

# Contempt: From the Basics to Recent Developments



**PRESENTED BY  
JUDGE STEVE STAFFORD**

# The Power of Contempt



O, it is excellent

To have a giant's strength, but it is  
tyrannous to use it like a giant.

William Shakespeare,  
*Measure for Measure*

# Authority



- In Tennessee, court's authority to punish certain acts as contempt derives from statute, and is limited to forms of conduct set forth in contempt statute.
  - *State v. Turner*, 914 S.W.2d 951 (Tenn. Crim. App. 1995).
- Tennessee Code Annotated Section 29-9-102.
  - The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases:
    - ✦ (1) The willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice;
    - ✦ (2) The willful misbehavior of any of the officers of such courts, in their official transactions;
    - ✦ (3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts;
    - ✦ (4) Abuse of, or unlawful interference with, the process or proceedings of the court;
    - ✦ (5) Willfully conversing with jurors in relation to the merits of the cause in the trial of which they are engaged, or otherwise tampering with them; or
    - ✦ (6) Any other act or omission declared a contempt by law.

# Criminal Contempt v. Civil Contempt

	<b>Civil Contempt</b>	<b>Criminal Contempt</b>
Burden of Proof	Preponderance.	Beyond a Reasonable Doubt.
Immediate Appeal	Probably.	Yes.
Appellate Review	De novo with a presumption of correctness to factual findings.	Only overturn criminal contempt convictions “when the evidence is insufficient to support the trier-of-fact's finding of contempt beyond a reasonable doubt.” Individuals lose presumption of innocence on appeal.
Willful Action	Acts or failures that are “intentional or voluntary rather than accidental or inadvertent.”	“A willful act is one undertaken for a bad purpose.”
Remedy	As any imprisonment ordered in civil contempt case is remedial, coercive, and designed to compel contemnor to comply with court's order, compliance will result in immediate release from prison. Cannot order a suspended sentence.	Circuit/Chancery/Appellate/Juvenile Courts: 10 days in jail and/or fine of \$50.00 per violation General Sessions: Same as above if judge is licensed to practice law; fine of \$50.00 Municipal: 5 days in jail and/or \$10.00 fine per violation

# Constitutional Protections

	<b>Civil Contempt</b>	<b>Criminal Contempt</b>
Right to Counsel	Yes, if facing incarceration	Yes.
Notice	Civil contempt only requires that the contemnor be notified of the allegation and be given an opportunity to respond.	Parties facing a criminal contempt charge must be given explicit notice that they are charged with criminal contempt and must also be informed of the facts giving rise to the charge.
Freedom from Double Jeopardy	No. Can be retried for the same offense unless res judicata.	Cannot be retried for the same offense after a witness has been sworn in and jeopardy has attached. No appeal of acquittal on criminal contempt charges.
Trial by Jury	No.	Typically no.
State Funded Court Reporter	No.	No.
Right against Self-incrimination	Maybe.	Yes.
Indictment	No.	No. But see Child Support Issues.

# Indirect Contempt



- If the contempt is committed outside of court or is not witnessed by the judge, it is an “indirect contempt.”
- This type of contempt usually involves the violation of a court order.
- The order alleged to have been violated must be “lawful.”
  - A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties.

## **More about a “lawful order”**

- An order is not rendered void or unlawful simply because it is erroneous or subject to reversal on appeal.
- Erroneous orders must be followed until they are reversed.
- However, an order entered without either subject matter jurisdiction or jurisdiction over the parties is void and cannot provide the basis for a finding of contempt.
- The determination of whether a particular order is lawful is a question of law.

# Indirect Contempt: Other Requirements



- The order alleged to have been violated must be clear, specific, and unambiguous
  - For an individual to be held in contempt, the order allegedly violated must be unambiguous, not susceptible to more than one reasonable interpretation and leave no basis for doubt. In addition, any ambiguity will be construed in favor of the person facing the contempt charge.
- The person alleged to have disobeyed the order must have actually disobeyed or otherwise resisted the order
- The person's violation of the order must be "willful"
- No requirement that the order violated be final or reduced to writing
- Error or irregularity does not excuse violation of an order
- However, if the order is void *ab initio*, the order cannot be the basis for a finding of contempt

# Direct and Summary Contempt



- **Direct Contempt**

- Direct contempt is based upon acts committed in presence of court and may be punished summarily.

