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Contempt of Court: A Primer

Contempt of court is like life on Mars. The search for it falls into two general categories: direct and indirect, says David Parnall of Hartog, Baer & Hand.

By David Parnall

"So there's no specific instrument designed to detect life, but if something crawled out from under a rock and climbed on the back of the thing, you wouldn't need the lab experiment to determine that's like yup, that's life." – Neil deGrasse Tyson, commenting on Mars rover Curiosity

Contempt of court is like life on Mars. The search for it falls into two general categories: direct and indirect. Direct contempt is when its beady little eyes stare a judge right in the face and announce itself. Indirect contempt is when traces of it call for a more deliberate analysis. The statutory underpinnings of civil contempt dwell in Code of Civil Procedure (CCP) sections 1209 to 1222, which also provide the "specific instruments" to analyze the issue of indirect contempt.

Contempt Generally

Contempt of court is, broadly speaking, an act that obstructs the administration of justice. Stretching back at least to the 1300s, Anglo-Saxon law has a history of empowering judges to summarily deal with "clamor[s] raised in court[.]" The power stems from the premise that judges must be able to punish acts that tend to "impede, embarrass, or obstruct the court in the discharge of its duties."

A judge's contempt authority is significant. It empowers a single official to summarily imprison a citizen just for being rude. Judges are therefore tasked with wielding that power cautiously. Their burden is to be "long of fuse and somewhat thick of skin." *DeGeorge v. Superior Court (1974) 40 Cal.App.3d 305, 312.* They must keep in mind that the contempt statutes' primary objective is to promote the orderly administration of justice, not to vindicate the judge.

Contempt that is committed in the court's immediate view is "direct" contempt. As with a scurrying creature, all the court needs to determine its existence is to directly perceive it. An example of direct contempt is when a testifying witness acts disrespectfully or refuses to obey an order. The court may summarily punish these acts. The contempt order need only recite the facts, adjudge the issue, and prescribe the punishment.

Contempt is "indirect" when the offending act occurs outside the judge's presence. For example, a person violates a protective order by leaking case details to the press or disclosing a trade secret. Just like science would require a cautious assessment of whether a Martian outcropping is a piece of sandstone or the weathered guano of a living being, a court must follow a formal and careful process to determine the existence of indirect contempt.

Statutory Scheme and Process

The statutes that define contempt of court are comprehensive. They outline myriad types, ranging from "insolent behavior," to "disobedience of any lawful judgment," to detaining a witness and beyond. CCP §§ 1209(a)(1), (5), (8). The statutes can ensnare virtually anyone: witnesses, attorneys, jurors, sheriffs, coroners, and even other judges.

Beyond what actually constitutes contempt, much of the statutory scheme details the steps required to initiate the proceedings and prove indirect contempt. Those steps are as follows:

- A party presents the court with an affidavit outlining the offending act. The declaration is like a complaint. It provides jurisdiction, states the facts, and frames the issues.
- The court issues an order to show cause why it should not find the accused in contempt. The OSC commences a separate action focused solely on the contempt. In extreme cases, the court may issue a bench warrant instead.
- The order is served, like a summons, on the alleged contemnor.
- The court holds a hearing on the alleged contemnor's answer and both sides' evidence.
- The court makes findings and imposes punishment. Punishment for civil contempt can consist of a fine of up to $1,000 or imprisonment for up to 5 days, or both, for each separate act of contempt.

Other Procedural Points

Civil vs. Criminal. Civil contempt is quasi-criminal in nature, thus providing the alleged contemnor with some criminal rights. But the boundary between "civil" or "criminal" contempt is squishy, and it differs on federal and state levels. The distinction lies in the "character and purpose" of the proceedings. *Shillitani v. United States (1966) 384 U.S. 364, 368.*

The Supreme Courts of both the U.S. and California have characterized civil contempt as coercive; it is a forward-looking remedy intended to coerce a person to comply with an order. Criminal contempt, on the other hand, is punitive; it is designed to punish the contemnor for a past act. The California Supreme Court has also stated, however, that the difference is immaterial because in California the procedures are the same for both civil and criminal contempt.

Appealability. A judgment of contempt is not appealable. The proper method to challenge a contempt order is to seek extraordinary writ relief.

Attorney-Contemnors. If the contemnor is an attorney, both the court and the attorney must notify the State Bar of the contempt order. The State Bar must investigate the matter and assess whether further penalties are appropriate.

Examples

The ways that a person can run afoul of the court are probably as limitless as poor behavior can be. In probate, for example, when a court orders a person to produce a will, or a trustee to perform an act of administration, those parties' refusals to comply are acts of contempt. And in our age of lamented courtroom incivility, attorney contempt is a particular eyesore.

A court cannot punish an attorney for the mere comment that "this trial is becoming a joke." In re Carrow (1974) 40 Cal.App.3d 924, 927. But gender bias against a female judicial officer in referring to her ruling as "succubistic" *(Martinez v. O'Hara (2019) 32 Cal.App.5th 853, 856, 858)*; arguing that the judge "obviously doesn't want to apply the law" *(In re Buckley (1973) 10 Cal.3d 237, 250)* or is "not my mother" *(McCann v. Municipal Court (1990) 221 Cal.App.3d 527, 541)*; abruptly leaving the courtroom; or pressing an argument after the court has ordered the attorney to stop can all lead to findings of contempt.

Moreover, while "contumacious conduct" is a focus, it is not a requirement. Contempt can exist even where an attorney is acting courteously. For an analysis of fourteen instances of attorney-contempt in one trial, see Hawk v. Superior Court (1974) 42 Cal.App.3d 108.

A court must be able to do its work. The contempt statutes ensure its ability to do so and define the steps it must take to deal with the people who get in its way. Those steps are simple when the court directly witnesses the offending conduct. When it does not, CCP 1209 et seq. constitute the well-defined instruments that the court must employ to answer the question of its existence.

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