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The Law of Contempt in Illinois

Edward R. Burr

Assoc. Judge, Circuit Court of Cook County, Illinois

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*Edward R. Burr**

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I. INTRODUCTION

As one of three major branches of government, our constitutionally created judiciary¹ may not become absolutely dependent upon either or both of the other two branches. The judiciary, therefore, must exercise certain inherent powers to ensure its continued existence and authority.² Among those inherent powers is the court's power of contempt.³ Contempt may be civil, criminal, or both.⁴ The sanctions that may be imposed for contumacious conduct may be either coercive or punitive.⁵

The exercise of that power may not be withheld from the judiciary by either the legislative or executive branches of government.⁶ The use and application of contempt powers, however, are not without limits. The guarantees prescribed by the constitutions of the United States and of the State of Illinois provide the framework within which the court's contempt powers permissibly may

1. U.S. CONST. art. III, § 1; ILL. CONST. of 1970 art. VI, § 1.

2. *In re Baker*, 71 Ill. 2d 480, 484, 376 N.E.2d 1005, 1006 (1978); ILL. CONST. of 1970 art. VI, § 1.

3. *People v. Colclasure*, 48 Ill. App. 3d 988, 990, 363 N.E.2d 631, 633 (4th Dist. 1977).

4. *Shatkin Inv. Corp. v. Connelly*, 128 Ill. App. 3d 518, 526, 470 N.E.2d 1230, 1236 (2d Dist. 1984).

5. *City of Chicago v. Chicago Fire Fighters Unions*, 99 Ill. App. 3d 583, 425 N.E.2d 1071 (1st Dist. 1981).

6. *See generally* U.S. CONST. art. III, § 1; ILL. CONST. of 1970 art. II, § 1; *People v. Levinson*, 75 Ill. App. 3d 429, 437, 394 N.E.2d 509, 516 (1st Dist. 1979).

operate.⁷

Illinois criminal law is codified with the exception of one remaining common law crime — the crime of contempt of court. Our criminal statutes define criminal conduct and set the parameters for violations of that conduct. To what source of information, however, may one go in an effort to determine what constitutes a contumacious act? How may litigants, attorneys, and judges become informed concerning the procedural, evidentiary, and substantive rules to apply in a contempt proceeding? What are the limits that are imposed on courts in meting out sanctions? What burdens must be met, and what rights has the contemnor to review? By bringing together a sampling of the Illinois case law dealing with the many areas of contempt, this Article intends to provide a useful tool in organizing, finding, and understanding the law of contempt in Illinois.⁸

II. GENERAL CONTEMPT PROVISIONS

A. Rules Generally Applicable to Contempt

All courts are vested with the inherent power to find a person in contempt. This power is essential and incident to the maintenance of their authority.⁹ The legislature may not limit the court's contempt power, but it may provide an alternative statutory solution.¹⁰ Contempt proceedings may be defined best "as *sui generis* and may partake of the characteristics of both [civil and criminal contempt]."¹¹ "[T]he same conduct can amount to both civil and

7. U.S. CONST. art. I; ILL. CONST. of 1970 art. II.

8. A more complete listing of the case law in the area of contempt may be found in the author's materials presented at the 1987 Associate Judges Seminar.

9. *In re G.B.*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982); *In re Baker*, 71 Ill. 2d 480, 376 N.E.2d 1005 (1978); *People v. Loughran*, 2 Ill. 2d 258, 118 N.E.2d 310 (1954); *People v. Gholson*, 412 Ill. 294, 302, 106 N.E.2d 333, 336 (1952); *People v. Hagopian*, 408 Ill. 618, 97 N.E.2d 782 (1951); *People v. Siegel*, 400 Ill. 208, 79 N.E.2d 616 (1948); *Universal Credit Co. v. Antonsen*, 374 Ill. 194, 29 N.E.2d 96 (1940); *Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 482 N.E.2d 1014 (2d Dist. 1985); *Shatkin Inv. Corp. v. Connelly*, 128 Ill. App. 3d 518, 470 N.E.2d 1230 (2d Dist. 1984); *People v. Halprin*, 119 Ill. App. 3d 922, 457 N.E.2d 1010 (1st Dist. 1983); *People v. Mowery*, 116 Ill. App. 3d 695, 701, 452 N.E.2d 363, 368 (4th Dist. 1983); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981); *Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 425 N.E.2d 1002 (1st Dist. 1981); *People v. Martin-Trigona*, 94 Ill. App. 3d 519, 418 N.E.2d 763 (4th Dist. 1981).

10. *In re G.B.*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982); *In re Baker*, 71 Ill. 2d 480, 376 N.E.2d 1005 (1978); *People v. Levinson*, 75 Ill. App. 3d 429, 394 N.E.2d 509 (1st Dist. 1979).

11. *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *County of Cook v. Fry Roofing Co.*, 59 Ill. 2d 131, 319 N.E.2d 472 (1974); *People v. Ryan*, 410 Ill. 486, 103 N.E.2d 116 (1952); *People v. Redlich*, 402 Ill. 270, 83 N.E.2d 736 (1949); *National*

criminal contempt, and . . . the same acts may justify the court in resorting to both coercive and punitive measures."¹² Contempt of court proceedings are regarded as original special proceedings collateral to, and independent of, the case in which the contempt originally arose.¹³ When considering whether a contempt proceeding is civil or criminal, the court must determine, in the totality of the circumstances, whether the proceeding was coercive or punitive in nature.¹⁴

B. Punishment Generally

Punishment for contempt is a drastic remedy, and the court's mandate must be clear before a violation of that mandate can subject a person to punishment.¹⁵ A court possessing the plenary power to punish for contempt may not, on the theory of punishing for contempt, summarily deprive a party of all rights to defend the underlying action.¹⁶ When there has been a finding of civil or criminal contempt, the court may order reimbursement of the complainant's attorney's fees and costs.¹⁷ Moreover, a court may

Metalcrafters v. Local 449, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981); *Aurora Steel v. United Steelworkers*, 94 Ill. App. 3d 97, 418 N.E.2d 492 (2d Dist. 1981); *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981); *People ex rel Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 409, 173 N.E.2d 417, 418 (1961).

12. *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 583, 590, 425 N.E.2d 1071, 1077 (1st Dist. 1981).

13. *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 259 N.E.2d 282 (1970); *People ex rel Watson v. Spinka*, 58 Ill. App. 3d 729, 374 N.E.2d 787 (1st Dist. 1978); *Archer v. Archer*, 71 Ill. App. 3d 938, 390 N.E.2d 629 (4th Dist. 1979); *People ex rel General Motors v. Bua*, 37 Ill. 2d 180, 226 N.E.2d 6 (1967).

14. *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Smith*, 102 Ill. App. 3d 226, 429 N.E.2d 870 (3d Dist. 1981); *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981); *In re G.B.*, 88 Ill. App. 3d 64, 410 N.E.2d 410 (4th Dist. 1980), *aff'd in part, rev'd in part*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982); *People v. Winchell*, 45 Ill. App. 3d 752, 359 N.E.2d 487 (3d Dist. 1977); *Bone v. Bone*, 43 Ill. App. 3d 363, 356 N.E.2d 1348 (5th Dist. 1976); *City of Park City v. Brosten*, 24 Ill. App. 3d 442, 321 N.E.2d 367 (2d Dist. 1974); *Board of Junior College v. Cook County Teachers Union*, 126 Ill. App. 2d 418, 262 N.E.2d 125 (1st Dist. 1970).

15. *Lane v. Sklodowski*, 97 Ill. 2d 311, 320, 454 N.E.2d 322, 326 (1983). *See also* *People v. Siegel*, 94 Ill. 2d 167, 172-73, 445 N.E.2d 762, 765 (1983) (Simon, J., dissenting); *People v. Siegel*, 102 Ill. App. 3d 529, 430 N.E.2d 142 (1st Dist. 1981).

16. *People ex rel. General Motors v. Bua*, 37 Ill. 2d 180, 226 N.E.2d 6 (1967).

17. *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 482 N.E.2d 1014 (2d Dist. 1985); *Savaglio v. Board of Fire & Police of Oak Brook*, 125 Ill. App. 3d 391, 465 N.E.2d 1065 (2d Dist. 1984); *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 453 N.E.2d 820 (1st

enforce monetary sanctions for criminal contempt from a bankrupt's estate, notwithstanding the existence of an automatic stay. A monetary sanction for civil contempt, however, is not exempt from an automatic stay.¹⁸

C. Who May Prosecute

Civil contempt is an act or acts sanctioned so as to coerce compliance with court orders. Indirect criminal contempt is conduct occurring outside of the presence of the court (thereby requiring evidence of its occurrence) which is sanctioned for purposes of punishment. Contempt may be prosecuted by counsel for a litigant, the State's Attorney, or an *amicus curia* appointed by the court.¹⁹

D. Review of Contempt Orders

1. Final and Appealable Orders

A civil contempt proceeding is reviewable under the provisions of the Illinois Code of Civil Procedure.²⁰ An order in a contempt proceeding imposing sanctions is a final and appealable order.²¹ Conversely, an adjudication of contempt without sanctions is not a final and appealable order.²² When an unappealable interlocutory order results in a judgment of contempt, including a fine or imprisonment, such judgment is final and appealable. The court hearing the appeal may review the propriety of the order claimed to have been violated.²³ A direct appeal to the Illinois Supreme Court will not lie from a contempt order issued upon failure to comply with

Dist. 1983); *Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 425 N.E.2d 1002 (1st Dist. 1981); *Comet Casualty v. Schneider*, 98 Ill. App. 3d 786, 424 N.E.2d 911 (1st Dist. 1981); *In re G.B.*, 88 Ill. App. 3d 64, 410 N.E.2d 410 (4th Dist. 1980), *aff'd in part, rev'd in part*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982).

