

CHAPTER 17

CONTEMPT

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INTRODUCTION

Contempt is a serious thing. The court has the power to send you to jail if it finds you in contempt. For this reason, you should strongly consider consulting an attorney if you find yourself being sued for contempt. If you are the person seeking to file a contempt action, be aware that attorney fees can be awarded to you if the court finds the defendant guilty of contempt. Conversely, if you are found in contempt, you may be ordered to pay the other party's attorney fees.

See **Checklist 17.1** for a list of items for a party filing a complaint for contempt. See **Checklist 17.2** for a list of items for a party served with a complaint for contempt.

WHAT IS CONTEMPT?

Stated simply, contempt is failing to follow a judge's clear order even though you were able to. G.L. c. 215, §§ 34, 57; *Larson v. Larson*, 28 Mass. App. Ct. 338 (1990). A contempt action or lawsuit can be filed for any violation of a court's order. For instance, you can file for contempt if your spouse has not paid child support or if he or she is not following a court-ordered parenting time schedule. Keep in mind that contempt cases are based on the accusation that someone is not following a court's direct order. Judges tend to feel that their authority is being challenged in many cases, and will act accordingly. Civil contempt proceedings are "remedial and coercive, intended to achieve compliance with the court orders for the benefits of the complainant." *Furtado v. Furtado*, 380 Mass. 137, 141 (1980).

WHAT IF THE OTHER PARTY AND I MAKE AN AGREEMENT?

It is important to know that even if you have made an agreement with the other side about existing court orders, you must put the agreement in writing and have it approved by the court if you want to avoid a possible future contempt case. The courts have found in *Quinn v. Quinn*, 49 Mass. App. Ct. 144 (1999), that an agreement between the parties to reduce child support did not mean that a contempt complaint could not be brought later.

ARE ALL CONTEMPT CASES THE SAME?

There are two types of contempt cases: civil and criminal. It is important that you determine which type applies to you. The critical difference is that the purpose of a criminal contempt is to punish you and the purpose of a civil contempt is to make you do what the judge told you to do. If the contempt is criminal, you are entitled to every protection that a criminal defendant is entitled to. For example, you can request a jury and your case must be proven beyond a reasonable doubt. For these reasons, criminal contempt cases are rare in the Probate and Family Court. It is more likely that if you are involved in a contempt case, it is civil in nature.

However, you should still keep in mind that the court has the power to imprison you as a way to get you to obey its orders. G.L. c. 215, § 34B; *Sodones v. Sodones*, 366 Mass. 121 (1974). You must, however, be found to be able to obey the court's order. "A person judged to be in civil contempt may not be sentenced to prison for failure to pay a compensatory sum of money if he or she shows an inability to comply." *Salvesen v. Salvesen*, 370 Mass. 608, 611 (1976).

WHO CAN FILE A CONTEMPT CASE?

The person who stands to benefit from the enforcement of a court order is generally the person who can bring a contempt action. For instance, if your spouse is not paying child support as the court has ordered or is not adhering to orders regarding parenting time, you have the right to file a contempt action.

For the court to find someone in civil contempt, you must be able to prove the following:

- that there was a "clear and unequivocal command" by the court;
- that there was an equally clear and undoubted disobedience; and
- that the defendant had the ability to comply with the order. (General Laws c. 215, § 34 actually places the burden on the defendant to prove inability to comply with the court's orders. The plaintiff should therefore

be prepared to rebut a claim by the defendant that he or she did not have the ability to comply with the court's orders.)

There are situations under G.L. c. 215, § 56B where an action for contempt can be commenced by a guardian ad litem or probation officer (also known as a family services officer).

HOW DO I FILE A CONTEMPT ACTION?

Filing a contempt action is free. However, it does cost money to have the complaint served. As with anything you file, it is important to be sure that you have a good reason to file. You can get a contempt complaint form from the clerk's office at the Probate and Family Court or at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#3>. You should have a copy of the court order that you are claiming was violated. File the complaint in the same court that issued the order that was violated.

There are ways of getting a Massachusetts court to enforce judgments from other states. However, it is a complicated procedure that is beyond the scope of this book. If you are in this situation, you should contact an attorney.

