

DRAFT

CONTEMPT (Updated March 2025)¹

WARNING:

Because a Judge may order a contemptuous individual to jail without the usual constitutional protections, the use of the contempt power must be carefully and **RARELY** used.

A judge may be removed from office for abusing the power of contempt.
See: *Goldman v. Nevada Comm'n on Judicial Discipline*, 108 Nev. 251, 251 (1992).

Remember always: “No judge has ever been disciplined for NOT holding somebody in contempt”

This Memorandum covers the following topics regarding contempt:

- Definitions
- Acts or Omissions that Constitute Contempt in Nevada
- Summary Punishment of **Direct** Contempt
- **Indirect** Contempt Proceedings
- Defenses to Contempt
- Penalties for Contempt
- Entry of Written Order Supporting a Finding of Contempt.
REQUIRED
- Contempt as an Actual Crime; Complaint by Prosecutor
- Applicable Case Law and Statutes

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- Contempt Powers Elsewhere
- Civil Contempt

Definitions

Contempt: is disobedience to the Court by acting in opposition to its authority, justice, and dignity to the point that it interferes with the administration of justice.

Contemptor: the person who has been found to have committed an act of contempt. It can be a party, an attorney, a witness, or a spectator – anyone who is or should have been in the courtroom or is subject to an Order of the Court.

Direct Contempt: When the contemptuous act occurs in open court, or in the judge’s chamber.²

Indirect Contempt: When the Court learns of a contemptuous act that occurred outside of court by reviewing an affidavit or declaration that describes the contempt in detail.³

Criminal Contempt: Generally, criminal contempt of court refers to disobedience of an order of the court which carries criminal penalties. Common examples of conduct which may result in criminal contempt of court charges include insulting the judge or creating a disturbance at trial or any contemptuous action that is punishable by jail and/or a fine, or **Specifically,** violation of a Statute that classifies a contempt as a crime, e.g., NRS 199.340 ⁴

Civil Contempt: Very rare. Civil contempt of court refers to disobedience of an order of the court which carries quasi-criminal penalties rather than direct criminal penalties. The goal of civil contempt of court charges is to persuade the party subject to the charges to comply with the court order(s). Unlike other civil penalties, however, civil contempt of court can result in jail time. “Persuasion” is the sanction. The Contemptor holds the keys to jail in his pocket. ⁵ This is the main difference between criminal and civil

² *Fagan v. Dist Ct.* 3/18/25 Court of Appeals of Nevada (in course materials)

³ *Id.*

⁴ *See:* Judge Gibbons’ 2023 slides in the course materials that also define Civil Contempt as “all other” contempt. *See also:* https://www.law.cornell.edu/wex/contempt_of_court_civil

⁵ *See:* Judge Kerns’ 2025 slides in the course materials that confines criminal contempt to NRS 199..

contempt. Civil contempt can be purged, whereas criminal contempt cannot be purged because the act cannot be undone.

Acts or Omissions that Constitute Contempt in Nevada

The following acts or omissions may be deemed contempts pursuant to **NRS 22.010**:

1. Disorderly, contemptuous or insolent behavior toward the judge while the judge is holding court, or engaged in judicial duties at chambers, or toward masters or arbitrators while sitting on a reference or arbitration, or other judicial proceeding.
2. A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of the trial or other judicial proceeding.
3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.
4. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
5. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or judge at chambers.
6. Disobedience of the order or direction of the court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which the juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence the verdict.
7. Abusing the process or proceedings of the court or falsely pretending to act under the authority of an order or process of the court.

Failure to appear in court is contempt. NRS 22.010(3)(4); *Gipson v. State*, 102 Nev. 61 (1986). It is also common law direct contempt, because

“the offensive conduct -- to wit, his absence -- occurs within the immediate view and presence of the court.” *Gipson, supra*.