18. *In re Marriage of Lueck*, 140 Ill. App. 3d 836, 489 N.E.2d 443 (2d Dist. 1986); *In re Marriage of Lytle*, 105 Ill. App. 3d 1095, 435 N.E.2d 522 (2d Dist. 1982).

19. *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *People v. Marcisz*, 32 Ill. App. 3d 467, 334 N.E.2d 737 (3d Dist. 1975).

20. *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *Bone v. Bone*, 43 Ill. App. 3d 363, 356 N.E.2d 1348 (5th Dist. 1976).

21. *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 429 N.E.2d 483 (1981); *People v. Hassakis*, 6 Ill. 2d 463, 129 N.E.2d 9 (1955).

22. *Valencia v. Valencia*, 71 Ill. 2d 220, 375 N.E.2d 98 (1978); *People ex rel. General Motors v. Bua*, 37 Ill. 2d 180, 226 N.E.2d 6 (1967); *Bone v. Bone*, 43 Ill. App. 3d 363, 356 N.E.2d 1348 (5th Dist. 1976).

23. *People v. Buckley*, 164 Ill. App. 3d 407, 517 N.E.2d 1114 (2d Dist. 1987); *People ex rel. Miselis v. Health and Hospital Governing Committee*, 44 Ill. App. 3d 958, 358 N.E.2d 1221 (1st Dist. 1976).

an order of the trial court to produce documents.²⁴

2. Record on Appeal

In the event that no report of contempt proceedings exists, the reviewing court is bound to accept the truth of the allegations set forth in the written order finding contempt.²⁵

3. Reversal for Failure to Grant Change of Venue

A judgment holding a defendant in contempt of court will be reversed if the trial court failed to grant a proper petition for change of venue.²⁶

III. CIVIL CONTEMPT

A. Definitions

1. Remedial and Coercive Aspects

Civil contempt is a remedial or coercive proceeding.²⁷ Courts typically utilize the civil contempt proceeding when a party has the right to require some act on the part of the defendant for his benefit and advantage, obtains an order of the court commanding that it be done, and the other party refuses to do as directed.²⁸

24. *Monier v. Chamberlain*, 31 Ill. 2d 400, 202 N.E.2d 15 (1964).

25. *Kotowski v. Kotowski*, 3 Ill. App. 3d 231, 278 N.E.2d 856 (1st Dist. 1971).

26. *People v. Hathaway*, 24 Ill. 2d 284, 181 N.E.2d 172 (1962); *People v. Goss*, 10 Ill. 2d 533, 141 N.E.2d 385 (1957).

27. *American Cyanamid v. Rogers*, 21 Ill. App. 3d 152, 314 N.E.2d 679 (1974); *People ex rel. EPA v. Ill. Central R.R.*, 12 Ill. App. 3d 549, 298 N.E.2d 737 (4th Dist. 1973).

28. *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *People ex rel. Kazubowski v. Ray*, 48 Ill. 2d 413, 272 N.E.2d 225 (1971); *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *People v. Redlich*, 402 Ill. 270, 38 N.E.2d 736 (1949); *Porter v. Alexenburg*, 396 Ill. 57, 71 N.E.2d 58 (1947); *People v. Kitzer*, 389 Ill. 54, 58 N.E.2d 881 (1945); *People v. Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Roulette v. Department of Central Management Servs.*, 141 Ill. App. 3d 394, 490 N.E.2d 60 (1st Dist. 1986); *Allen v. Duffie*, 127 Ill. App. 3d 820, 469 N.E.2d 702 (3d Dist. 1984); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *In re Marriage of Humphrey*, 121 Ill. App. 3d 701, 460 N.E.2d 52 (5th Dist. 1984); *People v. Mowery*, 116 Ill. App. 3d 695, 452 N.E.2d 363 (1983); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (1983); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Smith*, 102 Ill. App. 3d 226, 429 N.E.2d 870 (3d Dist. 1981); *Anderson v. St. Mary's Hosp.*, 101 Ill. App. 3d 596, 428 N.E.2d 528 (5th Dist. 1981); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981); *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 583, 425 N.E.2d 1071 (1st Dist. 1981); *Comet Casualty v. Schneider*, 98 Ill. App. 3d 786, 424 N.E.2d 911 (1st Dist. 1981); *Aurora Steel v. United Steel Workers*, 94 Ill. App. 3d 97, 418 N.E.2d 492 (2d

2. Compelling Compliance

In civil contempt proceedings, the court seeks to compel obedience with its order by a punishment that the contemnor can avoid by compliance with the order.²⁹

3. Abatement of Order

Civil contempt abates once the alleged contemnor complies with the court's order.³⁰

B. Requirement of Intent

In an action for civil contempt, the intent of the contemnor generally is not relevant.³¹ In an action for indirect civil contempt, however, the willful intent of the contemnor to disobey the court order, as opposed to the inability of the contemnor to comply with a court order, may be inferred from proof of surrounding circumstances and the actions of the contemnor.³²

C. Punishment

1. Who May Punish

Only the offended court has the power to punish for civil

Dist. 1981); *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981).

29. *In re Marriage of Logston*, 103 Ill. 2d 266, 469 N.E.2d 167 (1984); *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *County of Cook v. Fry Roofing Co.*, 59 Ill. 2d 131, 319 N.E.2d 472 (1974); *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *People v. Redlich*, 402 Ill. 270, 83 N.E.2d 736 (1949); *People v. Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986); *Shatkin Inv. Corp. v. Connelly*, 128 Ill. App. 3d 518, 470 N.E.2d 1230 (2d Dist. 1984); *In re Marriage of Humphrey*, 121 Ill. App. 3d 701, 460 N.E.2d 52 (5th Dist. 1984); *People v. Mowery*, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *Anderson v. St. Mary's Hosp.*, 101 Ill. App. 3d 596, 428 N.E.2d 528 (5th Dist. 1981); *Prairie State Petroleum v. Universal Oil Sales*, 88 Ill. App. 3d 753, 410 N.E.2d 1008 (1st Dist. 1980); *Sullivan v. Sullivan*, 16 Ill. App. 3d 549, 306 N.E.2d 604 (1st Dist. 1980).

30. *Roulette v. Department of Central Management Servs.*, 141 Ill. App. 3d 394, 490 N.E.2d 60 (1st Dist. 1986); *People ex rel. Scott v. Police Hall of Fame*, 69 Ill. App. 3d 501, 387 N.E.2d 856 (1st Dist. 1979); *Blankenship v. Blankenship*, 63 Ill. App. 3d 803, 380 N.E.2d 1165 (4th Dist. 1978).

31. *County of Cook v. Fry Roofing Co.*, 59 Ill. 2d 131, 319 N.E.2d 472 (1974); *People v. Doss*, 382 Ill. 307, 46 N.E.2d 984 (1943); *Shatkin Inv. Corp. v. Connelly*, 128 Ill. App. 3d 518, 470 N.E.2d 1230 (2d Dist. 1984); *Sunset Travel, Inc. v. Lavecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983).

32. *Sunset Travel, Inc. v. Lavecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983).

contempt.³³

2. Proper Penalty for Civil Contempt

Penalties for civil contempt are remedial or coercive in nature. A court may order a fine, a sentence of imprisonment, or both.³⁴

3. Purge Provisions

When a party is imprisoned for civil contempt of court, he must be provided with the "keys to his cell." That is, he must be allowed to purge himself of the contempt by complying with the court order initially violated.³⁵

4. Improper Penalties

Imprisonment for a definite period for civil contempt is improper.³⁶ A plaintiff may not recover compensatory damages in a civil contempt proceeding.³⁷

D. General Procedures

1. Due Process

Before a defendant may be found guilty of civil contempt, he must be afforded certain procedural guarantees.³⁸ First, the de-

33. *Commerce Comm'n v. Salamie*, 54 Ill. App. 3d 465, 369 N.E.2d 235 (1st Dist. 1977).

34. *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 83, 425 N.E.2d 1071 (1st Dist. 1981) (\$40,000 fine imposed); *People v. Gray* 36 Ill. App. 3d 720, 344 N.E.2d 683 (1st Dist. 1976) (contempt punishable by fine, imprisonment, or both); *People v. Marcisz*, 32 Ill. App. 3d 467, 334 N.E.2d 737 (3d Dist. 1975) (sixty day penal confinement appropriate).

35. *In re Marriage of Logston*, 103 Ill. 2d 266, 469 N.E.2d 167 (1976); *Illinois Crime Investigating Comm'n v. Tolomco*, 47 Ill. 2d 393, 266 N.E.2d 322 (1971); *People ex rel. Chicago Bar Association v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *People v. Ryan*, 410 Ill. 486, 103 N.E.2d 116 (1952); *People v. Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Smith*, 102 Ill. App. 3d 226, 429 N.E.2d 870 (3d Dist. 1981); *Prairie States Petroleum v. Universal Oil Sales*, 88 Ill. App. 3d 753, 410 N.E.2d 1008 (1st Dist. 1980); *Hess v. Hess*, 87 Ill. App. 3d 947, 409 N.E.2d 497 (3d Dist. 1980).

36. *In re Marriage of Logston*, 103 Ill. 2d 266, 469 N.E.2d 167 (1984); *Continental Illinois Nat'l Bank v. Brach*, 71 Ill. App. 3d 789, 390 N.E.2d 373 (1st Dist. 1979); *Sullivan v. Sullivan*, 16 Ill. App. 3d 549, 306 N.E.2d 604 (1st Dist. 1973).

37. *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 425 N.E.2d 1002 (1st Dist. 1981); *Round Lake Sanitary Dist. v. Basic Elecs.*, 60 Ill. App. 3d 40, 376 N.E.2d 436 (2d Dist. 1978).