Step One—Filling Out the Complaint

As mentioned above, be sure to have a copy of the court order that you believe has been violated. The complaint for contempt is included as **Exhibit 17A**, as are the instructions on filling it out. Be sure to read the form carefully so that your request makes sense. Try to use the exact language that is used in the original court order.

Step Two—Filing the Complaint

Once you have completed the complaint for contempt, make a copy and file the original with the court. Filing the complaint is as simple as it sounds. You can either mail it to the appropriate Probate and Family Court or you can hand it directly to the clerk at the filing desk. This author recommends personally handing it to the filing clerk for two reasons: first, you know that it got there; and second, so that you can have them date-stamp your copy as proof that you filed the original. If you cannot afford the cost of service of the summons, you can apply for a fee waiver by filing an affidavit of indigency at the same time.

Step Three—Getting the Summons

This step is actually easier than filing the complaint because the court will send the summons directly to the address you listed on your complaint.

Step Four—Filling Out the Summons

Once you receive the summons, you may need to fill it out. The court will select a date for the contempt hearing; this date will appear on the summons. It is your job to make sure the entire summons is filled out properly. Be sure to make copies of the summons and complaint for yourself and for the person who will be serving the papers. A sample summons and instructions on how to fill it out are included as **Exhibit 17B**.

Step Five—Serving the Summons and Complaint

You must serve the other party with copies of the summons and complaint so that he or she will know what you are asking for and when he or she needs to go to court. The following people can serve your papers for you:

- a sheriff or constable (they will charge a fee unless you are eligible for fee waiver);
- a person appointed by the court or authorized by law; or
- a disinterested person (i.e., a person not involved in your case).

This author recommends that you have the complaint served by a professional process server because they are aware of the requirements they must fulfill in notifying the court when they have served someone. Rule 4(f) of the Massachusetts Rules of Domestic Relations Procedure spells out the requirements for the person making service. No

matter who serves your papers, you will need to give that person the original summons and two copies of the summons and complaint. Check with that person to determine exactly what they want from you.

Step Six—Notifying the Department of Revenue

If the contempt action involves child support, and either the child or party filing the contempt receives or received public assistance at any point, you must send a copy of the contempt complaint to the Department of Revenue (DOR). If DOR has been involved in your case before, you must notify them of the hearing date.

IF YOU ARE THE DEFENDANT

If you are the person being brought to court for contempt, you should consult an attorney. If you cannot afford an attorney, the court may appoint one for you. Contempt is serious and the court may have the power to send you to jail if it finds you guilty.

You will receive a copy of the summons and complaint. These papers should tell you clearly when, where, and why you are to go to court. They will also tell you that you have seven days in which to respond to them. You should have both the summons and complaint in front of you and complete the following steps.

Step One—Filling Out the Answer

The complaint for contempt is basically a series of “allegations.” It will be numbered 1, 2, 3, and so forth. You need to respond to each of these allegations. First, take a piece of paper and copy the information on the top of the complaint verbatim, with the exception of where it says “Complaint for Contempt.” Instead write “Answer to Complaint for Contempt.” Next, read all that is written in paragraph one of the complaint. If you agree with everything in it, write “admitted” next to number one on your answer. If you disagree with what is in the paragraph, write “denied” next to the number on your answer. Do the same for all of the other paragraphs. At the end of your answer, as your last paragraph, write what you are asking the court to do. A sample answer is included as **Exhibit 17C**.

Step Two—Filing and Mailing the Answer

As the summons says, you must file an answer to the contempt complaint within seven days of receiving it. There are three things you need to do:

- make two copies of the original answer,
- mail a copy to the person indicated on the summons, and
- file the original with the court.

Keep the extra copy for your records and to help you prepare for court.

PREPARING FOR COURT

Contact the other side (if it is safe for you to do so) to see if you can resolve your case before you go to court. If you do reach an agreement, you will want to be sure to present it to a judge on the day scheduled for your hearing. You must show up to court even if you have reached an agreement.

Even though you may not be in front of a judge for long, you may be at the courthouse for several hours. If you have children, do not bring them to court.

It is important to be thoroughly prepared for court. Judges hear many cases all day long and do not have much patience for people who are unprepared. They expect to deal with your case quickly, often in less than five minutes. It is therefore important for you to only raise issues that are directly relevant to what your case is about. You should have all the points that you want to make written out so that you can be sure to say them.