Note: A judge’s oral contempt order is immediately effective and enforceable to punish the contempt. Nevertheless a written order, setting forth the conduct constituting the contempt in detail, must thereafter be promptly entered. *Houston v. Eight Judicial District Court*, 122 Nev. 544 (2006). (*infra*)

Summary Punishment of Direct Contempt

Direct Contempt -- **those acts identified in NRS 22.010 that are committed within the immediate view and presence of the judge**—must be summarily punished.

“[A]nd when we say immediate view and presence of the court we mean in the ocular view of the court” *Ex parte Hedden*, 29 Nev. 352 (1907). This should mean that the act(s) happen inside the Courtroom and/or Chambers.⁶

The authorities and NCJD Orders are rife that “what happens in the Hallway cannot be contempt.

The court must:

- 1: describe to the alleged contemtor the contemptuous act(s) complained of,
- 2: allow the alleged contemtor the opportunity to assert a defense or excuse to the contempt as well as an opportunity to request a delay before sentencing.
- 3: The request to delay may be accepted or rejected in the discretion of the court.

When a contempt is found, the punishment must be immediately announced. If the penalty is jail time, it may be served at a specified, but later, date. Likewise, if the penalty involves the payment of a fine, the court may allow sufficient time for receipt of the fine. While the jail time or fine can be delayed, it cannot be suspended upon conditions.

⁶ It is dangerous practice to meet in Chambers without making a record. Use either recording equipment or a reporter.

https://en.wikipedia.org/wiki/Murphy_v._Boston_Herald,_Inc.

In all cases, a written order must be immediately prepared setting forth the facts constituting the contempt, finds the contemtor guilty of the contempt; and prescribes the punishment for the contempt. NRS 22.030(1).

Because failure to appear is direct contempt (*Gipson, supra*) it may be dealt with summarily as well. But because the contemtor is not present for the summary hearing, an Order to Show Cause or a Bench Warrant may be issued to bring the alleged contemtor back into court. The summary hearing is held when the alleged contemtor is finally back in court.

Hearing on Indirect Contempt

Indirect contempt is not punished summarily.

Indirect contempt is a contempt that occurs outside of the courtroom that is brought to the attention of the court by the filing of an affidavit or a declaration by a party/witness/attorney. The affidavit or the declaration will describe the alleged act of contempt and request that the court issue an “Order to Show Cause” to have a hearing as to why the person should not be held in contempt of court and punished.

This occurs most frequently when a person fails to follow a court’s Order: for support, visitation, a violation of a Protection Order or an Order to pay restitution or when a person fails to perform Community Service.

The judge who issued the Order that has been allegedly violated cannot hear the issue of the alleged Indirect Contempt over the objection of the alleged contemtnor. If the alleged contemtor has not filed a written objection to the judge prior to the show cause hearing, it is always good practice to remind the alleged contemtor of his right to request an impartial judge and to allow a new date to be set before a neutral judge. *NuVeda v District Court* 137 Nev. Adv. Op. 54 495 P.3d 500 (2021).

Defenses to Contempt:

Ignorance

Illiteracy

Impossibility

Incompetence

Insanity

Good Faith⁷

This list is not finite.

Penalties

The contempt power may be used to punish a person who has behaved wrongfully (such as imposing a fine for misbehavior during a trial, issuing a fine for failing to appear, etc.) or disobeying an order. In determining whether to find a person guilty of contempt for violating the court's order, the court should determine that the contemtor's disobedience of an order that spells out the details of compliance in clear, specific and unambiguous terms so that the contemtor will readily know exactly what duties or obligations were imposed on him. Reciting the violated Order into the record is appropriate and strongly encouraged.

Written Order Supporting a Finding of Contempt is Required

A judge's oral contempt order is immediately effective and enforceable to punish the contempt. Nevertheless, a written order, setting forth the conduct constituting the contempt in detail, must thereafter be promptly entered per *Houston v. Eight Judicial District Court*, 122 Nev. 544 (2006). A sample of a form is included in the materials

Contempt as an Actual Crime; Criminal Complaint filed as a New Case by Prosecutor

⁷ It is a typically a 90 minute drive from Zephyr Cove to Yerington. A lawyer allowed 2 hours to get to court for a felony arraignment. He found himself behind about a hundred pair in Wilson Canyon moved by only 2 buckaroos. "Sonny, if you are gonna practice out here in the rurals, you gotta allow for such things" Sr. District Court Judge Frank B. Gregory (RIP).