38. *People v. Howarth*, 415 Ill. 499, 114 N.E.2d 785 (1955); *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *People v. Hagojsian*, 408 Ill. 618, 97 N.E.2d 782 (1951);

fendant must be admonished of the charges. Second, the defendant must be given an opportunity to answer. Finally, the defendant is entitled to a full evidentiary hearing.

2. Burden of Proof

In a civil contempt proceeding, the guilt of the accused must be established by a preponderance of the evidence.³⁹ Once the guilt of the civil contemnor has been proved, the contemnor bears the burden of proving, as a defense, his inability to comply with the court's order to a reasonable certainty by definite and explicit evidence.⁴⁰

3. Judicial Bias

In determining whether a judge is required to recuse himself, *sua sponte*, from rule to show cause proceedings, it must be determined whether there was actual bias, or the appearance or likelihood of bias on the part of the judge.⁴¹

4. Other Procedural Requirements

The defendant is not required to be personally present during civil contempt proceedings.⁴² The court, however, should not adjudge a defendant guilty of contempt on evidence heard by the court in another proceeding to which the defendant was not a party.⁴³ And, a chief circuit judge does not have authority to appoint the public defender to represent indigent defendants in civil contempt proceedings which may result in incarceration.⁴⁴

E. Contemptuous Acts

1. Refusal to Comply with Discovery

The trial court has its inherent contempt power as a weapon to enforce compliance with discovery orders and procedures and to

People v. Mann, 122 Ill. App. 3d 66, 460 N.E.2d 778 (1st Dist. 1984); People v. Mowery, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983).

39. People v. Fusco, 397 Ill. 468, 74 N.E.2d 531 (1947); City Savings Ass'n v. Mensik, 124 Ill. App. 2d 34, 260 N.E.2d 110 (1st Dist. 1970).

40. *In re Marriage of Logston*, 103 Ill. 2d 266, 469 N.E.2d 167 (1984); Dunaway v. Storm, 30 Ill. App. 3d 880, 334 N.E.2d 825 (5th Dist. 1975).

41. Payne v. Coates-Miller, Inc., 68 Ill. App. 3d 601, 386 N.E.2d 398 (1st Dist. 1979); People v. Dorris, 57 Ill. App. 3d 378, 373 N.E.2d 77 (4th Dist. 1978).

42. Porter v. Alexenburg, 396 Ill. 57, 71 N.E.2d 58 (1947); Comet Casualty v. Schneider, 98 Ill. App. 3d 786, 424 N.E.2d 911 (1st Dist. 1981).

43. People v. McKinlay, 367 Ill. 504, 11 N.E.2d 933 (1937).

44. Maloney v. Bower, 113 Ill. 2d 473, 498 N.E.2d 1102 (1986).

punish noncompliance.⁴⁵ A civil contempt adjudication is an appropriate method of testing a pretrial discovery order.⁴⁶ For example, a defendant's failure to appear or to produce documents in a citation to discover assets proceeding gives rise to civil contempt.⁴⁷ A defendant's refusal to comply with a constitutional order to supply handwriting samples constitutes civil contempt.⁴⁸ An order finding a physician in civil contempt may follow his failure to comply with a grand jury subpoena seeking the identity of patients treated at an abortion clinic.⁴⁹ Finally, a defendant may be held in civil contempt for his refusal to reveal the names of occurrence witnesses.⁵⁰

2. Refusal to Comply with a Court Order

One who willfully fails or refuses to pay costs may be subject to punishment for civil contempt.⁵¹ Further, an action for contempt is proper for the violation of an injunction.⁵² Civil contempt is proper when the court has determined that one wrongfully has converted funds that belong to a disabled person.⁵³ A citation for civil contempt for refusal to produce business records in a grand jury investigation will be proper when the defendant cannot demonstrate an inability to produce the requested documents.⁵⁴ Civil contempt also will lie when a party's inability to pay a money judgment pursuant to a court order is the result of a wrongful or illegal act or when he willfully has placed himself in a position which prevents him from complying with the order.⁵⁵ Defense

45. *People v. B.R. Mackay & Sons*, 141 Ill. App. 3d 137, 490 N.E.2d 74 (1st Dist. 1986).

46. *Niven v. Sieueria*, 109 Ill. 2d 357, 487 N.E.2d 937 (1985); *People ex rel. General Motors v. Bua*, 37 Ill. 2d 180, 189, 226 N.E.2d 6, 12 (1967); *Anderson v. St. Mary's Hosp.*, 101 Ill. App. 3d 596, 598, 428 N.E.2d 528, 530 (5th Dist. 1981); *Bicek v. Quitter*, 38 Ill. App. 3d 1027, 1029, 350 N.E.2d 125, 126 (1st Dist. 1976); *Cooper v. Rockford Newspapers, Inc.*, 50 Ill. App. 3d 250, 365 N.E.2d 746 (2d Dist. 1977).

47. *People ex rel. Scott v. Janson*, 57 Ill. 2d 451, 312 N.E.2d 620 (1974); *Allen v. Duffie*, 127 Ill. App. 3d 820, 469 N.E.2d 702 (3d Dist. 1984).

48. *People v. Henne*, 11 Ill. App. 3d 405, 296 N.E.2d 769 (4th Dist. 1973).

49. *People v. Florendo*, 95 Ill. 2d 155, 447 N.E.2d 282 (1983). *Cf. People v. Bickham*, 89 Ill. 2d 1, 431 N.E.2d 365 (1982).

50. *Hruby v. Chicago Transit Auth.*, 11 Ill. 2d 255, 142 N.E.2d 81 (1957).

51. *People v. Nicholls*, 45 Ill. App. 3d 312, 323, 359 N.E.2d 1095, 1103 (5th Dist. 1977).

52. *Schulenburg v. Signatrol, Inc.*, 37 Ill. 2d 352, 226 N.E.2d 624 (1967); *Porter v. Alexenburg*, 396 Ill. 57, 71 N.E.2d 58 (1947).

53. *In re Estate of Palm*, 11 Ill. App. 3d 24, 28, 295 N.E.2d 580, 583 (1st Dist. 1973).

54. *People v. Dorr*, 47 Ill. 2d 458, 265 N.E.2d 601 (1970).

55. *Archer v. Archer*, 71 Ill. App. 3d 938, 390 N.E.2d 629 (4th Dist. 1979); *Johnson v. Rolston*, 45 Ill. App. 3d 419, 359 N.E.2d 1115 (2d Dist. 1977).

counsel in a criminal case properly were found in direct civil contempt for refusing to advise the court of their calculations of the running of term under the speedy-trial statute.⁵⁶

Civil contempt proceedings are an appropriate method of enforcing the terms of a judgment for dissolution of marriage.⁵⁷ Willful failure to pay child support or maintenance as ordered by the court constitutes *prima facie* civil contempt of court.⁵⁸ Moreover, a defendant may be held in civil contempt for his refusal to submit to a court ordered blood test in a paternity suit.⁵⁹

F. Defenses to Civil Contempt

1. Inability to Comply

When an alleged contemnor, through no fault of his own, is in a position where he cannot comply with the court order, the civil contempt should be dismissed.⁶⁰ The alleged civil contemnor, however, bears the burden of proving his inability to comply with the court order, to a reasonable certainty by definite and explicit evidence.⁶¹ A defense of poverty to civil contempt for failure to pay maintenance or child support is applicable only in those cases in which the defendant has no money and no way to obtain money to meet his obligations.⁶² It is improper to adjudge a party in civil contempt, however, when compliance with the court's order would require him to violate the law.⁶³

56. *People v. Buckley*, 164 Ill. App. 3d 407, 517 N.E.2d 1114 (2d Dist. 1987).

57. *In re Marriage of Highsmith*, 111 Ill. 2d 69, 488 N.E.2d 1000 (1986).

58. *In re Marriage of Logston*, 103 Ill. 2d 266, 469 N.E.2d 167 (1984); *In re Marriage of Hilkevitch*, 124 Ill. App. 3d 401, 464 N.E.2d 795 (1st Dist. 1984); *People ex rel. Argo v. Henderson*, 97 Ill. App. 3d 425, 422 N.E.2d 1005 (1st Dist. 1981); *Hess v. Hess*, 87 Ill. App. 3d 947, 409 N.E.2d 497 (3d Dist. 1980).

59. *People ex rel. Aldworth v. Dutkanych*, 112 Ill. 2d 505, 493 N.E.2d 1037 (1986).

60. *In re Marriage of Logston*, 103 Ill. 2d 266, 285, 469 N.E.2d 167, 175 (1976); *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131, 319 N.E.2d 472 (1974); *People ex rel. Meier v. Lewe*, 380 Ill. 531, 44 N.E.2d 551 (1942); *In re Marriage of Hilkevitch*, 124 Ill. App. 3d 401, 464 N.E.2d 795 (1st Dist. 1984); *People v. Mowery*, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983); *People ex rel. Argo v. Henderson*, 97 Ill. App. 3d 425, 422 N.E.2d 1005 (1st Dist. 1981); *Prairie State Petroleum v. Universal Oil Sales*, 88 Ill. App. 3d 753, 758, 410 N.E.2d 1008, 1012 (1st Dist. 1980); *Hess v. Hess*, 87 Ill. App. 3d 947, 409 N.E.2d 497 (3d Dist. 1980).

61. *In re Marriage of Logston*, 103 Ill. 2d at 286, 469 N.E.2d at 175; *Dunaway v. Storm*, 30 Ill. App. 3d 880, 886, 334 N.E.2d 825, 836 (5th Dist. 1975); *First Nat'l Bank & Trust Co. v. Desaro*, 43 Ill. App. 2d 153, 159, 193 N.E.2d 113, 116 (1st Dist. 1963).

