

MONTHLY  
LUNCHTIME SEMINAR  
SERIES

34<sup>TH</sup> SESSION:

CONTEMPT:  
WHAT NOT TO DO

Justice Robert E. Gordon  
Justice Joy V. Cunningham

MAY 1, 2015



**Appellate Judge  
Robert E. Gordon  
First District, 5th Division**

Justice Robert E. Gordon was appointed to the bench in 1996 and later elected, then assigned to the Illinois Appellate Court in 2006 and has authored the most opinions and dissents from 1996 to 2013. Former presiding justice of the 1st, 5th, and 6th Divisions, and the alternate on the Workers Comp Appellate Court representing Cook County. Before that a jury trial judge in the Law Division after presiding over the most jury trials in the Municipal Division for seven years.

Presided over 1,400 jury trials to verdict. As a trial lawyer, Gordon was a defense litigator for 18 years and then switched to plaintiff personal injury, malpractice litigation representing medical providers as well as patients, criminal defense, automobile industry, trade dress, workers compensation, condemnation, commercial law, franchising, zoning, and sports law. Tried over 400 jury trials in 35 years as a trial lawyer. Voted "Man of the Year" in 1972 to 1974 by homeowners in Northbrook, for his legal zoning battles against the County and Village representing homeowners pro bono. He was then elected Village Trustee from 1975-1984, becoming Chairman of the Zoning Committee, Chairperson, Council of Governments of Cook County, 1983 (over 500 Municipal bodies). Spokesperson for the council before the Illinois Problems Commission and media, Special Assistant Attorney General from 1985-1996. Member and later Chairman of Local Board No.5 of the Draft Board for 20 years (1982-2002), recipient of the U.S. Selective Service Bronze Metal in 2002, Member of Operation PUSH and former member of their Juvenile Mentoring and Early Intervention Committee, and a sports historian. A 10 year member of the Supreme Court ADR Committee, member of the Educational Committee, the Appellate Court Administrative Committee, and has served on numerous Committees of the Illinois, American, and Chicago Bar Associations, and served as a member of Secretary of State Jesse White's Safety Commission. Treasurer for the United Council for Higher Education in Haiti. Recipient of Northbrook Park District Special Achievement Award (1974) for his help in acquiring land for parks through the passage of a referendum, and the Public Service Award in 1978 for his honesty and hard work in government. Recipient of Decalogue Society of Lawyers President's Award, 2008, Founders Award 2011, and the Freeman Judicial Merit Award in 2012. Conferred as Distinguished Counselor by the ISBA in 2012. Little League coach for 6 years, commissioner of baseball for 10 years, and former member of numerous school and park district committees. Author and lecturer on the law and its practical application. Married to Marilyn Statland-Gordon for 57 years, has 4 children, 8 grandchildren, and 1 great-grandchild.

## **BIOGRAPHICAL STATEMENT OF JUSTICE JOY VIRGINIA CUNNINGHAM**

Justice Joy Virginia Cunningham was elected to the Illinois Appellate Court, First District in 2006. Prior to joining the court Justice Cunningham served as Senior Vice President - General Counsel and Corporate Secretary for the Northwestern Memorial Healthcare system. Previously, Justice Cunningham also served as a judge of the circuit court of Cook County.

Justice Cunningham has had a broad range of experience over the course of her legal and judicial careers, initially serving as a judicial law clerk to the late Justice Glenn Johnson of the Illinois Appellate Court. She was also an assistant Illinois Attorney General, a litigator in private practice and Associate General Counsel for Loyola University of Chicago.

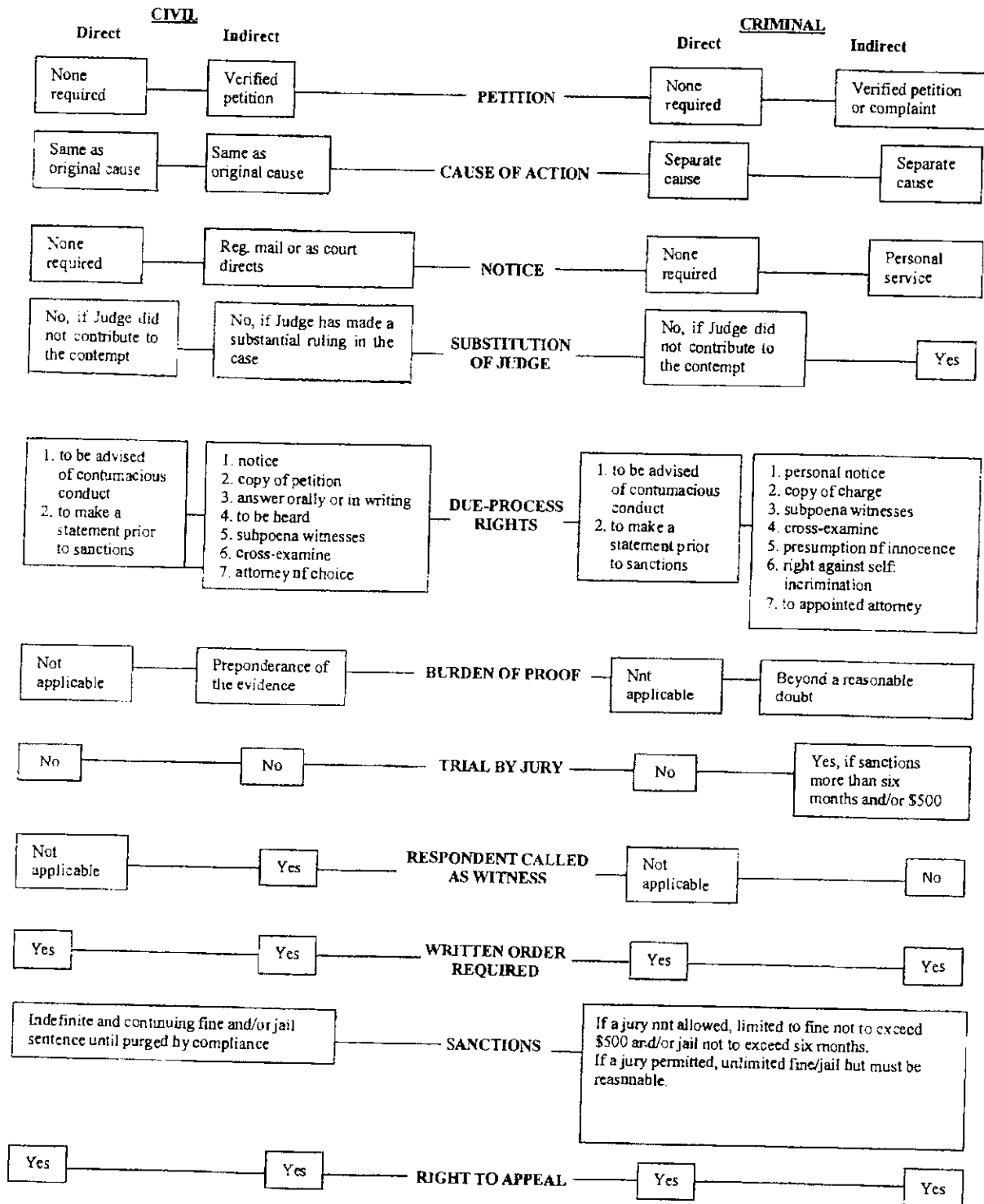
Justice Cunningham has had a diverse and non-linear career. She has served on numerous boards and committees, including serving as co-chair of the Chicago Bar Association's joint state/federal judicial security task force, which resulted in legislation aimed at preventing disclosure of personal information of judges; she is a member of both the Illinois Supreme Court Judicial Evaluation Performance Committee, the Illinois Supreme Court Committee on Education, and serves as chair of the Advisory Committee to the Illinois Supreme Court Preservation Commission.

In 2004, Justice Cunningham became the first black woman to become President of the Chicago Bar Association, the nation's largest municipal bar association. She is a member of the venerable Chicago Network as well as the Economic Club of Chicago. She frequently writes and speaks on a number of topics including healthcare, regulatory matters, business ethics and issues related to diversity. She is noted for her interest in mentoring young people and regularly participates in educational and community outreach activities.

# SECTION A

- Comparison Chart: Civil vs. Criminal Contempt, May 2015.
- “Contempt,” by Justice Robert E. Gordon, May 2015.

**COMPARISON  
CHART  
CONTEMPT OF  
COURT**



## CONTEMPT

By  
Justice Robert Gordon  
May 2015

### INTRODUCTION

Liberty is an important right. Thomas Jefferson said it is an inalienable right and that "we hold these truths to be self-evident." Our constitutional fathers agreed and our 5<sup>th</sup> Amendment proclaims that the government can deprive no person of liberty "without due process of law."

In a contempt proceeding, the mechanics of contempt must be understood in order for the bench and the bar to determine whether a person's liberty is being taken "without due process of law." Although a trial judge should attempt to avoid entering a contempt order and utilize other alternatives if at all possible, there are many situations that require the use of the contempt process. Lawyers should always attempt to placate and apologize to the court and try to convince the judge not to hold them in contempt because the contempt finding goes on your record, can cause an inquiry at the ARDC, and basically can prohibit you from later becoming a judge. Try to convince the court to enter a discovery sanction, a monetary fine, or anything but a contempt finding, unless it is a finding of friendly contempt, which we will discuss at a later part of this presentation.

In order to avoid reversals, the trial court must preserve the record, and show the warnings that were given and prepare a detailed order providing the entire history and reasons for the finding of contempt. When a court fails to do this, the order of contempt is usually easily reversed in the appellate court.

In debt collection cases it is important that the judge's finding of contempt was entered for failure of the contemnor to reasonably comply with a court order, not to collect a debt. The judge must be aware of section 14 of the Illinois Constitution, which states that:

"[n]o person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment." Ill. Const. 1970, Art. I, § 14.

In addition, under the Debtors' Right Act of 2012:

"[n]o order of body attachment or other civil order for the incarceration or detention of a natural person respondent to answer for a charge of indirect civil contempt shall issue unless the

respondent has first had an opportunity, after personal service or abode service of notice as provided in Supreme Court Rule 105, to appear in court to show cause why the respondent should not be held in contempt." 735 ILCS 5/12-107.5.

In many cases that have been reviewed in the appellate and Supreme Court, trial judges either have not specified in their contempt order whether their finding of contempt is civil or criminal, direct or indirect. For the most part, the labeling may not be important. However, to avoid reversals, the order in a civil contempt case must give the contemnor the ability to purge the contempt, and in an indirect criminal contempt order, the contemnor must be provided the constitutional protections that are given to all criminal defendants. Usually, an inexperienced judge will not be able to enter the proper findings.

### **INDIRECT CIVIL CONTEMPT**

1. To compel compliance with court orders
2. Limited constitutional protections
  - A. To be advised of the contumacious conduct
  - B. To receive a copy of the written order
  - C. To make a statement prior to sanctions
3. Defense - inability to perform
4. Prospective - the sanction must be invoked for refusing to do what has been ordered
5. The contemnor must have the ability to purge
6. All fines payable to the Clerk of the Court

### **INDIRECT CRIMINAL CONTEMPT**

1. To punish
2. Constitutional protections that are allowed to all criminal defendants, including
  - A. Right to jury trial when incarceration exceeds 6 months or the fine exceeds \$500.00
  - B. Right to counsel
  - C. Right to change of judge
  - D. Right to be charged with a written complaint, petition or information
  - E. Right to personal service and to know the nature of the charges
  - F. Right to file an answer and a have public trial
  - G. Right to present evidence, subpoena witnesses, and to confront and cross-examine witnesses
  - H. Right to the presumption of innocence and against self-incrimination
  - I. Right to be proven guilty beyond a reasonable doubt
3. The sanction must be retrospective - a punishment for doing what has been prohibited.

## CIVIL CONTEMPT

### I. Purpose

The purpose of civil contempt is to compel compliance with court orders, not to punish. *Cook County v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131, 135 (1974). Its purpose is not to collect a debt. It is to compel the contemnor to act. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43, 44 (1st Dist. 1990). It is remedial in nature. *Betts*, 200 Ill. App. 3d at 43-44. A civil contempt proceeding is a proper method for testing the correctness of a pretrial discovery order. *Sterling Finance Management, LP v. UBS Painewebber, Inc.*, 336 Ill. App. 3d 442, 444, 456 (2002); *Janousek v. Slotky et al.*, 2012 IL App (1st) 11342 (2012). A civil contempt proceeding is also an appropriate method for testing the correctness of orders entered in a collateral proceeding such as one to discover assets. *In re Marriage of Decker*, 153 Ill. 2d 298, 305 (1992), or as a vehicle to appeal an interlocutory order.

In *Van Gelderen v. Hokin*, 2011 IL App (1st) 093152 (2011), after a jury rendered a monetary verdict on a personal injury case, plaintiff's attorney filed a citation to discover assets 11 days after the trial court entered judgment on the verdict. 13 days later the defendant filed a posttrial motion for judgment notwithstanding the verdict with a motion to stay the citation proceedings that was denied. A friendly contempt order was entered and a fine was levied against the defendant's lawyer for \$10.00 to test the denial of a motion to stay. On a *de novo* review, the Appellate Court held that a finding of contempt against an attorney will not stand if the attorney acted in good faith to serve his client and the court. *People v. Siegel*, 94 Ill. 2d 167, 171 (1983). In such cases, the trial court can make this finding which would aid the reviewing court in formulating its decision.

Whenever a noncompliance of a court order was based on "a good-faith effort to secure an interpretation of an issue without direct precedent," the contempt will be considered friendly and the finding should be vacated. *Doe v. Weinzweig*, 2015 IL App (1st) 133424, ¶ 40.

While the state legislature may enlarge the court's power to issue a contempt ruling for violating a statute, *Rusch v. White*, 334 Ill. 465, 484-85 (1929), lawmakers may not restrict the court's inherent power and ability to issue contempt orders. *In re G.B.*, 88 Ill. 2d 36 (1981). In the federal system, on the other hand, the federal courts derive their contempt powers through Congress. 18 USC § 401 (2006).

### II. Attributes and Defenses

The attributes of civil contempt are that (1) the contemnor is able to perform the action demanded and (2) no further sanctions are imposed if the contemnor complies. *Betts*, 200 Ill. App. 3d at 44. The contemnor possesses the "'keys to his cell.'" *In re Marriage of Lagston*, 103 Ill. 2d 266, 289 (1984). While the contemnor's intent is irrelevant, *Cook County*, 59 Ill. 2d at 137, the inability to perform is a defense, so long as the infeasibility is not caused by the contemnor. *Betts*, 200 Ill. App. 3d at 44. So if the court orders the contemnor to produce records, and the contemnor says he has no records and never maintains any records, and the court holds him in civil contempt until he produces the records or explains what he did with the records and the contemnor stays



incarcerated – always contending he never maintained any records of the transaction – there comes a point when the court must recognize that the contemnor either has no records or he will stay incarcerated forever. The court may then utilize some other sanction. The better process would be to set a maximum period for the incarceration if the contemnor does not comply with the order. See *Gambino v. W. W. Funding, LLC*, 2012 IL App (1st) 103415U (2012) (unpublished).

Sanctions may not be imposed in a civil contempt proceeding when it is clearly established that the contemnor is unable to comply with the terms of the order. *United States v. Rylander*, 460 U.S. 752, 75 L. Ed. 2d 521, 103 S. Ct. 1548 (1983).

Cases considering these questions have determined that the contemnor bears the burden of demonstrating that the sanction has lost its coercive force and will not likely cause him to comply with the order of the court. The credibility of the contemnor's avowed refusal to comply with the order is one circumstance that a court may consider in determining whether a sanction for civil contempt remains coercive. There is no requirement, however, that a court accept a contemnor's declaration as dispositive. "Obviously, the civil contempt power would be completely eviscerated were a defiant witness able to secure his release merely by boldly asserting that he will never comply with the court's order." *In re Grand Jury Investigation*, 600 F.2d 420, 425 (1979).

Apart from the contemnor's reasons for refusing to comply with the underlying order, other criteria that a court may consider in making this determination include the age and health of the contemnor, the length of the incarceration, and "the significance of the ends to be achieved" by the underlying order. *In re King*, 110 Wash. 2d 739, 805, 7567 P.2d 1303, 1310 (1988). In addition, a contemnor may offer evidence from other inmates, community members, or expert witnesses regarding the strength of his resolve not to comply with the order of the court. *Sanders v. Shephard*, 163 Ill. 2d 534, 542 (1994).

The Illinois Supreme Court has clearly stated that sanctions for civil contempt must be continuing, open-ended, and subject to being purged:

"Imprisonment imposed for a criminal contempt is purely punitive and must be for a definite term... But in cases of civil contempt, the sentence being imposed as a remedial or coercive measure, the appropriate punishment is to commit the contumacious party to imprisonment until he has complied with the mandate of the court, since a fine or imprisonment for a specified term might not secure obedience to the order. *People v. Redlich*, 402 Ill. 270, (1949)."

In *In re Marriage of Logston*, 103 Ill. 2d 266, 289 (1984), the Illinois Supreme Court reaffirmed its directive for open-ended sanctions:

"When a party is found in civil contempt of court, such as for failure to pay money, the contempt order is coercive in nature. The court

seeks only to secure obedience to its prior order. Since the contempt order is coercive rather than punitive, the civil contemnor must be provided with the 'keys to his cell.' That is, he must be allowed to purge himself of contempt even after he has been imprisoned. *People ex rel. Chicago Bar Association v. Barasch*, 21 Ill. 2d 407, 409-10 (1961); *Continental Illinois National Bank v. Brach*, 71 Ill. App. 3d 789, 792-93 (1979). Accordingly, imprisonment for a definite period of time is improper in this situation. *Sullivan v. Sullivan*, 16 Ill. App. 3d 549, 552 (1973)."

In Illinois, it is well established that civil contempt is not an affront to the authority of the court and not a private remedy, that any fine imposed pursuant to the contempt is payable to the public treasury, and that a plaintiff may not recover compensatory damages in a civil contempt proceeding. *Round Lake Sanitary District v. Basic Electronics Manufacturing Corp.*, 60 Ill. App. 3d 40, 43 (1978) (citing *Rothschild & Co. v. Steger & Sons Piano Manufacturing Co.*, 256 Ill. 196 (1912)). Because a sanction in a civil contempt proceeding is strictly coercive, the court is without the authority to compensate an aggrieved party for its damages. *Harper v. Missouri Pacific R.R. Co.*, 228 Ill. App. 3d 19, 30 (1996).

Federal courts have consistently held that a court may award compensatory damages in contempt proceedings to a party in the underlying proceedings. However, our supreme court determined long ago that Illinois courts were not required to follow the federal courts on the issue and would not do so. *Rothschild*, 256 Ill. at 204-08.

The court, however, is not limited to imposing a fine or incarceration: "The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief. They may entail the doing of a variety of acts, such as the production of books. They may also require the payment of money as in the alimony cases." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 93 L. Ed. 599, 69 S. Ct. 497 (1949). See also *Sauber v. Whetstone*, 199 F.2d 520 (7th Cir. 1952). The court may also sequester the respondent's funds as a sanction for civil contempt. *Geitmann v. Geitman*, 126 Ill. App. 3d 470 (1984).

When the trial judge desires to compensate the opposing attorney for the additional time that the attorney spent on the contempt proceedings, a civil fine is not the vehicle to accomplish that purpose. A judge can order the contemnor to pay the opposing attorney's fees, but it cannot be part of the fine for the contempt. This is because civil contempt is an affront to the authority of the court and not a private remedy. It is coercive and not compensatory. *Keuper v. Beechen, Dill & Sperling Builders, Inc.*, 301 Ill. App. 3d 667, 669-70 (1998).