Contempt may also be charged by the prosecutor as a formal criminal complaint. **199.340** ⁸.

Contempt may be charged for failure to appear after admission to bail or O/R release as a misdemeanor, GM or Felony depending on the case. **NRS 199.335**. If the defendant was originally arraigned on a Summons and the issue of Bail or conditions was never entered – no crime. But it could be a Chapter 22 style failure-to-appear contempt with the 25 day jail sentence cap.

If you are ever handling a case with a complaint charging criminal contempt, treat that complaint as you would any other criminal case. If, following a trial or plea, the defendant is convicted, he may be sentenced in accordance with law.

You should disqualify yourself voluntarily from handling a criminal complaint charging the defendant with contempt if the alleged contempt occurred in your court or as a result of one of your orders. You might have been a witness to the incident, and you would have prior knowledge of the facts of the case. See, Code of Judicial Conduct 2.11(A) (1).

⁸ **NRS 199.340 Criminal contempt.** Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

1. Disorderly, contemptuous or insolent behavior committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of like character in the presence of a referee, while actually engaged in a trial or hearing pursuant to an order of court, or in the presence of a jury while actually sitting in the trial of a cause or upon an inquest or other proceeding authorized by law;

3. Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court, jury or referee;

4. Willful disobedience to the lawful process or mandate of a court;

5. Resistance, willfully offered, to its lawful process or mandate;

6. Contumacious and unlawful refusal to be sworn as a witness or, after being sworn, to answer any legal and proper interrogatory;

7. Publication of a false or grossly inaccurate report of its proceedings; or

8. Assuming to be an attorney or officer of a court or acting as such without authority.

But it is VERY RARE for a prosecutor to file a criminal complaint charging contempt. It is more of a “that’s all we have left that we can prove”

In small jurisdictions, it is not rare to find out that law enforcement has performed a warrantless arrest of someone for “a violation of suspended sentence”. This is usually noticed by the judge when she reviews the declaration of probable cause within 48 hours for persons who remain in custody. Follow the Chapter 211A procedures instead of the general contempt statute.

Applicable Case Law and Statutes

NRS 1.210 establishes the court’s power to maintain order, compel obedience, and, in the furtherance of justice, control the conduct of its ministerial officers.

NRS Chapter 22 provides information on the acts that constitute contempt and the penalties associated with such acts. There are numerous sections of which only a couple are highlighted in this chapter.

NRS 22.100 provides the penalties for contempt. The maximum contempt penalty for most cases is a fine not to exceed \$500, imprisonment of no more than 25 days, or a combination thereof.

Civil contempt and grand jury contempt have special provisions further explained in the statute (and in the penalty section of this chapter). Avoid having

NRS 22.110 provides that if the contempt conviction results from the defendant failing to perform an act that is still within the person’s power to perform, the defendant may be imprisoned until he performs it, providing it is specified in the warrant of commitment.

NRS 22.010 lists the acts or omissions constituting contempt in our state; they are as follows: • Disorderly, contemptuous, or insolent behavior toward the judge while he is holding court, or engaged in his judicial duties at chambers, or toward masters or arbitrators while sitting on a reference or arbitration, or

NRS 199.340 allows the prosecutor to file a charge of contempt as a misdemeanor. The possible penalties are detailed in NRS 193.120; 199.150(2).