62. *People v. Stanley*, 60 Ill. App. 3d 909, 376 N.E.2d 1095 (3d Dist. 1978); *Sullivan v. Sullivan*, 16 Ill. App. 3d 549, 306 N.E.2d 604 (1st Dist. 1973).

63. *Abbott v. Abbott*, 129 Ill. App. 2d 96, 262 N.E.2d 502 (4th Dist. 1970).

2. Invalidity of Order of Contempt

In testing the validity of a finding of civil contempt, the court should review the validity of the underlying order. A finding of civil contempt properly is vacated when it is imposed for disobeying a discovery order later found invalid on appeal.⁶⁴ It is no defense in a civil contempt proceeding to show that the order was merely erroneous.⁶⁵ Further, contempt will not lie for disobeying an order which is void for lack of jurisdiction or because the court has no power to decide the particular matter.⁶⁶ A finding of contempt for an attorney's failure to obey a discovery order properly may be vacated when the permissibility of such a discovery order was a question of first impression.⁶⁷ An attorney may not be held in civil contempt for his refusal to comply with a court order directing him to produce statements protected by the attorney-client privilege.⁶⁸

3. Constitutionally Based Defenses

A party cannot be held in civil contempt of court when he refuses, in good faith, to comply with a court's order based on a fifth amendment privilege against self-incrimination.⁶⁹ For example, when a defendant, in a proceeding under the Sexually Dangerous Persons Act,⁷⁰ claims that a compulsory examination violates his constitutional protection against self-incrimination, an order finding him guilty of contempt must be reversed.⁷¹

G. Review

When testing the validity of a finding of civil contempt, the court should review the validity of the underlying order. Contempt will not lie for disobeying an order that is void for lack of jurisdiction or because the court has no power to decide the particular mat-

64. *People v. Williams*, 87 Ill. 2d 161, 167, 429 N.E.2d 487, 489 (1981).

65. *People v. Huntley*, 144 Ill. App. 3d 64, 493 N.E.2d 1193 (5th Dist. 1986); *Schal-lau v. City of Northlake*, 82 Ill. App. 3d 456, 403 N.E.2d 266 (1st Dist. 1980); *City of Tuscola v. Otto*, 33 Ill. App. 3d 853, 338 N.E.2d 484 (4th Dist. 1975).

66. *Savaglio v. Board of Fire & Police of Oak Brook*, 125 Ill. App. 3d 391, 465 N.E.2d 1065 (2d Dist. 1984); *Hawkins v. Hawkins*, 77 Ill. App. 3d 873, 396 N.E.2d 668 (3d Dist. 1979); *Horzely v. Horzely*, 71 Ill. App. 3d 542, 390 N.E.2d 28 (1st Dist. 1979); *Bauter v. Reding*, 68 Ill. App. 3d 171, 385 N.E.2d 886 (3d Dist. 1979); *Armentrout v. Dondanville*, 67 Ill. App. 3d 1021, 1028, 385 N.E.2d 829, 835 (2d Dist. 1979).

67. *Sarver v. Barrett Ace Hardware*, 63 Ill. 2d 454, 462, 349 N.E.2d 28, 31 (1976).

68. *People v. Ryan*, 30 Ill. 2d 456, 461, 197 N.E.2d 15, 18 (1964).

69. *People v. Brown*, 27 Ill. App. 3d 891, 897, 326 N.E.2d 568, 572 (2d Dist. 1975).

70. ILL. REV STAT. ch. 38, para. 105-1.01 (1987).

71. *People v. English*, 31 Ill. 2d 301, 201 N.E.2d 455 (1964).

ter.⁷² A civil contempt order falls with the reversal of the underlying order.⁷³

IV. GENERAL CRIMINAL CONTEMPT

A. Definitions

Criminal contempt consists of acts which tend to impede the court's proceedings, lessen its dignity, or disregard or abuse its processes.⁷⁴ Criminal contempt is not a statutorily defined offense.⁷⁵ Contempt proceedings are instituted to vindicate the authority or the dignity of the judiciary for wholly punitive purposes.⁷⁶ Thus, contempt of court may be found when one violates the purpose of a court order even though he does not violate its express terms.⁷⁷ Whether criminal contempt is classified as di-

72. *People v. Huntley*, 144 Ill. App. 3d 64, 493 N.E.2d 1193 (5th Dist. 1986); *Savaglio v. Board of Fire & Police of Oak Brook*, 125 Ill. App. 3d 391, 465 N.E.2d 1065 (2d Dist. 1984); *Armentrout v. Dondanville*, 67 Ill. App. 3d 1021, 1028, 385 N.E.2d 829, 834 (2d Dist. 1979); *In re Hawkins*, 77 Ill. App. 3d 873, 396 N.E.2d 668 (3d Dist. 1979); *Horzely v. Horzely*, 71 Ill. App. 3d 542, 545, 390 N.E.2d 28, 30 (1st Dist. 1979).

73. *Anderson v. St. Mary's Hosp.*, 101 Ill. App. 3d 596, 428 N.E.2d 528 (5th Dist. 1981); *Schaullau v. City of Northlake*, 82 Ill. App. 3d 456, 467, 403 N.E.2d 266, 274 (1st Dist. 1980).

74. *People v. Gholson*, 412 Ill. 294, 298, 106 N.E.2d 333, 336 (1952).

75. *People v. Stollar*, 31 Ill. 2d 154, 159, 201 N.E.2d 97, 99 (1964), *cert. denied*, 380 U.S. 912 (1965) (citing ILL. REV. STAT. ch. 38, para. 1-3 (1961)). The Illinois Criminal Code provided that

[n]o conduct constitutes an offense unless it is described as an offense in this Code or in another statute of this State. However, this provision *does not affect the power of a court to punish for contempt* or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

ILL. REV. STAT. ch. 38, para. 1-3 (1961) (emphasis added).

76. *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People ex rel. Kazubowski v. Ray*, 48 Ill. 2d 413, 272 N.E.2d 225 (1971); *People v. Skar*, 30 Ill. 2d 491, 198 N.E.2d 101 (1964); *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *Porter v. Alexenburg*, 396 Ill. 57, 71 N.E.2d 58 (1947); *People v. Kitzer*, 389 Ill. 54, 58 N.E.2d 881 (1945); *People v. Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986), *rev'd on other grounds*, 116 Ill. 2d 569, 515 N.E.2d 1222 (1987); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Shatkin Investment Corp. v. Connelly*, 128 Ill. App. 3d 518, 470 N.E.2d 1230 (2d Dist. 1984); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 453 N.E.2d 820 (1st Dist. 1983); *People v. Mowery*, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *Anderson v. St. Mary's Hosp.*, 101 Ill. App. 3d 596, 428 N.E.2d 528 (5th Dist. 1981); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981); *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981); *In re Marriage of Miller*, 88 Ill. App. 3d 370, 410 N.E.2d 649 (4th Dist. 1980).

77. *Village of Gilberts v. Holiday Park Corp.*, 150 Ill. App. 3d 932, 502 N.E.2d 378 (2d Dist. 1986).

rect or indirect depends upon whether the contemptuous acts occur within the presence or outside the presence of the court.⁷⁸

B. Requirement of Intent

The necessary intent for criminal contempt is a volitional act done by one who knows or reasonably should know that his conduct is wrongful.⁷⁹

C. General Procedures

1. Burden of Proof

A party charged with criminal contempt must be found guilty beyond a reasonable doubt.⁸⁰ Thus, a party seeking to uphold a criminal contempt order bears the burden of showing that the court was warranted in exercising its power.⁸¹

2. Right to a Jury Trial

The basic right of trial by jury for one accused of a crime is not extended to one accused of criminal contempt.⁸² The denial of a jury trial does not violate the Constitution.⁸³ The failure to grant a jury trial or to obtain from the contemnor a jury waiver, however, will limit the sanction that may be imposed.⁸⁴

3. Double Jeopardy

When the same conduct is both statutorily criminal and contemptuous, contempt proceedings or sanctions no longer bar subsequent criminal prosecutions on double jeopardy grounds.⁸⁵ The

78. *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Harrison*, 403 Ill. 320, 86 N.E.2d 208 (1949); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 228 (1st Dist. 1981); *People v. McNeil*, 42 Ill. App. 3d 1036, 356 N.E.2d 1073 (1st Dist. 1976); *People v. Gray*, 36 Ill. App. 3d 720, 344 N.E.2d 683 (1st Dist. 1970).

79. *People v. Ziporyn*, 121 Ill. App. 3d 1051, 460 N.E.2d 385 (1st Dist. 1984), *rev'd*, 106 Ill. 2d 419, 478 N.E.2d 364 (1985).

80. *O'Leary v. Allphin*, 64 Ill. 2d 500, 356 N.E.2d 551 (1976); *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *People v. Douglas*, 73 Ill. App. 3d 520, 392 N.E.2d 75 (5th Dist. 1979); *People v. Edwards*, 69 Ill. App. 3d 626, 387 N.E.2d 969 (1st Dist. 1979).

81. *People v. Toomin*, 18 Ill. App. 3d 824, 310 N.E.2d 767 (1st Dist. 1974).

82. *People ex rel. Martin v. Panchire*, 311 Ill. 622, 143 N.E.2d 476 (1924).

83. *Green v. United States*, 356 U.S. 165 (1958).

