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## CH. 12 CONTEMPT OF COURT

### §12-1 General Rules

#### **United States Supreme Court**

**Codispoti v. Pennsylvania**, 418 U.S. 506, 94 S.Ct. 2687, 41 L.Ed.2d 912 (1974) An alleged contemnor may be summarily tried for acts of contempt that occur during a trial, and may receive a sentence of no more than six months. In addition, the judge may summarily convict and punish for separate contemptuous acts that occur during trial even though the aggregate punishment exceeds six months. However, when a judge postpones until after trial contempt proceedings for various acts of contempt committed during trial, the contemnor is entitled to a jury trial if the aggregate sentence is more than six months, even though each individual act of contempt is punished by a term of less than six months.

**Gelbard v. U.S.**, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d 179 (1972) In defense to a contempt charge brought on the basis of a grand jury witness's refusal to obey government orders to testify before the grand jury, witness may invoke federal statute barring use of intercepted wire communications as evidence.

**Groppe v. Leslie**, 404 U.S. 496, 92 S.Ct. 582, 30 L.Ed.2d 632 (1972) Due process was violated where, without notice or opportunity to be heard, state legislature passed resolution citing person for contempt that occurred two days earlier.

**Johnson v. Mississippi**, 403 U.S. 212, 91 S.Ct. 1778, 29 L.Ed.2d 423 (1971) Summary contempt is appropriate where misbehavior occurs in the presence of and is personally observed by the judge, and where immediate corrective steps are needed to restore order and maintain the dignity and authority of the court.

If the judge's knowledge of some essential elements of the contempt depend on statements made by others, due process requires notice and hearing. Because the hearing must be before an unbiased judge, the trial court should recuse itself where it is overly enmeshed in matters involving the alleged contemnor.

**Mayberry v. Pennsylvania**, 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971) Where the trial court waited until end of trial to hold contempt proceedings for insulting and slanderous remarks aimed at the court, contempt should have been tried by a different judge.

**Bloom v. Illinois**, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968) Prosecutions for serious criminal contempt are subject to the jury trial provision of the U.S. Constitution. See also, **People v. Owens**, 42 Ill.2d 451, 248 N.E.2d 104 (1969) (criminal contempt for which defendant received a one-year sentence was a serious offense requiring a jury trial).

**Ungar v. Sarafite**, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964) The trial judge may preside over post-trial contempt proceeding for a witness who criticized the judge's rulings and refused to answer questions.

**Panico v. U.S.**, 375 U.S. 29, 84 S.Ct. 19, 11 L.Ed.2d 1 (1963) Insanity defense is available against contempt charge.

## Illinois Supreme Court

**City of Urbana v. Andrew N.B.**, 211 Ill.2d 456, 813 N.E.2d 132 (2004) The Juvenile Court Act permits prosecution of some offenses as municipal ordinance violations without the right to appointed counsel, but minors sentenced to supervision for ordinance violations may not be held in contempt of court.

**Marcisz v. Marcisz**, 65 Ill.2d 206, 357 N.E.2d 477 (1976) Criminal contempt is directed at preservation of the dignity and authority of the court and seeks to punish. Civil contempt is intended to enforce the rights of private parties and compel obedience to orders or decrees for the benefit of opposing parties.

Order finding defendant in contempt of court for violating an injunction in a divorce decree was criminal, not civil, because it was intended to preserve the dignity and authority of the court and to punish defendant for past transgression; thus, defendant was entitled to notice, reasonable opportunity to defend, the assistance of counsel, the right to be proven guilty beyond a reasonable doubt, and not to be compelled to testify against himself. See also, **People v. Ramsell**, 266 Ill.App.3d 297, 640 N.E.2d 975 (2d Dist. 1994) (attorney charged with criminal contempt for failing to appear at hearing could not be required to "show cause" why he was not guilty of contempt, as this "amounts to an impermissible shifting of the burden of proof").

## Illinois Appellate Court

**People v. Jones**, 2023 IL App (1st) 221311 Defendant issued subpoenas to ShotSpotter, Inc, apparently in anticipation of filing a motion to suppress. ShotSpotter responded to some of defendant's requests but filed a motion to quash others. The trial court denied the motion to quash, in part, and ordered production of materials relating to the reliability of ShotSpotter's system. ShotSpotter did not comply and subsequently was held in contempt.

ShotSpotter (now known as "SoundThinking") filed a notice of appeal within 30 days of the contempt order, pursuant to Supreme Court Rule 304(b)(5), but more than 30 days after the entry of the order denying the motion to quash. Because the contempt proceedings necessarily encompass the underlying order, the contempt appeal necessarily includes review of the propriety of that underlying order. Further, a ruling on the motion to quash generally is not itself a final and appealable order. Thus, the appellate court had jurisdiction to review the merits of the underlying order denying the motion to quash.

**People v. McPherson**, 2017 IL App (2d) 150538 While defendant was facing prosecution for a drug offense, the State filed a petition for adjudication for direct criminal contempt because after being granted use immunity, defendant refused to testify at his brother's murder trial. The State asked the trial court to consider imposing a sentence of more than six months incarceration.

Defendant subsequently entered guilty pleas to both the drug and contempt charges. Consecutive terms of three-and-one-half years for the drug conviction and six years for contempt were imposed. Defendant moved to reconsider the contempt sentence, but the trial court denied the motion after reiterating the reasons for imposing a six-year-sentence.

Because defense counsel failed to file a Rule 604(d) certificate, the trial court remanded the cause for defendant to file a new motion and for the trial court to hold a new hearing. The court rejected the State's argument that direct criminal contempt proceedings are "*sui generis*" and not subject to Supreme Court Rule 604(d). Although procedural protections applicable to criminal prosecutions do not generally apply to direct criminal

contempt convictions, in this case the State employed a formal process in which defendant was charged by a petition for adjudication of direct criminal contempt, was arraigned, and entered a guilty plea at a formal proceeding. In addition, a sentencing hearing was held at which the trial court considered the pre-sentence report and various sentencing factors. Under these circumstances, the rules normally applicable to criminal prosecutions, including the certificate requirements of Rule 604(d), should apply.

**People v. Perez, 2014 IL App (3d) 120978** Indirect criminal contempt involves conduct the judge has not personally witnessed. Accordingly, indirect criminal proceedings must be initiated by a written request for adjudication and give rise to similar procedural safeguards as those required in criminal proceedings, including the requirement of proof beyond a reasonable doubt.

Typically, indirect criminal contempt involves a situation where the accused willfully ignores a valid court order. In some unusual situations, indirect criminal contempt involves disrespectful acts to the court's authority, even though such acts were not witnessed by the judge.

Here, during a court recess, a bailiff overheard defendant state, "I waited all fucking morning and now she takes a break," and reported it to the judge. The judge instructed the State to prepare and file a petition for contempt, and the matter proceeded immediately to trial over defense counsel's objection.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge referenced both the civil and criminal standards for contempt.

The Appellate Court disagreed with the trial judge's finding that defendant's words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, "all f\*\*king morning."

