RULE 107. Remedial and Punitive Sanctions for Contempt

(a) **Definitions.**

(1) **Contempt:** Disorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court; or any other act or omission designated as contempt by the statutes or these rules.

(2) **Direct Contempt:** Contempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist.

(3) **Indirect Contempt:** Contempt that occurs out of the direct sight or hearing of the court.

(4) **Punitive Sanctions for Contempt:** Punishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court.

(5) **Remedial Sanctions for Contempt:** Sanctions imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform.

(6) **Court:** For purposes of this rule, "court" means any judge, magistrate, commissioner, referee, or a master while performing official duties.

(b) **Direct Contempt Proceedings.** When a direct contempt is committed, it may be punished summarily. In such case an order shall be made on the record or in writing reciting the facts constituting the contempt, including a description of the person's conduct, a finding that the conduct was so extreme that no warning was necessary or the person's conduct was repeated after the court's warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court. Prior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.

(c) **Indirect Contempt Proceedings.** When it appears to the court by motion supported by affidavit that indirect contempt has been committed, the court may ex parte order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. The citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear. If such person fails to appear at

the time so designated, and it is evident to the court that the person was properly served with copies of the motion, affidavit, order, and citation, a warrant for the person's arrest may issue to the sheriff. The warrant shall fix the date, time and place for the production of the person in court. The court shall state on the warrant the amount and kind of bond required. The person shall be discharged upon delivery to and approval by the sheriff or clerk of the bond directing the person to appear at the date, time and place designated in the warrant, and at any time to which the hearing may be continued, or pay the sum specified. If the person fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited upon proper notice of hearing to the surety, if any, and to the extent of the damages suffered because of the contempt, the bond may be paid to the aggrieved party. If the person fails to make bond, the sheriff shall keep the person in custody subject to the order of the court.

(d) **Trial and Punishment.**

(1) **Punitive Sanctions.** In an indirect contempt proceeding where punitive sanctions may be imposed, the court may appoint special counsel to prosecute the contempt action. If the judge initiates the contempt proceedings, the person shall be advised of the right to have the action heard by another judge. At the first appearance, the person shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel. The maximum jail sentence shall not exceed six months unless the person has been advised of the right to a jury trial. The person shall also be advised of the right to plead either guilty or not guilty to the charges, the presumption of innocence, the right to require proof of the charge beyond a reasonable doubt, the right to present witnesses and evidence, the right to cross-examine all adverse witnesses, the right to have subpoenas issued to compel attendance of witnesses at trial, the right to remain silent, the right to testify at trial, and the right to appeal any adverse decision. The court may impose a fine or imprisonment or both if the court expressly finds that the person's conduct was offensive to the authority and dignity of the court. The person shall have the right to make a statement in mitigation prior to the imposition of sentence.

(2) **Remedial Sanctions.** In a contempt proceeding where remedial sanctions may be imposed, the court shall hear and consider the evidence for and against the person charged and it may find the person in contempt and order sanctions. The court shall enter an order in writing or on the record describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged. In all cases of indirect contempt where remedial sanctions are sought, the nature of the sanctions and remedies that may be imposed shall be described in the

motion or citation. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed in the discretion of the court. If the contempt consists of the failure to perform an act in the power of the person to perform and the court finds the person has the present ability to perform the act so ordered, the person may be fined or imprisoned until its performance.

(e) **Limitations.** The court shall not suspend any part of a punitive sanction based upon the performance or non-performance of any future acts. The court may reconsider any punitive sanction. Probation shall not be permitted as a condition of any punitive sanction. Remedial and punitive sanctions may be combined by the court, provided appropriate procedures are followed relative to each type of sanction and findings are made to support the adjudication of both types of sanctions.

(f) **Appeal.** For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

(Source: Entire rule amended and adopted, January 26, 1995, effective April 1, 1995; b corrected and effective, June 15, 1995; c amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

Annotation

I. General Consideration.

Law reviews. For comment on *Shapiro v. Shapiro*, appearing below, see 20 Rocky Mt. L. Rev. 313 (1948). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962). For article, "Enforcing Family Law Orders Through Contempt Proceedings Under C.R.C.P. 107 ", see 332 Colo. Law. 75 (March 2003). For article, "Proper Application of CRS §15-12-723 for Recovery of Estate Assets", see 32 Colo. Law. 59 (May 2003). For article, "Advice to Attorneys on Contempt", see 41 Colo. Law. 79 (January 2012).

Annotator's note. Since C.R.C.P. 107, is similar to §§ 166 and 356 through 369 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing those sections have been included in the annotations to this rule.

This rule applies to both civil and criminal contempt. In re Stone, 703 P.2d 1319 (Colo. App. 1985).