### III. The Confusion Between Civil and Criminal Contempt

Where the courts confuse criminal contempt with civil contempt it is usually an automatic reversal because criminal contempt triggers important constitutional protections for the contemnor

that civil contempt does not. While criminal contempt is typically *retrospective*, civil contempt is *prospective*. *Betts*, 200 Ill. App. 3d at 46. This distinction is critical because of the constitutional due process rights that come into play for criminal contempt which do not apply to civil contempt. In *Hicks v. Feiock*, 485 U.S. 524 (1988), the US Supreme Court found that a father's failure to pay child support was civil contempt if he could purge the contempt sentence by paying the arrearage. In *Feiock*, a California state court convicted the father on 5 counts of unnamed contempt and sentenced him to jail, then suspended the sentence and placed the father on probation, ordering him to pay \$150.00 per month for child support and \$50.00 per month for arrearage as a condition of probation. In that case, the sanction was held to be criminal because the court imposed a jail term for the contemnor's repeated failure to pay past child support. However, the sanction was also civil in that the sentence could be revoked if the contemnor paid the support order in a timely manner. Thus the same conduct can form the basis for both civil and criminal contempt. It is up to the court to explain fully in its order the basis of its findings and provide an adequate remedy for the contemnor to purge the contempt. According to the US Supreme Court, if the state court ruled on remand that the contemnor could purge his contempt by paying off his arrearage, the contempt was civil. If, however, the contemnor was required to serve the suspended sentence regardless of whether he paid the child support order, then it was criminal contempt and due process rights would be applicable. When you look at the court order in the California case, it would appear to be a civil contempt order, but the court failed to show in writing that the father could purge the contempt by making the required payments. The court failed to use the word purge and failed to demonstrate whether the contempt was criminal or civil.

In an eviction action, a trial judge ordered the sheriff to evict a resident by a date certain. When the sheriff had not accomplished the eviction, plaintiff's counsel filed a petition for a rule to show cause as to why the sheriff should not be held in contempt of court, and on the rule date the court extended the enforceability date for the eviction and continued the rule. On the continued date, the sheriff had accomplished the eviction but did so after the enforceability date set by the court. The trial court found the sheriff in "civil contempt" and entered a fine of \$1,400 payable to plaintiff for their rent loss and \$3,093.75 for attorney's fees. My panel held that the trial court's finding of "civil contempt" was in error, because at the time of the hearing the order had been complied with and the sheriff was in fact being charged with indirect criminal contempt, and was entitled to all of the constitutional protections and procedural rights afforded to other criminal defendants which included the right for a substitution of judges, legal counsel, a jury trial, the right to be charged by a written complaint, the right to know the nature of those charges, the right to personal service, the right to file an answer, the right to be heard, the right to present evidence, the right to confront and cross-examine witnesses, the right to be personally present at trial, the right to subpoena witnesses, the right to the presumption of innocence, and the right to be proven guilty beyond a reasonable doubt. *People v. Budzynski*, 333 Ill. App. 3d 433, 439 (2002); *SKS v. Dart*, 2012 Ill. App. LEXIS 632 (1st Dist.) (2012).

A defendant in an indirect criminal contempt proceeding may move for a substitution of judge under section 114-5 of the Code of Criminal Procedure. *Hoga v. Clark*, 113 Ill. App. 3d 1050, 1059 (1983). If the motion for substitution is made within 10 days after the case has been placed on

the judge's call, the named judge cannot proceed further and must transfer the case. 725 ILCS 5/114-5(a) (West 2010). After that, the movant has the burden of showing prejudice. *In re Marriage of Madary*, 166 Ill. App. 3d 103, 106 (1988).

The same conduct can form the basis for both civil and criminal contempt when the court imposes civil contempt sanctions to coerce future compliance while also imposing criminal contempt sanctions for past violations. You may remember the Kenneth Starr investigation into President Clinton's role in the Whitewater land deal and the case against Susan McDougal charging her with civil contempt for her refusal to testify before a grand jury. In the case against McDougal, the court held her in civil contempt and sent her to jail until she testified or her testimony was not needed, or the grand jury's term had expired. The court order indicated that the contempt violation would last no longer than 18 months. *U.S. v. McDougal*, 97 F.3d 1090 (8th Cir. 1996). Close to 2 years later, McDougal was again called before the grand jury and again refused to testify and was indicted for obstruction of justice and 2 criminal contempt charges for failing to testify before the grand jury earlier. The *McDougal* case is an example of civil and criminal contempt charges applying to the same conduct. However, the initial civil contempt was a separate order from the later criminal contempt findings. One order required her to testify and her jail sentence was to be purged when she did testify. It was an order to force her to testify. The second order was entered to punish her for her failure to testify before an earlier grand jury. McDougal requested a jury trial, and the jury was deadlocked on the contempt charges. McDonald was afforded her due process rights under the federal Constitution.

#### IV. Direct and Indirect Contempt

Both civil and criminal contempt have the distinction of having "direct" contempt, which occurs in the court's presence, and "indirect" contempt, which does not.

Direct contempt occurs in the presence of the court and is limited to actions known by the judge through observation or hearing. It must occur in the physical presence or constructive presence of the court. The judge must have personal knowledge of all of the acts constituting the contempt. *People v. Javaras*, 51 Ill. 2d 296 (1972). That does not include an incident that is reported by the sheriff or a juror. However, it does include the submission of a document that shows disrespect for the court. A defendant who admitted violating her probation and had her suspended sentence revoked signed the revocation order "kiss my ass." She then told her probation officer to give the order to the judge. Observing the comment, the judge scheduled a contempt hearing, found defendant in criminal contempt and sentenced her to 90 additional days in jail as a sanction. The South Carolina Court of Appeals, in an unpublished opinion, found direct criminal contempt, and found the actions of the contemnor in the "presence of the court." *State v. Law*, No. 2007-UP-557 (Dec. 14, 2007) (unpublished). In the *Law* case, the defendant admitted what she wrote in the disrespectful statement and the trial court determined her actions from her testimony and that of the probation officer. Under the circumstances of the *Law* case a hearing was warranted. Whenever the contemnor's act needs explanation, a hearing would be required whether it's direct or indirect.

Indirect contempt occurs when the acts are not admitted and do not occur in the physical or constructive presence of the court and a hearing is usually required because proof must be presented to support a finding of indirect contempt. *People v. L.A.S.*, 111 Ill. 2d 539, 543 (1986).

When the acts occur within the presence of the judge and when the judge acts immediately (*instantly*), the contemnor has the following due process rights in both civil and criminal contempt cases:

- (1) To be advised of the conduct deemed contemptuous,
- (2) The right to make a statement in allocation before being sanctioned,
- (3) The right to receive a copy of the written order of the adjudication of contempt,
- (4) The right to appeal, and
- (5) In civil contempt cases only, the right to purge oneself of the contempt. *Illinois v. Allen*, 397 U.S. 337, 25 L. Ed. 2d 353, 90 S. Ct. 1057 (1970).

In a civil case when a witness refuses to testify and invokes his Fifth Amendment privilege against self-incrimination, the judge can hold that witness in civil contempt and jail the witness until he or she does testify improperly. However, a witness may be denied the privilege only when it is "perfectly clear, from a careful consideration of all the circumstances of the case," that the answers sought "cannot possibly have a tendency" to incriminate. *People v. Cooper*, 202 Ill. App. 3d 336, 342 (1990) (quoting *Hoffman v. United States*, 341 U.S. 479, 488 (1951)). The trial court has discretion to determine whether the witness has a valid basis for invoking the Fifth Amendment right against self-incrimination. *People v. Redd*, 135 Ill. 2d 252, 304 (1990). Any uncertainty as to whether a question calls for an incriminating answer is to be resolved in favor of the witness. *People v. Spain*, 307 Ill. 283, 290 (1923).

On the other hand, in *People v. Iseminger*, 202 Ill. App. 3d 581 (1990), a defendant was held in direct civil contempt for refusing to answer the court's question during a criminal sentencing hearing. The appellate court found that a sentencing judge may conduct a hearing, largely unlimited, of the information it considers appropriate concerning the defendant, including the defendant's drug sources, habits, tendencies, and moral character and whether the defendant is cooperative with officials investigating a criminal conspiracy. However, in reversing the direct civil contempt, the appellate court cautioned that "an order of the court directing a defendant, upon pain of contempt, to answer a court's question at the sentencing hearing, such as occurred here, is action which ought to be a last resort, if ever." *Iseminger*, 202 Ill. App. 3d at 604.

To affirm on appeal a finding of direct contempt of court, the party seeking to affirm the order must show that the particular conduct was calculated to embarrass, hinder, or obstruct the court in the administration of justice, or to lessen its authority or dignity, or to bring the administration of

justice into disrepute. The party seeking to uphold the order bears the burden of showing that the court was warranted in exercising its power. It should also be borne in mind that a court must exercise its power in direct contempt proceedings prudently and judiciously because normal constitutional safeguards are not applicable. *People v. Toomin*, 18 Ill. App. 3d 824, 826 (1974).

In *Emory v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974 (2007), the court ordered the defendant to produce a log of certain documents, and the plaintiff requested 11 of these documents. The defendant refused, claiming attorney-client privilege. The trial court then entered an order providing:

1. That the parties agree to an order finding the defendant in contempt for refusing to produce the documents ordered;
2. That defendant is assessed a penalty of \$10.00. *Emery*, 374 Ill. App. 3d at 976.

The order did not specify what documents were involved or whether the contempt was civil or criminal. The reviewing court vacated the finding of contempt and remanded back to the trial court. The reviewing court discussed whether the contempt was civil or criminal, held it to be civil, but stated it was not a valid civil contempt order because it did not specify the type of contempt, the reason for the finding of contempt, or how the contemnor could purge herself of the contempt.

Indirect civil contempt is typically instituted by a petition for a rule to show cause. Here the contemnor is afforded certain due process rights which, at a minimum, require notice and an opportunity to be heard. *Betts*, 200 Ill. App. 3d at 52-53. The notice must contain an adequate description of the facts on which the contempt charge is based and which informs the contemnor of the time and place of an evidentiary hearing. *Betts*, 200 Ill. App. 3d at 53. The contemnor may waive service of written notice of the charge by voluntarily appearing in court and defending the charge. Usually a party to the original action brings the indirect civil contempt charge by using the rule to show cause as the vehicle to enforce compliance with the court's previous order. *47th & State Currency Exchange, Inc. v. B. Coleman Corp.*, 56 Ill. App. 3d 229, 235 (1st Dist. 1977). The burden of proof is on the petitioner to prove by a preponderance of the evidence that respondent violated a court order. *Central Production Credit Association v. Kruse*, 156 Ill. App. 3d 526, 531 (2d Dist. 1987). If there are affirmative defenses, the respondent must prove those by a preponderance of the evidence. The most common affirmative defense is the inability to comply with the court order. In a matrimonial case where the husband has failed to pay maintenance, the burden shifts to the father to prove that he is unable to pay the maintenance. *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984).

A petition for rule to show cause should not be issued in a criminal contempt matter as it may confuse the parties and shift the burden of proof to the contemnor. *In re Marriage of Betts*, 200 Ill. App. 3d 26 (1990).

In order to find indirect civil contempt, there must be "the existence of [a valid] order of the

trial court and proof [by a preponderance of the evidence] of a willful disobedience of that order." *In re Marriage of Charous*, 368 Ill. App. 3d 99 (2006). The burden is initially on the petitioner to show that the contemnor has violated a court order. The burden then shifts to the contemnor to show that the noncompliance was not willful or contumacious and that he had a valid excuse for failure to follow the court order. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107-08. The trial court's decision will not be disturbed on appeal unless the factual issues are against the manifest weight of the evidence or the record reflects an abuse of discretion. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010 (citing *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984))). If the order of the trial court is later found to be an invalid order, the contempt order must be vacated. *In re Marriage of Radzik*, 2011 IL App (2d) 100374 (2011).

Due process is the most distinguishing factor between civil and criminal contempt. In direct civil contempt, due process consists only of a right to notice, to be provided with a copy of the petition for contempt and the order for the rule to show cause, the ability to answer orally or in writing, to be heard, to present evidence, to cross-examine witnesses, and to call witnesses. *People ex rel. Chicago Bar Association v. Barasch*, 21 Ill. 2d 407 (1961).

A trial court's authority to hold a party in civil contempt for violating the terms of a citation to discover assets is derived from section 2-1402(f)(1) of the Code where it says "the court may punish any party who violates the restraining provision of a citation as and for a contempt."

Further, Supreme Court Rule 277(h), regarding supplementary proceedings, also addresses contempt as a sanction for violating the terms of a citation, providing, in relevant part, that "any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule may be punished for contempt."

Civil contempt proceedings are designed to compel obedience to a court order. *Felzak v. Hruby*, 226 Ill. 2d 382 (2007). A valid civil contempt order must contain a purge provision, which lifts the sanction when the contemnor complies with the order. *Felzak*, 226 Ill. 2d 382. A civil contempt order that fails to provide the contemnor with the "keys to his cell" is void. *Pancotto v. Mayes*, 304 Ill. App. 3d 108 (1999). In *Bank of America v. Freed*, 2012 IL App (1st) 113178 (1st Dist. 2012), a trial court appointed a receiver and left it up to the receiver as to when the sanction would be lifted, which takes the keys out of the defendant's hands and gives them to a receiver instead. It was within the receiver's discretion as to whether and when the sanction may be lifted. The purge provision was held to be invalid and the contempt was vacated.

The case law conflicts as to whether an indigent contemnor in an indirect civil contempt proceeding is entitled to counsel, even though the contempt proceeding may result in imprisonment. The fourth district in *Betts* held that the contemnor has no right to counsel. *Betts*, 200 Ill. App. 3d at 53. The first district, fourth division recognizes the right to appointed counsel. *Sanders v. Shephard*, 185 Ill. App. 3d 719, 728-30 (1989). Our Illinois Supreme Court reviewed the *Sanders* case, but did not specifically consider the right to counsel issue. *Sanders*, 163 Ill. 2d 534 (1994).

No trial by jury is afforded a contemnor in a civil contempt proceeding because the contemnor holds the keys to his jail cell and need only comply with a court order. *Betts*, 200 Ill. App. 3d at 57.

The trial judge must consider what the sanction is intended to accomplish. If the sanction is to force the compliance with an existing court order that has not been complied with, the contempt is civil, anything else would be to punish and thus criminal contempt. The contemnor is then entitled to admonishments that he or she has the right to a change of judge, a right to a jury trial, a right to have counsel, and if he or she cannot afford a lawyer, a lawyer must be appointed.

In *Weisberger v. Weisberger*, 2011 IL App (1st) 101557 (2011), a daughter sued her father who wrongfully took monies out of his daughter's trust accounts because she was dating a boy outside of their religion. The father refused to return the monies after the trial court ordered him to return the funds. The trial court wisely entered a monetary judgment instead of utilizing contempt as a vehicle. A contempt finding would have burned bridges that could never be repaired.

Supreme Court Rule 304(b)(5) allows for an appeal from "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty." Generally if an order does not mention the word "contempt" or impose a fine or penalty for a contempt finding, the order is not appealable under Rule 304(b)(5), and if its not a final order, it is not appealable until a final order is entered. *Lewis v. Family Planning Mgt., Inc.*, 306 Ill. App. 3d 918 (1999); *Dolan v. O'Callaghan*, 2012 Ill. App. LEXIS 807 (1st Dist.) (2012).

Double jeopardy does not apply because civil contempt is not a criminal action. *Yates v. United States*, 335 U.S. 66, 2 L. Ed. 2d 95, 78 S. Ct. 128 (1957). Imposition of sanctions in civil contempt for failure to return children pursuant to a prior custody order and subsequent prosecution under the criminal law do not offend the principles of double jeopardy. *People v. Doherty*, 165 Ill. App. 3d 630 (1988).

#### V. Judgment Order

The judgment order in direct civil contempt proceedings must:

(1) be in writing and signed by the judge. An orally transmitted order of contempt is not sufficient notice to the contemnor regarding grounds of contempt and facts in support thereof. *Central Production Credit Ass'n v. Kruse*, 156 Ill. App. 3d 526 (1987). If the court's oral pronouncement and the written order conflict, the written order will prevail. *People v. Hayslette*, 107 Ill. App. 3d 647 (1982);

(2) show jurisdiction over the parties and subject matter. *In re Adoption of Schumacher*, 120 Ill. App. 3d 50 (1983);

(3) set forth the previous order violated, the specific act or acts for which the contemnor is



being held in contempt, and the grounds supporting the finding of contempt. *People ex rel. Woodward v. Oliver*, 25 Ill. App. 3d 66 (1975). Facts, not merely opinions or conclusions of the judge, must support a finding of contempt. *People v. Miller*, 130 Ill. App. 2d 637 (1970), *rev'd on other grounds*, 51 Ill. 2d 76 (1972); *People v. Loughran*, 2 Ill. 2d 258 (1954); *People v. Jashunsky*, 51 Ill. 2d 220 (1972);

(4) when involving the failure to pay child support or a money judgment, contain a finding that the contemnor's failure to comply with the order was willful and that the contemnor has the means to comply but refuses to do so. *Mesirow v. Mesirow*, 346 Ill. 219 (1931); *Janov v. Janov*, 60 Ill. App. 2d 11 (1965). However, in a contempt proceeding involving a violation of an injunctive order, willfulness or intent is not an issue, so there is no requirement that the order recite a willful failure to comply and that contemnor has the means to do so. *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d (1974);

(5) provide for sanctions. *Valencia v. Valencia*, 71 Ill. 2d 220 (1978); *In re Marriage of Miller*, 112 Ill. App. 3d 203 (1983);

(6) set forth the means by which the contemnor may purge himself or herself of contempt. *Shillitani v. United States*, 384 U.S. 364, 16 L. Ed. 2d 622, 86 S. Ct. 1531 (1966). For a civil contempt to stand, a purge order must not be limited in nature; for example, an order that a document be signed by a certain date is improperly limiting in nature. *In re Marriage of Morse*, 240 Ill. App. 3d 296 (1993). "As long as the contempt order, within its four corners, sets forth the terms upon which a contempt may be dissolved and the defendant released from jail, the order is valid." *In re Estate of Maslowe*, 133 Ill. App. 3d 1043 (1985). Conversely, a written order that fails to provide the contemnor (and the jailer) with the "keys to his cell" is void. *Pancotto v. Mayes*, 304 Ill. App. 3d 108 (1999);

(7) include in its decretal portion, an adjudication of civil contempt and the sanctions imposed. *Green v. Green*, 21 Ill. App. 3d 396 (1974); and

(8) the order must be immediately transmitted to the contemnor and to the jailer along with the commitment order.

# SECTION B

- “Contempt: Case law summaries,” by Judge Lynn M. Egan, May 2015.

**CONTEMPT: CASE LAW SUMMARIES**

By  
Judge Lynn M. Egan  
May 2015

**IN RE M.S., 2015 IL App (4th) 140857**

**Foster care/removal.** *(Whether failure to remove children was indirect civil contempt where there was no specific order requiring removal after foster parent failed drug test.)*

"...to hold respondents in indirect civil contempt, it was essential that the juvenile court find the existence of a court order—and in this case specifically, an order requiring the removal of M.S. and P.S. from their foster placement—as well as proof of willful disobedience of that order. Here, the court failed to identify a specific order upon which its contempt finding was based and the record fails to reflect the existence of either a written or oral court order requiring the minors' removal from their foster home." *Id.* at ¶ 39.

"We acknowledge that '[u]nder some circumstances, an individual may be held in indirect civil contempt of court for violation of an oral court order.' However, 'a court must use extreme caution in holding a person in indirect civil contempt of court for the disobedience of an order of which there exists no record, and of which the alleged contemnor consistently denies knowledge.'" *Id.* at ¶ 44.

"...we also find it significant that the court appears to have confused civil and criminal contempt proceedings. We reiterate that '[c]riminal contempt is retrospective in nature and consists of punishing for doing what has been prohibited or not doing what has been ordered' while 'civil contempt is prospective in nature and is invoked to coerce what has been ordered.' Further, 'the contemnor must have an opportunity to purge himself of contempt by complying with the pertinent court order.'" *Id.* at ¶ 49.

"...conflating indirect civil and criminal contempt is problematic because of the due process rights involved with each type of contempt proceeding. 'In a civil contempt proceeding, the contemnor is only entitled to minimal due process, consisting of notice and an opportunity to be heard.' However, '[i]ndirect criminal contempt proceedings must generally conform to the same constitutionally mandated procedural requirements as other criminal proceedings.'" *Id.* at ¶ 52.