As the Plaintiff

If you do not reach an agreement prior to going to court, you will want to sit down and make sure of the following:

- that you can prove there is a clear court order,
- that you can prove there was a clear disobedience of the court order, and
- that you have a written outline of how you will present these facts to the court in as little time as possible.

As the Defendant

If you are defending against a contempt complaint, you will need to sit down and make sure you can prove the following:

- that the court does not have the authority to rule on this case,
- that you have not done what is alleged,
- that the court's order is not clear,
- that it is not clear that you violated the court's order, or
- that you do not have the ability to follow the court's order.

Be certain to write a brief outline of your points so that you can present them in an organized way to the judge. Remember that the better prepared you are, the more likely your points will be heard.

There may be some technical defenses available to you that deal with the court's jurisdiction over you or the case, how the papers were served, whether the complaint makes sufficient claims against you, or whether everyone necessary to the case has been sued. Explaining these defenses is beyond the scope of this book. Consult an attorney to see if any of these defenses apply to you.

FINANCIAL STATEMENT

If your case involves money or property, you will need to prepare a financial statement. See chapter 2, Overview of the Probate and Family Court, for a complete description of all the requirements surrounding a financial statement. This is important, because the court will not hear your case without a financial statement, and you could even be fined for not having one.

THE DAY OF THE HEARING

Be sure to arrive at least thirty minutes before your hearing. You may even want to go to the court on a day before your hearing so that you can become familiar with it. Dress in a way that shows that you appreciate the seriousness of the court matter and that you respect the court's authority. Avoid wearing t-shirts, shorts, tank-tops, cutoff shirts, or jeans; these are not allowed in many courts. Also be aware that you are not allowed to smoke, chew gum, eat, drink, or read a newspaper in the courtroom. Court policies differ regarding cellphones.

When you get to the court, check in with the clerk. Do not be afraid to ask questions of any court personnel. If you have a restraining order, tell the court clerk and court officers. Make sure you are in the right courtroom, because if you miss your case, the court may dismiss it. If you are the defendant and you miss your case, the court may issue a *capias* or warrant for your arrest. You must go to court even if you have reached an agreement so that the court will know the case has been settled.

What if You Are Sent to the Probation Department (Family Services)?

It is likely that when you check in with the court clerk, you will be referred to the Probation Department, sometimes called family services. The Probation Department is an arm of the court that tries to mediate and settle cases. It can also be used to investigate cases. In your case, the department will be trying to see if the case can be resolved without a judge.

If you are referred to the Probation Department, present your case as if you were in front of the judge. If you have a restraining order against the other party, the department cannot force you to mediate the case in that party's presence. If there is no restraining order, or if you want to be in the room while the other party is talking, you can both present your cases to the probation officer at the same time. Try to stick to the important points and do not argue with the other party. Speak only to the probation officer. Even if you reach an agreement, a judge will still have to approve it. This may involve a brief appearance before the judge. If so, the judge may ask you a few questions to make sure you understand the agreement and that you are signing it willingly.

Remember, the probation officer tries to resolve cases so that they do not have to go before a judge. However, you always have the right to present your case to a judge. This means that if the probation officer is suggesting a settlement that you do not agree with, you can take your chances with the judge.

For further information on the Probation Department, see chapter 2, Overview of the Probate and Family Court.

Appearing Before the Judge

When you appear before the judge, it is important to be respectful. Refer to the judge as "Your Honor" and listen closely to what he or she says. Answer questions directly and to the point. Have your case prepared as outlined above, and be ready to make your points in a different order than you may have prepared them. Some judges will ask you to present your case and others will ask you questions. In either situation, try to tell the judge all the points that you have outlined. Speak only to the judge.

Being respectful of the judge does not mean that you have to be afraid of him or her. If you do not understand something, say so. Be sure you are clear about what the judge is saying or asking. It is especially important that you are certain you understand the judge's decision.

Do I Have the Right to an Attorney?

If there is the possibility that the judge will impose a sentence of imprisonment, the defendant is entitled to be represented by counsel. If the defendant cannot afford an attorney, the court will appoint one. Under Supp. Prob. Ct. R. 402, a party in a civil or criminal contempt action for a sentence of imprisonment must be informed of his or her right to an attorney, and has the right to have an attorney appointed if he or she cannot afford one. If the party chooses to proceed without an attorney, he or she and the judge must sign a written waiver to that effect.