- **Summary Contempt**

- “A judge may summarily punish a person who commits criminal contempt in the judge's presence if the judge certifies that he or she saw or heard the conduct constituting the contempt. The contempt order shall recite the facts, be signed by the judge, and entered in the record.”

## **Direct Contempt is often Summary Contempt**

- A trial judge has the authority to punish direct contempt summarily when necessary to protect the authority and integrity of the court and to prevent obstruction of the administration of justice. Direct contempt may be punished summarily if the judge certifies that he or she saw or heard the conduct constituting contempt.



## But What About Recusal?



- When the charged acts of contempt involve disrespect to the trial court or criticism of the judge, that judge is disqualified from presiding over the contempt hearing unless the defendant consents; recusal is preferred except where it would cause prejudicial or injurious delay.

Does the Summary Contempt procedure conflict with this rule?

# Sentencing in Criminal Contempt



- ***State v. Wood***, 91 S.W.3d 769 (Tenn. Ct. App. 2002).
  - While the law allows multiple convictions for criminal contempt to be served consecutively, the court still must consider the severity of the violations and determine the least severe measure necessary to properly punish the contempt.
- ***Baker v. Baker***, No. M2010-01806-COA-R3-CV, 2012 WL 764918 (Tenn. Ct. App. March 9, 2012).
  - Court of Appeals may modify sentence for contempt that it deems excessive.

**How does this square with the abuse of discretion standard of review adopted by the Tennessee Supreme Court in *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012), for sentencing in criminal cases?**

- “[S]entences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a ‘presumption of reasonableness.’”
- See ***Reynolds v. Reynolds***, No. M2013-01912-COA-R3-CV, 2014 WL 7151596, at \*9 (Tenn. Ct. App. Dec. 12, 2014), for a case applying both standards.

# Suspended Sentences



- ***Coffey v. Coffey***, No. E2012-00143-COA-R3-CV, 2013 WL 1279410 (Tenn. Ct. App. March 28, 2013).
  - Husband also argued that the trial court erred in “unsuspending” certain criminal contempt sentences by waiting too late to do so. Husband was previously held in criminal contempt, but with the consent of Wife, that sentence was suspended. When Husband was again found in contempt, the trial court ordered Husband to serve the suspended sentences, in addition to the new sentence. Husband argued that Tenn. Code Ann. § 40-35-310(a) deprived the court of jurisdiction to revoke the suspension beyond the maximum term to which he could have been sentenced.
  - The Court of Appeals disagreed, noting that a finding of criminal contempt is not a finding that the defendant committed a crime. Thus the Court concluded that Tenn. Code Ann. § 40-35-310(a) “does not come into play when criminal contempt is at issue, and, therefore, it does not affect the court’s ability to suspend its ten-day sentence.”
  - Bottom line: A court may “unsuspend” criminal contempt convictions outside the time in which the defendant was to have served the maximum sentence for his contemptuous acts.

# Child Support



- Tennessee Code Annotated Section 36-5-104.
  - Failure to comply with child support order may be punished by:
    - ✦ Six months in jail; and/or
    - ✦ Picking up litter on the highways for *any* prescribed period of time
  - Includes an inference that the obligor has the ability to pay the amount previously ordered as child support.

# Important Notes on Child Support Enforcement



- Failure to pay must be willful. Trial court must make sufficient finding that obligor parent has present ability to pay to be found in criminal contempt for failure to make support payments.
  - But what about inference that the obligor has the ability to pay in Tenn. Code Ann. § 36-5-104?
  - Also does the inference in § 36-5-104 comply with *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 108 S.Ct. 1423 (U.S. 1988), which held that a statute that required the defendant to prove a present inability to pay child support as an affirmative defense is unconstitutional as applied in criminal contempt cases?
- Must specifically cite Tenn. Code Ann. § 36-5-104 in order to invoke child support statute and obtain sentence of up to six months
- Individuals charged with violations of the child support statute are entitled to:
  - jury trials
  - indictments from the grand jury

# Subject to Collateral Attack?



- ***Baker v. State***, 417 S.W.3d 428 (Tenn. September 6, 2013).
  - Contempt is criminal in nature but is not considered a crime under Title 39, Chapter 9 of the TCA.
  - The Post-Conviction Procedure Act applies only to constitutional claims arising from a conviction for a criminal offense.
  - Therefore, the Post-Conviction Procedure Act is not applicable to the Petitioner's criminal contempt convictions.
- The plain language of the Post-Conviction Procedure Act provides a mechanism for seeking relief from criminal convictions. A finding of criminal contempt pursuant to T.C.A. section 29-9-102 is not a criminal conviction. Thus, the petitioner was not entitled to seek post-conviction relief from the criminal contempt findings in the Agreed Order.