84. See *infra* note 92 and accompanying text.

85. *People v. Gartner*, 118 Ill. 2d 124, 514 N.E.2d 959 (1987) ("Same evidence" test in *People v. Gray*, 69 Ill. 2d 44, 370 N.E.2d 797 (1977), for determining whether same

test to determine whether there are two offenses, one of contempt and one constituting statutorily prohibited conduct, is whether each offense requires proof of facts which the other does not.⁸⁶ Further, summary proceedings for direct contempt do not result in adversary proceedings. Rather, summary proceedings merely result in the imposition of sanctions, inasmuch as all of the elements of the offense are matters within the court's personal knowledge.⁸⁷

4. Statute of Limitations

The statutory period of limitations does not bar an action for criminal contempt, especially when contemptuous conduct occurs over an extended period of time.⁸⁸ An action will be barred when the lapse of time would make it unjust or unfair for the respondent to answer the contempt charge.⁸⁹

D. Penalties

In Illinois, there is no prescribed maximum penalty for convictions of criminal contempt.⁹⁰ A sentence for criminal contempt is

acts constitute criminal offense for double jeopardy purposes is overruled in favor of the test articulated in *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). See also *People v. Rodriguez*, 162 Ill. App. 3d 149, 514 N.E.2d 1033 (2d Dist. 1987) (same conduct underlying criminal charges of child abduction, residential burglary, and battery violated court order in dissolution of marriage cause resulting in trial court finding of "direct civil contempt" and "indirect criminal contempt" held not a bar to criminal prosecution upon rehearing as to burglary and battery charges, but was double jeopardy as to the child abduction).

86. *Bloom v. Illinois*, 391 U.S. 194 (1968); *County of McLean v. Kickapoo Creek, Inc.*, 51 Ill. 2d 353, 282 N.E.2d 720 (1972); *In re Estate of Melody*, 42 Ill. 2d 451, 453 N.E.2d 820 (1969); *People v. Powers*, 122 Ill. App. 3d 629, 461 N.E.2d 549 (3d Dist. 1984); *People v. Halprin*, 119 Ill. App. 3d 922, 457 N.E.2d 1010 (1st Dist. 1983); *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 453 N.E.2d 820 (1st Dist. 1983); *People v. Martin-Trigona*, 94 Ill. App. 3d 519, 418 N.E.2d 763 (4th Dist. 1981); *People v. Patrick*, 83 Ill. App. 3d 951, 404 N.E.2d 1042 (2d Dist. 1980).

87. *People v. Harrison*, 403 Ill. 320, 86 N.E.2d 208 (1949).

88. *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961) (defendant continued to hold himself out as an attorney in four separate incidents from 1953 through 1957).

89. *People v. Levinson*, 75 Ill. App. 3d 429, 394 N.E.2d 509 (1st Dist. 1979), cert. denied, 449 U.S. 992 (1980) (three-year statute of limitations for felonies not a bar to criminal contempt involving filing untrue inventories in a probate estate and conversion of estate assets, and where the conduct falls into the category of continuing offenses it would not be deemed unfair to proceed); *People v. Martin-Trigona*, 94 Ill. App. 3d 519, 418 N.E.2d 763 (4th Dist. 1981) (a court can proceed for contempt at any time during which it retains jurisdiction over the matter, and the time for proceeding is generally discussed in terms of laches, there being no statute of limitations directed to the inherent power of a court to punish for contempt).

90. *County of McLean*, 51 Ill. 2d at 355, 282 N.E.2d at 722. The Illinois Criminal Code provides a penalty for those offenses which have no prescribed penalty. ILL. REV.

within the discretion of the trial court.⁹¹ In the event the contemnor does not waive, or is not allowed, a jury trial, however, the court is limited to imposing a fine not to exceed five hundred dollars, a six month prison term, or both.⁹²

1. Purpose

Imprisonment for criminal contempt is imposed to punish for past contumacious conduct in order to preserve the dignity and authority of the court.⁹³

2. Power and Discretion of Court

A sentence for criminal contempt is within the discretion of the trial court.⁹⁴ Punishment for criminal contempt should reflect the least possible power necessary to achieve its purpose.⁹⁵ Courts are without authority to fix precise dates for the commencement or completion of a sentence of imprisonment imposed pursuant to an order of contempt.⁹⁶

STAT. ch. 38, paras. 1005-5-2(c), 1005-9-1(a)(4), 1005-9-1(a)(5) (1987). These provisions, however, do not apply to contempt, but relate only to those offenses defined in the Code. See *People v. Stollar*, 31 Ill. 2d 154, 201 N.E.2d 97 (1964) (when no maximum penalty is authorized, the seriousness of the charge is to be determined by the severity of the actual sentence).

91. *Frank v. United States*, 395 U.S. 147, 149 (1969) (Congress has authorized courts to impose penalties for criminal contempt but has not placed any specific limits on the discretion of the courts).

92. *County of McLean v. Kickapoo Creek, Inc.*, 51 Ill. 2d 353, 282 N.E.2d 720 (1972) (a \$20,000 fine imposed upon the corporate defendant, and a one-year sentence in the county jail plus a \$10,000 fine imposed upon the corporation's president were set aside because the trial court failed to inquire if defendants desired a jury and because the defense counsel did not expressly waive a jury trial). See also *Cheff v. Schnackenberg*, 384 U.S. 373 (1966); *In re Estate of Melody*, 42 Ill. 2d 451, 248 N.E.2d 104 (1969) (denial of jury trial followed by one year sentence held reversible error, and required a new trial by jury).

93. *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *County of McLean v. Kickapoo Creek, Inc.*, 51 Ill. 2d 353, 282 N.E.2d 720 (1972); *People ex rel. Chicago Bar Ass'n v. Barasch*, 21 Ill. 2d 407, 173 N.E.2d 417 (1961); *People v. Redlich*, 402 Ill. 270, 83 N.E.2d 7 (1949); *People v. Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *Aurora Steel Prods. v. United Steelworkers*, 94 Ill. App. 3d 97, 418 N.E.2d 492 (2d Dist. 1981); *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981).

94. *In re G.B.*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 583, 425 N.E.2d 1071 (1st Dist. 1981).

95. *In re G.B.*, 88 Ill. App. 3d 64, 410 N.E.2d 410 (4th Dist. 1980), *cert. denied*, 456 U.S. 963 (1982).

96. *People v. Toman*, 367 Ill. 163, 10 N.E.2d 657 (1937).

3. Period of Incarceration/Compliance

Unlike the civil contemnor, the criminal contemnor is sentenced to a definite period of incarceration, and may not avoid or reduce the punishment by complying with the court order.⁹⁷

4. Probation

Probation, a sentence available in many criminal proceedings, rarely is imposed for criminal contempt. Probation focuses on rehabilitation. The purpose of sanctioning for criminal contempt is to uphold the dignity of the court.⁹⁸ Therefore, the rehabilitatory focus of probation makes its application an inappropriate sanction in a criminal contempt proceeding.

E. Review

The reviewing court is not bound by the findings made by, and contained in, the order of the trial court. Rather, it may look to the record to determine whether the court's finding of contempt is substantiated.⁹⁹

V. DIRECT CRIMINAL CONTEMPT

A. Definitions

Direct criminal contempt constitutes particular conduct that is calculated to embarrass, hinder, or obstruct the court in its administration of justice or to derogate from its authority or dignity, thereby bringing the administration of law into disrepute. The offending conduct takes place in the presence of the judge, making all of the elements of the offense matters within the personal knowledge of the judge.¹⁰⁰ Additionally, an act of direct criminal

97. *Shatkin Inv. Corp. v. Connelly*, 128 Ill. App. 3d 518, 470 N.E.2d 1230 (5th Dist. 1984); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *In re Estate of Shlensky*, 49 Ill. App. 3d 885, 364 N.E.2d 430 (1st Dist. 1977).

98. *In re G.B.*, 88 Ill. App. 3d 64, 410 N.E.2d 410 (4th Dist. 1980).

99. *People v. Jashunsky*, 51 Ill. 2d 220, 282 N.E.2d 1 (1972); *People v. Baxter*, 50 Ill. 2d 286, 278 N.E.2d 777 (1972); *People v. Tomashevsky*, 48 Ill. 2d 559, 272 N.E.2d 398 (1971); *People v. Bagdonas*, 372 Ill. 530, 25 N.E.2d 19 (1940); *Hoga v. Clark*, 113 Ill. App. 3d 1050, 448 N.E.2d 196 (5th Dist. 1983); *People v. Harper*, 28 Ill. App. 3d 820, 329 N.E.2d 496 (1st Dist. 1975); *In re Matter of Magnes*, 8 Ill. App. 3d 249, 290 N.E.2d 378 (1st Dist. 1972); *People ex rel. Morgan v. Mulliken*, 41 Ill. App. 3d 282, 190 N.E.2d 282 (3d Dist. 1963).