**People v. Hixson, 2012 IL App (4th) 100777** An element of contempt is that the conduct in question must have been wilfully committed. Intent may be inferred from the circumstances accompanying the conduct and need not be proven directly.

Here, defendant filed a *pro se* "petition for injunctive relief," requesting day-for-day good conduct credit against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line. The trial court found that the order might be interpreted as a copy of an order that had been entered by the court rather than a proposed order, and could hinder the administration of justice and "put the Court in disrepute."

The Appellate Court concluded that there was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. "At most, the facts and circumstances indicate defendant submitted 'a faulty proposed order.'" Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court's order was reversed.

**People v. Duff, 2012 IL App (5th) 100479** Criminal contempt requires intent. In direct criminal contempt committed in the presence of the court, intent can be inferred from the nature of the conduct. Because the contemptuous behavior occurs in the presence of the court,

the court may proceed on this personal knowledge and summarily punish the contemnor without conducting a hearing or allowing a defense to the charge.

However, a contemnor's health condition could bar criminal responsibility. If there is a substantial issue of the defendant's mental capacity to commit contempt, that matter is beyond the personal knowledge of the trial judge and requires a hearing on the contemnor's mental capacity.

Here, defendant had made delusional claims on the record; the petition before the court in the underlying proceeding alleged that defendant was mentally ill; and, the trial judge had remarked that defendant appeared to have two separate personalities, that his behavior was not reasonable and rational, and that he believed defendant suffered from a personality or behavior disorder or mental illness.

The Appellate Court reversed and remanded for a hearing to determine if defendant had a mental illness that could have a bearing on his ability to form the requisite intent to commit direct criminal contempt.

**People v. Covington**, 395 Ill.App.3d 996, 917 N.E.2d 618 (4th Dist. 2009) Civil contempt occurs where the purpose of the penalty is to coerce the contemnor to comply with a court order. Under civil contempt, sanctions cease when the contemnor complies with the court order. Criminal contempt, on the other hand, punishes one for committing prohibited conduct or for failing to take action that was required. Where the purpose of the trial court's sanctions was not to compel future action, but to punish defendant for failing to obey the trial court's order to obtain employment, the contempt was clearly criminal rather than civil.

A defendant may be sanctioned for indirect criminal contempt only if he is afforded the same constitutional protections afforded to any other criminal defendant. An alleged criminal contemnor is entitled to know the nature of the charge and to have the charge definitely and specifically set forth, must have an opportunity to respond, and has the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt.

Defendant was not afforded sufficient due process to permit an adjudication of indirect criminal contempt where the State merely filed a petition for rule to show cause, which was insufficient to provide proper notice.

In addition, the State cannot shift the burden to the defendant compelling him to "show cause" why he should not be held in contempt. Neither the State nor the defendant presented any evidence concerning the alleged contempt. However, the court took judicial notice of a previous proceeding at which it *sua sponte* asked the defendant to explain why he did not have a job and why he should not be held in contempt. The trial judge also asked defendant whether he had any witnesses or evidence to present in opposition to the contempt petition, and on several occasions ordered defendant to show what he had done to seek employment. Such a procedure impermissibly shifted the State's burden of proof to the defendant.

Finally, the trial court erred when it did not at any point inform defendant of his right to counsel.

**People v. Budzynski**, 333 Ill.App.3d 433, 775 N.E.2d 275 (4th Dist. 2002) The circuit court's jurisdiction to revoke or modify probation expires with the end of the probationary period. A trial court may use its contempt power to enforce probation conditions that "survive independently of the probation order"; however, only sanctions which are sentencing alternatives under **730 ILCS 5/5-5-3(b)** survive the probation order. Where the State's petition to hold defendant in contempt for failing to comply with a probation condition was

filed after the probation term had expired, and the condition did not survive the probation order because it is not a sentencing alternative under §5-5-3(b), the trial court lacked subject-matter jurisdiction to enforce the condition with its contempt powers.

## §12-2

### Direct Contempt and Indirect Contempt

#### Illinois Supreme Court

**People v. L.A.S.**, 111 Ill.2d 539, 490 N.E.2d 1271 (1986) Defendant's failure to return to court following a recess could not be punished summarily as direct contempt. Although the fact of the respondent's absence was "immediately before the court,...the reasons for her absence were not." Thus, whether the respondent intended to willfully disrupt the proceedings by her absence depended on "the facts and circumstances surrounding her absence," which were unknown to the trial court.

**People v. Miller**, 51 Ill.2d 76, 281 N.E.2d 292 (1972) The court's order for direct contempt must set forth fully and specifically the conduct upon which the finding was based. See also, **People v. Edwards**, 69 Ill.App.3d 626, 387 N.E.2d 969 (1st Dist. 1979).

**People v. Javaras**, 51 Ill.2d 296, 281 N.E.2d 670 (1972) The procedures required for criminal contempt depend on whether the contempt is "direct" or "indirect." Direct contempt is conduct that is personally observed by the judge or which takes place in an integral or constituent part of the court and is, therefore, in the constructive presence of the court. See also, **People v. Miller**, 51 Ill.2d 76, 281 N.E.2d 292 (1972) (direct contempt is conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or to derogate from its authority or dignity, or to bring the administration of law into disrepute).

Direct contempt may be summarily punished (with a sentence of less than six months' imprisonment) without a hearing or other procedural formalities. See also, **People v. L.A.S.**, 111 Ill.2d 539, 490 N.E.2d 1271 (1986) (direct contempt may be summarily found and punished "because all elements are before the court and . . . come within [the court's] own immediate knowledge.") Contempt in the constructive presence of the court may require evidence to establish the contempt and, if so, notice and a hearing.

Indirect contempt occurs out of the presence of the court, and the accused must be informed of the charges and given a full hearing and an opportunity to defend. See also, **People v. L.A.S.**, 111 Ill.2d 539, 490 N.E.2d 1271 (1986) (due process safeguards (i.e., notice, opportunity to answer and a hearing) are required in cases of indirect contempt "because a finding of indirect contempt requires proof of matters outside the immediate knowledge of the court").

#### Illinois Appellate Court

**People v. Johnson & Johnson**, 2022 IL App (5th) 210250 The defendant corporation and one of its employees, Dr. Susan Nicholson, were held in direct criminal contempt after Dr. Nicholson failed to appear for the second day of her scheduled trial testimony in a product liability case. On appeal, the defendants argued that the direct criminal contempt finding was erroneous.

Direct criminal contempt is contemptuous conduct occurring in the presence of the judge, such that all elements of the offense are within the judge's personal knowledge. It may be found and punished summarily because of this fact, and the usual procedural due process safeguards are not required. Indirect criminal contempt, on the other hand, requires proof of

matters outside the immediate knowledge of the court, so the alleged contemnor is entitled to due process safeguards such as notice, opportunity to respond, and a hearing.

Here, the court erred in finding direct criminal contempt. Dr. Nicholson's absence from court, alone, was insufficient to establish that she wilfully intended to disrupt the proceedings or embarrass the court. Counsel for the corporation told the court that Dr. Nicholson was ill and unable to appear, an explanation the court rejected. Without hearing evidence, the court had no way of knowing why Dr. Nicholson failed to appear or whether her absence was willful. Those matters were not within the court's personal knowledge. Accordingly, the matter should have proceeded as a charge of indirect contempt.

