



## How to: File for a Motion for Contempt

### What is Contempt?

When a judge makes a ruling, all the parties involved in a case are required to follow the requirements in this ruling. When someone does not comply with (follow) the duties ordered by a court, then the opposing party may file for contempt. Contempt is a request to the court to carry out a penalty on the individual for failing to follow the order.

Civil contempt is often used in Idaho to enforce child support payments. For issues like unpaid child support and unpaid spousal support, the contempt proceeding will be “civil” and “Nonsummary.” “Civil” means that the alleged person in contempt can avoid the fines or sanctions by doing what the court previously asked them to do (for example: pay child support in a timely manner). “Nonsummary” means that the person who violated the previously issued court order received notice of the contempt hearing and an opportunity to explain their reasons for not following the court order. Criminal contempt is used to enforce a requirement of a court order that can no longer be fixed by the person doing whatever it is that they were previously ordered to do.

Judges may decide that certain issues require a criminal or civil sanction. For example, nonpayment of child support has the potential to result in time in jail (criminal sanction) or a fine and repayment (civil sanction). However, criminal sanctions may only be given after the person that is allegedly in contempt of a court order is afforded certain constitutional rights. See Hon. Daniel T. Eismann, *Contempt-the Basics and More*, 51 Advoc. 13, 14 (2008).

### Important Vocabulary

Word	Definition
Petitioner	The person initiating the non-summary contempt proceeding. Idaho Rule of Civil Procedure (IRCP) 75(a)(1).
Respondent	The person alleged to have committed an act of contempt. IRCP 75(a)(2).
Contemnor	The person found by a court to have committed an act of contempt. IRCP 75(a)(3).
Nonsummary Proceeding	A court proceeding where the person allegedly in contempt was given notice of the contempt charges and an opportunity for a hearing. IRCP 75(a)(5).
Summary Proceeding	A court proceeding where the alleged person in contempt was not given notice of the contempt charges or an opportunity for a hearing. This generally occurs when the judge witnessed the contempt behavior. IRCP 75(a)(4).
Civil Sanctions	Civil sanctions are conditional, meaning that the alleged person in contempt can completely avoid the sanction by doing what the court previously ordered them to do. IRCP 75(a)(6).
Criminal Sanctions	Criminal sanctions are unconditional, meaning that the alleged person in contempt cannot avoid a sanction by doing what they were previously ordered to do. IRCP 75(a)(7).
Alleged Contemnor	An individual whose alleged conduct potentially violated a previously documented court order or decree. Hon. Daniel T. Eismann, <i>Contempt-the Basics and More</i> , 51 Advoc. 13 (2008).

## What Can Contempt be Used to Enforce?

The initiation of a Civil Nonsummary Contempt Proceeding can be used to enforce any of the following:

- Child Support Payments;
- Spousal Support Payments;
- No Contact Order issued by a Judge;
- Civil Protection Order issued by a Judge; or,
- Any other order of the Court.

Hon. Daniel T. Eismann, *Contempt-the Basics and More*, 51 Advoc. 13, 14 (2008).

## Who Can Initiate Contempt Proceedings?

There are two different ways contempt may be initiated in a Nonsummary: (1) by a Judge or (2) by an Individual through a Motion.

*If you are initiating a contempt proceeding for unpaid child support, unpaid spousal support, a previously issued no contact order, or a previously issued civil protection order, best practices would be to follow the “Second Route” below.*



Contempt can be by a Judge in a Nonsummary proceeding by issuing a written charge and having it served on the respondent. The written charge must be supported by affidavit unless the facts in it are based on the Judge’s personal knowledge of information from the court file contained in documents prepared by court personnel. IRCP 75(c)(1).

Judges may also initiate contempt in a summary proceeding, which can be done if the Judge witnesses the contempt behavior, has personal knowledge of the contempt conduct, and the contempt conduct interferes with the court’s business. IRCP 75(b)(1)(A)-(B).

However, before the Judge can impose a sanction, notice and an opportunity to be heard in court must be given to the alleged contemnor.

For an example of a Motion for Contempt, please see the Appendix # 1, on page 5. For a blank Motion form, please visit Idaho’s Court Self Help website [here](#).

For an example of an Affidavit, please see Appendix #2, on page 6. For a blank affidavit, please visit Idaho’s Court Self Help Website [here](#).

By an individual, other than a Judge, upon (1) a motion and (2) an affidavit. IRCP 75(c)(2).

- (1) A Motion: A formal request to the Judge to enter an order or ruling. ***In your Motion, you must state what you would like the Court to order as a sanction.***

Note: If the conduct by the alleged contemnor was a specific violation of a previously issued court order, you must state in your motion that either: (a) the alleged contemnor had actual notice of the judgment that created their obligations or (b) that the alleged contemnor had actual knowledge of the court order.