"Because a respondent in an indirect criminal contempt proceeding enjoys the privilege against self-incrimination, he may not be called by the petitioner to testify. Accordingly, a petition initiating indirect criminal contempt proceedings ought not have the title 'Petition for Rule To Show Cause,' the designation commonly (and appropriately) used for a petition initiating an indirect civil contempt proceeding; instead, a petition initiating an indirect criminal contempt proceeding ought to have the title 'Petition for Adjudication of Criminal Contempt.' By definition, if a respondent has a right not to testify, he cannot be required to 'show cause' why he should not be held in indirect criminal contempt. Instead, the burden is on the petitioner to prove the charges in the petition beyond a reasonable doubt. An ancillary benefit of using such a title would be to force court and counsel into a recognition that such petitions differ from routine petitions for rules to show cause and require different procedural steps." *Id.* at ¶ 52.

**DOE V. WEINZWEIG, 2015 IL App (1st) 133424**

**Battery.** *(Whether indirect civil contempt for failure to comply with court ordered Rule 215 exam that included a physical examination and blood test was "friendly contempt.")*

"We find that the record supports the conclusion that the circuit court intended to enter a friendly contempt order to allow defendant to appeal the underlying Rule 215 order. First, the court acknowledged that defendant had informed the court "in a very gentlemanly way" that he was not going to comply with the Rule 215 order. Second, the circuit court indicated that the \$1,000 fine was being imposed as a "penalty which is required in order to furnish the legal underpinning for an interlocutory appeal under Rule 304." Third, the court stated that it "only made the contempt finding in order to facilitate

an interlocutory appeal" so as to avoid "having a trial on damages and then find[ing] that the evidence of tort was inadmissible." *Id.* at ¶ 39.

"Thus, we find that defendant's noncompliance was based on "a good-faith effort to secure an interpretation of an issue without direct precedent." We therefore vacate the October 29 contempt order." *Id.* at ¶ 40.

"[U]pon the filing of a notice of appeal, the circuit court is divested of jurisdiction to enter any order involving a matter of substance and thereafter retains jurisdiction only to decide matters independent of and collateral to a judgment. Ultimately, any order entered while the circuit court is divested of jurisdiction during the pendency of an appeal is void." *Id.* at ¶ 43.

"In this case, the circuit court lost jurisdiction over the Rule 215 issue when defendant filed his notice of appeal on October 30, 2013. We disagree with plaintiff's contention that the court's contempt order of October 29, 2013 was merely preliminary and not final. Plaintiff cites no legal authority to support her argument that a contempt order is preliminary where the contemnor is given an opportunity to purge the contempt. We thus find that the court lacked jurisdiction to enter the second contempt order. Therefore, we vacate the November 14, 2013 order and remand the cause for the court to vacate all orders entered on or after that date, including the default judgment." *Id.* at ¶ 44.

***TROSKE V. TROSKE, 2015 IL App (5th) 130333-U***

**Divorce/child support.** (*Contemnor's ability to pay an indirect civil contempt sanction for failure to pay child support.*)

"Failure to comply with an order to pay child support constitutes prima facie evidence of contempt. Once that showing is made, the burden shifts to the noncompliant party to prove that he is unable to pay the support ordered. To make this showing, the party must show that (1) he does not have the money to pay now and (2) he did not wrongfully dispose of assets he could have used to pay the judgment." *Id.* at ¶ 23.

"...it was Robert who bore the burden of proving that his failure to comply with the child support orders was not willful." *Id.* at ¶ 25.

"The purging provision must be based on the party's realistic ability to pay. An order to pay an arrearage of support in one lump sum does not necessarily run afoul of this requirement; however, if the party is not able to pay the lump sum, the requirement is not a realistic purging mechanism." *Id.* at ¶ 27.

***PEOPLE V. HOUSE, 2015 IL App (1st) 122552-U***

**Post-conviction petition.** (*Whether a 13 year sentence for direct criminal contempt violated the Illinois Constitution proportionality clause and the eighth amendment to the United States Constitution.*)

"...we are not persuaded that the unlimited sentencing range for criminal contempt is 'so wholly disproportionate to the offense that it shocks the moral sense of the community.'\*\*\*If courts lacked the authority to implement punitive measures when faced with deliberate non-compliance with its rules, the judiciary would be at the mercy of parties, counsel, and witnesses who could sidetrack proceedings often and at whim. Courts necessarily need flexibility to impose whatever punishment may be required in the many possible situations in which a contempt penalty may be required. Contempt orders allow the contemnor to 'remedy' the misconduct and is a court's most effective remedy for obtaining compliance with its orders and maintaining the integrity of the tribunal." *Id.* at \*12.

***MAGANA V. MAGANA, 2014 IL App (1st) 131930-U***

**Divorce.** (*Jurisdiction over an indirect civil contempt order for violating a joint parenting agreement.*)

"[i]t is clear from the language of [Rule 304(b)(5)] that only contempt judgments that impose a penalty are final, appealable orders. Immediate appellate jurisdiction is allowed under Rule 304(b)(5) when both a contempt finding and a sanction are imposed because litigation proceedings could linger for years

before a final judgment is entered and the contemnor could face incarceration or forfeiture of property." *Id.* at ¶ 37.

"A penalty is a punishment imposed on a wrongdoer, especially in the form of imprisonment or a fine." *Id.* at ¶ 38.

**IN RE MARRIAGE OF STEPHENSON, 2014 IL App (2d) 140344**

**Divorce.** (*Indirect civil contempt for failure to comply with discovery order.*)

"Illinois Supreme Court Rule 219(c) provides trial courts with authority to compel compliance with discovery orders by means of contempt proceedings. Indirect contempt is contempt that is committed outside the presence of the court. Civil contempt ordinarily occurs when a party fails to comply with a court order." *Id.* at ¶ 24.

"In contempt proceedings the burden initially falls on the petitioner to prove by a preponderance of the evidence that the alleged contemnor has violated a court order. If the petitioner meets this burden, the burden shifts to the alleged contemnor to show that his noncompliance with the court's order was not willful or contumacious and that he had a valid excuse for his noncompliance." *Id.* at ¶ 25.

**COUNTRY MUTUAL INSURANCE CO. V. HILLTOP VIEW, LLC, 2014 IL App (4th) 140007**

**Declaratory judgment.** (*Indirect civil contempt for contemnor's failure to pay attorney fees and costs.*)

"Any finding of indirect civil contempt requires the existence of an order of the court and proof of willful disobedience of the order. The burden rests upon the alleged contemnor to show that noncompliance was not willful and contumacious and that he or she has a valid excuse for failure to follow the court order. Because findings of indirect civil contempt involve questions of fact, we will only overturn a trial court's finding of indirect civil contempt if it is against the manifest weight of the evidence. However, '[w]hen the facts are not in dispute, their legal effect may be a question of law, which this court considers *de novo*.' If divergent inferences could have been drawn from the undisputed facts, a question of fact remained to be determined and the manifest weight of the evidence standard is applied on review." *Id.* at ¶ 25.

"Generally, assuming a trial court has the necessary jurisdiction, a party must obey a trial court's respective orders, regardless of whether the court erred in entering the respective orders, until any erroneous order is set aside. Further, the fact a party disagrees with a court's order does not mean the party can simply ignore the order. A party's failure to comply with a court order is *prima facie* evidence of contempt." *Id.* at ¶ 26.

**IN RE ALDEN V. ALDEN, 2014 IL App (2d) 121046-U**

**Divorce/Violation of a Joint Parenting Agreement.** (*Mootness when the indirect civil contempt had been purged and whether petitioner was entitled to attorney fees. Court also considered whether double jeopardy precluded a successive prosecution for direct criminal contempt.*)

"...trial court found respondent not in indirect civil contempt for considering the weekend of February 10 as his parenting time because the schedule was not clear; however, it found respondent in indirect civil contempt for violating provisions of the Joint Parenting Agreement. The trial court allowed respondent to purge the contempt finding by writing an apology to petitioner. The transcript of the report of proceedings from the hearing on August 29 reflect the trial court's later finding that respondent had issued a written apology that complied with its prior order, and the trial court purged the contempt order. Because respondent complied with the trial court's order, an appeal concerning the merits of the trial court's finding of contempt is indeed moot." *Id.* at ¶ 48.

Court relied on *In re Marriage of Pultzer*, to state that "... 'finding a party in contempt for failing to comply with a court order implies a finding the failure to comply was without cause or justification,' rendering

mandatory the imposition of attorney fees per section 508(b) [of the Illinois Marriage and Dissolution of Marriage Act]" *Id.* at ¶ 52.

"Direct criminal contempt that allegedly occurs in the constructive presence of the court is subject to the same procedural requirements as indirect-criminal-contempt proceedings. Accordingly, respondent in the present case was entitled to the following procedural safeguards, including: (1) notice of the nature of the contempt charges; (2) an opportunity to answer the alleged charges; (3) right to a hearing; (4) the privilege against self-incrimination; (5) the presumption of innocence; (6) the right to be proved guilty beyond a reasonable doubt; (7) right to counsel (and to appointed counsel if indigent); [\*\*63] (8) right to confront and cross-examine witnesses; (9) right to be personally present at trial; (10) right to testify or to remain silent; (11) right to compulsory process for obtaining witnesses; and (12) right to present the testimony of witnesses favorable to his or her defense." *Id.* at ¶ 82.

"With a criminal contempt proceeding, as opposed to a civil contempt proceeding, certain admonitions, such as the right to remain silent, are to be administered, and the burden of proof is not shifted to a respondent. In criminal contempt cases, the State—or in this case, the petitioner—must prove the charges beyond a reasonable doubt. Further, before citing one with direct criminal contempt, a court must find the alleged contemnor's conduct was willful." *Id.* at ¶ 83.

"...principles of double jeopardy undoubtedly apply when a party is found in criminal contempt, either direct or indirect. We do recognize that, in certain circumstances, a criminal charge following and arising out of an adjudication of criminal contempt may not offend the double jeopardy clause of either the U.S. or Illinois Constitution. For example, an individual who has been sentenced for indirect criminal contempt for striking an attorney may also be prosecuted for aggravated battery. The present case, however, does not share those characteristics. The instant case concerns a successive prosecution for the exact same act and circumstances of alleged direct criminal contempt for which respondent has already been acquitted. Accordingly, we conclude that double jeopardy principles preclude a successive and identical prosecution against respondent for direct criminal contempt, where the evidence pertaining to his first prosecution was found to be insufficient and the trial court declined to find him in direct criminal contempt." *Id.* at ¶ 88.

#### **ZURITA V. SPILLER, 2014 IL App (1st) 133873-U**

**Failure to pay child support.** (*Indirect civil contempt order based on a failure to comply with child support and discovery orders.*)

"A contempt citation is an appropriate method for testing the propriety of a discovery order and if the discovery order is found to be invalid, a contempt judgment for failure to comply with that discovery must be reversed." *Id.* at ¶ 27.

#### **IN RE MARRIAGE OF SHURE, 2014 IL App (2d) 140215-U**

**Divorce/child support.** (*Due process for civil contempt where contemnor failed to pay child support.*)

"...only a contempt order that imposes a sanction is immediately appealable. Such an order must be appealed within 30 days of its entry. However, a timely filed motion to reconsider tolls the time for an appeal until the entry of the order disposing of the motion to reconsider." *Id.* at ¶ 32.

"Here, the September 26, 2013, contempt order imposed a sanction, that being periodic imprisonment. Therefore, it was appealable. Petitioner contends, however, that it did not impose a sanction, because the trial court stayed the sanction. Petitioner does not cite, nor are we aware of, any case holding that a stay of the sanction in a contempt order negates the import of the sanction. The plain language of Rule 304(b)(5) requires only that the order impose a sanction. It does not require that the sanction be carried out before the order becomes appealable." *Id.* at ¶ 33.

"The failure to make child-support payments pursuant to a court order is *prima facie* evidence of contempt. Once the *prima facie* case is established, the burden shifts to the alleged contemnor to show

that his noncompliance was not willful or contumacious and that he has a valid excuse for not paying. To prove such a defense, the alleged contemnor must show that he does not have the money and that he has not disposed wrongfully of the money or assets with which he might have paid." *Id.* at ¶ 43.

"In *Turner*, the Supreme Court addressed the issue of whether an indigent defendant had a right to state-appointed counsel in a civil contempt proceeding that could lead to his incarceration. The Court held that such an indigent defendant does not have an automatic right to counsel under the due process clause of the Fourteenth Amendment. The Court explained that due process does not require the provision of counsel where the party seeking child support is not represented and the state provides alternate safeguards such as clear notice of the importance of the ability to pay, a fair opportunity to present, and to dispute, relevant information, and a finding of an ability to pay." *Id.* at ¶ 45.

"...we do not read *Turner* as creating a general due process requirement irrespective of a potential contemnor's indigency. Rather, the Court emphasized that its holding was limited to a situation where the party obligated to pay the child support was found to be indigent. *Turner* did not impose its due process protections untethered from a finding of indigency. Therefore, because respondent never raised the issue of, or established, his indigency when he was found to be in contempt, he cannot avail himself of the due process protections of *Turner*." *Id.* at ¶ 48.

***PEOPLE V. PEREZ, 2014 IL App (3d) 120978***

**Traffic violation.** (*Indirect criminal contempt where contemnor used profanity outside the courtroom.*)

"Typically, a routine petition requesting the adjudication of indirect criminal contempt is based on an assertion that the accused was aware of a valid court order and willfully ignored the mandates of the court order. In unusual situations, an allegation of indirect criminal contempt may be levied against the accused for a verbal or nonverbal act that was allegedly disrespectful to the court's authority, but not witnessed by the judge, rather than a violation of an existing court order." *Id.* at ¶ 21.

"In this case, the trial court seemed to recognize that respondent's verbal outburst during a court recess could not be summarily adjudicated as direct criminal contempt because the court did not observe the alleged contemptuous conduct at issue. Consequently, after learning about respondent's conduct from bailiff Richardson, the court returned to the bench and instructed the prosecutor to prepare a charging instrument for indirect criminal contempt. The court then directed the prosecutor to provide respondent with notice by delivering a copy of the petition to respondent's counsel. In spite of this notice by written petition, the State concedes multiple other due process difficulties may be present in this record warranting, at the very least, a new hearing. We agree." *Id.* at ¶ 22.

"...[A] petition initiating indirect criminal contempt proceedings ought not have the title 'Petition for Rule To Show Cause,' since this language applies only in proceedings for indirect civil contempt and impermissibly shifts the burden of proof to respondent." *Id.* at ¶ 23.

"... to deny defense counsel's request for a continuance creates serious due process concerns. After denying the request for a continuance, without inquiring whether the State objected to the request, the court held a hearing on the merits on the same day as the alleged contemptuous act. This decision by the court may have deprived respondent of her due process right to have notice of the indirect criminal contempt hearing 'within a reasonable time in advance of the hearing.'" *Id.* at ¶ 24.

"...the State's only witness spoke directly to the court about the incident prior to the hearing. We respectfully suggest a judge in this situation may consider voluntary recusal after discussing the incident with an eyewitness." *Id.* at ¶ 25.

"...judge found 'the words that were used were very disrespectful to what I try to do here each and every day.' As previously stated, a verbal or nonverbal act may qualify as an act of indirect criminal contempt in certain situations. Based on the judge's remark, it appears the court found respondent intended to embarrass the judge or bring her method of the administration of the law into disrepute." *Id.* at ¶ 28.

"...[W]e are unable to conclude the evidence proved respondent intended to embarrass the judge, since respondent did not communicate this statement directly to the judge or identify the judge by name while in the hallway. In addition, the bailiff's testimony established respondent did not use profanity when referring to the judge as "she." Instead, respondent complained the respondent was tired of waiting all "f\*\*\* morning." Since the bailiff testified respondent entered the hallway after the court recessed... there seems to be an element of truthfulness to respondent's declaration and verbalized frustration. These remarks about the additional delay resulting from the recess may constitute protected speech under the first amendment." *Id.* at ¶ 29.

**PEOPLE V. HODGE, 2014 IL App (3d) 120720-U**

**Domestic battery.** (*Whether contemnor could form the requisite intent for direct criminal contempt where he was unfit to stand trial for domestic battery.*)

"The uncontradicted expert testimony, therefore, established that defendant was unfit to stand trial. This conclusion was further supported by defendant's repeated outbursts, indifference to contempt charges, and altercations with officers in the courtroom. Defendant also refused to cooperate in the preparation of his psychological evaluation and did not approve of appointed counsel's representation." *Id.* at ¶ 25.

"...based on our determination, we cannot find that defendant could form the requisite intent to be convicted of contempt. Therefore, we reverse defendant's contempt convictions outright." *Id.* at ¶ 26.

**PEOPLE V. UPHOFF, 2014 IL App (4th) 140057-U**

**Criminal.** (*Jurisdiction over an appeal challenging an order for direct civil contempt where the court did not impose a sanction on the contemnor.*)

"In this case, it is undisputed the trial court did not impose contempt sanctions on respondent. The court opted instead to wait and provide respondent the opportunity to purge himself of the contempt, which it ultimately found he did. However, a contempt order is not a final and appealable order until and unless the court imposes a sanction upon the contemnor. Indeed, it has been consistently held 'an order adjudicating one to be in contempt is not final and is not reviewable' and should be dismissed 'where no punishment has been imposed.'" *Id.* at ¶ 15.

Appeal dismissed for lack of jurisdiction. *Id.* at ¶ 17.

**PEOPLE V. FORD, 2014 IL App (1st) 120943-U**

**Possession of contraband in penal institution.** (*Whether a hearing on contemnor's mental capacity to commit direct criminal contempt was required where contemnor claimed a history of mental illness.*)

"To cite defendant for direct criminal contempt, the trial court must find that his conduct was willful. Where there is a substantial issue regarding defendant's mental capacity to commit contempt, the elements of the offense are not within the trial court's knowledge. In that situation, the court may not summarily punish the contempt, but instead, must afford defendant his due process rights by conducting a hearing and giving defendant an opportunity to present a defense." *Id.* at ¶ 30.

"...trial court did not err when it summarily found defendant in direct criminal contempt because there was no evidence that defendant was suffering from a mental illness...there was never a *bona fide* doubt of defendant's fitness. The trial court found that defendant's angry outbursts were not due to mental illness, but instead, were volitional and manipulative. The trial court's finding was supported by the fitness examinations conducted by Dr. Gutzmann and Dr. Neu, who both found that defendant had no symptoms of mental illness that would affect his fitness for trial and fitness to represent himself. The record shows that on several occasions throughout the proceedings, the trial court cautioned defendant to watch his language and not to use profanity. The court tolerated numerous profane outbursts by defendant and warned him before the trial that he would be found in contempt if he swore in front of the jury. The court finally found defendant in contempt after he yelled at the court and used profanity during a sidebar during



closing arguments. Accordingly, we find that the evidence was sufficient to allow the trial court to summarily find defendant in direct criminal contempt of court.” *Id.* at ¶ 32.

**PEOPLE V. PEREZ-GONZALEZ, 2014 IL App (2d) 120946**

**First degree murder.** (Direct criminal contempt where contemnor refused to testify against his co-defendant. The court also considered whether prosecuting defendant for contempt violated his plea agreement in the underlying action.)

A defendant who promises, as part of a plea agreement, to give testimony in aid of the prosecution waives fifth amendment rights in that respect and is subject to a contempt sanction for refusal to do so. *Id.* at ¶ 16.

The prosecution’s breach of a plea agreement by petitioning for an adjudication of contempt would not be a defense to the charge of contempt because “the breach would not have authorized the respondent to refuse the court’s order to testify” because “the public is entitled to any man’s evidence concerning criminal acts committed by another.” *Id.* at ¶ 18.

“[A] finding of criminal contempt is proper based on actions that occur before a trial begins and cause a delay in the trial.” *Id.* at ¶ 21.

A finding of contempt was proper because contemnor’s refusal to testify at a pre-trial hearing resulted in a delay of the trial, even though the plea agreement only required him to testify at the actual trial. *Id.*

“Civil contempt involves sanctions that are prospective and seek to coerce particular conduct. Criminal contempt is designed to punish past conduct.” *Id.* at ¶ 25.

“Although contempt has no statutory sentencing guidelines, a trial court is bound by certain principles when sentencing for contempt. Criminal contempt is punishable by fine or imprisonment or both. However, a sentence of imprisonment must not be ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ Further, the punishment for contempt should reflect the least possible power adequate to the end proposed. Based on these principles, a sentence of death for contempt is not permissible.” *Id.* at ¶ 33.