While mischaracterization of the type of contempt does not always require reversal, here the trial court's failure to provide defendants with any due process safeguards necessitated reversal and remand. The court declined the defendants' request to assign the matter to a new judge on remand, however, because there was no evidence that the judge was biased against them, despite the court's obvious frustration with the circumstances surrounding Dr. Nicholson's testimony.

**People v. Smith, 2019 IL App (4th) 160641** Trial court did not err in summarily finding defendant in contempt of court based upon defendant's in-court comments. Contempt may not be summarily imposed if the record shows a substantial question as to defendant's mental capacity to commit contempt. While defendant had a history of mental illness, he had been evaluated and found fit prior to trial, and he was able to control his conduct during other stages of the proceedings in his case.

**In re Criminal Contempt of Turner & Hudson, 2016 IL App (4th) 160245** During a recess at a trial concerning concentrated animal feeding operations, defense counsel informed the judge that spectators were distributing books in the courtroom. The judge stated that he had seen a woman carrying a box but did not see her distributing anything.

When questioned by the judge, Hudson stated that she had brought books into the courtroom and had distributed them. Turner said that she had not distributed any books but had passed out some kind of pamphlet. The court held both in direct criminal contempt.

Later the same day, defendants appeared with an attorney who stated that she knew one of the contemnors but that a different attorney would be representing them. The attorney sat next to defendants but did not enter an appearance or present evidence or argument. No attorney appeared on behalf of the contemnors.

The court again found defendants in direct criminal contempt and fined each \$500, ordering they be held in custody until the fine had been paid. It did not allow defendants to present evidence or make statements.

During oral argument, the Appellate Court reversed the convictions from the bench. It then issued a written opinion reversing the contempt citations.

To be found in direct criminal contempt, the contemptuous acts may be committed outside the physical presence of the judge but within an integral part of the court. In that situation, the contemnor is entitled to the same procedural protections as a person charged with indirect criminal contempt, including notice of the nature of the charge, an opportunity to answer, the right to a hearing, the privilege against self-incrimination, the presumption of innocence, the right to be proved guilty beyond a reasonable doubt, the right to counsel and to appointed counsel if indigent, the right to confront and cross-examine witnesses, the right to be personally present at trial, the right to testify or to remain silent, the right to compulsory process, and the right to present testimony.

Here, the judge did not observe the acts on which the contempt findings were based. Instead, the court learned of the alleged misconduct from counsel, who did not observe the acts but was told of them by another person.

Although the acts occurred within an integral part of the court, the judge failed to provide the necessary procedural protections which would have permitted the contempt finding to stand. The proceedings “constituted less of a ‘hearing’ and more of a lecture by the court.” Because the contemnors were not afforded their procedural rights, the direct contempt findings could not be sustained.

**People v. Perez, 2014 IL App (3d) 120978** Criminal contempt arises from conduct calculated to: (1) impede, embarrass, or obstruct the court in its administration of justice; (2) derogate from the court’s authority or dignity; or (3) bring the administration of law into disrepute. Direct criminal contempt involves a defiant or disrespectful act occurring in the courtroom and witnessed by the judge. Neither a formal charge nor an evidentiary hearing is necessary in direct criminal contempt. The misconduct is observed by the judge and the relevant facts lie within his or her personal knowledge.

Indirect criminal contempt involves conduct the judge has not personally witnessed. Accordingly, indirect criminal proceedings must be initiated by a written request for adjudication and give rise to similar procedural safeguards as those required in criminal proceedings, including the requirement of proof beyond a reasonable doubt.

Typically, indirect criminal contempt involves a situation where the accused willfully ignores a valid court order. In some unusual situations, indirect criminal contempt involves disrespectful acts to the court’s authority, even though such acts were not witnessed by the judge.

Here, during a court recess, a bailiff overheard defendant state, “I waited all fucking morning and now she takes a break,” and reported it to the judge. The judge instructed the State to prepare and file a petition for contempt, and the matter proceeded immediately to trial over defense counsel’s objection.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge referenced both the civil and criminal standards for contempt.

The Appellate Court disagreed with the trial judge’s finding that defendant’s words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, “all f\*\*king morning.”

**People v. Duff, 2012 IL App (5th) 100479** Criminal contempt of court is conduct by an individual that is calculated to embarrass, hinder, or obstruct the court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute. The actions must be willful, as criminal contempt requires intent.

In direct criminal contempt committed in the presence of the court, the intent can be inferred from the nature of the contemptuous conduct. The court may proceed on its personal knowledge and summarily punish the contemnor without conducting a hearing or allowing a defense to the charge.

However, a contemnor’s health condition could bar criminal responsibility. If there is a substantial issue of the defendant’s mental capacity to commit contempt, that matter is



beyond the personal knowledge of the trial judge, and requires that a hearing on the contemnor's mental capacity be conducted.

**People v. Hixson**, 2012 IL App (4th) 100777 Criminal contempt may be direct or indirect. Direct criminal contempt of court can occur in two ways - the contemptuous act may be personally observed by the judge, or the act may be committed outside the immediate physical presence of the judge but within an integral part of the court such as the circuit clerk's office. Under appropriate circumstances, filing a document with the clerk of the court may be the basis for a direct criminal contempt conviction.

The alleged condemner in an indirect contempt case is entitled to due process safeguards, including notice, an opportunity to answer, and a hearing. Such safeguards are not required for direct contempt, which may be punished summarily because all of the elements of the offense are within the direct knowledge of the court. However, where direct criminal contempt occurs in the constructive presence of the court, as where the contempt is based on the filing of a document in the clerk's office, the procedural requirements of indirect criminal contempt proceedings must be followed.

Here, defendant filed a *pro se* "petition for injunctive relief," requesting day-for-day good conduct credit against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line.

An element of contempt is that the conduct in question must have been wilfully committed. Intent may be inferred from the circumstances accompanying the conduct and need not be proven directly. There was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. "At most, the facts and circumstances indicate defendant submitted 'a faulty proposed order.'" Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court's order was reversed.

**People v. Meyers**, 352 Ill.App.3d 790, 817 N.E.2d 173 (2d Dist. 2004) A court may summarily punish criminal contempt only if all relevant facts are before the court and within the judge's personal knowledge. Where there is a substantial issue concerning defendant's mental capacity, it cannot be said that all relevant facts are before the court. Defendant here should not have been found in contempt of court for his in-court behavior without being afforded an opportunity to present a defense of mental incapacity.

**People v. Goleash**, 311 Ill.App.3d 949, 726 N.E.2d 194 (4th Dist. 2000) The trial court erred by holding probationer in indirect criminal contempt for committing the offense of driving while his license was revoked.

Unlike probation revocation proceedings, contempt is a criminal offense and carries the "full panoply of constitutional protections . . . afforded any other criminal defendant," including the right to notice of the nature of the charges. Thus, to institute indirect criminal contempt proceedings, the State must advise defendant not only of the sanctions being sought but also that the proceedings will be criminal in nature.

