

## JUSTICE COURT / MUNICIPAL COURT BENCH CARD ON CONTEMPT OF COURT

PROCEDURES ON CONTEMPT OF COURT ARE SET FORTH IN 32 OF THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE. READ THE RULE!

### **RULES 26.6 AND 32 GOVERN CONTEMPT PROCEDURES FOR FAILURE TO PAY FINES, FEES, RESTITUTION, AND/OR COURT COSTS.**

DIRECT CONTEMPT is a disruptive act occurring within the judge's actual sight or hearing that interferes with the dignified conduct of the court's business. A judge may summarily sanction the violator as set forth in Rule 32.2 of the Mississippi Rules of Criminal Procedure. Punishment may not exceed 30 days in jail or a \$100.00 fine. FAILURE TO PAY A FINE, FEE, COURT COSTS, OR RESTITUTION IS NOT DIRECT CONTEMPT OF COURT since the reasons for nonpayment involve personal and/or financial circumstances outside the courtroom.

CRIMINAL CONTEMPT is defined in Rule 32.1(d) of the Mississippi Rules of Criminal Procedure.

INDIRECT, CRIMINAL CONTEMPT requires:

- A criminal affidavit.
- A criminal summons to appear.
- An advisement of rights (see BENCH CARD ON INITIAL APPEARANCES) including the right to an attorney and, if indigent, the right to an appointed attorney FREE OF COST.
- A hearing by a judge other than the trial judge.
- Proof beyond a reasonable doubt.

Criminal contempt for failure to pay fines, fees, restitution, and/or court costs requires proof beyond a reasonable doubt that the defendant **WILFULLY REFUSED** to pay despite having the financial ability to do so. See also Miss. Code Ann. § Section 99-19-20.1.

CIVIL CONTEMPT is defined in Rule 32.1(e) of the Mississippi Rules of Criminal Procedure.

INDIRECT, CIVIL CONTEMPT for non-payment of fines, fees, restitution, and/or court costs requires:

- A written motion specifying the amount of the fines, fees, restitution, and/or court costs owed.
- A copy of court's sentencing order and an affidavit verifying or supporting the motion.
- A summons to appear and show cause.
- A hearing by the trial judge that allows the defendant a FULL OPPORTUNITY to present testimony, confront and cross-examine adverse witnesses, and to present evidence in his/her defense.

IF INCARCERATION TO COMPEL COMPLIANCE IS SOUGHT, then the judge MUST advise the defendant of the right to an attorney and, if indigent, the right to an appointed attorney FREE OF COST. MRCrP 32.4(d)(4).

AT THE HEARING, the judge may reduce the amount of the remaining fines, fees, restitution, and/or court costs, allow additional time for payments, and/or order community service with credit received at the highest current federal minimum wage.

A JUDGE'S ORDER OF CIVIL CONTEMPT must specify the sanction imposed and how the contempt may be purged. **DEFENDANTS MAY NOT BE INCARCERATED FOR REASONS OF THEIR FINANCIAL INABILITY TO PAY!** See Bearden v. Georgia, 461 U.S. 660 (1983).



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