# Contempt for Violation of an Ethical Rule



- ***State v. Beeler*, 387 S.W.3d 511 (Tenn. 2012).**
  - Unethical conduct may amount to criminal contempt, but only if the conduct also “embarrasses, hinders, or obstructs a court in its administration of justice or derogated the court’s authority or dignity, thereby bringing the administration of law into disrepute.”

# Knowledge of the Order that was Violated



- ***Mawn v. Tarquinio***, No. M2019-00933-COA-R3-CV, 2020 WL 1491368 (Tenn. Ct. App. Mar. 27, 2020).
  - In order to show the essential element of willfulness to sustain a criminal contempt conviction, the defendant must have knowledge that his or her actions were unlawful. And in order to show knowledge, the court cannot conclusively presume that knowledge to counsel was imputed to the client.



# Recent Contempt Cases



- ***Gibbs v. Gibbs***, No. E2015-01362-COA-R3-CV, 2016 WL 4697433 (Tenn. Ct. App. Sept. 7, 2016).
  - Contempt is a proper remedy for breach of an MDA even where the contract did not merge with the court's order.
- ***Dodd v. Dodd***, No. M2011-02147-COA-R3-CV, 2012 WL 3193339 (Tenn. Ct. App. Aug. 6, 2012).
  - The Court may enforce its prior orders by reducing an arrearage to judgment without first finding a party in contempt.

## Recent Contempt Cases cont.



- ***In re Carolina M.***, No. M2014-02133-COA-R3-JV, 2016 WL 6427853, at \*5 (Tenn. Ct. App. Oct. 28, 2016).
  - Violation of a statute may support a finding of criminal contempt, but the violation must be willful, that is including both: “(1) intentional conduct, and (2) a culpable state of mind.”
- ***Miller v. Miller***, No. M2014-00281-COA-R3-CV, 2015 WL 113338 (Tenn. Ct. App. Jan. 7, 2015).
  - Tennessee courts retain jurisdiction over petitions for contempt of orders entered in the state. Regarding the requirement of willfulness, contempt is not willful if it occurs pursuant to an alleged contemnor’s good faith efforts to comply with another state’s court orders.
- ***In re Khrystchan D.***, No. M2018-01107-COA-R3-JV, 2020 WL 3494467 (Tenn. Ct. App. June 26, 2020).
  - Giving birth is no excuse!

## Recent Contempt Cases cont.



- ***St. John-Parker v. Parker***, No. E2018-01536-COA-R3-CV, 2020 WL 1491371 (Tenn. Ct. App. Mar. 27, 2020), perm. *app. denied* (Tenn. Sept. 16, 2020).
  - Fees can be awarded in a contempt action that were incurred in a separate action, such as a bankruptcy.
- ***Luttrell v. Wassenberg***, No. W2017-02443-COA-R3-CV, 2020 WL 3867131 (Tenn. Ct. App. July 9, 2020).
  - If the appellate court vacates an order on appeal, the contempt finding based on that order *may* be vacated as well.
- ***Proctor v. Proctor***, No. M2018-01757-COA-R3-CV, 2020 WL 2764410 (Tenn. Ct. App. May 27, 2020).
  - The ten-year statute of limitations is applicable to contempt actions based on judgments, but the judgment can be extended via Rule 69.04.

## Recent Contempt Cases cont.



- ***Bachelor v. Bachelor***, No. W2020-00516-COA-R3-CV, 2021 WL 217703 (Tenn. Ct. App. Jan. 21, 2021).
  - MDA attorney's fees can be awarded even without a finding of willful contempt.
- ***Keller v. Est. of McRedmond***, No. M2013-02582-COA-R3-CV, 2018 WL 2447041, at \*6 (Tenn. Ct. App. May 31, 2018).
  - Damages that result from contempt should clearly delineate what damages are attributable solely to the contempt.