A probation revocation petition which did not charge indirect criminal contempt and merely sought contempt as an alternative relief for the probation violation failed to imply that criminal proceedings were contemplated. Therefore, it did not satisfy the notice requirement.

Although a defendant who violates probation arguably commits both an act of indirect criminal contempt and a probation violation, "[i]n light of the procedural burdens . . . that are inherent in prosecuting an indirect criminal contempt charge, we find it bewildering that

the State would ever seek indirect criminal contempt sanctions when the less burdensome procedures to resentence the probationer (pursuant to a petition to revoke his probation) provide a means to achieve the same result."

**People v. Willson**, 302 Ill.App.3d 1004, 706 N.E.2d 1075 (3d Dist. 1999) The trial court erred by finding defendant in direct criminal contempt for repeatedly interrupting the judge at a hearing on a motion for a fitness hearing. There was a *bona fide* doubt that defendant was fit and the court in fact granted a motion for a fitness hearing. Because there was a substantial issue as to defendant's mental capacity, the element of willfulness was not within the court's personal knowledge. Due process precluded summary proceedings, therefore, and required a hearing at which defendant could litigate the willfulness of his actions.

**People v. Minor**, 281 Ill.App.3d 568, 667 N.E.2d 538 (1st Dist. 1996) Defendant could be held in direct criminal contempt for filing pro se documents alleging that the trial judge was racially biased; contumacious statements contained in documents filed with the clerk are deemed to have been made in the presence of the court. See also, **Kaeding v. Collins**, 281 Ill.App.3d 919, 668 N.E.2d 572 (2d Dist. 1996).

**People v. Bell**, 276 Ill.App.3d 939, 658 N.E.2d 1372 (2d Dist. 1995) A written contempt order failed to adequately set forth the grounds for contempt where it said merely that defendant had been sentenced to six months for "direct criminal contempt of court for comments made to Judge Hogan in open court." However, because the complete report of proceedings was available and showed a sufficient basis for the contempt finding, defendant was not entitled to a reversal on this basis.

Although the trial court lacked authority to conduct the hearing at which the allegedly contumacious acts occurred (a hearing on a motion for substitution of the judge), it had inherent authority to hold defendant in direct criminal contempt for disrespectful behavior that occurred during the hearing. A different rule would mean that "judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them."

**People v. Horton**, 250 Ill.App.3d 944, 620 N.E.2d 437 (4th Dist. 1993) Supreme Court Rules 402 and 605, which specify admonitions to be given to a defendant before a guilty plea and after sentencing, apply to indirect criminal contempt proceedings. The Court rejected the State's argument that an indirect contempt admitted by defendant in open court can be punished as direct contempt without notice, written charges, a plea, or a trial.

**People v. Boucher**, 179 Ill.App.3d 832, 535 N.E.2d 56 (2d Dist. 1989) Indirect contempt can be punished summarily as direct contempt if defendant admits his contempt in court. The court erred in summarily punishing defendant for contempt at the hearing on a petition to revoke probation. Although defendant admitted to the violation, there was no evidence of willfulness. Therefore, defendant had to be afforded the procedural safeguards applicable to indirect contempt.

**People v. Pincham**, 38 Ill.App.3d 1043, 350 N.E.2d 67 (1st Dist. 1976) The court reversed the trial judge's finding of contempt because the alleged contempt was indirect rather than direct, as the finding was based on facts outside the judge's personal knowledge, and the defendant was not afforded notice, counsel, a full hearing, and the right to confrontation. The

case was remanded for a new hearing before "an impartial judge." See also, **People v. Edwards**, 69 Ill.App.3d 626, 387 N.E.2d 969 (1st Dist. 1979).

**People v. Clark**, 4 Ill.App.3d 301, 280 N.E.2d 723 (1st Dist. 1972) A witness may be held in direct contempt for refusing to be sworn in.

## §12-3

### Conduct of Counsel and Pro Se Litigant

#### United States Supreme Court

**Maness v. Meyers**, 419 U.S. 499, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975) A lawyer is not subject to contempt for advising a client to withhold material that the lawyer in good faith believes may incriminate the client. The privilege against self-incrimination would be drained of its meaning if counsel could be penalized for advising his client, in good faith, to assert the privilege.

**Taylor v. Haynes**, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974) Where an attorney is held in contempt and sentenced after trial for conduct that occurred during trial, due process requires reasonable notice of the specific charges and the opportunity to be heard.

**In re Little**, 404 U.S. 553, 92 S.Ct. 659, 30 L.Ed.2d 708 (1972) Contempt conviction reversed; defendant, acting as his own counsel, said in closing argument that he was a political prisoner and that the judge was biased.

**Holt v. Virginia**, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 290 (1965) In the absence of improper language, due process is violated where an attorney is held in contempt for moving for a change of venue and to disqualify the judge because of bias.

**In re McConnell**, 370 U.S. 230, 82 S.Ct. 1288, 8 L.Ed.2d 434 (1962) It was not contempt for an attorney to insist on the right to ask questions or to inform the court that he would ask questions until stopped by a bailiff. After the statement, counsel did not ask further questions along the line forbidden by the court.

**In re Green**, 369 U.S. 689, 82 S.Ct. 1114, 8 L.Ed.2d 198 (1962) Where an attorney advised his client to violate what he believed to be an invalid injunction, due process required a hearing before a contempt finding could be entered.

#### Illinois Supreme Court

**People v. Simac**, 161 Ill.2d 297, 641 N.E.2d 416 (1994) A defense attorney was held in direct criminal contempt for placing his law clerk in defendant's place at counsel table and placing defendant elsewhere in the courtroom. Counsel's conduct was contemptuous because he failed to inform the trial court before making the switch. An attorney's duty to provide vigorous representation does not justify concealing the identity of the client from the trial judge, who is obligated to insure that the accused is present at all stages of the proceedings. Counsel could have tested the identification without deceiving the trial judge by holding an in-court lineup, having defendant sit in the gallery without placing a substitute at counsel table, or placing more than one person at counsel table. Requiring a defense attorney to give prior notice before placing a substitute at counsel's table would not violate professional responsibility or improperly reveal defense strategy.

**People v. Shukovsky**, 128 Ill.2d 210, 538 N.E.2d 444 (1988) The trial judge properly held an assistant state's attorney in contempt for failing to comply with a subpoena after being ordered to do so. "[T]he trial judge understood that [the] contempt was purely a formal one and that the motivation for his refusal to comply with the subpoena duces tecum was solely to permit, through an appeal, examination of a question, the answer to which was not free from doubt."