“A sentence imposed for direct criminal contempt is reviewed for an abuse of discretion. A court abuses its discretion when a sentence varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. A reviewing court must give great deference to a trial court’s sentence because the trial judge, having observed the defendant and the proceedings, is in a better position to consider ‘the defendant’s credibility, demeanor, moral character, mentality, environment, habits, and age.’” *Id.* at ¶ 34.

“In determining an appropriate sentence for criminal contempt, a court should consider the following factors: (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.” *Id.*

A sentence of ten years imprisonment for direct criminal contempt was appropriate where the contemnor’s refusal to testify was willful and deliberate because he was not under a mistaken belief that he had a fifth amendment right not to testify, the underlying crime (first-degree murder) was serious, and the severity of the sentence properly deters future witnesses from refusing to testify and obstructing the administration of justice in serious criminal cases. *Id.* at ¶ 38.

**BCL CAPITAL FUNDING, LLC V. KINGLAKE, INC., 2014 IL App (2d) 131086-U**

**Mortgage foreclosure.** (Disgorgement of funds paid pursuant to a contempt order required after the contempt order was subsequently reversed.)

"If a party has received benefits from an erroneous decree or judgment, he must, after reversal make restitution." *Id.* at ¶ 12.

**RUSSEL V. GIBLIN, 407 Ill. App. (3d) 1189 (1st Dist., 2011)**

**Child support/medical expenses.** (*Contemnor's ability to comply with an indirect civil contempt order requiring him to pay child support and medical expenses.*)

"A finding of indirect civil contempt for failure to pay child support is warranted when there is 'willful and contumacious refusal to obey the court's order'...The failure to pay child support under a court order or judgment is *prima facie* evidence of indirect, civil contempt." *Id.* at \* 10.

"When faced with *prima facie* evidence of contempt, the alleged contemnor is obligated to show his failure to comply was not willful...Because of this presumption of willfulness, the burden of proof is on [the alleged contemnor] to show his actions were not willful...To meet this burden, the alleged contemnor must present 'definite and explicit evidence' of his financial inability to pay. General testimony does not meet that burden. A payor must, by testimony, present evidence establishing with reasonable certainty money disbursed for expenses other than payments on the support order was disbursed for expenses permitted by law. It is proper that [the payor] first pay his bare living expenses; but whenever he has any money in his possession that belongs to him and which is not absolutely needed by him for the purpose of obtaining the mere necessities of life, it is his duty to make a payment on this decree." *Id.* at 13-14.

"Here, a contempt finding is all the more justified, as the court found Russell earned over \$59,000 in 2008, which he does not dispute. Russell and his wife can afford a nanny five days per week and vacations to Australia, Florida, Las Vegas and Hawaii. Russell owns two 18-wheel trucks, and his current wife earns over \$92,000 annually. Russell found it more important to pay his attorney than his children's child support. That Russell was evidently able to pay Giblin nearly \$20,000 within 14 days to avoid incarceration discredits his 'financial inability' to pay claim." *Id.* at \*14.

"Where an ex-spouse's failure to pay was without cause or justification, an award of attorney fees is mandatory by statute... Because finding a party in contempt for failing to comply with a court order implies a finding the failure to comply was without cause or justification, the imposition of attorney fees is allowed." *Id.* at \*15.

**IN RE MARRIAGE OF SIMMS, 2014 IL App (5th) 130055-U**

**Divorce.** (*Indirect civil contempt where contemnor failed to pay former spouse his share of equity in the marital home pursuant to the judgment of dissolution.*)

"Civil contempt is coercive in nature—to obtain compliance with the court's order. Indirect contempt refers to contempt that occurs outside of the courtroom. Civil contempt is not considered a punishment. Civil contempt has two fundamental requirements. First, the contemnor must have the ability to do what the court asked, and second, after complying with the order, the trial court cannot impose any further sanctions." *Id.* at ¶ 25.

"The party seeking the contempt order has the burden to prove that there was an obligation pursuant to a court order and that the alleged contemnor did not comply with the court order. After the moving party makes his *prima facie* case, the burden of proof shifts to the alleged contemnor. The alleged contemnor must establish that his noncompliance with the trial court's order was not willful—that he has a valid reason for failing to comply with the court's order. We will not overturn a trial court's finding of contempt unless that finding is contrary to the manifest weight of the evidence." *Id.* at ¶ 26.

"There are situations in which poverty or insolvency can constitute a defense to contempt of court. Illinois courts have only recognized poverty or insolvency as a defense in extreme cases. In addition, the individual claiming the defense must prove financial inability to pay by 'definite and explicit' evidence. Testimony in a general nature about financial difficulties is not 'definite and explicit.'" *Id.* at ¶ 30.

"In this case, Julie [the contemnor] acknowledged receipt of the pension funds. She admitted that she did not follow the court's dissolution order to obtain an appraisal on the marital home, and that she did not pay Samuel for his equity. Julie was aware that she was in court to defend against Samuel's petition to hold her in contempt. Counsel represented her at this hearing. Julie did not claim a defense that she had no ability to pay the \$4,000 to Samuel. We find that the trial court's order finding Julie in contempt of court is not contrary to the manifest weight of the evidence." *Id.* at ¶ 31.

**PEOPLE V. SHAW, 2014 IL App (4th) 120804-U**

**Theft.** (*Direct criminal contempt and a contemnor's right to allocution.*)

"[D]irect criminal contempt may be summarily found and punished 'because all elements are before the court and, therefore, come within its own immediate knowledge.' Review of direct criminal contempt orders requires this court to determine 'whether there is sufficient evidence to support the finding of contempt and whether the judge considered facts outside of the judge's personal knowledge.' *Id.* at ¶ 25.

"Before citing one with contempt, a court must find that the alleged contemnor's conduct was willful. An alleged contemnor's state of mind need not affirmatively be proved, but rather may be inferred from the allegedly contemptuous conduct itself." *Id.* at ¶ 26.

Defendant's continued interruption of the proceedings, despite the court's warning it would hold him in contempt, was enough to support an inference that the defendant's conduct was willful. *Id.* at ¶ 27.

Basic due-process requires that "before a trial court may summarily impose sanctions pursuant to a finding of contempt, a contemnor must be afforded...the opportunity to be heard in defense before sanctions are imposed." *Id.* at ¶ 31.

**IN RE MARRIAGE OF RAY, 2014 IL App (4th) 130326**

**Divorce/child support.** (*Indirect civil contempt order where the contemnor invoked the Fifth Amendment privilege against self-incrimination during the contempt proceedings.*)

"In marriage dissolution proceedings, when a party fails to obey a trial court's order for temporary relief, the party entitled to relief may initiate indirect civil contempt proceedings by filing a petition for rule to show cause. Noncompliance with a court order is prima facie evidence of contempt. When a party establishes a prima facie case of contempt, the burden shifts to the contemnor to show cause why he should not be held in contempt. To meet this burden, the contemnor may present evidence 'his noncompliance was not willful and contumacious and that he had a valid excuse for his failure to pay.'" *Id.* at ¶ 15.

Although "...the assertion of the Fifth Amendment privilege against compulsory self-incrimination may be a valid ground upon which a witness such as [respondent] declines to answer questions, it has never been thought to be in itself a substitute for evidence that would assist in meeting a burden of production." *Id.* at ¶ 21.

"In this case, the trial court did not, as respondent posits, hold him in contempt for asserting his fifth-amendment privilege. Instead, the trial court held respondent in contempt because he failed to meet his burden of showing why he should not be held in contempt.\*\*\*Respondent's assertion of his fifth-amendment privilege cannot be substituted for evidence and does not shift the burden back to petitioner. Respondent is attempting to use the fifth-amendment as a sword to defeat allegations of contempt, not as a shield from compulsory self-incrimination as it was originally intended." *Id.* at ¶ 22.

**TABACZYK V. TABACZYK, 2013 IL App (2d) 130051-U**

**Divorce/child support.** (*Indirect civil contempt where contemnor failed to pay child support and maintenance obligations.*)

"The contemnor in an indirect civil contempt proceeding must be afforded due process of law. However, only minimal due process is required for such proceedings, consisting of notice and an opportunity to be heard. Initially we find that respondent has forfeited his claim that he was not provided with proper notice of the charges against him. A court order may be void *ab initio* for lack of due process, but a defect in notice can be forfeited. To preserve an issue for review, a party must make an appropriate objection in the trial court. Here, respondent did not object to the proceedings on the basis of improper notice when petitioner was questioned regarding alleged arrearages occurring after the date of the first petition for rule to show cause." *Id.* at ¶ 57.

"Respondent also claims that the trial court improperly 'prejudged' him to be in civil contempt of court. In support of this claim, respondent directs us to the trial court's comments at a sidebar during respondent's attorney's cross-examination of petitioner. At that time, the trial court noted that there was evidence that respondent had not been paying his support obligations. The court then stated, 'Mr. Tabaczyk, I assure you today, that if I don't have a very good explanation for [the failure to meet his support obligation], you're going to leave with the deputies today, okay.' We find nothing improper about the trial court's comment." *Id.* at ¶ 59.

#### **HOWELL V. HOWELL, 2013 IL App (1st) 120821-U**

**Divorce/child support.** (*Ability to pay where unemployed contemnor failed to purge civil contempt for violating child support and college expense obligations.*)

"...the purging provision in any civil contempt sanction for nonpayment must be based on the contemnor's ability to pay." *Id.* at ¶ 42.

"The defense of 'poverty and misfortune as a valid excuse for nonpayment has been found applicable only in the most extreme cases, notably where a defendant had no money and no way of getting money' to meet support obligations... While Thomas's primary contention on appeal is that he has no 'liquid resources' to pay the purge amount, he cites no authority for his apparent position that his alleged 'illiquidity' is synonymous with 'poverty' for contempt purposes." *Id.* at ¶ 43.

"To prove that a failure to pay was not wilful, a defendant must show that he does not have the money and that he did not wrongfully dispose of money or assets by which could have made payment... 'The party must show, with reasonable certainty, the amount of money he has received since the order was entered and that it has been disbursed in the payment of expenses that under the law he should pay before making any payment on the support decree.' A contemnor may not assert his inability to comply with a court order where he 'has voluntarily created the incapacity.'" *Id.* at ¶ 44.

Court found the contemnor willfully disobeyed a court order to pay college expenses where the contemnor had emailed his son in college stating, "you won't get the money and I will go to jail before I give away more of your college money to your mother for her to steal." *Id.* at ¶ 48.

"Thomas contends that he 'should not have to deplete all of his property and assets to contribute to the college expenses of his children when he increases his debt every month.' However, we note that Thomas continued to own two parcels of real estate—the Evanston house and the Wisconsin property—when he again pled poverty in the circuit court... Thomas is choosing how he wants to spend his funds without regard to the obligations he has. Even assuming *arguendo* that Thomas lacked the ability to pay the purge amount—which we do not believe was the case—such inability *arguably* was the result of Thomas making certain payments that he chose, such as payments to his own counsel, rather than making the payments mandated by court order." *Id.* at ¶ 60.

#### **IN RE MARRIAGE OF CULP, 2013 IL App (4th) 130037-U**

**Divorce/visitation.** (*Whether the trial court erred when it found no indirect civil contempt by a former spouse who failed to comply exactly with the visitation schedule.*)

"A court has the authority to enforce its orders by way of contempt. Civil contempt proceedings are coercive, that is, the civil contempt procedure is designed to compel the contemnor to perform a specific act. Civil contempt proceedings have two fundamental attributes: (1) the contemnor must be capable of taking the action sought to be coerced, and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order." Whether a party is guilty of indirect civil contempt is a question of fact for the trial court, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Id.* at ¶ 19.

"The evidence presented at...hearing included Angela's testimony that she attempted to cooperate with Thomas and tried to provide Thomas the ordered visitation with the children, but she did not always have access to safe and reliable transportation and often could not afford the transportation costs...Angela testified as to the various vehicles she had driven and their general states of disrepair. She had limited financial resources and could not always afford the costs associated with transporting the children to Illinois each month." *Id.* at ¶ 21.

"On these facts, the trial court found that 'although Ms. Reinhold did not comply fully with the order of this Court that it was not done willfully or contentiously.' The evidence supports the court's finding that Angela's conduct was not willful or contumacious. We conclude, therefore, that the trial court's judgment was not against the manifest weight of the evidence or an abuse of discretion." *Id.* at ¶ 22.

In *In re Marriage of LaTour*, the court stated "A petition for a rule to show cause is the method for notifying the court that a court order may have been violated, and the petitioner requests a hearing on the issue. The petition for a rule to show cause and the rule to show cause operate together to inform the alleged contemnor of the allegations against her. The rule to show cause is the method by which the court brings the parties before it for a hearing. It also notifies the alleged contemnor of the time and place of the hearing. Thus, the petition for a rule to show cause initiates the contempt proceedings, but it does not establish that a violation of a court order has in fact occurred. The rule to show cause, issued by the court, is not a finding [that] a violation of a court order has occurred, but part of the process of notifying the alleged contemnor of the charges, and time and place of the hearing. At the hearing, the burden is on the petitioner to show a violation of a court order has occurred. Once this showing has been made, the burden shifts to the alleged contemnor to show the violation was not willful." *Id.* at ¶ 24.

#### **YEHOUENOU V. ST. JOSEPH HOSPITAL, 2013 IL App (1st) 120393-U**

**Medical Malpractice.** (*Direct criminal contempt where contemnor shouted at the judge, waived the Bible at the bench, and engaged in other "disrespectful" conduct.*)

"Direct contempt is contemptuous conduct which occurs in the presence of a judge. It is strictly limited to actions seen and known by the judge. The most readily recognizable examples of direct contempt are criminal contempts consisting of outbursts during court proceedings or other disruptions of judicial proceedings. Criminal sanctions are *retrospective* in nature; they seek to punish a contemnor for past acts which he cannot now undo. A finding of direct contempt may be made in a summary manner immediately after the contemptuous conduct occurs. This is the practice followed if the purpose of imposing sanctions is to restore order in the courtroom or to maintain control over proceedings in the courtroom." *Id.* at ¶ 90.

"A court may summarily punish criminal contempt if all relevant facts are before the court and within the judge's personal knowledge. The conduct which may be punished by means of criminal contempt proceedings covers the entire gamut of disrespectful, disruptive, deceitful, and disobedient acts (or failures to act) which affect judicial proceedings. Statements that are 'specifically punishable as criminal contempt are statements made in open court which suggest that trial judges are guilty of criminal conduct.' A finding of direct contempt may be made in a summary manner immediately after the contemptuous conduct occurs. This is the practice followed if the purpose of imposing sanctions is to restore order in the courtroom or to maintain control over proceedings in the courtroom." *Id.* at ¶ 91.

The contemnor made "...allegations that the court was 'not fair and impartial,' that the order was 'an abuse of the judge's authority,' that the court's true motive in imposing sanctions on him was 'retaliation,' and that the court 'merely followed a script'...Amu's statement to the court that, 'the fact that you are judge does not make you God'...Amu was yelling and waving his Bible at the court. Judge Brewer requested that Amu not raise his voice or waive the Bible in her courtroom...From our review of the record, Amu disrupted the orderly proceedings of the courtroom and ignored Judge Brewer's repeated admonitions to cease his conduct. Amu's statements and conduct before Judge Brewer justified the imposition of direct criminal contempt. We therefore affirm this contempt order and the \$500 fine imposed by that order." *Id.* at ¶ 94-95.

"Amu objected to Judge Brewer's statement that he comes to court with the Q'uran, turned around to face the courtroom and asked all the attorneys for a show of hands as to whether anyone had seen him with a copy of the Q'uran and upon a showing of no hands then stated to Judge Brewer, "You're lying. With all due respect, Judge, you are lying." Upon Amu stating to Judge Brewer that she is "lying," Judge Brewer entered a direct criminal contempt and fined Amu \$500." *Id.* at ¶ 99.

**SHADDON V. SHADDON, 2013 IL App (3d) 120453-UB**

**Divorce.** (*Indirect civil contempt for failing to enroll child in counseling, bringing a frivolous motion, and delaying discovery production.*)

"We acknowledge that criminal sanctions are normally retrospective in nature, whereas civil sanctions are usually prospective in nature. The supreme court, however, has noted the difficulty in applying such an arbitrary distinction. Specifically, it stated [in People ex rel. Chicago Bar Association v. Barasch]: Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither. They may best be characterized as sui generis, and may partake of the characteristics of both. Proceedings in the nature of criminal contempt have been defined as those directed to preservation of the dignity and authority of the court, while it has been said that civil contempts are those prosecuted to enforce the rights of private parties and to compel obedience to orders or decrees for the benefit of opposing parties. These principles, while seemingly plain and adequate, are most difficult to apply. The line of demarcation in many instances is indistinct and even imperceptible." *Id.* at ¶ 28.

"The record supports the conclusion that respondent did not comply with the circuit court's orders concerning counseling and discovery. The record also supports the conclusion that the emergency motion regarding health and dental care was filed with the intent to harass. While respondent may believe the civil contempt finding was entirely punitive in nature, we do not share such a belief. We believe the civil contempt finding could reasonably be seen as an attempt to coerce respondent to continue counseling with his daughter, Nicole, or at the very least engaging in a functional relationship with petitioner as it relates to Nicole. Moreover, the civil contempt finding could be seen as an effort to coerce respondent to refrain from filing harassing emergency motions and delaying discovery in any future litigation regarding this case. More importantly, however, the record supports the court's factual contempt findings. We will not reverse these findings as we believe the particular facts of this case present us with an instance where the difference between criminal and civil contempt is indistinct and even imperceptible." *Id.* at ¶ 29.

**SHANNON C. V. MICHAEL M., 2013 IL App (1st) 123166-U**

**Parentage action.** (*Due process where contemnor was held in indirect criminal contempt for failure to keep a court ordered job search diary. Finding reversed.*)

"Criminal contempt proceedings ensure, inter alia, that judges and other court personnel are shown the respect to which they are entitled when performing their judicial duties, that court proceedings are conducted in an orderly fashion, and that court orders are obeyed." *Id.* at ¶ 15.

"Initially, this court notes that although the trial court stated, at the hearing on the bystander's report, that it had found respondent in indirect criminal contempt, respondent's mittimus indicated that he was found in direct criminal contempt. However, the oral pronouncement of the trial court is the judgment of the

court, and the written order of commitment is merely evidence of that judgment. Here, it is the court's oral pronouncement that it had found respondent in indirect criminal contempt which controls." *Id.* at ¶ 16.

"Direct criminal contempt may occur when either the court personally observes a contemptuous act or a contemptuous act is committed outside the immediate physical presence of the trial court, but within an integral part of the court. Indirect criminal contempt occurs when the contemptuous act occurs outside the presence or constructive presence of the trial court. Accordingly, respondent was held in indirect criminal contempt because the contempt was based upon his failure, outside the presence of the trial court, to comply with the trial court's order to keep a job diary." *Id.* at ¶ 17.

"A person charged with indirect criminal contempt is entitled to all of the constitutional protections and procedural rights afforded to other criminal defendants. These include, *inter alia*, the right to know the nature of the charges; the right to file an answer; the right to confront and cross-examine witnesses; the right to be personally present at trial; the right to subpoena witnesses; the right to a public hearing; the right to the privilege against self-incrimination; the right to counsel; the right to the presumption of innocence; and the right to be proven guilty beyond a reasonable doubt." *Id.* at ¶ 18.

Respondent was not afforded the procedural protections that attach to an indirect criminal contempt proceeding because (1) he was not given notice that he might be subject to a criminal sanction, (2) the court did not admonish him regarding the right to counsel, and (3) respondent was not afforded the privilege against self-incrimination. *Id.* at ¶ 19-20.

#### **IN RE MARRIAGE OF MCCORMICK, 2013 IL App (2d) 120100**

**Divorce/visitation.** (*Indirect civil contempt order for violating a visitation schedule where the court had previously found no contempt for similar violations.*)

"Proof of willful disobedience of a court order is essential to any finding of indirect civil contempt. Once the petitioner establishes by a preponderance of the evidence that a violation occurred, the alleged contemnor has the burden of showing that the violation was not willful and contumacious and that he or she had a valid excuse for failing to follow the order. Contumacious behavior consists of 'conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or [conduct] lessening the authority and dignity of the court.' Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court should not disturb the trial court's determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Id.* at ¶ 17.