Contempt Powers Elsewhere In Addition to Chapter 22

Look around at your Local Rules. For example, the *the Eighth Judicial District Court Rules state:

“No attorney or party may directly or indirectly influence or attempt to influence the clerk of the court or court staff or any officer thereof to assign a case to a particular judge. **A violation of this rule is an act of contempt of court and may be punished accordingly.**” (Rule 1.60.(f)) and “A motion seeking an Order to Show Cause (OSC) for contempt must be accompanied by a detailed affidavit complying with NRS 22.030(2) that identifies the specific provisions, pages and lines of the existing order(s) alleged to have been violated, the acts or omissions constituting the alleged violation, any harm suffered or anticipated, **and the need for a contempt ruling**, which should be filed and served as any other motion.”(Rule 5.509(a))

And in the Ninth Judicial District: “If a party or an attorney fails, refuses, or neglects to comply with these rules, the Supreme Court Rules, the Nevada Rules of Appellate Procedure, the Nevada Rules of Civil Procedure, the District Court Rules, the orders of the court, or any other statutory requirements, the court may, after notice and an opportunity to be heard, impose any and all sanctions authorized by statute or rule, including but not limited to the following: (a) **Hold the disobedient party or attorney in contempt of court...**” (Rule 23)

And the good old NRCPC: 16.2 requires each party to complete and file a Financial Disclosure Form within 45 days of service of the Complaint. The rule further provides that if a party fails to do so without clear and convincing evidence of “good cause” for that failure to file, a court may treat it as a contempt of court.

The Willick Law Group has an interesting article about Contempt as it relates to certain Family Court situations:

<https://www.willicklawgroup.com/wp-content/uploads/2012/04/44-JPI-Violations-and-Contempt.pdf>

Family Law:

While there are dozens of statutes outside of Chapter 22 and Chapter 199 dealing with contempt, none are found more often than in Chapter 125C. For an excellent review of these statutes, please refer to Judge Gibbons' slides in the materials, but see, *e.g.*

125C.030. Imprisonment for contempt for failure to comply with judgment ordering additional visit

1. A custodial parent who fails to comply with a judgment ordering an additional visit may, upon a judgment of the court, be found guilty of contempt and sentenced to imprisonment in the county jail. During the period of imprisonment, the court may authorize his or her temporary release from confinement during such hours and under such supervision as the court determines are necessary to allow the custodial parent to go to and return from his or her place of employment.
2. A custodial parent imprisoned for contempt pursuant to subsection 1 must be released from the jail if the court has reasonable cause to believe that the custodial parent will comply with the order for the additional visit.

Note that the sanction in section (1) *above* is Criminal Contempt, while section (2) *above* is Civil Contempt

Civil Contempt

Courts will rarely, if ever, have an issue with 'civil' contempt. For example, when a witness refuses to testify and there is no valid privilege or other protection against testifying, then that witness may be held in jail until she agrees to testify. The person "absolves themselves of contempt" and is released as soon as he provides the testimony. Criminal contempt is **punished** with a fine or imprisonment. With civil contempt, the contemnor is only jailed to **persuade** her cooperation. Other situations could involve the refusal to comply with a court order to produce a thing, a document, a password or computer code, etc. The person may be held in custody until he agrees to immediately deliver or provide access.

Docketing Contempt Orders and Capturing Statistics

Contempt charges can be docketed in an existing case or can result in new charges being filed and a new case being initiated. Depending on the circumstance, initiate the new case or docket the order in the existing case pursuant to your clerk's office policy and case management systems procedures. If fees/fines have been ordered as part of the findings, make sure to create the obligation(s) in your case management system.

For the statistics, the State of Nevada only captures the number of CIVIL contempt trials, per **NRS 22.090**. This is an additional caseload statistic and is not captured/tracked as a formal case.

Criminal contempt matters, more often than not, are associated with existing cases and should be tracked within those cases. This means if the contempt is after adjudication, then the contempt issue is a reopening event, and the resolution of the contempt issue would be the re-adjudication of the case (since the case was reopened). If your court chooses to track criminal contempt matters separate from original criminal matters, or a contempt matter is not associated with an existing case, then nothing is reported for statistical purposes.