100. *People v. Siegel*, 94 Ill. 2d 167, 445 N.E.2d 762 (1983); *People v. Graves*, 74 Ill. 2d 279, 384 N.E.2d 1311 (1979); *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 364 N.E.2d 50 (1977); *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Jashunsky*, 51 Ill. 2d 220, 282 N.E.2d 1 (1972); *People v. Tomashevsky*, 48 Ill. 2d 559, 273 N.E.2d

contempt may be found, though not observed by the judge, if the conduct takes place in the integral or constituent parts of the court. Such conduct is deemed to have occurred in the constructive presence of the court.¹⁰¹

B. Requirement of Intent

Intent, or at least knowledge of the nature of one's act, is a necessary element of criminal contempt.¹⁰² The intent to commit direct criminal contempt of court may be inferred from proof of surrounding circumstances and the actions of the contemnor.¹⁰³

C. General Procedures

1. Summary Proceedings

When direct criminal contempt is committed in open court, it is proper for the judge to proceed upon his personal knowledge of the facts and to punish the offender summarily without giving prior notice, entering written charges, or hearing any evidence.¹⁰⁴ The

398 (1971); *In re Estate of Melody*, 42 Ill. 2d 451, 248 N.E.2d 104 (1969); *People v. Skar*, 30 Ill. 2d 491, 198 N.E.2d 101 (1964); *People ex rel. Andrews v. Hassakis*, 6 Ill. 2d 463, 129 N.E.2d 9 (1955); *People v. Howarth*, 415 Ill. 499, 114 N.E.2d 1017 (1953); *Village of Gilberts v. Holiday Park Corp.*, 150 Ill. App. 3d 932, 502 N.E.2d 378 (2d Dist. 1986); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 470 N.E.2d 21 (1st Dist. 1984); *People v. Halprin*, 119 Ill. App. 3d 922, 457 N.E.2d 1010 (1st Dist. 1983); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981); *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 583, 425 N.E.2d 1071 (1st Dist. 1981); *People v. Randall*, 89 Ill. App. 3d 406, 41 N.E.2d 1017 (1st Dist. 1980); *Smith v. Georgia Pacific Corp.*, 76 Ill. App. 3d 667, 395 N.E.2d 214 (3d Dist. 1979); *People v. Page*, 73 Ill. App. 3d 796, 392 N.E.2d 411 (5th Dist. 1979); *People v. Edwards*, 69 Ill. App. 3d 626, 387 N.E.2d 969 (1st Dist. 1979); *People v. Oatis*, 56 Ill. App. 3d 613, 371 N.E.2d 1195 (1st Dist. 1977).

101. *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 364 N.E.2d 50 (1977); *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Jashunsky*, 51 Ill. 2d 220, 281 N.E.2d 1 (1972); *In re Estate of Melody*, 42 Ill. 2d 451, 248 N.E.2d 104 (1969); *People v. Reek*, 410 Ill. 618, 103 N.E.2d 127 (1952); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Page*, 73 Ill. App. 3d 796, 392 N.E.2d 411 (5th Dist. 1979); *People v. Edwards*, 69 Ill. App. 3d 626, 387 N.E.2d 969 (1st Dist. 1979).

102. *People v. Novotny*, 386 Ill. 536, 54 N.E.2d 536 (1944); *In re Watts*, 66 Ill. App. 3d 971, 384 N.E.2d 453 (1978).

103. *People v. Siegel*, 94 Ill. 2d 167, 445 N.E.2d 762 (1983); *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 48, 364 N.E.2d 50 (1977); *People v. Rodriguez*, 91 Ill. App. 3d 626, 414 N.E.2d 1202 (1st Dist. 1981); *People v. Page*, 73 Ill. App. 3d 796, 392 N.E.2d 411 (5th Dist. 1979); *People v. Collins*, 57 Ill. App. 3d 934, 373 N.E.2d 750 (2d Dist. 1978).

104. *People v. L.A.S.*, 111 Ill. 2d 539, '90 N.E.2d 1271 (1986); *People v. Graves*, 74 Ill. 2d 279, 384 N.E.2d 1311 (1979); *People v. Bazzell*, 68 Ill. 2d 177, 369 N.E.2d 48 (1977); *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Jashunsky*, 51 Ill. 2d 208, 281 N.E.2d 1 (1972); *People v. Miller*, 51 Ill. 2d 76, 281 N.E.2d 292 (1972);

mere existence, however, of a charge of direct criminal contempt does not entirely preclude the judge from hearing evidence to establish fully the direct contempt.¹⁰⁵ For example, direct criminal contempt that occurs in the constructive presence of the court may require that extrinsic evidence be presented.¹⁰⁶

2. Order of Contempt

Adjudication for direct criminal contempt must be supported by either an order of contempt or an adequate record.¹⁰⁷ A written order, which fully and completely sets forth the facts upon which contempt was found, must be entered in a finding of direct contempt.¹⁰⁸

People v. Skar, 30 Ill. 2d 491, 198 N.E.2d 101 (1964); *People ex rel. Andrews v. Hassakis*, 6 Ill. 2d 463, 129 N.E.2d 9 (1955); *People v. Loughran*, 2 Ill. 2d 258, 118 N.E.2d 310 (1954); *People v. Howarth*, 415 Ill. 499, 114 N.E.2d 785 (1953); *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *People v. Ryan*, 412 Ill. 54, 104 N.E.2d 821 (1952); *People v. Pomeroy*, 405 Ill. 175, 90 N.E.2d 102 (1950); *People v. Harrison*, 403 Ill. 320, 86 N.E.2d 208 (1949); *People v. egal*, 400 Ill. 208, 79 N.E.2d 616 (1948); *People v. Tavernier*, 384 Ill. 388, 51 N.E.2d 528 (1943); *People v. Doss*, 382 Ill. 307, 46 N.E.2d 984 (1943); *People v. Rosenthal*, 370 Ill. 244, 18 N.E.2d 450 (1938); *People v. Berof*, 367 Ill. 454, 11 N.E.2d 936 (1937); *In re Estate of Kelly*, 365 Ill. 194, 6 N.E.2d 118 (1937); *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 470 N.E.2d 21 (1st Dist. 1984); *Sunset Travel, Inc. v. Lovecchio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *City of Chicago v. Chicago Fire Fighters Union*, 99 Ill. App. 3d 583, 425 N.E.2d 1071 (1st Dist. 1981); *In re Grand Jury Investigation of Swan*, 92 Ill. App. 3d 856, 415 N.E.2d 1354 (2d Dist. 1981); *People v. Rodriguez*, 91 Ill. App. 3d 626, 414 N.E.2d 1202 (1st Dist. 1980); *Smith v. Georgia Pacific Corp.*, 76 Ill. App. 3d 667, 395 N.E.2d 214 (3d Dist. 1979).

105. *People v. Howarth*, 415 Ill. 499, 114 N.E.2d 785 (1953).

106. *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Howarth*, 415 Ill. 499, 115 N.E.2d 785 (1953); *People v. Berof*, 367 Ill. 454, 11 N.E.2d 936 (1937); *People v. Ellis*, 40 Ill. App. 3d 370, 352 N.E.2d 56 (2d Dist. 1976); *People v. Image Theatre, Inc.*, 18 Ill. App. 3d 777, 310 N.E.2d 658 (1st Dist. 1974).

107. *People v. Baxter*, 50 Ill. 2d 286, 278 N.E.2d 777 (1972); *People v. Tomashevsky*, 48 Ill. 2d 559, 273 N.E.2d 398 (1971); *People v. Wilcox*, 5 Ill. 2d 222, 125 N.E.2d 453 (1955); *People v. Loughran*, 2 Ill. 2d 258, 118 N.E.2d 310 (1954); *People v. Tavernier*, 384 Ill. 388, 51 N.E.2d 528 (1943); *People v. Dorris*, 57 Ill. App. 3d 378, 373 N.E.2d 77 (4th Dist. 1978); *People v. Roberts*, 42 Ill. App. 3d 604, 356 N.E.2d 249 (4th Dist. 1976); *People ex rel. Woodward v. Oliver*, 25 Ill. App. 3d 66, 322 N.E.2d 240 (2d Dist. 1975); *People v. Stufflebeam*, 19 Ill. App. 3d 462, 311 N.E.2d 601 (4th Dist. 1974).

108. *People v. Bagdonas*, 372 Ill. 530, 25 N.E.2d 19 (1940); *People v. Bernard*, 75 Ill. App. 3d 786, 394 N.E.2d 819 (5th Dist. 1979); *Hellige v. Hellige*, 50 Ill. App. 3d 209, 365 N.E.2d 220 (5th Dist. 1977); *Palacio v. Palacio*, 33 Ill. App. 3d 1074, 339 N.E.2d 427 (1st Dist. 1975); *People v. Harper*, 28 Ill. App. 3d 820, 329 N.E.2d 496 (1st Dist. 1975); *People ex rel. Woodward v. Oliver*, 25 Ill. App. 3d 66, 322 N.E.2d 240 (2d Dist. 1975); *People v. Brighan*, 47 Ill. App. 3d 444, 198 N.E.2d 106 (1st Dist. 1974).

D. Contemptuous Acts

1. Admission of Perjury

Before a person can be guilty of direct criminal contempt predicated on an admission of perjury, the witness must admit that his testimony was false, or the circumstances must be such that the court could so hold as a matter of law.¹⁰⁹

2. Courtroom Conduct

The mere use of vulgar language which does not cause an imminent threat to the administration of justice usually does not constitute direct criminal contempt.¹¹⁰ Causing a commotion which requires the court to suspend the hearing of a cause, however, does constitute direct criminal contempt.¹¹¹ Further, courtroom spectators can be held in criminal contempt: (1) for an obviously contemptuous statement directed at the court or at the judicial process; (2) for an action, such as appearing naked in court, which does or is likely to create a disturbance; or (3) when the trial court directly has notified those in the courtroom that certain behavior will not be permitted.¹¹²

3. Filing Contemptuous Documents

A document may contain material which is of such character that the filing of the document with the clerk of the court constitutes an act of criminal contempt. Filing of a known forged will, for example, constitutes direct criminal contempt.¹¹³ Direct criminal contempt may be committed by incorporating impertinent, scandalous, insulting, or contemptuous language reflecting on the integrity of the court in pleadings, motions, and notices of motions.¹¹⁴ The act of filing a contemptuous document with the clerk

109. *People v. Randall*, 89 Ill. App. 3d 406, 411 N.E.2d 1017 (1st Dist. 1980); *Zokoych v. Spaulding*, 36 Ill. App. 3d 654, 344 N.E.2d 805 (1st Dist. 1976).

110. *People v. Hathaway*, 27 Ill. 2d 615, 190 N.E.2d 332 (1963); *People v. Wilson*, 35 Ill. App. 3d 86, 341 N.E.2d 34 (1st Dist. 1975).