"In determining whether a party's violation of a court order constitutes contempt, the trial court may consider the procedural posture of the case as a context for the party's actions...In other words, it is important to consider the party's frame of reference and feedback from the court at the time he or she committed the violation...Amy was informed by the court that her previous behavior...was not contemptuous. She reasonably continued to labor under this belief until...this court ruled that the trial court had erred in entering its initial finding of no contempt. Still, her compliance with the visitation order improved somewhat." *Id.* at ¶ 19.

"Particularly where, in its initial finding of no contempt, the trial court 'misled Amy by suggesting that she could legitimately second-guess the visitation schedule,' we cannot find that Amy willfully disrespected an order of the court." *Id.*

#### **IN RE MARRIAGE OF CHAPA, 2013 IL App (2d) 121285-U**

**Divorce.** (*Indirect civil contempt where contemnor failed to sign a listing agreement for the marital home. Court also considered purge order permitting contemnor to sign the old listing agreement and quit-claim deed.*)

"Here, we cannot say the trial court abused its discretion in finding that Nancy's behavior was contemptuous. She refused to sign the court-ordered listing agreement following this court's denial of stay, and she failed to attend the majority of the hearings. Nevertheless, we temper this affirmation of

the contempt finding with a note that we do understand Nancy's conundrum. If this court... were to have reversed the trial court's order to sell the home, the home would no longer be available to Nancy to raise her daughter in until graduation. While Nancy's appeal was ultimately unsuccessful, this court did not find frivolous her argument that the court should avoid selling the marital residence so as to provide stability and continuity for the minor child. Therefore, given that Nancy's appeal was not frivolous and her refusal to sign the listing agreement, in part, was based on the pending appeal, affirming the trial court's finding of contempt is a very close call. Guided mainly by deference to the trial court in managing its court call, we affirm the finding of contempt. However, such discretion is not without limit and the bounds of equity." *Id.* at ¶ 28.

"Pursuant to our authority under Rule 366(a), however, determined that equity requires a modification of the purge order. The sale of this luxury home presents an unusual situation. It is common knowledge that, due to fluctuations in the real estate market over the last five years, home values have changed substantially from year to year... It remains for the trial court to balance the priority of a reasonable time frame against the priority of maximizing assets. To do this, the court must know the current value of the home. Therefore, we direct the trial court to hear evidence as to value, and, if appropriate, amend the listing agreement accordingly. Nancy cannot be ordered to sign the listing agreement until given this opportunity..." *Id.* at ¶ 29.

"We also modify the purge order to omit the condition that Nancy sign the quit-claim deed. This order is problematic for two reasons. First, the order that Nancy sign the quit-claim deed is imprecise. It is unclear whether Daniel must seek court approval before he records the quit-claim deed, or whether he may unilaterally decide that Nancy is uncooperative. Second, the order that Nancy sign the quit-claim deed changes Nancy's property rights based on hypothetical future conduct... Although purge orders may be prospective in nature with the aim to coerce compliance with a valid court order, purge orders should not be used to correct conditions that have not yet occurred. The term purge itself implies an amends for past behavior." *Id.* at ¶ 31.

**BEEVERS V. BEEVERS, 2013 IL App (2d) 121387-U**

**Divorce/maintenance.** (*Due process requirements for indirect civil contempt, a contemnor's ability to pay where a trust was his main source of funds, and purging contempt after incarceration.*)

"To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving, by a preponderance of the evidence, that the other party has violated a court order. The burden next shifts to the alleged contemnor to prove that he did not willfully or contumaciously fail to comply with the court order, and that he has a valid excuse. A trial court's determination that a party has engaged in indirect civil contempt will not be disturbed on appeal unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Id.* at ¶ 30.

"A defendant in an indirect civil contempt proceeding must be afforded due process of law. However, only minimal due process is required for such proceedings, consisting of notice and an opportunity to be heard." *Id.* at ¶ 33.

"Nancy argues that Robert's failure to object to lack of notice of the filed petition forfeited any objection to the petition. We agree. A court order may be void ab initio for lack of due process, but a defect in notice can be forfeited. To preserve a question for review, a party must make an appropriate objection in the trial court." *Id.* at ¶ 34.

"Even if, arguendo, this argument was properly preserved, we would still not vacate the trial court's order. The failure to provide notice of a motion makes the trial court's resulting order voidable rather than void. Whether such an order should be vacated is not determined by the lack of notice but rather by whether the nonmoving party suffered any resulting harm or prejudice. *Id.*

"The prejudice must be actual, not just possible. The prejudice must result from not timely receiving notice of the motion, rather than the result of the ruling on the motion itself." *Id.* at ¶ 35.



"...Robert did not suffer any prejudice from not receiving timely notice of Nancy's August 2011 petition. Robert did receive notice and answered a prior version of the petition which contained very similar if not identical allegations as those in count I of the August 2011 petition. The hearing then proceeded on just count I, for which Robert was prepared. Therefore, Robert has not shown any prejudice from the lack of notice of the August 2011 petition." *Id.* at ¶ 36.

"The notice must adequately describe the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of the evidentiary hearing, within a reasonable time before the hearing." *Id.* at ¶ 38.

"A contempt order must be written and set forth the ground supporting the finding of contempt. The order must contain facts, not just the trial court's opinions or conclusions." *Id.* at ¶ 41.

"A failure to make court-ordered support payments is prima facie evidence of contempt. The burden then shifts to the alleged contemnor to show that the noncompliance was not willful or contumacious and that he has a valid excuse for failing to pay. To show that he is unable to pay, the party must show that he has no money now with which to pay and did not wrongfully dispose of money or assets with which he might have paid. The alleged contemnor may not meet his burden of showing the financial inability to comply with an order by general testimony regarding financial status, but rather must provide definite and explicit evidence. Also, although it is proper for an obligor to first pay his bare living expenses, any money that is not absolutely required for the mere necessities of life should be used for maintenance." *Id.* at ¶ 45.

"The purging provision in any civil contempt sanction for nonpayment must be based on the contemnor's ability to pay." *Id.* at ¶ 64.

"...under *In re Marriage of Sharp*, a respondent is considered to be able to pay a purge amount if it is within the trustees' discretion to pay. While there is no trustee testimony in this case, under the Trust's language, 'principal may be paid out if necessary for [Robert's] proper support, care and maintenance.' Keeping Robert out of jail would fall within the category of proper support, care, and maintenance, so it would be within the trustees' discretion to pay the purge amount." *Id.*

"... a civil contemnor must be permitted to purge himself of contempt even after incarceration. Therefore, where only civil contempt has been found, it is improper to have a definite jail term with no further means of purging contempt. Instead, the order should provide for release from jail if the contemnor pays the purge amount after he is incarcerated." *Id.* at ¶ 70.

#### **IN RE MARRIAGE OF LEFEVRE-ROWLEY, 2013 IL App (2d) 121221-U**

##### **Divorce. (Indirect civil contempt.)**

"Contempt citations along with all other orders falling within the scope of Rule 304(b) must be appealed within 30 days of their entry or be barred." *Id.*

#### **RATHJE V. HORLBECK CAPITAL MANAGEMENT, LLC, 2013 IL App (2d) 121120-U**

##### **Securities/misrepresentation. (Jurisdiction, "friendly" contempt, and purging a civil contempt order for discovery violations.)**

"[Illinois Supreme Court] Rule 304(b)(5) governs appeals from final judgments that do not dispose of entire proceedings and provides that an order finding a person or entity in contempt of court, and which imposes a fine or other penalty, is appealable without the finding required under paragraph (a) of the Rule. Ill. Sup. Ct. R. 304(b)(5)." *Id.* at ¶ 12.

"A contempt citation is properly vacated on appeal where a party's refusal to comply with a court order is a good-faith effort to secure an interpretation of an issue that lacks precedent." *Id.* at ¶ 17.

"If contempt sanctions are imposed for coercive purposes—to compel the contemnor to perform certain acts—the contempt is civil in nature. On the other hand, criminal contempt sanctions are imposed to punish past misconduct. A civil contemnor must have an opportunity to purge itself of contempt by complying with the pertinent court order. In contrast to the coercive purpose of civil contempt, the punishment for criminal contempt is retribution, deterrence, and vindication of the norms of socially acceptable conduct." *Id.* at ¶ 20.

"Contemptuous conduct is also categorized on the basis of whether it is direct or indirect. Direct contempt is conduct that occurs in front of a judge. Refusal to produce documents can be direct civil contempt where the trial court has knowledge of the facts establishing noncompliance." *Id.*

"[A] sentencing order in a civil contempt proceeding must contain an effective purging provision." *Id.* at ¶ 22.

"Here, the contempt order merely fined Cantella \$250. As in Pancotto, the instant contempt order must be vacated. Fining Cantella \$250 did not fulfill the coercive nature of the contempt. In addition to the fine, the order had to contain language that Cantella could purge itself of the contempt by furnishing the discovery." *Id.*

#### **SCANLON V. KENSHOL, 2013 IL App (4th) 120890-U**

**Child support.** (*Contemnor's ability to pay where an indirect civil contempt order allowed contemnor to purge himself by paying \$30,000 toward child support arrearages.*)

"When a party is found in civil contempt of court, the contempt order seeks only to secure obedience to its prior order, and 'the civil contemnor must be provided with the keys to his cell' in order to purge himself of contempt. 'The purging provision in any civil contempt sanction for nonpayment must be based on the contemnor's ability to pay.' 'However, the defense of poverty and misfortune as a valid excuse for nonpayment has been found applicable only in the most extreme cases, notably where a defendant had no money and no way of getting money to meet his support obligations.'" *Id.* at ¶ 25.

"We find unpersuasive Respondent's argument the \$30,000 purge order does not reflect his ability to pay. Respondent offers he is "only minimally employable" because he is a registered sex offender." *Id.* at ¶ 29.

"...there is no evidence respondent is physically incapable of employment; he did not serve a lengthy prison sentence... and he has property available to allow him to pay the purge amount. Respondent offers no accounting for eight years of unemployment. His assertion he is "minimally employable" concedes he is employable. Moreover, respondent offers no evidence that would refute the trial court's findings that respondent's inability to pay was not in good faith, that his reduction in income was not in good faith, and that he had not paid support commensurate with his ability to pay... Despite his status as a registered sex offender, the trial court was entitled to conclude respondent can obtain gainful employment and the court's order for periodic imprisonment enables respondent to maintain employment five days a week." *Id.* at ¶ 30.

#### **IN RE MARRIAGE OF LEVINSON, 2013 IL App (1st) 121696**

**Divorce.** (*Jurisdiction to review a finding of contempt for failing to comply with an order to pay interim attorney fees. The court also considered whether the contempt was direct or indirect, "friendly", and if it was error to substitute a purge amount as sanctions.*)

"...when a party appeals from a contempt sanction imposed for violating an interim fee order, the contempt finding is final and appealable and presents to the reviewing court the propriety of the underlying order." *Id.* at ¶ 29.

"... in order for the appellate court to assume jurisdiction under Illinois Supreme Court Rule 304(b)(5), the contempt order must impose sanctions of some kind upon the contemnor." *Id.* at ¶ 50.

"The power to enforce an order to pay money through contempt is limited to cases of wilful refusal to obey the court's order." *Id.* at ¶ 52

"In our view, the contempt at issue was direct civil contempt because the contumacious behavior at issue, e.g., Robert's refusal to pay the court-ordered interim attorney fees, occurred directly in front of the court. Robert, by counsel, in court, openly refused to comply with the court's interim fees order. This conduct occurred within the court's presence, and all elements of the offense were, therefore, within the court's personal knowledge. Accordingly, Robert should have been held in direct civil contempt." *Id.* at ¶ 57.

"...the court erred in substituting the purge amount of \$78,500, which was the amount of the underlying interim fees order, for contempt sanctions. The purpose of the circuit court imposing sanctions, i.e., an indefinite and continuing fine and/or jail sentence, until purged by compliance, is to coerce Robert to comply with the initial order. Here, reviewing the contempt order in combination with the subsequent court order clarifying that the purge amount was a sanction, it appears the court intended the purge amount—the amount of the interim fees order—to act doubly as a purge amount and as a fine or sanction. This was error." *Id.* at ¶ 58.

#### **IN RE MARRIAGE OF MCCORMICK, 2013 IL App (2d) 110894-U**

**Divorce/visitation.** (*Finding of no contempt where a former spouse failed to comply with the visitation schedule.*)

"Whether a party has violated an order is a straightforward fact question. Whether the violation is wilful is a bit harder. A violation is not wilful if a "valid excuse" exists. A more difficult question is what constitutes a valid excuse." *Id.* at ¶ 28.

"The law does not necessarily require utmost efforts to comply; certainly avoidance of clear threats to life or health takes priority, as does obedience to other court orders or law. On the other hand, if the alleged contemnor has knowingly created the obstacle to compliance, the obstacle is not a valid excuse. The Fifth District has treated a teenage child's desire to pursue her own interests as a valid excuse, at least where the residential parent encouraged compliance. However, the Charous court, citing several earlier cases... stated that the child's preferences are not an excuse at all. Both Charous and Tatham appear to agree that the parent cannot simply accede to the child's preferences. Thus, a child's simple reluctance to visit is not a valid excuse." *Id.* at ¶ 29.

"Extracurricular activities are a legitimate *visitation factor*, but not a valid excuse for disobeying an order. The Charous court accepted that a nonresidential parent who lived near the children could be effectively bound to get the children to such activities if the activities were scheduled in compliance with the joint parenting agreement. However, if the activities chosen by the residential parent conflicted with the schedule, the residential parent should have sought to change the schedule in court, rather than unilaterally modifying it." *Id.* at ¶ 30.

"Here, the fact of contempt is clear. Amy never contested the fact that the order had been violated. Moreover, her own descriptions of her motivations established the violations as wilful. Every time she justified the violation as something that she deemed to be better for the boy involved, or, in the instance of the New Year's schedule, as simply not her idea." *Id.* at ¶ 31.

#### **IN RE JOHN DOE INVESTIGATION, 2013 IL App (2d) 120425-U**

**Failure to appear before a Grand Jury.** (*Indirect criminal contempt for failure to appear before a grand jury where the trial court denied contemnors' emergency petition to continue the grand jury subpoenas.*)

"The rationale for imposing punishment for contempt is the same as for misdemeanor criminal proceedings, i.e., retribution; deterrence; and vindication of norms of socially acceptable conduct such as respect for judges and court officials, orderly judicial proceedings, obedience of court orders, and not committing fraud upon the courts." *Id.* at ¶ 17.

"...we believe that determining whether the trial court erred in denying defendants' emergency petition—which formed the basis of the trial court's subsequent contempt finding—is consistent with our supreme court's directive to closely examine a trial court's contempt finding because contempt powers can be subject to abuse." *Id.* at ¶ 20

"[W]e conclude that the trial court erred in finding defendants guilty of indirect criminal contempt because it abused its discretion in denying defendants' emergency petition to continue the grand jury subpoenas." *Id.* at ¶ 21.

**FIRST AMERICAN BANK V. KINGLAKE, INC., 2013 IL App (2d) 120762-U**

**Mortgage foreclosure. (Whether contempt order was civil or criminal.)**

"Contempt of court can be either civil or criminal. The proper classification as civil or criminal 'is essentially a function of the purpose for which the contempt sanctions are imposed and where the allegedly contemptuous conduct occurred.' Contempt is civil when the sanction is designed to coerce the contemnor to perform a particular act. Because the penalties for civil contempt are designed to coerce compliance with a court order, the penalty must cease upon compliance by the contemnor. 'A party held in civil contempt must be given the keys to his or her cell, meaning that the contempt order should give the contemnor the ability to purge at any time.'" *Id.* at ¶ 5.

"The conduct that may be punished by criminal contempt includes the entire range of disrespectful, disruptive and disobedient acts, including disobedience of a court order. A person charged with indirect criminal contempt—a contemptuous act that occurred outside the trial court's presence—is entitled to the constitutional protections and procedural rights afforded to criminal defendants." *Id.* at ¶ 6.

"King argues that the trial court imposed a punitive sanction without affording him the requisite procedural protections. Although the trial court held King in "direct civil contempt," we are not bound by the trial court's characterization. The acts of contempt that King was charged with committing—collection of rent after a receiver had been appointed—did not occur in the trial court's presence, so King could not be guilty of *direct* contempt. Moreover, the sanction imposed by the trial court—a money judgment for the Bank—was not coercive. The sanction did not serve to compel a future act; it merely gave the Bank an unconditional right to a sum of money. Thus, King was given no means of purging himself of contempt and avoiding the sanction." *Id.* at ¶ 7.

"In any event, whether a sanction imposed is remedial is not what distinguishes civil and criminal contempt sanctions." *Id.* at ¶ 8.

**POPOVICH V. POPOVICH, 2013 IL App (2d) 120619-U**

**Divorce. (Indirect civil contempt for failure to pay interim attorney fees.)**

"The failure to pay interim attorney fees when ordered to do so is *prima facie* evidence of contempt. Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make payments was not willful or contumacious and that there exists a valid excuse for his failure to pay." *Id.* at ¶ 19.

"A valid excuse for failing to make court-ordered payments is very limited. That is, a party is excused from making court-ordered payments only if 'the failure to pay is due to poverty, insolvency, or other misfortune, unless that inability to pay is the result of a wrongful or illegal act.' To prove this type of 'poverty, insolvency, or other misfortune,' the alleged contemnor "must show he neither has money now with which to pay, nor has he wrongfully disposed of money or assets with which he might have paid." *Id.* at ¶ 22.

"...the alleged contemnor must show, with reasonable certainty, the amount of money he has received since the order was made and that it has been disbursed in the payment of expenses which, under the law, he should pay before making any payment for support or fees. Moreover, payments that will excuse

an alleged contemnor's failure to pay include 'money [that] has been used to pay only for the basic necessities of life.'" *Id.* at ¶ 23.

"...we 'are strongly impressed that the failure of [respondent] to pay [the money owed] was not due to his financial inability to do so, but to his disinclination to pay it.' Specifically, the evidence failed to establish that the money respondent used to pay for things other than Schwarz's fees went to the basic necessities of life or to cover costs that, under the law, respondent was required to pay before paying Schwarz his fees. For example, the evidence indicated that, at the end of 2011, respondent spent \$50,000 that he got from his IRA to run his law firm and later withdrew \$50,000 from his security account, using \$25,000 of that amount to pay for his own legal fees. Using money to run a business or to pay for one's own legal fees will not excuse an alleged contemnor from complying with a court order to make payments." *Id.* at ¶ 24.

**PEOPLE EX REL. CITY OF CHICAGO V. LE MIRAGE, 2013 IL 113482**

**Building code enforcement action.** *(Whether an indirect criminal contempt order was ambiguous where a jury found the contemnor willfully violated a court order to cease operation of a night club.)*

"Indirect criminal contempt occurs out of the court's presence, and its proof is dependent upon evidence of some kind or upon facts of which the court has no judicial notice." *Id.* at ¶ 63.

"In criminal contempt cases, the State must prove the charges beyond a reasonable doubt. Therefore, in reviewing the sufficiency of the evidence in a criminal contempt case, the appropriate standard of review is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at ¶ 64.

"...an injunction order cannot support a finding of contempt unless it sets forth with certainty, clarity and conciseness precisely what actions are enjoined...As the Court explained in International Longshoremens's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, '[t]he most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension.' No such difficulties exist, however, when there is 'a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate.'" *Id.* at ¶ 66.

**FIRST CHICAGO BANK & TRUST v. ZAUSA, 2012 IL App (3d) 110651-UB**

**Mortgage foreclosure.** *(Whether contempt sanctions for violating a citation lien and knowingly providing false testimony were criminal or civil using the dominant purpose test. A fixed, 30-day sentence for indirect civil contempt was improper because it permitted the option of serving the sentence in lieu of complying with the order.)*

"It is well settled that indirect criminal contempt proceedings must generally conform to the same constitutionally mandated procedural requirements as other criminal proceedings. One charged with indirect criminal contempt is entitled to know the nature of the charge against him, to have it definitely and specifically set forth by citation or rule to show cause, and [have] an opportunity to answer. Also applicable to a respondent in an indirect criminal contempt proceeding are the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt." *Id.* at ¶ 21.