- (2) An Affidavit: A written statement made under oath or sworn in front of an authorized individual. ***In your Affidavit, you must allege the “specific facts” that create the alleged act(s) of contempt (acts that violate the court order).*** To do that, you must list each specific time that the alleged contemnor failed to complete obligations required by the previous judicial order.

## How to Initiate Contempt--What Documents are Needed to File a Motion for Contempt?

- (1) The **Original Judgment/Order** indicating what the alleged contemnor's obligations are/were;
- (2) A **Motion for Contempt**. A blank Motion form can be found [here](#). An example Motion can be found in Appendix #1, on page 5;
- (3) An **Affidavit**, explaining the alleged contemnor's misconduct. A blank Affidavit form can be found [here](#). An example Motion can be found in Appendix #2, on page 6.
- (4) A **Notice of Hearing**, which will inform the alleged contemnor of the upcoming contempt hearing. A blank Notice of Hearing form can be found [here](#). An example of a Notice of Hearing can be found in Appendix #3, on page 7.
- (5) [**Optional**]: **Motion and Affidavit for a Fee Waiver**. A Motion and Affidavit for a Fee Waiver can be found [here](#). Low-income persons may file this to ask the court to waive costs associated with filing.

## How to Start a Contempt Action —Filing the Documents with the Court.

Once you have all the above documents, you will take them to the courthouse that issued the order to file for Contempt. For a list of all Idaho county courthouses, click [here](#).

The Clerk of the Court will take your documents and file them to start the Contempt action. The Clerk will expect a fee for these services. However, you may also file a fee waiver at this time if you cannot afford the filing fee. Fee waivers are available for individuals in certain income brackets. A **Motion and Affidavit for a Fee Waiver** can be found [here](#).

At the time you file your documents, the Clerk will schedule a hearing. You will add this information to your Notice of Hearing which will be filed with the rest of your paperwork.

Once all the documents are filed with the Court, the next step is to serve those documents to the alleged contemnor.

## How to Initiate Contempt—Serving the Documents on the Alleged Contemnor.

If the alleged contemnor has an attorney, the paperwork must be served on their attorney. Idaho Rule of Civil Procedure (IRCP) 75(n) and 5(b)(1).

If the alleged contemnor does not have an attorney, the paperwork can be served to the alleged contemnor—by an adult other than you—by:

- Handing it to the alleged contemnor;
- Delivering it to the alleged contemnor's most recent place of work; or,
- Delivering it to the alleged contemnor's most recent residential address. IRCP 5(b)(2)(A)-(C).

Notice of the time, date, and place to appear for the hearing, along with all the other documents, must be served no later than 7 days before the date set for the initial appearance, unless otherwise ordered by the court. IRCP 75(d)(3).

*Once all the paperwork is served, the next step is to prepare your testimony and any documents or other evidence before the date of your hearing.*

### At the Hearing for Contempt—Initial Questions by Judge.

It is recommended that you arrive to the proceeding early. Be sure to bring all the paperwork you filed with the Court, plus any additional evidence that will show that the alleged contemnor violated the order/judgment.

You will likely be asked by the Judge to explain why you believe the other party violated the court order. Then the Judge will ask/inform the alleged contemnor of the following:

- (A) the charge(s) of contempt against the respondent;
- (B) the possible sanctions for contempt;
- (C) that the respondent is not required to make a statement and that any statement made may be used against the respondent;
- (D) the respondent's right to a trial;
- (E) the respondent's right to confront the witnesses against the respondent, including watching the witnesses testify in court and questioning them; and
- (F) the respondent's right to bail if the respondent has been arrested under a warrant of attachment.

Idaho Rule of Civil Procedure (IRCP) 45(f)(1).

### At the Hearing for Contempt—Alleged Contemnor's Plea & Next Steps.

The alleged contemnor will then be asked to state that they are either “guilty” or “innocent” for violating the previously issued court order.

If the alleged contemnor states they are innocent, a trial will be set for approximately two weeks later. IRCP 75(g)(2). There are defenses available to the alleged contemnor, but they must submit them, in writing, to the Court within seven (7) days after they stated their innocence of contempt to the Court.

If the alleged contemnor admits to the contempt, the judge will likely place sanctions upon the alleged contemnor. However, the judge must ensure that the alleged contemnor: (1) knew they were being charged with contempt; (2) was aware sanctions were involved; (3) that the alleged contemnor voluntarily admitted to their conduct, and (4) that the alleged contemnor was advised of their rights. IRCP 75(g)(1)(A)-(D).

If the alleged contemnor  
pleas not guilty/innocent:

A trial will be set for approximately two weeks later. IRCP 75(g)(2). There are defenses available to the alleged contemnor, but they must submit them, in writing, to the Court within seven (7) days after they stated their innocence of contempt to the Court. IRCP 75(g)(1)(A)-(D).

If the alleged contemnor  
admits guilt to the judge:

The judge will likely place sanctions upon the alleged contemnor. However, the judge must ensure that the alleged contemnor: (1) knew they were being charged with contempt; (2) was aware sanctions were involved; (3) that the alleged contemnor voluntarily admitted to their conduct, and (4) that the alleged contemnor was advised of their rights. IRCP 75(g)(1)(A)-(D).