**People v. Waldron**, 114 Ill.2d 295, 500 N.E.2d 17 (1986) The appellate court ordered respondent, the Public Defender, to appear before it to show cause why he failed to timely file briefs. After respondent explained his reasons, the court indicated that it was unsure what it was going to do, but noted that it could find respondent in contempt of court. Later that day, the court entered an order finding respondent in indirect criminal contempt for failing to either file the briefs or request an extension of time. The Supreme Court vacated the contempt order because respondent was not afforded the procedural safeguards applicable to indirect contempt. The rule to show cause did not adequately advise respondent of the charge and the possibility that he might be found in contempt. For "all practical purposes, the proceeding consisted solely of accusatory cross-examination of respondent by one of the judges," without respondent having the opportunity to present any evidence other than his own statement.

**People v. Verdone**, 107 Ill.2d 25, 479 N.E.2d 925 (1985) The trial judge's order finding the State's Attorney in contempt for refusing to comply with the order to produce certain documents for a suppression hearing was reversed. The trial judge erred by ordering a hearing on a motion to suppress that was legally insufficient.

**People v. Siegel**, 94 Ill.2d 167, 445 N.E.2d 762 (1983) Defendant, an attorney, properly held in contempt after the court advised defendant that she could not address the court in open session without filing an appearance and defendant, nevertheless, approached the bench without authorization, addressed the court in a loud and abusive manner, and raised objections to the court's jurisdiction over her "client." Defendant's conduct "was calculated to embarrass, hinder or obstruct the court in its administration of justice."

**People v. Graves**, 74 Ill.2d 279, 384 N.E.2d 1311 (1979) Direct contempt finding upheld where defense counsel asked questions that the trial court had prohibited. The trial court's ruling was not ambiguous and the questions informed the jury of impermissible matters.

**People ex rel. Kunce v. Hogan**, 67 Ill.2d 55, 364 N.E.2d 50 (1977) Contempt finding upheld where an attorney filed a civil suit against a trial judge who was to sentence the lawyer's client, because the civil case was intended to hinder, delay, or impede the administration of criminal justice, interfere with the judicial process, and embarrass the trial court. While the \$750 fine was upheld, a 30-day jail sentence was reversed because counsel had not been allowed to present mitigating evidence.

**People v. Miller**, 51 Ill.2d 76, 281 N.E.2d 292 (1972) Counsel's "sarcastic" and "overzealous" remarks were not contemptuous, but were instead a good faith attempt to represent his client.

## **Illinois Appellate Court**

**People v. Smith**, 2019 IL App (4th) 160641 Trial court did not err in summarily finding defendant in contempt of court based upon defendant's in-court comments. Contempt may not be summarily imposed if the record shows a substantial question as to defendant's mental capacity to commit contempt. While defendant had a history of mental illness, he had been evaluated and found fit prior to trial, and he was able to control his conduct during other stages of the proceedings in his case.

**People v. Hixson**, 2012 IL App (4th) 100777 Defendant filed a *pro se* "petition for injunctive relief" which argued that he was statutorily entitled to receive day-for-day good conduct credit against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line. The trial court found that the order might be interpreted as a copy of an order that had been entered by the court rather than a proposed order, and could hinder the administration of justice and "put the Court in disrepute."

There was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. "At most, the facts and circumstances indicate defendant submitted 'a faulty proposed order.'" Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court's order was reversed.

**People v. Ramsell**, 266 Ill.App.3d 297, 640 N.E.2d 975 (2d Dist. 1994) An attorney's failure to appear in court as scheduled was indirect rather than direct contempt. Therefore, due process required notice, a hearing, and the opportunity to be heard.

Furthermore, because criminal contempt was involved, the reasonable doubt standard applied. Thus, defendant could not be required to "show cause" why he was not guilty of contempt; a "show cause" order in a criminal contempt case "amounts to an impermissible shifting of the burden of proof."

**People v. Griffith**, 247 Ill.App.3d 21, 620 N.E.2d 1138 (1st Dist. 1993) Defense attorneys should not have been held in contempt for arguing that the trial court had abandoned its judicial role and acted as an additional prosecutor. Even if that interpretation of the post-trial motion was accurate, the allegation could not be considered contumacious in light of case law reversing other convictions on the same basis.

**People v. Powell**, 248 Ill.App.3d 164, 618 N.E.2d 365 (1st Dist. 1993) Defense counsel said that she would be in court when the trial was scheduled to begin and that she hoped the jury would be as well. The trial judge demanded an apology, and defense counsel apologized at length. Nevertheless, the judge found counsel in contempt, stating that her remark "undermined the fairness and integrity" of the court and that counsel had "turned her back" on the judge in "silent defiance." The appellate court reversed. Counsel's remark was at most sarcasm and could not have been intended to embarrass or hinder the court. Also, the court criticized the trial judge for finding counsel in contempt after she apologized: "Suffice it to say this is the weakest case involving a finding of contempt that we have encountered through research, personal experience or any other source . . . The power to punish for direct contempt is an extraordinary power and should be exercised with utmost caution. In this unfortunate case, that power was exercised with abandon."

**People v. Gasper**, 167 Ill.App.3d 218, 521 N.E.2d 170 (3d Dist. 1988) Defendant was held in direct criminal contempt because the trial court believed that his motions to withdraw his

pleas contained bad faith allegations and lies. The court vacated the finding of contempt, stating:

"[D]efendant did not intentionally obstruct or hinder the trial court sufficient to warrant a direct criminal contempt finding. [Although the] trial court was understandably irritated by defendant's 'on-again, off-again' plea bargaining, nevertheless, given the trauma associated with appearing in court, it is understandable defendant was nervous and unsure of himself. He obviously wanted to present the most favorable story and achieve the best possible outcome in this situation. His conduct, in light of his guilty plea, conviction and sentence, did not warrant an additional finding of direct criminal contempt."

**People v. Buckley**, 164 Ill.App.3d 407, 517 N.E.2d 1114 (2d Dist. 1987) Contempt citations against defense attorneys who refused to provide the trial court with their calculations concerning the running of the speedy trial term were upheld.

Attorneys engaged in litigation owe "a duty to the court to assist it in the expeditious consideration and disposal of cases," and "have a duty as officers of the court to make full and frank disclosure of all matters and facts which the court ought to know." The court condemned "the gamesmanship utilized by contemnors in their effort to gain an advantage for their client under the speedy trial rules which was intended by neither the constitution nor statute. . . . [A] defendant is not entitled to the assistance of his counsel to turn that right into a loophole to avoid trial."

The appeal was not moot though the trial judge had discharged defense counsel after finding that the prosecutor's calculations were accurate. The trial judge lacked authority to modify or change the contempt finding after defendants filed notices of appeal. Also, review was appropriate because a judgment of contempt against an attorney "may have adverse collateral consequences relating to his future employment or may subject him to disciplinary proceedings in which the contemnor may not be permitted to relitigate the propriety of the contempt adjudication."

**People v. Robinson**, 100 Ill.App.3d 660, 427 N.E.2d 288 (1st Dist. 1981) Defendant was properly found in direct criminal contempt for filing a change of venue petition containing "scurrilous, libelous and defamatory statements" directed at the judge. See also, **People v. LaRosa**, 198 Ill.App.3d 862, 556 N.E.2d 611 (1st Dist. 1990) (trial judge may declare direct criminal contempt for false swearing only where he has personal knowledge of the falsity from defendant's admissions in open court; a judge may not summarily punish a witness for contempt "solely on the basis of the court's opinion that the witness is committing perjury.")