"[C]ivil contempt proceedings have two fundamental attributes: (1) the contemnor must be capable of taking the action sought to be coerced; and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order." *Id.* at ¶ 22.

"Civil contempt is coercive in nature rather than punitive; the finding of civil contempt results from failure to do something which the court has ordered for the benefit or advantage of another party to the proceeding, and the court acts to compel the contemnor to obey the order for the benefit of that other party. In civil contempt proceedings the contemnor must have the opportunity to purge the contempt, i.e.,

be provided with the keys to his cell even after he has been imprisoned, and must also have the power to comply with the order." *Id.*

"[C]riminal contempt is an act committed against the majesty of the law in disrespect of the court or its process, and the court acts to preserve its dignity by punishing the wrongdoer. Criminal contempt sanctions are imposed for the purpose of punishing past misconduct. The test for determining whether contempt proceedings are criminal or civil in nature is the dominant purpose for which sanctions are imposed, and any incidental results or benefits of imposing the sanctions are of no consequence in making this determination." *Id.*

"A contempt will be considered civil if the sanction is: (1) remedial and for the benefit of the complainant; (2) continuing in nature until the contemnor performs the affirmative act required by the court's order; (3) a continuing jail sentence and/or fine that can be avoided or discontinued by performing the affirmative act required by the court's order; or (4) conditional and can be purged by obeying the order of the court. On the other hand, a contempt will be considered criminal if the sanction is: (1) imposed to vindicate the authority of the court and the sentence is punitive; (2) limited to imprisonment for a definite period; (3) a determinate fine, payable to the court; or (4) unconditional and exclusively punitive in character." *Id.* at 24.

"Imprisonment imposed for a criminal contempt is purely punitive and must be for a definite term." *Id.* at ¶ 27.

"[I]n cases of civil contempt, the sentence being imposed as a remedial or coercive measure, the appropriate punishment is to commit the contumacious party to imprisonment until he has complied with the mandate of the court, since a fine or imprisonment for a specified term might not secure obedience to the order."

"[T]he trial court's order in this case could allow the defendant to evade the coercive nature of the imprisonment. If the defendant is willing to sit in jail for 30 days rather than turn over the \$18,200 in assets... the coercive effect is lost." *Id.*

#### **PEOPLE V. DUPREE, 2012 IL App (4th) 110243-U**

##### **Burglary. (Direct criminal contempt where the contemnor's mental capacity was at issue.)**

"An appeal from a contempt order is ordinarily considered moot if the party held in contempt has already completed the sentence." *Id.* at ¶ 31.

"The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *Id.* at ¶ 32.

Pursuant to the public interest exception, the court reviewed an otherwise moot direct criminal contempt order where the due process rights of persons suffering from a mental illness were at issue. *Id.* at ¶ 33.

"...the standard of review for direct criminal contempt is whether sufficient evidence exists to support a finding of contempt and whether the judge considered facts outside his or her personal knowledge. 'Criminal contempt of court has been generally defined as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute.' Direct criminal contempt occurs when the contemptuous conduct takes place in the presence of the judge." *Id.* at ¶ 38.

"Where the record reveals a substantial issue as to the defendant's mental capacity to commit contempt, it cannot be said that all of the elements are within the court's knowledge. That is not to say that a summary finding of direct criminal contempt is never possible, that every incident of courtroom disruption requires a mental fitness hearing." *Id.*

"In this case, defendant repeatedly interrupted the proceedings and used obscene language. In some cases that may not have raised a substantial issue as to the defendant's mental capacity to commit contempt. In this case, however...the trial court ordered a fitness evaluation at the same time he found defendant to be in contempt, agreeing with defense counsel that a *bona fide* doubt existed as to defendant's fitness to stand trial." *Id.* at ¶ 40.

**PEOPLE V. GEIGER, 2012 IL 113181**

**Refusal to testify at murder trial.** (*Whether a direct criminal contempt order sentencing a witness to a 20-year term for refusing to testify based on his mistaken belief that he had a fifth amendment privilege was disproportionate and unreasonably excessive.*)

"...because the power to punish for contempt is inherent and does not depend on a constitutional or legislative grant, the legislature may not restrict its use. Accordingly, contempt has no sentencing classification or sentencing range set by the legislature." *Id.* at ¶ 24.

"When imposing a sentence for contempt, courts should keep in mind that 'the contempt power is an extraordinary one that should be used sparingly and with the utmost sensitivity.'" *Id.* at ¶ 25.

"A sentence imposed for direct criminal contempt, like any other sentence, is subject to review for an abuse of discretion. A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' In contempt cases, however, because there are no sentencing guidelines, appellate courts have a 'special responsibility for determining that the [contempt] power is not abused, to be exercised if necessary by revising themselves the sentences imposed.'" *Id.* at ¶ 27.

"In *United States v. United Mine Workers of America*, the United States Supreme Court listed certain factors that trial courts may consider when fashioning an appropriate sentence for criminal contempt: (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." *Id.* at ¶ 28.

"...we find that the 20-year sentence imposed in this case is manifestly disproportionate to the nature of the offense and, therefore, unreasonably excessive. Although defendant willfully and deliberately refused to testify, his refusal was based on his mistaken belief that he had a Fifth Amendment right to do so. We note, too, that some evidence was presented at defendant's contempt trial that other gang members who had testified were threatened. Thus, defendant's refusal to testify might have been driven, in part, by the fact that, as a gang member, he feared retaliation." *Id.* at ¶ 29.

"...defendant continued to refuse to testify in a double-murder case after he was informed by the court that he had no right to refuse and was offered use immunity. In doing so, defendant exhibited a disregard for the authority of the court. However, defendant's contemptuous conduct was nonviolent and he was not flagrantly disrespectful to the trial judge. Defendant simply refused to testify because he honestly believed he had a Fifth Amendment right to do so. Moreover, defendant's belief was not unreasonable, given the fact that his own attorney maintained throughout the contempt proceedings that defendant had a valid Fifth Amendment right to refuse to testify." *Id.* at ¶ 31.

**VILLAGE OF ARLINGTON HEIGHTS V. ADAMS, 2012 IL App (1st) 113456-U**

**Traffic violation.** (*Whether it is a due process violation for the judge who initiates an indirect criminal contempt proceeding to preside over the contempt hearing. The court also considered substitution of judge as a matter of right in an indirect criminal contempt case.*)

"[W]here indirect contempt is involved, proof of the contemptuous conduct must be presented to support a finding of contempt. An attorney's failure to return to court after a recess, if contemptuous, falls under

the category of indirect contempt because, although the attorney's absence is immediately before the court, the reasons for the absence are not." *Id.* at ¶ 16.

Not every personal attack on a judge automatically disqualifies that judge from imposing punishment for contempt. *Id.* at ¶ 19.

Only where "the judge did not act the instant the contempt was committed and where the words leveled at the judge were 'highly personal aspersions.'" does due process require that another judge preside over the contempt proceedings. *Id.*

A trial judge's irritation with the contemnor "does not raise the same fairness concerns that are present where a contemnor personally insults a trial judge," and it is not a violation of due process for that trial judge to preside over the contempt hearing. *Id.* at ¶ 20.

"[T]his court has long acknowledged that section 114-5 of the Code [of Criminal Procedure] applies to a motion for substitution of judge in indirect criminal contempt proceedings... defendants in criminal contempt proceedings have an absolute right to substitution of judge on general allegations of prejudice as long as the requirements of section 114-5(a) are satisfied. *Id.* at ¶ 22.

"The unexplained absence of an attorney at trial constitutes possible grounds for indirect criminal contempt." *Id.* at ¶ 24.

"The award of reasonable costs and attorney fees related to a contempt proceeding has been held to be appropriate in the context of criminal contempt proceedings." *Id.* at ¶ 25.

"Although a court has the inherent power to punish contemptuous conduct, 'its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions'... The potential for abuse in the exercise of a court's summary power to imprison for contempt has long been recognized and individual liberty must be protected from any possible abuse." *Id.* at ¶ 26.

Where an attorney did not return after a recess in a jury trial, it was reasonable to assess a fine and costs associated with the contempt hearing, but incarceration was "unduly harsh." *Id.* at ¶ 27.

#### **TNI PACKAGING, INC. V. HANOVER INSURANCE CO., 2012 IL App (2d) 120145-U**

**Trademark infringement.** (*Whether insurance company was required to defend contemnor against civil contempt proceedings where the policy covered "damages."*)

"Civil contempt is a unique sanction, because its aim is both coercive and compensatory. Civil contempt proceedings are remedial and coercive, not punitive, in their nature. If the fine is compensatory, it is payable to the complainant and must be based on proof of the complainant's actual loss. The payment of the attorney fees and costs of bringing civil contempt proceedings are 'clearly' compensatory to the injured party." *Id.* at ¶ 15.

#### **BRINSON V. MARTINEZ, 2012 IL App (1st) 103228-U**

**Automobile accident.** (*Whether conduct was direct criminal contempt or "zealous advocacy" and if contemnor had criminal due process rights.*)

"Sanctions for criminal contempt ensure, inter alia, that judges and other court personnel are shown the respect to which they are entitled when performing their judicial duties, court proceedings are conducted in an orderly fashion, and court orders are obeyed." *Id.* at ¶ 17.

"Direct criminal contempt may occur when either the court personally observes a contemptuous act or a contemptuous act is committed outside the immediate physical presence of the trial court, but within an integral part of the court. A party may be found in criminal contempt when, in the judge's presence, that party's action is disrespectful, disruptive, deceitful, or disobedient to the extent that such action affects the court's proceedings. The most readily recognizable example of direct contempt is criminal contempt



consisting of an outburst during court proceedings or other disruptions of judicial proceedings." *Id.* at ¶ 18

"Direct criminal contempt may be found and punished summarily because all elements are before the court and, therefore, come within its own immediate knowledge. Consequently, the usual safeguards of procedural due process are not required for a direct criminal contempt conviction. However, before citing a person with contempt, the trial court must find that his conduct was willful. The person's state of mind does not have to be affirmatively proven, as a 'contemptuous state of mind may be inferred from the allegedly contemptuous conduct itself.' Intent may be inferred from the circumstances around the conduct and the character of the conduct. The standard of review for direct criminal contempt is whether sufficient evidence exists to support a finding of contempt and whether the trial court considered facts outside the court's knowledge." *Id.* at ¶ 19.

"Although it is unclear how the transcript could have memorialized Lubecki's tone, the record does reflect that the trial court admonished Lubecki that he should conduct himself in a certain way in the courtroom and stated that it was appalled by his impolite behavior. Plaintiff's counsel also expressed concern that the jury was going to notice the tension between the court and Lubecki. While Lubecki correctly points out that neither oral contempt finding indicated whether he was found in civil or criminal contempt, the transcript indicates that Lubecki was found to be in contempt and fined after he refused, in the court's presence, to obey the court's orders. As the punishment was retroactive in nature and punished him for doing what was prohibited in the court's presence, the nature of the contempt finding was criminal." *Id.* at ¶ 26.

"[T]he trial court is the trier of fact in a direct criminal contempt case. That means the trial court had the responsibility to determine the credibility of witnesses, weigh evidence, and resolve conflicts in the evidence; a reviewing court gives deference to the trial court because it heard the evidence and observed the witnesses." *Id.* at ¶ 27.

"[T]here must be a line between zealous advocacy and disobeying the trial court." *Id.* at ¶ 30. In Thomas v. Koe, "the attorney, unhappy with the court's ruling, chose to disregard it. However, it was 'utterly irrelevant' that the attorney believed that the trial court was wrong, because even when the court makes an erroneous decision, it remains entitled to 'dignity and obedience.' The court reiterated that admittance to 'the bar is a privilege burdened with conditions,' 'one of which is obeying the court's orders. If an attorney believes that the trial court erred, the proper procedure is to appeal, rather than to disregard the court's ruling." *Id.*

"In the case at bar, even if Lubecki believed that the trial court was wrong when it went off the record without his permission, declined to consider the motion for substitution of judge, and failed to tender him a panel of four potential jurors, the proper procedure was to preserve these issues for appeal by objecting at the time and in a posttrial motion, rather than to accuse the court of being unprofessional, confused about the law, and odd. Lubecki's continued questioning of the court's authority and refusal to follow the court's orders certainly hindered the court as it attempted to conduct the trial and administer justice to the parties, and cannot be excused by his assertion that he was acting as a zealous advocate for his client." *Id.* at ¶ 31.

"A finding of direct criminal contempt may be made in a summary manner immediately after the contemptuous conduct occurs if the purpose of the sanctions is to restore order in the courtroom or to maintain control over court proceedings. When the total punishment for a particular course of criminally contemptuous conduct committed before the trial court exceeds the parameters of punishments normally imposed for misdemeanors and the punishment is not imposed immediately after occurrence of the contemptuous conduct, the contemnor is entitled to a jury trial as to the contempt charges. Although the traditional test for determining whether or not a charged offense is a misdemeanor is whether the penalties exceed \$500 or six months' imprisonment, there is some authority indicating that the fine component is subject to an upward adjustment on the basis of the contemnor's financial resources and inflation." *Id.* at ¶ 33.

"Here, while it is true that Lubecki was fined more than \$500, in each case the \$1,000 fine was imposed immediately after the trial court found him in contempt and in order to maintain control over the courtroom proceedings. Posttrial, the court stated that a written memorandum order would issue when the court had an opportunity to write it. Accordingly, because the punishment was imposed immediately after the contemptuous conduct, Lubecki was not entitled to a jury trial even though the total amount exceeded \$500." *Id.* at ¶ 34.

**IN RE MARRIAGE OF WIGHTMAN, 2012 IL App (2d) 111160-U**

**Divorce/child support. (Contempt for violating a vacated order.)**

"A party may not be held in contempt for violating a void order. "A void order or judgment is one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved." Although a party may not be held in contempt for violating a void order, a party may be held in contempt for violating a voidable order. A voidable order arises when, among other things, the court has jurisdiction over the parties and the subject matter, but the court enters an order based on a party's fraudulent conduct or concealment of evidence." *Id.* at ¶ 8.

"...if we were to conclude that the November 24, 2008, order was void merely because the court subsequently vacated it, we would be 'shield[ing respondent] from liability for violating the order that never should have been entered and would not have been entered[] absent [respondent's] own fraud.'" *Id.* at ¶ 9.

"...it is immaterial that the court found respondent in contempt after it vacated the November 24, 2008 order. If a court has jurisdiction of the subject matter and of the parties, then the court's order must be obeyed until such time as it is set aside by either the issuing court or the reviewing court...because defendant never fully complied with the voidable November 24, 2008, order, he could be found in contempt for violating that order even though the court eventually vacated it on May 9, 2011. Given the fact that the order was entered based on respondent's misrepresentations to the court and the fact that he could be held in contempt for violating an order that the court subsequently vacated, we would conclude that respondent was properly held in contempt for violating the November 24, 2008 order." *Id.* at ¶ 10.

**SKS & ASSOCIATES, INC. V. DART, 2012 IL App (1st) 103504**

**Forcible entry and detainer. (Whether an order holding sheriff in contempt for failure to enforce eviction order was civil or criminal, direct or indirect, and the due process requirements for indirect criminal contempt.)**

The court is not bound by a trial court's determination of whether a contempt order is civil or criminal, but must examine the nature of the sanction imposed. *Id.* at ¶ 14.

"The primary determinant is the purpose for which contempt sanctions are imposed. If contempt sanctions are imposed for a coercive purpose, to compel the contemnor to perform a particular act, the contempt is civil in nature. On the other hand, criminal contempt sanctions are imposed for the purpose of punishing past misconduct." *Id.* at ¶ 15.

"The contemnor in a civil contempt proceeding must have the opportunity to purge him or herself from contempt by complying with the relevant court order. In contrast to the coercive nature of civil contempt, criminal contempt is imposed to punish past conduct that offends the dignity of the court." *Id.* at ¶ 16.

Because there was no action the contemnor could take to purge himself of the contempt, the order was criminal in nature, despite the trial court labeling it "civil contempt." *Id.* at ¶ 17.

"Criminal contempt is direct when it occurs in the presence of the judge. It is limited to actions seen and known by the court, and opinions, presumptions, conclusions and inferences cannot be considered. Indirect criminal contempt...refers to all other contemptuous acts that occur outside the trial court's presence." *Id.* at ¶ 18.

"A person charged with indirect criminal contempt is entitled to all of the constitutional protections and procedural rights afforded to other criminal defendants...These include the right to be charged by a written complaint, petition or information; the right to know the nature of those charges; the right to personal service; the right to file an answer; the right to be heard; the right to present evidence; the right to confront and cross-examine witnesses; the right to be personally present at trial; the right to subpoena witnesses; the right to a public hearing; the right to the privilege against self-incrimination; the right to counsel; the right to the presumption of innocence; and the right to be proven guilty beyond a reasonable doubt." *Id.* at ¶ 20.

Additionally, a defendant in an indirect criminal contempt proceeding is entitled to a jury trial if the potential penalty may exceed six months' imprisonment or a fine greater than \$500 and may move for a substitution of judge. *Id.* at ¶ 21.

"The alleged contemnor cannot assert these [constitutional and procedural] rights unless he receives proper notice of the nature of the charges against him. Accordingly, any party wishing to initiate indirect criminal contempt proceedings must not only notify the alleged contemnor that sanctions are being sought, but that the proceedings will be criminal in nature. Thus, indirect criminal contempt proceedings cannot be initiated by a pleading captioned so as to imply that the proceedings will not be criminal. Instead, a party seeking a finding of indirect criminal contempt must say so explicitly by filing a pleading captioned 'petition for adjudication of criminal contempt.'" *Id.* at ¶ 23.

It is immaterial that a contemnor did not assert his constitutional and procedural rights if he was never informed that he was facing criminal, as opposed to civil, contempt charges. *Id.* at ¶ 24.

"In a criminal contempt proceeding, the contemnor has the right to be proven guilty beyond a reasonable doubt and cannot be compelled to 'show cause.'" *Id.* at ¶ 25.

#### **CITY OF CHICAGO V. BORSUK, 2012 IL App (1st) 110613-U**

**Violation of zoning ordinances.** *(Whether a contemnor can challenge the underlying judgment in the contempt proceeding and whether petitioner had to prove the contemnor's ability to purge an indirect civil contempt order.)*

"A party held in contempt 'may not collaterally attack the underlying final judgment in an appeal from an order of contempt based on a violation of that judgment.'" *Id.* at ¶ 19.

"...Borsuk has cited no authority to support his proposition that the city was obligated to 'demonstrate exactly how [he] would be able to pay a fine of \$500.00 per day.' As stated above, the burden on a plaintiff in a contempt proceeding is simply to establish, by a preponderance of the evidence, that a defendant failed to comply with a court order, which the city here did. As the city correctly points out, Borsuk seems to conflate his compliance with the agreed orders, the conduct necessary to purge himself of contempt, with the fines imposed for failing to comply with them. The city merely had to show Borsuk's ability to comply with the agreed orders, rather than his ability to pay a fine, in order to support a finding of contempt..." *Id.* at ¶ 27.

#### **MILLER V. MILLER, 2012 IL App (3d) 090206-U**

**Divorce.** *(Indirect civil contempt and purge order requiring respondent to pay more than he required, plus interest and attorney fees. Was this an invalid compensatory award.)*

"...[T]he record supports the court's determination that Derrick violated provisions of the parties' marital settlement agreement without a valid reason for his noncompliance. Thus, the trial court's finding of indirect civil contempt was not against the manifest weight of the evidence." *Id.* at ¶ 18.

"The sanctions for civil contempt should be designed to be prospective in nature and seek to coerce compliance with a valid court order. Thus, a person found in indirect civil contempt must be given the "keys to his cell" and the ability to purge his contempt. Civil contempt is not a private remedy... Because a

sanction in a civil contempt proceeding is strictly coercive, the court is without the authority to compensate an aggrieved party for its damages." *Id.* at ¶ 20.

