Theater, 82 Wn. 2d 87, 507 P. 2d 1165 (1973)

²³ RCW 26.18.050 (4).

²⁴ *Rideout v. Rideout*, 150 Wn. 2d 337 (2003)

²⁵ *State ex rel. Ewing v. Morris*, 120 Wash. 146 (1922), *In re Marriage of Maxfield*, 47 Wn App. 69 (1987)

²⁶ *In re Marriage of Young* 26 Wn. App. 843, 615 P. 2d 508 (1980).

²⁷ *Dike v. Dike*, 75 Wn. 2d 1, 448 P. 2d 490 (1968).

²⁸ *Wheeler v. Wheeler*, 37 Wn. 2d 159, 222 P. 2d 400 (1950).

help collect support/maintenance directly from the military if the obligated party is not paying.

What Is The Procedure For Contempt?

Most contempt hearings started by private parties are filed as motions. A Motion is not a new case. It takes place in an existing case because it is an effort to enforce an existing order.

The contempt motion is filed in the same county and court where the original order was entered. **(If you have an order from another county or state, additional steps are required to start a new court case in the new county).**

A contempt proceeding includes²⁹

- Filing a motion and declaration with the court,
- Obtaining a hearing date by having the court sign an Order to Show Cause,³⁰
- Having the contempt papers (and usually the original court order) properly delivered to every other party,
- Participating in the contempt hearing,
- Entering an order showing the judge's decision at the hearing.

The Division of Child Support (DCS) uses additional steps if it files for contempt in to enforce a child support order issued by an agency rather than a court. In their cases, contempt may begin with the filing and service of a Summons and Petition, together with a Motion and the other documents.

What Happens At The Contempt Hearing?

Usually the court hears many cases on the same day. There will be a court calendar listing the cases to be heard.

The court will listen to both parties' arguments. **Some courts require live testimony at the hearing; others allow it at contempt hearings (but may require that the request for live testimony be made in advance), and some do not allow live testimony.**

The person who has filed for contempt must show that there is a court order in place and that the other person knows of the order, has violated it, and has been given reasonable notice of the contempt hearing and the violations claimed. .

The person charged with contempt is entitled to present defenses. Usually, if s/he claims that s/he cannot obey the court order, s/he must have evidence to prove this. If s/he has filed motions, they may be heard at the same time, if proper notice has been given.

If jail time is requested as a remedy, the person charged with contempt is entitled to a court-appointed attorney if s/he is unable to afford an attorney and if jail time might be imminent.³¹

²⁹ This information assumes that the original order and the contempt motion are filed in the same county. Court. If not, additional procedure, not discussed here, will be necessary.

³⁰ The packet *Filing for Contempt* discusses the procedure in more detail and contains required court forms.

If the other party fails to come to the court hearing or to review hearings, the court may issue a bench warrant for his or her arrest.

After hearing from both parties, the court makes a decision about the Motion for Contempt and any other motions before the court. The party who succeeds at the hearing then presents a written order for the court to sign. Usually that order is signed the day of the contempt hearing³²; sometimes a new hearing date is scheduled for the order to be presented for signature. The order must accurately summarize the judge's decision.

What Are The Consequences If The Court Enters A Contempt Order?

To remedy contempt, the court can order one or more of the following:

1. An order designed to make the person obey the order in the future;
2. A forfeiture not to exceed \$2,000 for each day the contempt continues³³;
3. Payment for losses to the injured party;³⁴
4. Costs to the injured party in bringing the contempt motion;³⁵
5. If the parent has been found in contempt for violation of a parenting plan at least twice in the last three years, there may be a basis for modification of the residential provisions of the parenting plan: (See RCW 26.09.260(2)(d) for that and other consequences);
6. Imprisonment, as a last resort and only so long as it serves the purpose of obtaining compliance with the order.³⁶

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**This publication provides general information concerning your rights and duties. It is not intended to replace specific legal advice.
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³¹ *Tetro v. Tetro*,

³² Some counties require it to be signed the day of the hearing.

³³ RCW 7.21.030

³⁴ RCW 7.21.030(3).

³⁵ RCW 7.21.030, RCW 26.18.160

³⁶ *King v. Department of Social and Health Services*, 110 Wn. 2d 793,, 756 P.2d 1303 (1988).