**People v. Knuppel**, 65 Ill.App.3d 1022, 383 N.E.2d 244 (4th Dist. 1978) An attorney must be protected from contempt for professionally (but vigorously) representing a client and legitimately seeking to advance the client's interests. An attorney should not have been held in contempt for disagreeing with the judge "in an unduly loud voice" or for saying "[y]ou bet your booties" to the court.

**People v. Sunnen**, 56 Ill.App.3d 727, 372 N.E.2d 448 (4th Dist. 1978) Defense counsel violated discovery rules by introducing a piece of evidence that had not been disclosed to the State. At the end of the trial, counsel was held in direct contempt without notice or hearing.

Because the alleged contemptuous behavior was essentially committed outside the presence of the court, it was at most indirect contempt. Further, the evidence failed to establish that counsel willfully violated the trial court's discovery order and, instead, merely showed that counsel was "inept" and "unaware of the import of our rules of discovery."

**People v. Oatis**, 56 Ill.App.3d 613, 371 N.E.2d 1195 (1st Dist. 1977) Defendant, who represented himself at trial, was admonished about making statements in front of the jury during voir dire. He was subsequently held in contempt for saying that he had not been given ample time to prepare his evidence and asking whether the jury thought that he "could give a proper verdict on [a juror] without knowing all the evidence."

Contempt finding reversed. The trial judge should have explained the meaning of his "admonition" when requested to do so by defendant. Also, defendant had not been admonished about making the second statement, and the first statement was not made after defendant was admonished or immediately before the finding of contempt.

**People v. Hanna**, 37 Ill.App.3d 98, 345 N.E.2d 179 (4th Dist. 1976) Pro se defendant was improperly held in direct contempt for accompanying an objection with the statement that the judge had "messed up so much already it's pathetic." Defendant's comment was not contemptuous; although the remark offended the sensibilities of the judge, it was isolated and was not made in a loud or boisterous voice.

**People v. Roberts**, 42 Ill.App.3d 604, 356 N.E.2d 429 (4th Dist. 1976) Contempt order affirmed where attorney loudly expelled air from his lungs, slapped the table and shouted "how come everything he does is right and everything I do is wrong." Each act to some extent obstructed the administration of justice; in addition, the attorney had previously been admonished about misconduct.

**People v. Toomin**, 18 Ill.App.3d 824, 310 N.E.2d 767 (1st Dist. 1974) During a criminal trial, defense counsel cross-examined a police officer with a document purporting to be a police report containing the witness's signature and the police department stamp. This document had not been furnished to defense counsel in discovery. When the trial judge asked how counsel had obtained the police report, he replied that he could not answer for reasons of work product, professional responsibility, and immateriality. The trial court cited counsel for direct contempt and fined him \$100.

The appellate court reversed the contempt finding. The trial court's inquiry was in no way related to any material issue in the case. Further, the witness conceded that the document was authentic. Under these circumstances, the conduct was not contemptuous and did not thwart the administration of justice.

**People v. Pearson**, 98 Ill.App.2d 203, 240 N.E.2d 337 (1st Dist. 1968) Though a lawyer's comment to the judge ("I think your bias is showing") was not proper, it was not contempt of court.

**People v. Pearson**, 98 Ill.App.2d 203, 240 N.E.2d 337 (1st Dist. 1968) A lawyer's strenuous and persistent presentation of his client's case before a hostile trial court, and his comment in the heat of battle that the court was biased, was not calculated to embarrass, hinder, or obstruct the court in the administration of justice.

## §12-4

### Violating Court Orders

#### United States Supreme Court

**U.S. v. Wilson**, 421 U.S. 309, 95 S.Ct. 1802, 44 L.Ed.2d 186 (1975) A federal trial judge properly imposed summary contempt on respondents who refused to testify after being given immunity and ordered to testify. Although the refusals to testify were not made in a disrespectful manner, they were intentional obstructions of court proceedings and disrupted both the progress of trial and the orderly administration of justice. See also, **People v. Goodwin**, 148 Ill.App.3d 56, 499 N.E.2d 119 (4th Dist. 1986) (grant of immunity must comply with statute).

**Shillitani v. U.S.**, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966) Where a witness refuses to testify before the grand jury after being granted immunity, he may be held in civil contempt without an indictment or a jury trial and may be imprisoned until the grand jury is discharged.

#### Illinois Supreme Court

**People ex rel. City of Chicago v. Le Mirage, Inc.**, 2013 IL 113482 To sustain a finding of indirect criminal contempt for violating a court order outside the court's presence, two elements must be proved: (1) the existence of a court order; and (2) a willful violation of that order. An injunction order cannot support a finding of contempt unless it sets forth with certainty, clarity and conciseness precisely what actions are enjoined.

A jury found defendants guilty of indirect criminal contempt for violating court orders that prohibited occupancy of the second floor and mezzanine area of a building where defendants operated a nightclub.

The orders prohibiting occupancy of the "2nd floor" of the premises, were sufficiently clear to support a finding of contempt. The court rejected the argument that the "2nd floor" meant only the mezzanine area that extended over the second floor.

Any confusion based on transcripts of the proceedings in building court regarding whether the orders only prohibited occupancy of the mezzanine was only relevant to whether defendants' violation of the court's orders was willful. Ambiguities raised by those transcripts were matters for the jury to weigh. Viewing all of the evidence in the light most favorable to the prosecution, a rational jury could find that defendants were fully aware that the orders closed not just the mezzanine, but the entire second floor.

**In re G.B.**, 88 Ill.2d 36, 430 N.E.2d 1096 (1981) The trial judge properly held juvenile in contempt of court for violating order of supervision by failing to attend school. Sentence of probation and 60 days' incarceration was upheld. But see, **In re M.C.**, 89 Ill.App.3d 1130, 412 N.E.2d 709 (2d Dist. 1980) (contempt order overturned where order directing minor to attend school "did not reasonably apprise her that her tardiness . . . would expose her to . . . contempt.")

**O'Leary v. Allphin**, 64 Ill.2d 500, 356 N.E.2d 551 (1976) Defendants, the director and employees of the Department of Revenue, were found in contempt for enforcing certain sections of the Cigarette Tax Act in violation of a permanent injunction.

The injunction was not so specific and clear that it was susceptible of only one interpretation. Also, the record showed that defendants ceased all enforcement procedures when the injunction was issued and resumed them only after guidelines were developed



through consultation between the legal staffs of the Department of Revenue and the Attorney General. Thus, the record failed to establish a willful violation of the injunction beyond a reasonable doubt.

**People v. Denson**, 59 Ill.2d 546, 322 N.E.2d 464 (1975) Defendant was held in contempt for failing to testify at another's trial after she had been granted immunity. Defendant refused to testify because she believed that her testimony, although given under immunity, could subject her to perjury charges if it was inconsistent with her trial testimony. The trial testimony could not be used for the purpose feared by defendant, and defendant was properly held in contempt.