"Once a purge provision becomes impossible for the contemnor, due process may prohibit the trial court from imposing any sanction which is no longer possible...to carry out.\*\*The contempt sanction must mirror the requirements of the original court order to be enforced. In this case, the original order did not require Derrick to directly compensate Marianne for the 2007 pre-paid taxes but dictated the information Derrick could provide to the IRS without violating the court order at issue." *Id.* at ¶ 23.

"A trial court simply lacks the authority to order damages which are not the direct remedial loss of a contemnor's violation or to order compensation for tertiary damages. By imposing additional financial obligations upon Derrick to directly pay Marianne 55.5% of the 2007 pre-paid taxes plus interest and attorney fees, the purge order became compensatory and invalid." *Id.* at ¶ 26.

### **PEOPLE V. DUFF, 2012 IL App (5th) 100479**

**Divorce.** (*Whether contemnor's mental illness affected his ability to form the requisite intent to commit direct criminal contempt.*)

"The actions of the contemnor must be willful, as criminal contempt requires intent. Intent or at least knowledge of the nature of one's act is a necessary element of contempt because contempt requires some form of construction or actual knowledge of what conduct is forbidden. In a direct form of criminal contempt committed in the presence of the court, the intent required can be inferred from the nature of the contemptuous conduct at issue." *Id.* at ¶ 11.

"Summary adjudication of contempt is appropriate when the trial judge has all facts necessary to resolve the matter. However, if it appears that the defendant may have a mental health condition, that mental issue could bar criminal responsibility. If there is a substantial issue of the defendant's mental capacity to commit contempt, an element of the crime of contempt is therefore not within the judge's knowledge. The matter of mental illness is considered to be beyond the personal knowledge of the trial judge...If the record reflects a substantial issue of intent to commit contempt due to mental illness, the court should initiate a hearing on the individual's mental capacity." *Id.* at ¶ 14.

### **IN RE BROWN, 2012 IL App (5th) 100477-U**

**Divorce/maintenance.** (*Whether contempt for failure to appear and violating court order was civil or criminal, and if it could be based on violating an order that was erroneously granted.*)

"In analyzing the court's contempt order to determine if the contempt was considered to be civil or criminal in nature, we look to the purpose for which the contempt sanctions were imposed. The penalties imposed by the court also shed light on the nature of the contempt. If the sanctions are imposed to coerce a certain behavior or act, the contempt is civil in nature. If the punishment is purely punitive-to vindicate the court's authority-the contempt is criminal in nature." *Id.* at ¶ 22.

"The individual found to be in contempt of court bears the burden to establish that his noncompliance was not willful and that he has a valid reason for failing to comply with the court's order." *Id.* at ¶ 23.

"We will not overturn a trial court's finding of contempt unless that finding is contrary to the manifest weight of the evidence." *Id.* at ¶ 24.

"We agree that the contempt was indirect, but disagree that the contempt order was civil in nature. If the contempt order was civil, the punishment must have been structured to allow Stephen's attorneys the opportunity to purge themselves of the contempt. In this case, by the date that the contempt order was entered--August 26, 2010--the releases sought by Ellen in order to obtain the sought-after employment documents had already been produced. Counsel for Stephen presented these releases to Ellen's attorney on August 19, 2010. Already having delivered the authorizations listed in the court's July 28, 2010, order, there was nothing to purge at the contempt hearing on August 19, 2010. Furthermore, with respect to that

portion of the contempt order addressing counsel's failure to appear in court on July 28, 2010, the court had already entered its order continuing the case on that same date. Overall, there simply was nothing for Stephen's attorneys to purge, and therefore the contempt order and the attorney fees for time spent by Ellen's attorney in filing the discovery-related motion and the rule to show cause was criminal in nature." *Id.* at ¶ 25.

"While the court has the power to hold an attorney in contempt of court for failing to appear at a hearing, in this case, we find that the court's order was contrary to the manifest weight of the evidence. Notwithstanding the fact that the court did grant the motion to continue, Stephen's attorneys were not present in Judge Leberman's courtroom when the order was entered. However, the attorneys fully explained where they were, and why they were not able to be present, and also made adequate contact with opposing counsel about the scheduling conflict, as well as the need for the continuance. There were no witnesses present for the hearing on the petition to modify. No one suffered any prejudice by the fact that Stephen's attorneys did not appear in court on July 28, 2010." *Id.* at ¶ 31.

The order for contempt was contrary to the manifest weight of the evidence because it was based on a failure to comply with an erroneously granted motion to compel. *Id.* at ¶ 32.

**BANK OF AMERICA, N.A. V. FREED, 2012 IL App (1st) 113178**

**Mortgage foreclosure.** (*Indirect civil contempt for violating citations to discover assets by transferring assets. Court also considered the appointment of a receiver as a sanction for civil contempt and a purge provision dependent on a receiver's recommendation.*)

"The existence of an order of the trial court and proof of willful disobedience of that order is essential to any finding of indirect civil contempt." *Id.* at ¶ 20.

"The trial court's authority to hold a party in contempt for violating the terms of a citation to discover assets derives from section 2-1402(f)(1) of the Code, which provides that 'The court may punish any party who violates the restraining provision of a citation as and for a contempt.'" *Id.* at ¶ 21.

"Illinois Supreme Court Rule 277(h), regarding supplementary proceedings, also addresses contempt as a sanction for violating the terms of a citation, providing, in relevant part, that 'Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule may be punished for contempt.' Therefore, it is clear that the trial judge had authority to hold the defendants in contempt if she found that they had failed to comply with the citations." *Id.* at ¶ 22.

"...section 12-718 of the Code permits the appointment of a receiver to 'compel the judgment debtor to do or to refrain from doing any specific act or deed, collect any indebtedness or to take possession, sell or otherwise dispose of any other property, and enter all orders in regard thereto which are necessary and equitable between the parties.'" *Id.* at ¶ 39.

"A valid contempt order must contain a purge provision, which lifts the sanction when the contemnor complies with the order." *Id.*

"A civil contempt order that fails to provide the contemnor with the 'keys to his cell' is void." *Id.* at ¶ 42.

"...trial court's order provides that the sanction will be discharged only if, to the court's satisfaction: (1) defendants have cooperated in the receiver's investigation and the receiver reports that his investigation is complete; (2) the receiver makes a recommendation to the court on the collection, sale and distribution of defendants' assets, and defendants cooperate in such collection, sale, and distribution; and (3) defendants' assets are collected and sold and the cash applied toward the judgment." *Id.* at ¶ 43.

"...the second part of that provision requires that the receiver must report to the court that his investigation is complete. Further, the second requirement is that the receiver makes a recommendation to the court regarding the collection, sale and distribution of defendants' assets. These provisions appear to take the keys out of the defendants' hands and give them to the receiver, for even if defendants

cooperate with the receiver, the contempt will not be purged until the receiver determines that his investigation is complete and makes a report and recommendation to the court...Therefore, we find that because the trial court's order appointing a receiver leaves it up to the receiver's discretion as to whether and when the sanction may be lifted, the trial court's order appointing a receiver is not valid." *Id.* at ¶ 44.

**HUMPAL V. PAPPAS, 2012 IL App (2d) 110722-U**

**Violation of an injunction.** (*Whether a contempt order was civil or criminal where the order enjoined the contemnor from violating an injunction and required him to pay respondent's attorney fees.*)

"Civil and criminal contempt are distinguished by the purpose of the sanction: the former is imposed to coerce compliance with a court order, but the latter is imposed as punishment for past acts. Here, the contempt order had two parts: (1) it enjoined respondent from violating the Mandatory Injunction again; and (2) it required him to pay the attorney fees and costs that petitioners incurred in bringing the contempt action. Neither part was a criminal sanction." *Id.* at ¶ 8.

"The first part of the order imposed no punishment, but required only that respondent conform his future conduct to the Mandatory Injunction—as he was already legally obligated to do. The only 'punishment' was that, if respondent later violated the Mandatory Injunction, he would serve seven days in jail. Thus, although the *finding* that respondent was in contempt was based on his past conduct, the *sanction* imposed was purely coercive and prospective. That is the crucial point." *Id.* at ¶ 9.

"The second part of the order imposed a monetary obligation on respondent, but it was not punishment. A civil-contempt order may require the contemnor to pay the attorney fees that another party incurred in petitioning for contempt." *Id.* at ¶ 10.

"We find *In re Marriage of Samuel*, persuasive. There, the trial court found an attorney in contempt, based on his past improprieties. The contempt judgment fined the attorney and required him to apologize to the court. The appellate court vacated the fine, holding that it was punitive and had been imposed without the required criminal-trial safeguards. However, because the apology could be construed as a promise not to engage in similar behavior in the future, ordering it was coercive, not punitive. The mere fact that the civil-contempt finding was based entirely on past conduct did not prohibit imposing a sanction that was wholly prospective. The situation here is similar: requiring respondent to refrain from further violations of the Mandatory Injunction, and requiring incarceration if he did so, was a proper civil-contempt sanction, even though the finding of contempt was based wholly on his past conduct." *Id.* at ¶ 11.

**PEOPLE V. HIXSON, 2012 IL App (4th) 100777**

**Post-conviction petition.** (*Whether a pro se contemnor had the required intent to justify an order for direct criminal contempt where he mailed an order to the court which purported to have been signed by the judge.*)

"The standard of review for direct criminal contempt is whether sufficient evidence exists to support a finding of contempt and whether the judge considered facts outside the judge's personal knowledge. Criminal contempt of court has been generally defined as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." *Id.* at ¶ 11.

"Direct criminal contempt may occur in either of two ways: (1) the contemptuous acts are personally observed by the judge or (2) the contemptuous acts are committed outside the immediate physical presence of the judge but within an integral part of the court, i.e., the circuit clerk's office. Under appropriate circumstances, the filing of a document with the clerk of the court may be a basis for a direct-criminal-contempt conviction." *Id.* at ¶ 12.

"Before citing one with contempt, a court must find the alleged contemnor's conduct was willful. The alleged contemnor's state of mind, however, does not have to be affirmatively proven; the contemptuous state of mind may be inferred from the allegedly contemptuous conduct itself. The intent may be inferred

from the circumstances surrounding the contemptuous conduct and the character of the party's conduct." *Id.* at ¶ 15.

"...An essential element to a finding of criminal contempt is the contemnor's conduct must be willful." *Id.* at ¶ 17.

"Although defendant apparently typed the name "Jeffrey B. Ford" on the signature line of the order, rather than beneath it, this cannot be construed as an attempt to embarrass, hinder, or obstruct the judge in the administration of justice. Defendant mailed the proposed order to the circuit clerk's office along with his petition requesting such an order be entered. At most, the facts and circumstances indicate defendant submitted "a faulty proposed order" for filing." *Id.* at ¶ 18.

**UNITED TRANSFER, INC. V. LORENCE, 2011 IL App (2d) 110041**

**Collection and levy.** (*Whether a trial court properly dismissed a petition for indirect criminal contempt for violating a sheriff's levy where there was no levy order in the record.*)

"The purpose of contempt proceedings is to maintain the dignity of the court and to enforce its orders by punishing contemnors for disobedience. Criminal contempt sanctions punish a contemnor for past acts that cannot be undone; indirect criminal contempt is a subcategory of criminal contempt for those situations where the contemptuous conduct occurs outside of the court's presence. Two elements must be proved to sustain an indirect criminal contempt finding: (1) the existence of a court order; and (2) a willful violation of that order. A person charged with indirect criminal contempt is entitled to the constitutional protections afforded criminal defendants and to be proved guilty beyond a reasonable doubt. We review de novo a trial court's dismissal of a criminal complaint for failure to state an offense." *Id.* at ¶ 18

"...the petition for contempt presumes the existence of a levy order. There is no such order in the record. There is no court order in the record that orders a levy. The record contains only a sheriff's inventory, with the word "seized" crossed out and reflecting that Lorence was present for the inventory. The court's order of March 4, 2010, did not order a levy; it, too, presumed the existence of a levy. We agree with the trial court that a petition for indirect criminal contempt, which requires proof beyond a reasonable doubt of the existence of an order, fails where the petition fails to demonstrate, in fact, the existence of the order that forms the basis of the petition." *Id.* at ¶ 19.

**OHIO SECURITY INSURANCE CO. V. RASLER PLUMBING CO., 2011 IL App (5th) 100164-U**

**Worker's compensation/declaratory judgment.** (*Civil contempt where contemnor failed to comply with discovery orders because it believed the documents were protected by attorney-client and work-product privileges.*)

"A contempt proceeding is an appropriate method for testing the correctness of a discovery order. When a party appeals a contempt order that was imposed for violations of a discovery order, the discovery order is subject to review. If the discovery order is found to be invalid, then the contempt order must be reversed." *Id.* at ¶ 21.

"In this case, the record shows that Ohio Security refused to produce the requested documents for 18 months, despite four court orders directing it to produce those documents. It was only after the entry of a fourth order compelling production of the contested Leahy documents that Ohio Security sought to be held in civil contempt so that it could seek appellate review of the propriety of the discovery orders. Ohio Security has not offered any reason why it waited more than 18 months to request the contempt finding. Ohio Security has not shown that its delay was reasonable or justified by some extenuating circumstances or events. Though Ohio Security employed an accepted method to test the underlying discovery order, the lengthy delay in seeking to pursue that option was unreasonable and without justification. Additionally, the communications between Leahy and Ohio Security were one of the pivotal parts of the bad-faith claim. The trial court's determination that Ohio Security's conduct was contemptuous

is supported by the record. The trial court's decision to hold Ohio Security in civil contempt and to impose sanctions is supported by the record and is not an abuse of discretion." *Id.* at ¶ 27.

**PEOPLE V. PETTIS, 2011 IL App (1st) 102528-U**

**Refusal to testify at murder trial.** (*Whether a nine year sentence for indirect criminal contempt violated the proportionate penalties clause of the Illinois Constitution and the eighth amendment to the United States Constitution.*)

"The proportional penalties clause applies to all penalties, which includes sentencing imposed for criminal contempt. The clause is violated where the sentence 'is greater than the sentence for an offense with identical elements.' In contrast, a majority of the United States Supreme Court has concluded either that the eighth amendment does not guarantee proportionality between a criminal offense and the length of a sentence of incarceration, or forbids only extreme sentences that are grossly disproportionate to the crime." *Id.* at ¶ 24.

"The Illinois Supreme Court has not suggested that the flexibility of the contempt power renders its exercise constitutionally questionable in general. Similarly, this court cannot impose any scheme limiting the contempt power, as we lack the supervisory powers vested in the Illinois Supreme Court under our state constitution." *Id.* at ¶ 26.

"In the contempt case before us, there is no statutory range for sentencing in indirect criminal contempt offenses. Appellate courts bear a 'special responsibility' to prevent abuse of the contempt power, in part because there are few limits on that power. In a contempt case, 'the punishment imposed must be measured by, and limited to the gravity of the contemptuous conduct.' A punishment for contempt should involve the 'least possible power adequate' to the purpose." *Id.* at ¶ 31.

"...we conclude that the sentence is manifestly disproportionate to the nature of the offense, and therefore unreasonable. We disagree with the State's assertion that a lesser sentence may induce further lawlessness. Pettis's defiance of the subpoena was an affront to the judicial system and may have weakened the prosecutions of Hebron. Yet, we find a nine-year sentence for indirect criminal contempt is excessive because such a sentence does not represent the 'least possible power adequate' to punish Pettis, vindicate the judiciary, and deter similar acts in the future...We must adhere to our state constitution's mandate that penalties be determined according to the severity of the offense, and insure it is not greater than the sentence for an offense with identical elements. We therefore find the trial court abused its discretion in imposing an unreasonable sentence." *Id.* at ¶ 34.

"...[W]e reduce defendant's sentence to four years imprisonment, which still remains one of the longest reported sentences imposed for indirect criminal contempt in Illinois." *Id.* at ¶ 35.

**NEWTON V. NEWTON, 2011 IL App (1st) 090683**

**Divorce.** (*Contempt where attorneys failed to step aside despite a court finding that the attorneys were disqualified due to a conflict of interest.*)

"A contempt order is final and appealable and generally also brings the propriety of the underlying disqualification order and denial of attorney fees before us." *Id.* at ¶ 27.

"Contempt of court can result from a party's failure to comply with the terms of a court order. Persons subject to the order of a court having jurisdiction must obey the order until it is reversed by a reviewing court or set aside or modified. Exposing oneself 'to a finding of contempt is an appropriate method of testing the validity of a court order.' Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Id.* at ¶ 62.

"We note the well-established rule that where a 'refusal to comply with a trial court's order constitutes a good-faith effort to secure an interpretation of [an issue without direct precedent], it is appropriate to



vacate a contempt citation on appeal.' However, under the facts of this case, we find that Grund and Leavitt's refusal to comply with the circuit court's order denying them fees did not constitute a good-faith effort to secure an interpretation without direct precedent. Rule 1.9 of the Rules of Professional Conduct is clear that representing clients with conflicts of interest is prohibited. Precedent is clear that fees for such prohibited representation are barred. It is un rebutted that Grund knew of the conflict before he agreed to represent Hadley and yet undertook to represent her anyway, thus paving his own road to the denial of fees. Therefore, the court's adjudication of civil contempt was well founded and not against the manifest weight of the evidence or an abuse of discretion." *Id.* at ¶ 63.

"Further, we note that in this very case Grund had previously been found in direct civil contempt in an order dated June 30, 2008, in which the court found: "Grund's verbal outbursts obstructed and embarrassed the court and constituted a direct defiance of a court order before a judge in open court and Grund is found to be in direct contempt of court. It is ordered that contemnor David Grund will pay to the Clerk of the Circuit Court a fine of \$500.00 forthwith. Grund is remanded to the custody of the Cook County Sheriff and released upon payment of the fine..." *Id.* at ¶ 64.

"The fact that the order states that Grund and Leavitt were found in direct contempt 'for their failure to obey the court's disqualification order' indicates that the court was attempting to coerce compliance with its order denying Grund and Leavitt's fees. The order stated that paying the fine would purge the contempt." *Id.* at ¶ 65.

**FOSS V. FOSS, 2011 IL App (5th) 100401-U**

**Divorce/visitation.** (*Evidentiary sufficiency of an indirect civil contempt order where the contemnor violated a visitation order.*)

"Where a parent is found in contempt for failure to turn a child over to the other parent for visitation or custody, the conduct occurs outside of the court's presence and must be construed as indirect contempt." *Id.* at ¶ 23.

"...mislabeling the type of contempt alone is insufficient grounds to reverse the order." *Id.*

"...indirect contempt can only be proven by extrinsic evidence-which means that the accused must be allowed to offer evidence on her own behalf. *Id.*

**IN RE MARRIAGE OF HEALEY, 409 Ill. App. 3d 1146 (1st Dist., 2011)**

**Divorce.** (*Due process for indirect civil contempt where contemnor received notice of rule to show cause and received a hearing.*)

"The notice must contain an adequate description of the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of an evidentiary hearing on the charge within a reasonable time in advance of the hearing on the contempt charge. The notice required is notice of the hearing on the rule to show cause or contempt charge, not notice of the motion or petition for a rule to show cause." *Id.* at \*11-12.

"In an indirect civil contempt hearing, respondent is only entitled to minimal due process, which consists of notice and an opportunity to be heard." *Id.* at \*12-13.

"Where a rule to show cause and petition for a rule to show cause set forth substantially the same allegations, the service of the rule to show cause, setting forth the nature of the charges against him and the time and place of the hearing on those charges, satisfies the due process notice requirements." *Id.* at \*14.

"An alleged contemnor in an indirect contempt proceeding is entitled to notice, a fair hearing, and an opportunity to be heard. At the contempt hearing the alleged contemnor has the opportunity to show compliance with the court's order, or an acceptable reason, like impossibility, for noncompliance." *Id.* at \*16.

**PEOPLE V. KEMP, 409 Ill. App. 3d 1156 (1st Dist., 2011)**

**Burglary.** (*Evidentiary sufficiency of direct criminal contempt for pro se criminal defendant's false pleading.*)

Defendant filed a pro se petition for post-conviction relief alleging the judge failed to communicate his mandatory release admonishments at the plea hearing. *Id.* at 5.

During the hearing on defendant's post-conviction petition the court find him in direct criminal contempt because he was "obviously lying" in the petition and "filing a false pleading." *Id.* at \*6.

