

## Alabama Rules of Civil Procedure

### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Rule 70A.

##### Contempt in civil cases.

(a) *Scope of rule and definitions.*

(1) SCOPE. This rule shall apply to all civil or criminal contempt proceedings arising out of civil actions.

(2) DEFINITIONS.

(A) "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.

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

(C) "Criminal contempt" means either

(i) 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

(ii) 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 finding of contempt is to punish the contemnor.

(D) "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.

(b) *Summary disposition of direct contempt proceedings.*

(1) FINDING. The court may summarily find in contempt any person who commits a direct contempt, immediately notifying the person of its finding. The judge shall cause to be prepared a written order reciting the grounds for the

finding, including a statement that the judge observed the conduct constituting the contempt. The order shall be signed by the judge and entered of record.

(2) MITIGATION. The court shall apprise the person of the specific conduct on which the finding is based and give that person a reasonable opportunity to present evidence or argument regarding excusing or mitigating circumstances. No decision concerning the punishment to be imposed shall be made during the course of the proceeding out of which the contempt arises, unless prompt punishment is imperative to achieve immediate vindication of the court's dignity and authority.

(3) SENTENCE. Unless it is pronounced immediately under subsections (1) and (2) above, sentence shall be pronounced in open court, in the presence of the contemnor, within seven (7) days after the completion of the proceeding out of which the contempt arose.

(c) *Disposition of constructive contempt proceedings.*

(1) INITIATION OF ACTION. A proceeding based on constructive contempt, whether criminal or civil, shall be subject to the rules of civil procedure. The proceeding shall be initiated by the filing of a petition seeking a finding of contempt (the petition may be in the form of a counterclaim or cross-claim authorized under Rule 13). The petition shall provide the alleged contemnor with notice of the essential facts constituting the alleged contemptuous conduct.

(2) ISSUANCE OF PROCESS AND NOTICE. Upon the filing of a contempt petition, the clerk shall issue process in accordance with these rules, unless the petition is initiated by a counterclaim or cross-claim authorized under Rule 13. In any case, the person against whom the petition is directed shall be notified (1) of the time and place for the hearing on the petition and (2) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A(d), to compel the presence of the alleged contemnor.

(3) RIGHT TO COUNSEL. In actions involving criminal contempt, upon the request of the alleged contemnor and proof of indigence, counsel shall be appointed to represent the alleged contemnor. This right to appointed counsel, once asserted, may be subsequently waived by the alleged contemnor in writing or on the record, after the court has ascertained that the alleged contemnor knowingly, intelligently, and voluntarily desires to forgo the right to counsel. The court may, in its discretion, appoint advisory counsel to advise the alleged contemnor.

(d) *Failure to appear; issuance of writ of arrest.* If an alleged contemnor who has been duly given notice of a contempt hearing fails to appear at the hearing, the court may, in its discretion, issue a writ of arrest to compel the presence of the alleged contemnor.

(e) *Punishment for criminal contempt; commitment in cases of civil contempt.*

(1) PUNISHMENT FOR CRIMINAL CONTEMPT. The court may not punish a person for criminal contempt under the provisions of this rule by imprisonment or a fine exceeding the maximum term of imprisonment or maximum amount of fine provided by law.

(2) COMMITMENT IN CASES OF CIVIL CONTEMPT. The court may order that a person who had been found to be in civil contempt be committed to the custody of the sheriff until that person purges himself or herself of the contempt by complying with the court's writ, subpoena, process, order, rule, or command.

(f) *Disqualification of judge.* If the alleged contumacious conduct involves gross disrespect directed toward the judge or a personal attack upon the character of the judge, or if the judge's own conduct is so related to the alleged contumacious conduct that the judge may have contributed to or may have been otherwise involved in it, then, unless the conduct constitutes a direct contempt and prompt punishment by the summary procedure of section (b) is imperative, the contempt proceeding shall be referred to another judge, who shall hold a hearing to determine whether the person charged with contempt committed the contempt charged, and, if so, to impose punishment.

(g) *Review of contempt proceedings.*

(1) WHERE CONTEMNOR IS IN CUSTODY. An adjudication of contempt is reviewable by appeal if the person found in contempt is being held in custody pursuant to that adjudication, unless the writ of habeas corpus is an available remedy.

(2) WHERE CONTEMNOR IS NOT IN CUSTODY. If the person found in contempt is not being held in custody pursuant to the adjudication of contempt, the adjudication is reviewable by appeal.

(dc) *District court rule.* Rule 70A applies in the district courts.

[Added 6-21-94, eff. 7-11-94.]

### **Committee Comments**

Several decisions of the Alabama Supreme Court and the Alabama Court of Civil Appeals mandated the application of certain Alabama Rules of Civil Procedure to contempt proceedings arising out of civil actions. See *Baker v. Heatherwood Homeowners Association*, 587 So.2d 938 (Ala.1991); *Lee v. Lee*,

608 So.2d 1383 (Ala.Civ.App. 1992); *Ex parte Parcus*, 615 So.2d 78 (Ala.1993); *Ex parte DeMarco*, 628 So.2d 828 (Ala.Civ.App.1993); and *French v. Lyford*, 636 So.2d 437 (Ala.Civ.App.1994). The Alabama Rules of Criminal Procedure, particularly Rule 33, proved cumbersome when applied in civil cases, especially domestic relations cases, where contempt is routinely used as a method to enforce support and other familial or spousal obligations.

Rule 70A allows contempt proceedings arising out of civil actions (whether the actual contempt is civil or criminal) to be governed by the Alabama Rules of Civil Procedure, including the basic principles of notice pleading and liberal rights to the amendment of pleadings. At the same time Rule 70A was adopted, the Alabama Rules of Criminal Procedure were amended to limit the scope of those rules to contempt proceedings arising out of criminal actions.