Further, the contempt order was a valid "dual-purpose order" that involved both civil and criminal contempt, and the six-month sentence was proper.

### **Illinois Supreme Court**

**People v. Johnson**, 2017 IL App (1st) 162876 Defendant, who was charged with distribution of harmful material, was properly convicted of direct civil contempt when she defied a court order to unlock her phone. The court's credibility finding was not against the manifest weight of the evidence where defendant's claim that she could not remember the passcode conflicted with her previous claim that she did not "have" the passcode. Only four months passed between the motion to compel and defendant's claim to have forgotten the code, and her supposed loss of memory had never been mentioned before.

**People v. Covington**, 395 Ill.App.3d 996, 917 N.E.2d 618 (4th Dist. 2009) Civil contempt occurs where the purpose of the penalty is to coerce the contemnor to comply with a court order. Under civil contempt, sanctions cease when the contemnor complies with the court order. Thus, a civil contemnor is said to "hold the keys to the jailhouse door."

Criminal contempt, on the other hand, punishes one for committing prohibited conduct or for failing to take action that was required. Where the purpose of the trial court's sanctions was not to compel future action, but to punish defendant for failing to obey the trial court's order to obtain employment, the contempt was clearly criminal rather than civil.

To provide notice of the alleged contempt, the contemnor must receive written notice of the conduct which allegedly constituted contempt. Because the State did not file a petition for adjudication of criminal contempt, but merely filed a petition for rule to show cause, the procedure was insufficient to provide proper notice of a potential criminal sanction for contempt.

In addition, the State has the burden to prove the charges in a criminal contempt petition beyond a reasonable doubt, and cannot shift that burden to the defendant compelling him to "show cause" why he should not be held in contempt. Neither the State nor the defendant presented any evidence concerning the alleged contempt. However, the court took judicial notice of a previous proceeding at which it *sua sponte* asked the defendant to explain why he did not have a job and why he should not be held in contempt. The trial judge also asked defendant whether he had any witnesses or evidence to present in opposition to the contempt petition, and on several occasions ordered defendant to show what he had done to seek employment. Such a procedure impermissibly shifted the State's burden of proof to the defendant.

Finally, a person charged with indirect criminal contempt is entitled to, and must be admonished of, the right to counsel. Here, the trial court did not at any point inform defendant of his right to counsel.

The indirect criminal contempt order was vacated, and the cause was remanded for further proceedings.

**In re Marriage of Almquist**, 299 Ill.App.3d 732, 704 N.E.2d 68 (3d Dist. 1998) Indirect criminal contempt for violating a court order consists of two elements: (1) the existence of a court order, and (2) a willful violation of that order by the accused. The evidence was sufficient to sustain a conviction for indirect criminal contempt where defendant played a tape at high volume in the background while her former husband was attempting to engage in court-ordered telephone visitation with the couple's daughter.

The court rejected the argument that such conduct did not violate the "express terms" of the court order - a reasonable person would have understood the order as permitting telephone visitation "free of obnoxious interference."

**People v. Fields and Bracey**, 177 Ill.App.3d 129, 533 N.E.2d 48 (4th Dist. 1988) Defendant Bracey testified against Fields. At trial, Bracey, citing his Fifth Amendment rights, refused to answer four questions. Three of the questions concerned who had accompanied Bracey in a burglary and one of the questions concerned how he entered burglarized premises. Four separate findings of contempt were entered against defendant. This was improper under **Yates v. U.S.**, 355 U.S. 66 (1987), because a refusal to answer a series of questions constitutes only one contempt when the witness has "carved out an area of refusal." Here, defendant's refusal to answer the three questions regarding who had accompanied him in a burglary all pertained to a single "area of refusal," so it was improper to enter three separate contempt convictions.

**People v. Gorisek**, 176 Ill.App.3d 266, 530 N.E.2d 518 (3d Dist. 1988) Defendant, who was serving a sentence for unlawful delivery of cocaine, was taken before a grand jury and asked to give the names of persons whom he knew to be involved with drugs. He disclosed the names of eight people, but said he could not remember any other names.

The evidence was insufficient to sustain a conviction of indirect criminal contempt because there was no evidence refuting defendant's claim of lack of memory.

**People v. Mowery**, 116 Ill.App.3d 695, 452 N.E.2d 363 (4th Dist. 1983) Pro se defendant was held in contempt of court for failing to pay restitution and court costs imposed as a condition of probation. The court vacated the contempt order because the trial court failed to advise defendant that only a willful failure to pay would support a finding of contempt. Also, the sentencing hearing was "entirely taken up with establishing that the defendant had not remained steadily employed," and did not establish that the failure to pay costs and restitution had been willful. The court further held that the written order of commitment failed to show the jurisdiction of the court, recite the facts upon which the contempt was based, find that defendant's conduct was willful, or "provide any means whereby the defendant may purge himself" of the civil contempt. See also, **People v. Harris**, 41 Ill.App.3d 690, 354 N.E.2d 648 (4th Dist. 1976) (failure to pay restitution must be willful to constitute contempt; mere failure to secure and maintain employment does not amount to willfully refusing to comply with a court order); **People v. Nelson**, 84 Ill.App.3d 1123, 406 N.E.2d 167 (4th Dist. 1980) (defendant was properly held in contempt for failing to pay restitution).

**People v. Harris**, 91 Ill.App.3d 1, 413 N.E.2d 1369 (4th Dist. 1980) A sheriff was properly held in contempt of court for refusing to produce police reports in response to a subpoena.

**People v. Schmoll**, 77 Ill.App.3d 762, 396 N.E.2d 634 (2d Dist. 1979) Defendant was properly held in civil contempt for refusing to comply with discovery order to provide handwriting exemplars.

**People v. Stewart**, 58 Ill.App.3d 630, 374 N.E.2d 1006 (1st Dist. 1978) The trial court erred by finding witness in direct contempt for refusing to submit to a urine test. The witness's refusal to submit to the test did not hinder or obstruct the administration of justice because the witness testified and answered all questions asked on direct and cross-examination. Also, the court found that the results of the test would only have gone to credibility and that the jury had sufficient evidence to make that determination.

**People v. Colclasure**, 48 Ill.App.3d 988, 363 N.E.2d 631 (4th Dist. 1977) The trial court may punish a periodic imprisonment violator by indirect criminal contempt. The availability of a statutory remedy does not preclude the court from exercising its inherent contempt power.

**People v. King**, 8 Ill.App.3d 2, 288 N.E.2d 672 (1st Dist. 1972) Defendant could not be held in contempt for refusing to answer an irrelevant question on cross-examination.

## §12-5

### Other Conduct

#### United States Supreme Court

**Eaton v. Tulsa**, 415 U.S. 697, 94 S.Ct. 1228, 39 L.Ed.2d 693 (1974) Although petitioner referred to the alleged assailant as "chicken shit" while testifying on direct examination, the isolated usage of street vernacular, not directed at the judge or any officer of the court, cannot support a conviction for criminal contempt.

Furthermore, the State reviewing court denied due process by upholding the contempt order on the basis of remarks not found to be contemptuous by the trial court.