111. *People v. Wright*, 51 Ill. App. 3d 990, 367 N.E.2d 492 (4th Dist. 1977); *People v. Wilson*, 35 Ill. App. 3d 86, 341 N.E.2d 34 (1st Dist. 1975).

112. *In re Watts*, 66 Ill. App. 3d 971, 384 N.E.2d 453 (2d Dist. 1978).

113. *In re Estate of Melody*, 42 Ill. 2d 451, 148 N.E.2d 104 (1969); *People v. Bagdonas*, 372 Ill. 530, 25 N.E.2d 19 (1940); *In re Estate of Kelly*, 365 Ill. 194, 6 N.E.2d 118 (1937).

114. *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 364 N.E.2d 59 (1977); *People v. Bennett*, 51 Ill. 2d 282, 281 N.E.2d 664 (1972); *People v. Richardson*, 397 Ill. 76, 72 N.E.2d 862 (1947); *People v. Richardson*, 397 Ill. 76, 72 N.E.2d 862 (1947); *People v. Parker*, 396 Ill. 583, 72 N.E.2d 848 (1947); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 288 (1st Dist. 1981).

of the court is direct criminal contempt because it is considered to be within an integral part of the court.¹¹⁵

4. Perjury

Perjury is another basis for a charge of direct criminal contempt. A defendant is in direct criminal contempt based on perjury if he made representations that were false when made and he knew of their falsity when he made them. Further, the defendant must have had a willful and malevolent intention either to assail the dignity of the court or to interfere with the court's procedure and administration of justice.¹¹⁶

5. Attorney Misconduct

The trial court can and should institute direct criminal contempt proceedings against recalcitrant counsel and impose as a sanction either a fine or jail sentence.¹¹⁷ An attorney is guilty of direct criminal contempt when he violates a trial court ruling or ignores well-accepted case law.¹¹⁸ Further, when the trial court imposes a limitation upon closing argument and informs counsel that further comment on such matters will be viewed as contemptuous, the contempt power can and should be exercised by the court if counsel's comments exceed the court's stated limitation.¹¹⁹ An attorney's failure to heed the directive of the court to desist from arguing, to sit down, to remain quiet, or to continue with a trial may constitute direct criminal contempt as an actual material obstruction to the administration of justice.¹²⁰ Practicing law without a license also constitutes direct criminal contempt.¹²¹ Finally,

115. *People ex rel. Kunce v. Hogan*, 67 Ill. 2d 55, 364 N.E.2d 50 (1977); *People v. Bennett*, 51 Ill. 2d 282, 281 N.E.2d 664 (1972); *People v. Baxter*, 50 Ill. 2d 286, 278 N.E.2d 777 (1972); *In re Estate of Melody*, 42 Ill. 2d 451, 248 N.E.2d 104 (1969); *People v. Howarth*, 415 Ill. 499, 114 N.E.2d 785 (1953); *In re Estate of Kelly*, 365 Ill. 174, 6 N.E.2d 113 (1936); *People v. Robinson*, 100 Ill. App. 3d 660, 427 N.E.2d 228 (1st Dist. 1981).

116. *People v. Page*, 73 Ill. App. 3d 796, 392 N.E.2d 411 (1st Dist. 1979).

117. *People v. DeStefano*, 64 Ill. App. 2d 368, 212 N.E.2d 368 (1st Dist. 1965); *Eizerman v. Behn*, 9 Ill. App. 2d 263, 132 N.E.2d 788 (1st Dist. 1956).

118. *Rowley v. Rousseau*, 81 Ill. App. 3d 193, 400 N.E.2d 1045 (4th Dist. 1980).

119. *People v. Graves*, 74 Ill. 2d 279, 384 N.E.2d 1311 (1979); *People ex rel. Woodward v. Oliver*, 25 Ill. App. 3d 66, 322 N.E.2d 240 (2d Dist. 1976).

120. *People v. Graves*, 74 Ill. 2d 279, 384 N.E.2d 1311 (1979); *People v. Powers*, 122 Ill. App. 3d 629, 461 N.E.2d 549 (3d Dist. 1984); *In re Matter of Magnes*, 8 Ill. App. 3d 249, 290 N.E.2d 378 (1st Dist. 1972).

121. *In re Schelly*, 94 Ill. 2d 234, 446 N.E.2d 236 (1983); *People ex rel. Chicago Bar Ass'n v. Barasch*, 406 Ill. 249, 93 N.E.2d 370 (1950); *People v. Goodman*, 366 Ill. 346, 8 N.E.2d 941 (1937).

wrongfully manipulating the court will lead to the imposition of criminal contempt sanctions. For example, an attorney will be held in direct criminal contempt when it is shown that the attorney misled the judge into believing the defendant was unrepresented in order to obtain a continuance.¹²²

E. Defenses to Direct Criminal Contempt

1. Constitutionally Based Defenses

The contemnor's refusal to testify, without the claim of the fifth amendment privilege, clearly obstructs the court in its administration of justice and results in criminal contempt.¹²³ The constitutional guaranties of freedom of press and speech¹²⁴ do not justify conduct such as writing malicious letters to members of a grand jury about a person under investigation. Such conduct tends to obstruct the administration of justice and does not protect one from criminal contempt charges.¹²⁵ An order of criminal contempt for failure to comply with a subpoena *duces tecum* is improper when the subpoena is unconstitutionally broad in its demand.¹²⁶

2. Other Defenses

A defendant is not in contempt of court when he refuses to answer a question that is irrelevant or immaterial to the case even if he is directed by the court to answer the question.¹²⁷ Further, a charge of contempt is improper if it is based on a deficient court order. For example, an injunction order cannot support a finding of criminal contempt unless it sets forth with certainty, clarity, and conciseness precisely which actions are enjoined.¹²⁸ Moreover, a written order charging criminal contempt will be found fatally deficient if it does not show jurisdiction of the court, or facts upon which contempt was based.¹²⁹ A stand taken by counsel in good faith and in the interest of his client should not serve as a basis for

122. *People v. Sleezer*, 10 Ill. 2d 47, 139 N.E.2d 259 (1956).

123. *People v. Carradine*, 52 Ill. 2d 231, 287 N.E.2d 670 (1972); *People v. Monroe*, 27 Ill. 2d 449, 189 N.E.2d 350 (1963); *People v. Burkert*, 7 Ill. 2d 506, 131 N.E.2d 495 (1955); *People v. Clark*, 4 Ill. App. 3d 301, 280 N.E.2d 723 (1st Dist. 1972).

124. U.S. CONST. amend I; ILL. CONST. OF 1970 art. I, § 4.

125. *People v. Doss*, 382 Ill. 307, 46 N.E.2d 984 (1943); *People v. Parker*, 374 Ill. 524, 30 N.E.2d 11, cert. denied, 313 U.S. 560 (1940).

126. *People v. Lurie*, 39 Ill. 2d 331, 235 N.E.2d 637 (1968).

127. *People v. King*, 8 Ill. App. 3d 2, 288 N.E.2d 672 (1st Dist. 1972).

128. *O'Leary v. Allphin*, 64 Ill. 2d 500, 356 N.E.2d 551 (1976).

129. *People v. Carradine*, 52 Ill. 2d 231, 287 N.E.2d 670 (1972); *In re Marriage of Humphrey*, 121 Ill. App. 3d 701, 460 N.E.2d 52 (5th Dist. 1984); *People v. Mowery*, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983); *Hoga v. Clark*, 113 Ill. App. 3d 1050,

a charge of criminal contempt if the counsel conducts himself in a proper and respectful, albeit forceful way.¹³⁰

VI. INDIRECT CRIMINAL CONTEMPT

A. Definition

Indirect criminal contempt entails a willful or contumacious act which occurs out of the presence of the judge. Therefore, a charge of indirect criminal contempt is dependent for its proof upon extrinsic evidence or upon facts of which the court has no judicial notice.

B. General Procedures

1. Due Process Requirements

To be found in indirect criminal contempt, the contemnor must be accorded the requirements of procedural due process.¹³¹ These requirements include the constitutional rights of notice,¹³² a full hearing,¹³³ counsel, and confrontation.¹³⁴ The mere opportunity to testify on one's own behalf does not satisfy these requirements.¹³⁵ A defendant charged with contempt is entitled to the constitutional

448 N.E.2d 196 (5th Dist. 1983); *People v. Stufflebeam*, 19 Ill. App. 3d 462, 311 N.E.2d 601 (4th Dist. 1974).

130. *Smith v. Georgia Pacific Corp.*, 76 Ill. App. 3d 667, 395 N.E.2d 214 (3d Dist. 1979); *People v. Bernard*, 75 Ill. App. 3d 786, 394 N.E.2d 819 (5th Dist. 1979); *People v. Knuppel*, 65 Ill. App. 3d 1022, 383 N.E.2d 244 (4th Dist. 1978); *Chicago Title and Trust Co. v. Czubak*, 53 Ill. App. 3d 193, 368 N.E.2d 404 (1st Dist. 1977); *People v. Kuelper*, 46 Ill. App. 3d 420, 361 N.E.2d 29 (1st Dist. 1977).

131. *People v. L.A.S.*, 111 Ill. 2d 539, 490 N.E.2d 1271 (1986).

132. *Id.* at 544, 490 N.E.2d at 1273.

133. *Id.*

134. *Sunset Travel, Inc. v. Lovechio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *People v. Marcisz*, 32 Ill. App. 3d 467, 334 N.E.2d 737 (3d Dist. 1975).

