

RULE 1:10. Contempt Of Court And Enforcement Of Litigant's Rights Related Thereto

[Note: Caption to Rule 1:10 amended July 27, 2006 to be effective September 1, 2006.]

1:10-1. Summary Contempt in Presence of Court

A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:

- (a) the conduct has obstructed, or if continued would obstruct, the proceeding;
- (b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;
- (c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;
- (d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and
- (e) the judge has afforded the alleged contemnor an immediate opportunity to respond.

The order of contempt shall recite the facts and contain a certification by the judge that he or she saw or heard the conduct constituting the contempt and that the contemnor was willfully contumacious. Punishment may be determined forthwith or deferred. Execution of sentence shall be stayed for five days following imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that the judge may require bail if reasonably necessary to assure the contemnor's appearance.

Note: Source-R.R. 4:87-1, 8:8; amended July 13, 1994 to be effective September 1, 1994.

1:10-2. Summary Contempt Proceedings on Order to Show Cause or Order for Arrest

(a) Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

(b) Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be released on his or her own recognizance pending the hearing unless the judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

(c) Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county or, where the court for good cause designates an attorney, then by the attorney so designated. The matter shall not be heard by the judge who instituted the prosecution if the appearance of objectivity requires trial by another judge. Unless there is a right to a trial by jury, the

court in its discretion may try the matter without a jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of sentence shall apply.

Note: Source-R.R. 4:87-2; former R. 1:10-2 redesignated R. 1:10-2(a), former R. 1:10-3 amended, recaptioned and redesignated R. 1:10-2(b) and former R. 1:10-4 amended, recaptioned and redesignated R. 1:10-2(c) July 13, 1994 to be effective September 1, 1994.

1:10-3. Relief to Litigant

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he or she signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release provided, however, that no order for commitment shall be entered to enforce a judgment or order exclusively for the payment of money, except for orders and judgments based on a claim for equitable relief including orders and judgments of the Family Part and except if a judgment creditor demonstrates to the court that the judgment debtor has assets that have been secreted or otherwise placed beyond the reach of execution. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule. In family actions, the court may also grant additional remedies as provided by R. 5:3-7. An application by a litigant may be tried with a proceeding under R. 1:10-2(a) only with the consent of all parties and subject to the provisions of R. 1:10-2(c).

Note: Source-R.R. 4:87-5; amended July 26, 1984 to be effective September 10, 1984; former R. 1:10-3 recaptioned and redesignated R. 1:10-2(b), former R. 1:10-4 recaptioned and redesignated R. 1:10-2(c), and former R. 1:10-5 amended and redesignated R. 1:10-3 July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended January 21, 1999 to be effective April 5, 1999.