

## **Alabama Rules of Criminal Procedure**

### **Rule 33. Contempt.**

#### *Rule 33.1. Scope; definitions.*

(a) SCOPE. Rule 33 shall not apply to either civil or criminal contempt proceedings arising out of civil actions.

(b) DEFINITIONS.

(1) "Direct Contempt" means disorderly or insolent behavior or other misconduct committed in open court, in the presence of the judge, that disturbs the court's business, where all of the essential elements of the misconduct occur in the presence of the court and are actually observed by the court, and where immediate action is essential to prevent diminution of the court's dignity and authority before the public.

(2) "Constructive Contempt" means any criminal or civil contempt other than a direct contempt.

(3) "Criminal Contempt" means either:

(a) Misconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings, or

(b) Willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the dominant purpose of the contempt proceeding is to punish the contemnor.

(4) "Civil Contempt" means willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command, that by its nature is still capable of being complied with.

[Amended eff. 7-1-94.]

### **Committee Comments As Amended Effective July 1, 1994**

The distinction between direct and constructive contempt is drawn as a basis for procedural differences in applying a remedy. In those limited cases where the contempt is within the judge's actual sight and hearing so that further or extrinsic evidence is not needed to show the judge what in fact occurred, the

judge may dispose of the matter summarily under Rule 33.2. In all other instances the procedure is different. (See Rule 33.3.)

Rule 33 applies both to civil contempt proceedings and to criminal contempt proceedings, so long as the proceedings arise out of criminal cases. The general distinction between civil and criminal contempt is the purpose for which the punishment is imposed. Where the punishment operates prospectively, i.e., to coerce compliance with a lawful order of the court, the contempt is civil. The person being punished holds the keys to the jail and can gain release at any time by complying with the order. See *Shillitani v. United States*, 384 U.S. 364 (1966). On the other hand, a criminal contempt proceeding is intended to punish for accomplished, not contemplated or ongoing, conduct, e.g., a willful failure to comply with lawful orders of the court. Its purpose is to vindicate the dignity of the court. Criminal contempt is a criminal offense for which a specific punishment is meted out, over which the defendant has no control. See *United States v. Barnett*, 376 U.S. 681 (1964). If the conduct is extreme, contempt can be a serious crime entitling a defendant to certain constitutional safeguards. *Bloom v. Illinois*, 391 U.S. 194 (1968).

Alabama cases decided before the adoption of this rule have made this same distinction between civil and criminal contempt. For example, in *Ex parte Abercrombie*, 277 Ala. 479, 482, 172 So.2d 43, 46 (1965), the Court, following well-established precedent, stated:

“[A] civil contempt consists in failing to do something ordered to be done by a court in a civil action, for the benefit of the opposing party therein. A criminal contempt is one in which the purpose of the proceeding is to impose punishment for disobedience to the orders of the court, as distinguished from a civil contempt which invokes the power of the court to commit one who is continuing to violate its orders until he complies with them.”

See also *Ex parte Dickens*, 162 Ala. 272, 50 So. 218 (1909); *Ex parte Hill*, 229 Ala. 501, 158 So. 531 (1935). In *Ex parte NAACP*, 265 Ala. 349, 91 So.2d 214 (1956), rev'd sub nom. *NAACP v. Alabama*, 357 U.S. 449 (1958), the Court further distinguished criminal contempt proceedings as being those brought to preserve the power and vindicate the dignity of the court:

“[Criminal contempt proceedings] are criminal and punitive in their nature, and the government, the courts, and the people are interested in their prosecution. [Civil contempt proceedings] are civil, remedial, and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted.”

265 Ala. at 353-54, 91 So.2d at 217-18 (quoting 12 Am.Jur. Contempt, § 6, at 392).

Alabama cases decided before the adoption of this rule seem to indicate that civil contempt occurs only in civil proceedings. However, it is possible that civil contempt could occur in a criminal case, as, for example, where a witness refuses to submit to a deposition or otherwise refuses to obey a lawful order of the court. The Advisory Committee thought it appropriate that the Rules of Criminal Procedure address to some degree civil contempt because the ultimate sanction for either civil or criminal contempt is incarceration.

Consistent with Rule 1.1, which limits the scope of these rules to “criminal proceedings,” Rule 33.1(a) provides that the procedures established by this Rule 33 to govern contempt proceedings apply only to civil or criminal contempt proceedings arising out of criminal cases.

Rule 33.1(b) defines various types of contempt. It is intended that as to each only a definition is being stated and not a substantive criminal provision. Ala.Code 1975, § 13A-10-130, creates an offense called “interfering with judicial proceedings.” It is similar to 18 U.S.C. § 401 (1970) and comports with Ala.Code 1975, § 12-1-7. 18 U.S.C. § 401 (1970) defines “criminal contempt” to include the following conduct:

“(1) Misbehavior of any person in [the court’s] presence or so near thereto as to obstruct the administration of justice;

“(2) Misbehavior of any of its officers in their official transactions;

“(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”

Rule 33.1(b)(3) substantially tracks the language of 18 U.S.C. § 401 (1970).

The comparable statute in Alabama is Ala.Code 1975, § 12-1-7. That statute grants the power to every court, inter alia:

“(1) To preserve and enforce order in its immediate presence and as near thereto as is necessary to prevent interruption, disturbance or hindrance to its proceedings;

“(2) To enforce order before a person or body empowered to conduct a judicial investigation under its authority;

“(3) To compel obedience to its judgments, orders and process and to orders of a judge out of court, in an action or proceeding therein;

“(4) To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it in every matter appertaining thereto....”

It should be noted that both the federal statute and the Alabama statute include misconduct on the part of officers of the court within the scope of criminal contempt; the rule contains no similar provision, not because the Advisory Committee intended to change the law to exempt court officers, but because it believed that 18 U.S.C. § 401(2) was overly broad. The definition in the rule is not intended to remove the court’s authority over its officers. The term “any person” includes court officials and comports with the statutory grant of power to every court “[t]o control ... the conduct of its officers.”