What Can I Expect from the Judge?

The judge has a lot of discretion in contempt cases. Following are some of the things a judge can do:

- make an order right there;
- take the matter under advisement (that is, make a decision later and mail it to you);
- order the defendant to undergo a work search;
- continue the matter to a future date with or without any conditions;
- sentence the defendant to jail; and/or
- order a suspended sentence with certain payments or requirements as a condition.

There are other possibilities, but these are the most common actions. Again, do not be afraid to ask questions if you do not understand what the judge is ordering.

MCLE and the author are grateful to John D. Welch, Esq., for his contribution to a previous version of this chapter.

✓ CHECKLIST 17.1

For a Party Filing a Complaint

- Get a copy of the court order that you think was violated, and read it carefully.
- Make sure the court order is clear and that it is also clear that it was not obeyed.
- Try to contact the other side to get him or her to comply with the order.
- If the other side is still unwilling to follow the court's order, follow the six steps listed in this chapter.
 - Step one: Fill out the complaint.
 - Step two: File the complaint.
 - Step three: Get the summons.
 - Step four: Fill out the summons.
 - Step five: Serve the summons and the complaint.
 - Step six: Notify the Department of Revenue.
- If you cannot afford the cost of serving the summons, file an affidavit of indigency (see **Exhibit 2A**).
- If your contempt involves money or property issues, fill out a financial statement (see chapter 2, Overview of the Probate and Family Court). Attach all W-2 and 1099 forms from last year and make a copy for yourself and a copy for the other side.
- Prepare for your court hearing.
 - Make a written outline for yourself showing how a clear order was violated.
 - Make two copies of all documents you wish to present to the court that support your case (one copy for you and one copy for the other side).
- At your hearing:
 - Dress appropriately.
 - Be on time. Arrive one-half hour early.
 - File your financial statement and any other papers.
 - Check in with the clerk and find your courtroom early.
 - Exchange any papers you plan to present to the court with the other side.
 - Be prepared to go to Family Services.
 - Be respectful but not fearful of the judge.
 - Make sure you understand the judge's order.

✓ CHECKLIST 17.2

For a Party Served with a Complaint

- Read the complaint carefully to determine what you are being sued for.
- Consider consulting an attorney if it is at all possible—being found guilty of contempt could land you in jail.
- Contact the other side to see if you can work things out without going to court.
- If you are unable to reach an agreement, follow the steps outlined in this chapter.
 - Fill out an answer.
 - File and mail the answer within seven days of receiving it.
- If your contempt involves money or property issues, fill out a financial statement (see chapter 2, Overview of the Probate and Family Court). Attach all W-2 and 1099 forms from last year and make a copy for yourself and a copy for the other side.
- Prepare for your court hearing.
 - Make a written outline for yourself showing how you plan to present your case.
 - Make two copies of all documents you wish to present to the court that support your case (one copy for you and one copy for the other side).
- At your hearing:
 - If you are not able to have an attorney because of financial means, ask the judge to appoint you an attorney.
 - If you can afford an attorney and want time to get one, ask the judge to continue the case so you can have the time you need to find one.
 - Dress appropriately.
 - Be on time. Arrive one-half hour early.
 - File your financial statement and any other papers.
 - Check in with the clerk and find your courtroom early.
 - Exchange any papers you plan to present to the court with the other side.
 - Be prepared to go to Family Services.
 - Be respectful but not fearful of the judge.
 - Make sure you understand the judge's order.

EXHIBIT 17A—Complaint for Contempt

COMPLAINT FOR <input type="checkbox"/> CIVIL <input type="checkbox"/> CRIMINAL CONTEMPT	Docket No. _____	Commonwealth of Massachusetts The Trial Court Probate and Family Court
_____, Plaintiff First Name M.I. Last Name v. _____, Defendant First Name M.I. Last Name	_____ Division	

1. Plaintiff resides at _____
 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)
2. Defendant resides at _____
 (Address) (Apt. Unit, No. etc.) (City/Town) (State) (Zip)
3. By judgment order of the Court, dated _____ defendant was ordered
 - to pay alimony and/or support for minor or dependent child(ren) in the sum of _____ weekly monthly
 - to comply with the Court ordered parenting time.
 - not to impose any restraint on the personal liberty of plaintiff
 - to pay health insurance premiums for plaintiff and/or child(ren)
 - to pay reasonable medical and dental expenses for plaintiff and/or child(ren)
 - other _____

and said judgment order is still in force.
4. Defendant has not obeyed that judgment order and
 - is in arrears of court-ordered support payments.
 - there now remains due and unpaid to plaintiff the sum of \$ _____ plus such further amounts as may accrue to the date of hearing.
 - plaintiff has been denied parenting time on _____
 - has violated the order on _____ by: _____
5. Wherefore, plaintiff requests that defendant be required to appear before this Court to show cause why defendant should not be adjudged in contempt of Court and for such other relief as the Court deems just.