# Appendix

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## Appendix Item #1: Motion for Contempt Example

Your Full Name  
Your Mailing Address  
City, State, Zip Code  
Your Phone Number

IN THE DISTRICT COURT FOR THE [district number] JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF [county name].

YOUR FULL NAME

Plaintiff,

vs.

OPPOSING PARTY'S FULL NAME

Defendant.

Case No. \_\_\_\_\_

**MOTION FOR CONTEMPT**

I, [your name] certify I am the [plaintiff/defendant] in the above-entitled action and I file with the Court this Motion for Contempt against [opposing parties name].

This Motion is based on the following:

1. The previous decree: [insert case number of previous case] issued on [date of issuance]. The decree is attached as [Exhibit A].
2. The Affidavit of [your name] in Support of this Motion for Contempt, filed contemporaneously.

Wherefore, Petitioner respectfully requests the Court find Respondent in [criminal / civil] Contempt of Court and impose the following sanction: [insert sanction request].

Dated this [day] of [month, year].

For family law matters, generally a “civil sanction” is requested. Examples of a civil sanction requested for child support can be:

- (1) For the alleged contemnor to comply with the previous court order; or
- (2) For the alleged contemnor to pay an additional daily fee until they are caught up with payments; or
- (3) For the alleged contemnor to spend time in jail until caught up on payments.

Daniel T. Eismann, *Contempt-the Basics and More*, 51 Advoc. 13 (2008).

For a blank Motion form, please visit Idaho’s Court Self Help website [here](#).

**Appendix Item #2: Affidavit in Support of Motion for Contempt Example**

Your Full Name  
Your Mailing Address  
Your City, State, Zipcode  
Your Email Address  
Your Phone Number

IN THE DISTRICT COURT OF THE [district number] JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF [county name]

YOUR FULL NAME

Plaintiff,

v.

OPPOSING PARTY'S FULL NAME

Defendant.

Case No.

**AFFIDAVIT OF [YOUR NAME]  
IN SUPPORT OF MOTION FOR  
CONTEMPT**

The heading and  
body of the  
Affidavit in Support  
of Motion for  
Contempt.

I, [YOUR NAME], certify that I am the [plaintiff or defendant] in the above-entitled action. I state:

[This space should be used to list all the instances of alleged behavior of the alleged contemnor that requires the Court's attention].

The Affidavit in  
Support of Motion  
for Contempt must  
end with your  
signature certifying  
everything is true  
and correct.

**CERTIFICATION UNDER PENALTY OF PERJURY**

I certify under penalty of perjury pursuant to the law of the State of Idaho that the forgoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(type/printed name)

\_\_\_\_\_  
(signature)

For a blank Affidavit form, please visit Idaho's Court Self Help Website [here](#).

### Appendix Item #3: Notice of Hearing Example

Your Full Name  
 Your Mailing Address  
 Your City, State, Zip code  
 Your Phone Number  
 Your Email Address (if any)

IN THE DISTRICT COURT OF THE [district number] JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF [county name]  
 MAGISTRATE DIVISION

YOUR NAME,  
 \_\_\_\_\_  
 Petitioner  
 v.  
 OPPOSING PARTY'S NAME,  
 \_\_\_\_\_  
 Respondent.

**Case No. (If you know the case number, please fill in, otherwise the Clerk will.)**

#### NOTICE OF HEARING

**PLEASE TAKE NOTICE** that the [name of hearing] filed herein on the [date] day of [month], [year], by [name of individual who filed], will come on for hearing on the [date of hearing] day of [month], [year] at [time], in the Magistrate's Division of the District Court, [county name] County Courthouse at [address of courthouse].

**DATED** this \_\_\_\_ day of \_\_\_\_\_.

CLERK OF THE COURT

By: \_\_\_\_\_  
 Deputy Clerk

A blank Notice of Hearing form from Idaho's Court Assistance website can be found [here](#).

### Appendix Item #4: Counties within each Idaho Judicial District

Idaho Judicial District	Idaho Counties within the Judicial District
Judicial District 1	Boundary, Conner, Kootenai, Benewah, and Shoshone Counties.
Judicial District 2	Latah, Nez Perce, Lewis, Idaho, and Clearwater Counties.
Judicial District 3	Adams, Washington, Payette, Gem, Canyon, and Owyhee Counties.
Judicial District 4	Valley, Boise, Ada, Elmore Counties.
Judicial District 5	Camas, Gooding, Blaine, Lincoln, Jerome, Minidoka, Twin Falls, Cassia Counties.
Judicial District 6	Power, Oneida, Bannock, Franklin, Caribou, Bear Lake Counties.
Judicial District 7	Custer, Lemhi, Butte, Clark, Jefferson, Madison, Fremont, Teton, Bonneville, and Bingham Counties.