135. *People v. L.A.S.*, 111 Ill. 2d 539, 490 N.E.2d 1271 (1986); *Marcisz v. Marcisz*, 65 Ill. 2d 206, 357 N.E.2d 477 (1976); *People v. Javaras*, 51 Ill. 2d 296, 281 N.E.2d 670 (1972); *People v. Jashunsky*, 51 Ill. 2d 208, 281 N.E.2d 642 (1972); *People v. Sears*, 49 Ill. 2d 14, 273 N.E.2d 380 (1971); *People v. Tomashevsky*, 48 Ill. 2d 559, 273 N.E.2d 398 (1971); *People v. Skar*, 30 Ill. 2d 491, 198 N.E.2d 101 (1964); *People v. Hassakis*, 6 Ill. 2d 463, 129 N.E.2d 9 (1955); *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952); *People v. Ryan*, 412 Ill. 54, 104 N.E.2d 821 (1952); *People v. Pomeroy*, 405 Ill. 175, 90 N.E.2d 102 (1950); *People v. Rosenthal*, 370 Ill. 244, 18 N.E.2d 450 (1938); *People v. McKinlay*, 367 Ill. 504, 11 N.E.2d 933 (1937); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 470 N.E.2d 21 (1st Dist. 1984); *National Metalcrafters v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *Sunset Travel, Inc. v. Lovechio*, 113 Ill. App. 3d 669, 447 N.E.2d 891 (1st Dist. 1983); *In re Estate of St. George*, 99 Ill. App. 3d 388, 426 N.E.2d 6 (1st Dist. 1981); *In re T.V.P.*, 90 Ill. App. 3d 800, 414 N.E.2d 209 (4th Dist. 1980); *People v. Patrick*, 83 Ill. App. 3d 951, 404 N.E.2d 1042 (2d Dist. 1980); *Archer v. Archer*, 71 Ill. App. 3d 938, 390 N.E.2d 629 (4th Dist. 1979); *People v. Edwards*, 69 Ill. App. 3d 626, 387 N.E.2d 969

guarantees against self-incrimination.¹³⁶

2. Requirement of Intent

The intent to commit indirect criminal contempt may be inferred from proof of surrounding circumstances and the actions of the contemnor.¹³⁷

3. Answer to Charge

A defendant cannot purge himself of an indirect criminal contempt charge merely by denying alleged acts in a verified answer.¹³⁸

4. Admission of Contempt

If the contemnor admits his contempt in open court, indirect criminal contempt may be punished summarily as direct contempt.¹³⁹

5. Substitution of Judges

The applicable sections of the Illinois Code of Criminal Procedure govern application for substitution of judges in indirect criminal contempt cases.¹⁴⁰

C. *Indirect Contemptuous Acts*

1. Threatening a Juror

Threatening a juror or witness outside the presence of the court after the return of a guilty verdict constitutes indirect criminal contempt.¹⁴¹

(1st Dist. 1979); *Armentrout v. Dondanville*, 67 Ill. App. 3d 1021, 385 N.E.2d 829 (2d Dist. 1979); *People v. McNeil*, 42 Ill. App. 3d 1036, 356 N.E.2d 1063 (1st Dist. 1976).

136. *In re Marriage of Walden*, 93 Ill. App. 3d 699, 417 N.E.2d 715 (1st Dist. 1981).

137. *National Metalcrafters, Inc. v. Local 449*, 125 Ill. App. 3d 399, 465 N.E.2d 1001 (2d Dist. 1984); *People v. Douglas*, 73 Ill. App. 3d 520, 392 N.E.2d 75 (5th Dist. 1979); *People v. Dorris*, 57 Ill. App. 3d 378, 373 N.E.2d 77 (4th Dist. 1978).

138. *People v. Gholson*, 412 Ill. 294, 106 N.E.2d 333 (1952) (overruling doctrine of purgation by oath).

139. *People v. Bennett*, 51 Ill. 2d 282, 281 N.E.2d 782 (1972); *In re Estate of Melody*, 42 Ill. 2d 451, 248 N.E.2d 104 (1969); *People v. Goss*, 10 Ill. 2d 533, 141 N.E.2d 385 (1957); *People v. Hagopian*, 408 Ill. 618, 97 N.E.2d 782 (1951); *People v. Pomeroy*, 405 Ill. 175, 90 N.E.2d 102 (1950); *People v. Harrison*, 403 Ill. 320, 86 N.E.2d 208 (1949); *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 490 N.E.2d 95 (2d Dist. 1986); *In re Grand Jury Investigation of Swan*, 92 Ill. App. 3d 856, 415 N.E.2d 1354 (2d Dist. 1981); *People v. Patrick*, 83 Ill. App. 3d 951, 404 N.E.2d 1042 (2d Dist. 1980).

140. *People v. Wright*, 20 Ill. App. 3d 96, 312 N.E.2d 727 (4th Dist. 1974).

141. *Id.*

2. Improper Communication to Grand Jury

Sending an improper communication to a grand jury constitutes indirect criminal contempt of court as it is an unauthorized interference with the administration of justice.¹⁴²

3. Perjury

Perjury or false swearing, although occurring in court and witnessed by the judge, constitutes indirect criminal contempt, as extrinsic evidence is needed to determine that the contemnor committed perjury.¹⁴³

4. Violation of a Circuit Court Rule

Violation of a circuit court rule prohibiting loitering in or about the corridors of a courthouse is subject to the charge of indirect criminal contempt.¹⁴⁴

5. Interference with Jury Duty

An employer who discharges an employee who has been called to jury duty commits indirect criminal contempt.¹⁴⁵

6. Libelous Publication

Publication of a letter calculated to impede, embarrass, or obstruct justice is contemptuous.¹⁴⁶ The publication of libelous or slanderous matter concerning a judge or the court is contemptuous if it is systematically designed to thwart the judicial process.¹⁴⁷

7. Violation of Probation

Indirect criminal contempt is a proper sanction for a violation of probation.¹⁴⁸

8. Attorney Misconduct

In general, an attorney may be held in indirect criminal contempt for failure to appear in court unless an adequate excuse is

142. *People v. Parker*, 397 Ill. 305, 74 N.E.2d 523 (1947); *People v. Doss*, 382 Ill. 307, 46 N.E.2d 784 (1943); *People v. Parker*, 374 Ill. 524, 30 N.E.2d 11 (1940).

143. *People v. Randall*, 89 Ill. App. 3d 406, 411 N.E.2d 1017 (1st Dist. 1980).

144. *People v. Bufford*, 132 Ill. App. 2d 417, 270 N.E.2d 550 (1st Dist. 1971).

145. *People v. Vitucci*, 49 Ill. App. 2d 171, 199 N.E.2d 78 (1st Dist. 1974).

146. *People v. Hathaway*, 27 Ill. 2d 615, 190 N.E.2d 332 (1963); *People v. Goss*, 10 Ill. 2d 533, 141 N.E.2d 385 (1957).

147. *People v. Goss*, 10 Ill. 2d 533, 141 N.E.2d 385 (1957).

148. *People v. Patrick*, 83 Ill. App. 3d 951, 404 N.E.2d 1042 (2d Dist. 1980); *People v. Colclasure*, 48 Ill. App. 3d 988, 363 N.E.2d 631 (4th Dist. 1977).

offered on his behalf.¹⁴⁹

9. Violation of Court Order/Juvenile Proceeding

Indirect criminal contempt is a permissible sanction for the willful violation of a court order in a juvenile proceeding.¹⁵⁰

D. Defenses to Indirect Criminal Contempt

If the publication of a libelous letter is not calculated to obstruct justice, no contempt order may lie because this speech is constitutionally protected.¹⁵¹ A juvenile may not be held in contempt of court and sentenced to detention for violating an order placing him on probation for an indefinite period of time.¹⁵²

VII. CONCLUSION

The great freedoms which we, as American citizens, are privileged to enjoy are not without limits or bounds. We recognize that our freedoms, rights, and privileges may not place us above the law, but rather, are dependent upon the law. Our judicial system, as guardian of the law, must, therefore, exercise certain inherent powers where appropriate to ensure its ability to continue to function. The judiciary may not depend solely upon voluntary compliance with proper court orders. Nor should it tolerate interference with its administration of justice. Therefore, courts must at all times invoke their powers, which include, of course, the power to sanction for contempt, within those limits that have evolved and become known generally as the law of contempt.

149. *People v. L.A.S.*, 111 Ill. 2d 539, 490 N.E.2d 1271 (1986); *People v. McDonnell*, 377 Ill. 568, 37 N.E.2d 159 (1941); *People v. Mann*, 122 Ill. App. 3d 66, 460 N.E.2d 778 (1st Dist. 1984); *People v. Edwards*, 69 Ill. App. 3d 626, 387 N.E.2d 969 (1st Dist. 1979); *People v. McNeil*, 42 Ill. App. 3d 1036, 356 N.E.2d 1073 (1st Dist. 1976); *People v. Pincham*, 38 Ill. App. 3d 1043, 350 N.E.2d 67 (1st Dist. 1976); *Geraty v. Carbona Prods. Co.*, 16 Ill. App. 3d 702, 30^t N.E.2d 554 (1st Dist. 1973).

150. *In re T.V.P.*, 90 Ill. App. 3d 800, 414 N.E.2d 209 (4th Dist. 1980); *In re G.B.*, 88 Ill. App. 3d 64, 410 N.E.2d 410 (4th Dist. 1980), *aff'd in part, rev'd in part*, 88 Ill. 2d 36, 430 N.E.2d 1096 (1981), *cert. denied*, 456 U.S. 963 (1982).

151. *People v. Hathaway*, 27 Ill. 2d 615, 190 N.E.2d 332 (1963); *People v. Goss*, 10 Ill. 2d 533, 141 N.E.2d 385 (1957).

152. *In re R.R.*, 92 Ill. 2d 423, 442 N.E.2d 252 (1982).