Date: _____

Signature of Attorney or Plaintiff, if pro se

(Print name)

(Address) _____
(Apt. Unit, No. etc.)

(City/Town) _____
(State) _____
(Zip)

Primary Phone #: _____

B.B.O. # _____

EXHIBIT 17B—Contempt Summons

**ENTER THE DOCKET NUMBER
AS IT APPEARS ON THE
MOST RECENT COURT ORDER**

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

_____ ESSEX Division _____ Docket No. _____

Contempt Summons

**YOU ARE THE PLAINTIFF
BECAUSE YOU ARE ASKING
THE COURT FOR HELP.** _____, Plaintiff

v.

**THE DEFENDANT IS THE
PERSON WHO HAS NOT
FOLLOWED THE COURT'S ORDER.** _____, Defendant

To the above named Defendant:

**THIS INFORMATION
WILL ALREADY
BE FILLED IN.**

You are ordered to appear at a Probate and Family Court to be held at Salem
in said County of Essex on _____, 19____
at _____ in the forenoon to show cause why you should not be held in civil and/or criminal
contempt, the penalty for which may be a jail sentence.

You are hereby summoned and required to serve upon _____
_____ plaintiff's attorney whose address is _____

**PUT YOUR NAME
AND ADDRESS
HERE AND CROSS
OUT PLAINTIFF'S
ATTORNEY.**

your answer, if any, to the complaint which is herewith served upon you, within 7 days after service of this summons upon you, exclusive of the day of service. You are also required to file your answer, if any, to the complaint in the office of the Register of this Court at Salem either before service upon plaintiff's attorney or within a reasonable time thereafter.

Failure to appear on this date may result in the issuance of an order for your arrest.

Witness Edward J. Rockett, Esquire, First Justice of said

Court at Salem
this _____ day of _____, 19____

**IF THE DATE IS
NOT FILLED IN
PUT TODAY'S
DATE.**

Please Report to the Probation Department at 8:30 AM
A current financial statement is required at that time

Register of Probate

**THE COURT MAY HAVE ALREADY FILLED THIS OUT PARTIALLY OR ENTIRELY.
CHECK IT CAREFULLY TO SEE IF IT IS COMPLETE. IT IS YOUR RESPONSIBILITY
TO MAKE SURE THIS SUMMONS IS COMPLETE AND ACCURATE.**

CJD 113 (3-95)

EXHIBIT 17C—Answer to Complaint for Contempt

COMMONWEALTH OF MASSACHUSETTS
 THE TRIAL COURT
 THE PROBATE AND FAMILY COURT DEPARTMENT

ENTER THE DOCKET
 NUMBER AS IT
 APPEARS ON THE
 COMPLAINT

WRITE THESE
 EXACTLY AS
 THEY APPEAR
 IN THE
 COMPLAINT

[_____, ss.
 [_____
 [_____,
 [Plaintiff,
 [v.
 [_____,
 [Defendant.
 [_____

Docket No. _____

ANSWER TO COMPLAINT FOR CONTEMPT

The defendant answers the plaintiff's complaint as follows:

INDICATE IF
 YOU ADMIT
 THE FACTS
 STATED IN THE
 CORRESPONDING
 PARAGRAPH OF
 THE COMPLAINT

1. Admitted.
2. Admitted.
3. Defendant admits the allegations in paragraph four but _____
4. The defendant asks that the Court _____

IF YOU HAVE NOT
 COMPLIED WITH
 THE COURT'S
 ORDER BUT
 WANT TO EXPLAIN,
 WRITE IT HERE

PUT WHAT YOU
 ARE ASKING
 FOR HERE

Date: _____ Name: _____

Address: _____

Phone: _____