**Wood v. Georgia**, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962) It is not contemptuous for sheriff to issue a press release criticizing judges. Because the statements did not create a clear and present danger to the administration of justice, sheriff's right to free speech was violated by contempt citation.

#### Illinois Supreme Court

**People v. Ziporyn**, 106 Ill.2d 419, 478 N.E.2d 364 (1985) Defendant, a psychiatrist, testified as a defense expert at a death penalty sentencing hearing. When he left the stand after a "vigorous" and "rather demeaning" cross-examination, defendant uttered "a vile epithet" to the prosecutor. The Supreme Court found that defendant had the intent necessary for contempt. It was possible that members of the jury might have overheard defendant's comments, and "it was certainly foreseeable . . . that these 'fighting words' would prompt action which would disrupt the court proceedings."

**People v. Baxter**, 50 Ill.2d 286, 278 N.E.2d 777 (1972) Defendant was properly found guilty of direct contempt for allegations in motion that were intentionally disrespectful, contemptuous, abusive, and critical of the personal integrity of the judge.

**People v. Tomashevsky**, 48 Ill.2d 554, 273 N.E.2d 398 (1971) Defendant's alleged laughter in court, although in the presence of the judge, was indirect contempt where the judge did not personally know who had laughed.

### **Illinois Appellate Court**

**People v. Perez**, 2014 IL App (3d) 120978 Indirect criminal contempt involves conduct the judge has not personally witnessed. Here, during a court recess, a bailiff overheard defendant state, "I waited all fucking morning and now she takes a break," and reported it to the judge. The judge instructed the State to prepare and file a petition for contempt, and the matter proceeded immediately to trial over defense counsel's objection.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge referenced both the civil and criminal standards for contempt.

The Appellate Court disagreed with the trial judge's finding that defendant's words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, "all f\*\*king morning."

**People v. Kelleher**, 116 Ill.App.3d 186, 452 N.E.2d 143 (4th Dist. 1983) Following his acquittal, defendant requested return of his bail deposit. The trial judge denied the request and ordered the bond paid to the county for the cost of appointed trial counsel. Defendant said, "I wonder how much of that you are getting." The judge stated that defendant was "indicating that the court is getting some of the money from the attorney fees," an interpretation which defendant denied, and held defendant in direct criminal contempt. The appellate court upheld the contempt finding, reasoning that defendant's statement, which "accused the judge of a crime," was "likely to hinder or obstruct the court and to derogate its authority."

**People v. Collins**, 57 Ill.App.3d 934, 373 N.E.2d 750 (2d Dist. 1978) Defendant was properly held in direct contempt for sitting in courtroom without clothes.

**People v. Watts**, 66 Ill.App.3d 971, 384 N.E.2d 453 (2d Dist. 1978) Defendant, a female spectator in the courtroom, was held in direct contempt for wearing a t-shirt bearing the words "Bitch, Bitch" in five-inch letters. The court reversed, holding that the evidence was insufficient to show that defendant intended to act contemptuously. Although the shirt was not proper courtroom attire and the judge could have excluded defendant from the courtroom until the offending garment was changed or covered, defendant should have been given a reasonable opportunity to alter her behavior before being held in contempt.

**People v. Bufford**, 132 Ill.App.2d 417, 270 N.E.2d 550 (1st Dist. 1971) Defendants were found in contempt of court for violating a circuit court rule that prohibited "loitering in or about the rooms or corridors of the courthouse." The convictions were reversed because the State failed to prove beyond a reasonable doubt that defendants "intended to lessen the authority or dignity of the court or hinder it in the administration of justice."

## §12-6 Sentencing

### Illinois Supreme Court

**People v. Geiger, 2012 IL 113181** Contempt has no sentencing classification or sentencing range set by the legislature. Because there are no sentencing guidelines, Appellate Courts have a special responsibility to determine that the contempt power is not abused. A contempt sentence is reviewed for an abuse of discretion.

Factors that a trial court may consider when fashioning an appropriate sentence for contempt are: (1) the extent of the willful and deliberate defiance of the court's order, (2) the seriousness of the consequences of the contumacious behavior, (3) the necessity of effectively terminating the defendant's defiance as required by the public interest, and (4) the importance of deterring such acts in the future. Punishment of criminal contempt should reflect the least possible power adequate to achieve the end proposed.

A 20-year sentence for refusal to testify after being offered use immunity was an abuse of discretion and manifestly disproportionate to the nature of the offense. Defendant willfully and deliberately refused to testify, but his refusal was based on the mistaken belief that he had a right to do so. Defendant's testimony was cumulative of other evidence, and his refusal did not hamper the State's ability to prosecute, as it obtained a conviction without defendant's testimony. Defendant's conduct was nonviolent and he was not flagrantly disrespectful to the trial judge. The court remanded to afford the circuit court the opportunity to enter a more reasonable sentence.

### Illinois Appellate Court

**People v. Hoffman, 2020 IL App (2d) 180853** The trial court did not abuse its discretion when it ordered the sentence for contempt to run consecutively to the sentence for domestic battery. The contempt conviction stemmed from the defendant's violation of a no-contact order prior to trial. Although consecutive sentences were not mandatory under section 5-8-4(d)(8), because contempt is not a felony, the court did have discretion to order consecutive sentences under section 5-8-4(c)(1). And while defendant's contempt conviction was based on a short phone call, the sentencing court could base its decision on the totality of the facts that came out at aggravation. Defendant's conduct extended far beyond the one phone call in the charge, such that consecutive sentences was clearly warranted to protect the public. Finally, both the length of the sentence and the consecutive sentencing order comported with the factors applicable to contempt sentences as outlined in **People v. Geiger, 2012 IL 113181**.

**People ex rel. City of Chicago v. Le Mirage, 2013 IL App (1st) 093547** Criminal contempt is punishable by fine or imprisonment. The power to punish for contempt is inherent and can be neither created nor limited by statute. Because it is not subject to legislation, contempt has no sentencing classification or range. Because criminal contempt is not bound by sentencing ranges, courts have a special responsibility for determining that the contempt power is not abused. Punishment of criminal contempt should reflect the least possible power adequate to the end proposed.

In sentencing a criminal contemnor, a trial court may consider: (1) the extent of the willful and deliberate defiance of the court's order; (2) the seriousness of the consequences of the contumacious behavior; (3) the public interest in terminating the defendant's defiance; and (4) the importance of deterring future acts. Sentences imposed for criminal contempt are reviewed for an abuse of discretion.

Defendants were convicted of indirect criminal contempt for violating a court order that they vacate the second floor of a building due to building code violations that made occupancy of that floor unsafe. Deaths and injuries occurred when they violated that order by allowing the second floor to be occupied. Those deaths and injuries did not result from the structural defects that made occupancy of the second floor unsafe, but occurred when 21 people were crushed to death in a panic after security guards released pepper spray in an attempt to subdue a fight. The deaths and injuries were not properly considered by the court in aggravation where there was no reliable evidence that defendants' contumacious conduct was the proximate cause of those deaths and injuries.

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