"However, our review of the record, including defendant's petition and the sentencing transcript shows that, the trial court did not reference the MSR term, when it imposed its sentence on defendant, though it had done so earlier. Thus, the record does not establish that defendant's filing was calculated to embarrass, hinder or obstruct the circuit court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute... we reverse the trial court's contempt finding and vacate the attendant six-month sentence." *Id.* at \*14.

**IN RE GEREBIZZA, 409 Ill. App. 3d 1166 (2d Dist., 2011)**

**Divorce/maintenance.** (*Whether section 362 of the Bankruptcy Code provides an automatic stay on indirect civil contempt proceedings.*)

"Courts have consistently held that civil contempt orders fall within the scope of the automatic stay under §362(a) of the Bankruptcy Code but that criminal contempt orders do not. Criminal contempt orders, which are purely punitive, are outside the scope of the automatic stay whose purpose is to protect the estate for the benefit of creditors and promote the estate's orderly disposition." *Id.* at \*12.

"... we know that Shirley's contempt proceeding sought payment for the prior judgment of \$2.5 million, which we agree constituted a 'domestic support obligation' under the Bankruptcy Code. We do not know, however, whether Shirley was seeking payment from non-bankruptcy estate property or from property within the estate." *Id.* at \*13.

"...[W]e find that the order was civil in nature, evidenced by the fact that Alfred had the ability to release himself by paying the purge amount. Thus, in spite of the court's statement that it found him in contempt for failing to appear in court on numerous occasions, Alfred still held the proverbial keys to the jailhouse. Civil contempt orders are not excepted from the automatic stay. Therefore, we vacate the circuit court order and remand the cause to the trial court to fully consider whether Shirley sought to collect from non-bankruptcy estate property." *Id.*

**LOPEZ V. SCHILLER DEVELOPMENT INC., 406 Ill. App. 3d 1201 (1st Dist., 2011)**

**Property encroachment/mandatory injunction.** (*Mootness of an appeal where the contemnor purged the contempt*)

"Although defendants attack the validity of issuing a contempt order while the underlying judgment order is being appealed, it is well established that a defendant is required to obey an injunction order under pain of contempt and could be found in civil contempt for violation of the order, even if the injunction order is subsequently reversed." *Id.* at \*12

"The penalties in a civil contempt case serve only to coerce the contemnor to comply with a court order, and they cease when the contemnor complies." *Id.* at \*13.

"A contempt order which is purged by complying with the court's order renders an appeal of such contempt moot." *Id.* at \*14.

**MALCOLM V. CRUMP, 405 Ill. App. 3d 1192 (1st Dist., 2011)**

**Divorce/child support.** (*Insufficiency of evidence to support a finding of direct criminal contempt.*)

"It is well established that all courts have the inherent power to punish contempt; such power is essential to the maintenance of their authority and the administration of judicial powers. This court has defined criminal contempt of court 'as conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute.'" *Id.* at \*14.

"Direct criminal contempt is contemptuous conduct occurring 'in the very presence of the judge, making all of the elements of the offense matters within his own personal knowledge.' Direct contempt is 'strictly restricted to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions or inferences should be considered.' Direct criminal contempt may be found and punished summarily because all elements are before the court and, therefore, come within its own immediate knowledge. On appeal, the standard of review for direct criminal contempt is whether there is sufficient evidence to support the finding of contempt and whether the judge considered facts outside of the judge's personal knowledge." *Id.* at \*15.

"[I]f a contemnor can show that the conduct was a good-faith attempt to represent his or her client without hindering the court's function or dignity, a finding of direct contempt will be reversed upon review." *Id.* at \*17.

"[A] reviewing court may consider 'any provocation or error by the trial court which may have triggered' the contemnor's conduct... We are not saying that provocation is a defense to contempt; however, the circumstances of the underlying proceedings may be weighed in determining whether the offense of contempt has been proved beyond a reasonable doubt." *Id.* at \*19.

"Judges have an enormous range of remedies for dealing with impertinent lawyers, from subtle to stern admonition. Contempt is always a last resort reserved for the most egregious behavior. Incarceration of a lawyer as a sanction is almost always an abuse of the contempt power." *Id.* at \*20-21.

**PEOPLE V. LEMON, 405 Ill. App. 3d 1199 (1st Dist., 2011)**

**Criminal defendant's fitness hearing.** (*Whether a judge's failure to recuse himself was plain error where the trial judge had physically restrained the contemnor.*)

"Our review shows that the trial judge repeatedly ordered defendant to be seated and both the trial judge and defendant's counsel advised him he would be found in contempt of court. When defendant became unruly, the trial judge descended from the bench and helped sheriff's deputies restrain him out of perceived necessity. The simple fact that the trial judge physically touched or restrained defendant does not support a finding that he could no longer fairly adjudicate the proceedings. Under the circumstances, we find no error by the trial judge in aiding the deputies to restore order. We also find nothing in the record which would preclude the court from entering an order of contempt in this situation. We, thus, find no basis for excusing defendant's forfeiture of this issue." *Id.* at \*3-4.

"We agree with the general proposition cited by defendant that a sentence may not be ordered to run consecutively to a sentence that has not yet been imposed. However, we find this general proposition inapplicable to the case at bar, where the contempt sentence arose from defendant's unruly behavior at a hearing on his pending criminal charges." *Id.* at \*6.

"Section 5-8-7(b) of the Unified Code of Corrections (Code) provides that credit may be awarded for time spent in custody as a result of the offense for which sentence was imposed. Here, as in Jackson, defendant's contempt sentence was not a result of his underlying offense, it was the result of his unruly courtroom behavior. Nothing in the Code or caselaw requires the court to credit defendant with time served as a result of his contempt, and to find otherwise would 'greatly diminish a defendant's incentive to comply with the trial court's order respecting proper decorum in the courtroom and render the contempt

citation itself meaningless and inoperative.' We find no abuse of discretion by the court in ordering defendant to serve the contempt sentence upon the release from the sentence imposed in his underlying criminal case..." *Id.* at \*7-8.

***HOLTKAMP TRUCKING CO. V. FLETCHER, 402 Ill. App. 3d 1109 (4th Dist., 2010)***

**Worker's compensation.** (*Direct civil contempt where medical provider failed to produce employee's medical records per a subpoena issued by the Illinois Workers' Compensation Commission.*)

Defendant was held in direct civil contempt for failing to supply medical records pursuant to a subpoena. Plaintiff agreed with the finding of contempt but disagreed with the portion of the judgment requiring plaintiff to pay defendant 15 cents a page and declining to assess costs, attorney fees, and a fine against defendant. The court held it did not have jurisdiction to overturn the finding of contempt because (1) defendant did not appeal and (2) plaintiff did not challenge the finding of contempt. *Id.* at \*1113.

"Even though a court finds a party to be in contempt, the court does not have to impose a sanction. The types of sanctions and whether to impose any sanction at all lie within the sound discretion of the court. There are degrees of contumacious behavior, and a court could reasonably make the sanctions depend on how egregious or persistent the contumacious behavior is. On the record before us, we find no evidence that defendant or its attorney has ever behaved contumaciously toward the circuit court in this case, and therefore we find no abuse of discretion in the court's denial of plaintiff's request for sanctions in the form of costs, attorney fees, and a fine." *Id.* at \*1117.

"This statute [the Worker's Compensation Act] does not say that disobeying a subpoena issued by the Commission is contempt of court. The statute does not require the reader to pretend that the court issued an order and that someone disobeyed it. There is no such thing as contempt of Commission. Instead of treating the Commission as if it were a court, the statute says that if a person refuses to comply with a subpoena issued by the Commission, the circuit court, on application of a member of the Commission or an arbitrator, 'shall compel obedience by attachment proceedings, as [the court would do] for contempt, as in a case of disobedience of the requirements of a subpoena from such court on a refusal to testify therein.' The 'as for' and 'as in' constructions signify that the court may use a tool from the law of contempt, *i.e.*, attachment. The statute does not say the court is to hold the person in contempt merely because the person disobeyed a subpoena issued by an administrative agency." *Id.* at \*1118.

"In the context of contempt proceedings, attachment usually is a method of last resort. Typically, it is only after a person fails to respond to a notice to show cause that the court issues a writ of attachment--and then the attachment is not punishment (noncompliance with a notice to show cause is not contempt of court, because the notice is not a court order), but, rather, it is merely a necessary method to bring a person before the court so that the person will have an opportunity to be heard." *Id.* at \*1119.

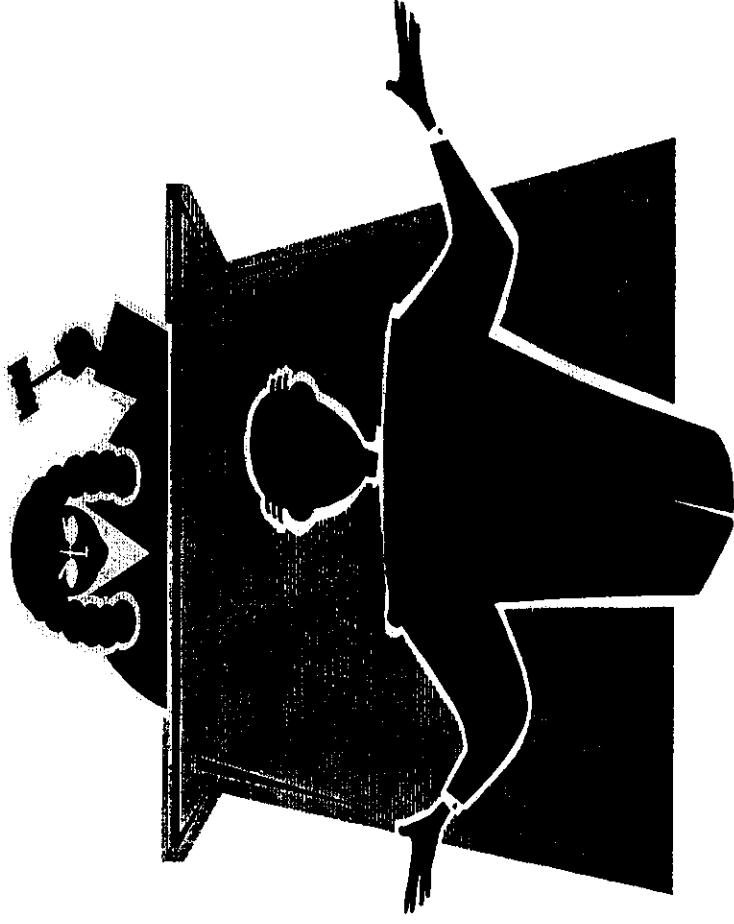
# **CONTEMPT**

Hon. Joy V. Cunningham, *1<sup>st</sup> Dist.*

Hon. Robert E. Gordon, *1<sup>st</sup> Dist.*

May 1, 2015

Use contempt as a last resort,  
whenever possible



## **After this session, participants will:**

- Learn Strategies for Avoiding Contempt Findings
- Effectively Distinguish between Civil and Criminal Contempt;
- Tackle the Nuts and Bolts of Civil Contempt;
- Recognize Effective Civil Contempt Orders;
- Better understand the Application and Issues of the Debtors' Rights Act of 2012

“The power of the court to punish for contempt does not depend on constitutional or legislative grant, but is inherent in all courts as essential to the proper and effective functioning of the courts and to the administration of justice.”

47<sup>th</sup> & State Currency Exchange v. Coleman Corp., 56 Ill.App.3d 229, 233 (1<sup>st</sup> Dist. 1977)



The types of sanctions and whether to impose sanctions lie within the sound discretion of the court.

Multituit Corp v. Draiman, 359

Ill.App.3d 527 (1<sup>st</sup> Dist. 2005)

# Criminal Contempt

1. To punish
2. Constitutional protections that are allowed to all criminal defendants, and for indirect contempt:
  - Right to a jury trial when incarceration exceeds 6 months or the fine exceeds \$500.00
  - Right to counsel
  - Right to change of judge
  - Right to be charged with a written complaint, petition, or information

# **Criminal Contempt (cont.)**

- Right to file an answer and have a public trial
  - Right to present evidence, subpoena witnesses, and to confront and cross-examine witnesses
  - Right to the presumption of innocence and against self-incrimination
  - Right to be proven guilty beyond a reasonable doubt
3. The sanction must be retrospective – a punishment for doing what has been prohibited.

# Civil Contempt

1. To compel compliance with court orders
2. Prospective: the sanction for refusing to do what has been ordered
3. Limited constitutional protections  
The contemnor has the right to....
  - to be advised of contumacious conduct
  - to receive a copy of the written order
  - to make a statement prior to sanctions

## **Civil Contempt (cont.)**

4. Defense: inability to perform
5. Contemnor must have the ability to purge
6. All fines payable to the Clerk of the Court
7. Additional remedies as provided by statute

# What kind of contempt?

Ask, “What is the court attempting to accomplish?”

- If punishing → Criminal
- If compelling conduct → Civil
- If punishing and compelling → Criminal and Civil

# CIVIL V. CRIMINAL CONTEMPT

## Civil Contempt

- Failure to perform an act ordered by the court
- Purpose: To compel and act
- Sanction: Prospective
- Fewer Constitutional protections

## Criminal Contempt

- Behavior that assaults the dignity or impairs the ability of the court to conduct its work
- Purpose: Punish
- Sanction: Retrospective
- Constitutional protections provided

# CIVIL v. CRIMINAL CONTEMPT (cont.)

## Civil Contempt

- Same as original cause of action
- Requires written order
- Right to Appeal

## Criminal Contempt

- Separate cause of action (separate case number)
- Requires written order
- Right to Appeal



# Direct v. Indirect Contempt

- Both civil and criminal contempt can be direct or indirect.
- Direct contempt is an act that occurs in the presence, or constructive presence, of the court  
-- the judge must hear or see the act.
- Indirect contempt occurs in whole or part outside the presence of the court.

# Direct Civil Contempt

- Alleged Contemnor (AC) must willfully disobey a [valid] court order in the presence or constructive presence of the Court
- *Examples:* Alleged Contemnor (AC) refuses to appear/testify under a valid subpoena, refuses to submit to fingerprints, turn over paycheck stubs, etc.
- Judge must: Give AC notice of contemptuous act; opportunity to make a statement; a copy of the written order giving the AC the ability to purge (“keys to his cell”)
- Defense: Inability to perform, valid 5<sup>th</sup> Amend’t claim

# Indirect Civil Contempt

- Commonly instituted by a Petition for Rule to Show Cause (to enforce compliance)
- Usually brought by a party to the original action
- The AC is afforded limited Due Process Rights
- Notice must contain an adequate description of the facts and give the time and place of the evidentiary hearing

## Scenario 2

### **AVOIDING CONTEMPT FINDINGS**

In a divorce case, the trial court disqualifies an attorney who disagrees with the decision and refuses to leave the bench after another case is called.

Is the lawyer out of bounds?

*In re Marriage of Newton*, 955 N.E. 2nd 572  
(Ill. App. 2011)

## Scenario 3

### **AVOIDING CONTEMPT FINDINGS**

In the jury selection process, a member of the venire refuses to answer any questions and refuses to even verify her address.

Is this venire person subject to contempt?

# Elements of Civil Contempt

- (1) A valid court order requiring the contemnor to do something;
- (2) Contemnor is able to perform the action demanded;
- (3) The contemnor refuses to perform the action demanded;
- (4) No further civil sanctions are imposed if the contemnor complies; and
- (5) The contempt order provides a means for the contemnor to purge the contempt finding.

**NOTE:** While the contemnor's intent is irrelevant, the inability to perform is a defense (so long as the infeasibility is not caused by the contemnor).

## **Cannot Be Civil Contempt Unless There Is an Ability to Purge**

Failure to comply with a court's order can result in a finding of civil contempt. When the order is complied with, the contempt is purged.

# Civil Contempt: Coercive Force

- Civil contempt loses coercive force
- If you have indefinite order of commitment to imprison until someone does something it loses its coercive force
- The contemnor bears the burden of demonstrating that the sanction has lost its coercive force and will not likely cause him to comply with the order of the court.
- A contemnor's avowed refusal to comply with the order is one circumstance that a court *may* consider in determining whether a sanction for civil contempt remains coercive.



## **Civil Contempt: Coercive Force (cont.)**

- Other criteria that a court may consider in making this determination include the age and health of contemnor, the length of incarceration, and the “significance of the ends to be achieved” by the underlying order.

# Writing Effective Civil Contempt Orders

The judgment order in direct civil contempt proceedings must:

- (1) Be in writing (an orally transmitted order of contempt is not sufficient notice);
- (2) Signed by the judge;
- (3) Show jurisdiction over the parties and subject matter;
- (4) Set forth the specific act or acts for which the contemnor is being held in contempt and the grounds supporting the finding of contempt;

# Writing Effective Civil Contempt Orders (cont.)

(5) When involving the failure to pay child support or a money judgment, the order must contain a finding that contemnor's failure to comply with the order was willful and the contemnor has means to comply but refuses to do so;

(NOTE: willfulness and intent are not issues in a violation of an injunctive order.)

(6) Provide sanctions;

# **Writing Effective Civil Contempt Orders (cont.)**

- (7) Set forth means by which the contemnor may purge the contempt;
- (8) Include in its decretal portion, a description of adjudication and sanctions imposed;
- (9) Order must be immediately transmitted to the contemnor and the jailer along with the commitment order, when applicable.

# Scenario 4

## **CIVIL CONTEMPT**

During a personal injury case, plaintiff's attorney informs the trial court that a medical doctor who treated plaintiff was subpoenaed a month ago and informed him one hour ago that he refuses to appear at the trial.

Or a police officer who came to the scene or a witness fails to appear.

As a trial lawyer, what relief would you request?

# Scenario 5

An eviction judge ordered the sheriff to evict a person by a date certain after becoming frustrated by the sheriff's actions over time. The sheriff did evict the person but not before the date set by the court. Plaintiff's lawyer filed a rule to show cause as to why the sheriff should not be held in contempt of court. After a hearing, the trial court found the sheriff in civil contempt and entered a fine of \$1,400.00, payable to plaintiff for their rent loss, and \$3,093.75 for attorney's fees.

Was the trial court correct?

SKS and Associates, Inc. v. Dart, 2012 IL App. (1st) 103504

# Scenario 6

Valerie was a speeding ticket defendant who, during a recess outside of a courtroom, was overheard by the court bailiff saying, "I waited all f\*\*\*ing morning and now she takes a break." The bailiff told the judge. The judge returned to the bench and instructed the State to prepare and file a petition for contempt and refused to give the defendant a continuance. After an immediate hearing, the judge sentenced defendant to eight days in jail.

1. Is this civil or criminal contempt?
2. Is this direct or indirect contempt?
3. Did the judge do anything wrong?

People v. Perez, 2014 IL App (3d) 120978

# Scenario 7

A defendant, after a jury trial for domestic battery, was found unfit to stand trial. During his trial, he made repeated outbursts accusing the court of being "thugs," "playing games," and other improper phrases, and continually interrupted the court during the trial. The court found the defendant in contempt and initially sentenced him to consecutive six-month terms in jail.

1. Is this a valid contempt finding?
2. Can the court sentence the defendant to consecutive terms in prison?

People v. Hodge, 2014 IL App (3d) 120720-U



# ILLINOIS CONSTITUTION

## ARTICLE I, SECTION 14

"No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments of necessary, and has willfully failed to make a payment." Ill. Const. 1970, Art. I, § 14.

# Debtors' Rights Act of 2012

"No order of body attachment or other civil order for the incarceration or detention of a natural person respondent to answer for a charge of indirect civil contempt shall issue unless the respondent has first had an opportunity, after personal service or abode service of notice as provided in Supreme Court Rule 105, to appear in court to show cause why the respondent should not be held in contempt." 735 ILCS 5/12-107.5

# The Act was amended effective January 1, 2014

- does not apply to: the enforcement of any order or judgment resulting from an adjudication of a municipal ordinance violation that is subject to Supreme Court Rules 570 through 579, or from an administrative adjudication of such an ordinance violation
- or the enforcement of any order or judgment for child support

# **Why the Debtor's Rights Act of 2012**

- Different procedures in different jurisdictions
- Efforts to create uniformity
- **Special issues – areas yet unsettled:**