As part of its inherent authority to issue orders that are necessary for the performance of judicial functions, a court has the power to enforce

obedience to its orders through contempt sanctions. *People v. McGlotten*, 134 P.3d 487 (Colo. App. 2005).

The power to punish for contempt is a judicial power within the meaning of the constitution, and it belongs exclusively to the courts except in cases where the constitution confers such power upon some other body. *People v. Swena*, 88 Colo. 337, 296 P. 271 (1931).

A finding of contempt is within the discretion of the trial court, and its ruling will not be disturbed on appeal absent an abuse of discretion. In re Gomez, 728 P.2d 747 (Colo. App. 1986); In re Roberts, 757 P.2d 1108 (Colo. App. 1988).

Nothing in this rule or the forcible entry and detainer (FED) statute precludes the remedy of contempt in an FED action under appropriate circumstances. *Hartsel Springs Ranch v. Cross Slash Ranch*, 179 P.3d 237 (Colo. App. 2007).

A finding of contempt can be brought under this rule and proved with evidence other than jury deliberation, provided the prosecution can show beyond a reasonable doubt the following elements: (1)The prospective juror knowingly and willfully gave an untruthful answer or deliberately failed to disclose information during voir dire in response to a specific question asked; (2)the purpose of the juror's untruthful answer or nondisclosure was to gain acceptance on the jury and to obstruct the administration of justice; and (3)the juror's untruthful answer or nondisclosure did obstruct the administration of justice. *People v. Kriho*, 996 P.2d 158 (Colo. App. 1999).

Court must make findings in both types of contempt procedures. For contempt in the presence of the court, the judgment must recite the facts constituting the contempt. For contempt out of the presence of the court, the judgment must include, among other considerations, a finding that the court's order has not been complied with. In re McGinnis, 778 P.2d 281 (Colo. App. 1989).

The power to punish for contempt is inherent in all courts. *Allen v. Bailey*, 91 Colo. 260, 14 P.2d 1087 (1932).

Jurisdiction to punish contempt rests solely in contemned court; no court can try a contempt against another. *Gonzales v. District Court*, 629 P.2d 1074 (Colo. 1981).

A court's right of self-preservation is not limited by statutory enumeration of causes of contempts. *Hughes v. People*, 5 Colo. 436 (1880).

The power to punish for contempt should be used sparingly, with caution, deliberation, and due regard to constitutional rights; it should be exercised only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951); *Conway v. Conway*, 134 Colo. 79, 299 P.2d 509 (1956).

Intent to interfere with administration of justice not required for contempt finding; rather, the intent is a guide to be used by the trial court in exercising its discretion to punish. In re Stone, 703 P.2d 1319 (Colo. App. 1985).

This rule does not purport to limit the application of contempt to parties, officers of the court, or those subject to direct orders. Rather, the rule defines contempt broadly to include any conduct by any person that obstructs or interferes with judicial proceedings. In re Lopez, 109 P.3d 1021 (Colo. App. 2004).

Correction officials are officers of the court whose compliance with a mittimus directing them to take custody of a juvenile could be enforced by a contempt proceeding. People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

Judge conducting a settlement conference has the same authority to impose sanctions as the trial judge for conduct related to the settlement conference which interferes with the functions of the court. *Halaby, McCrea & Cross v. Hoffman*, 831 P.2d 902 (Colo. 1992).

Language in this rule authorizing district court to sanction an "officer of the court" does not include a judge who is presiding over the same case in which the alleged contempt has taken place. *People v. Proffitt*, 865 P.2d 929 (Colo. App. 1993).

A remedial contempt order only describes the means by which the contempt can be purged and the sanctions that will be in effect until the contempt is purged. Other than costs and reasonable attorney fees, a trial court is without authority to require, as a remedial sanction, monetary payments that do not force compliance with or performance of a court order. *Sec. Investor Prot. Corp. v. First Entm't Holding Corp.*, 36 P.3d 175 (Colo. App. 2001).

Attorney fees can be awarded under subsection (d)(2) only as a component of remedial sanctions; however, under subsection (a)(1)(5), a remedial sanction must include a purge clause. Where the contemnor commits a one-time violation, incapable of being purged, attorney fees may not be assessed as a remedial sanction. Thus, a punitive sanction, such as a fine or

imprisonment, is the only avenue for punishment. No remedial sanction was imposed, nor could one have been. The CAT scan contempt constituted a one-time violation of a 2007 order committed over a year before father even raised the issue with the court. By that time, mother could not undo what she had done. In re Webb, __ P.3d __ (Colo. App. 2011).

A pro se attorney litigant is not necessarily precluded from an attorney fee award under either section (d)(2) of this rule or §13-17-102 in a contempt proceeding. *Wimmershoff v. Finger*, 74 P.3d 529 (Colo. App. 2003).

Not error for defendants' counsel to have been permitted to prosecute the contempt proceedings. Conduct that is found to be offensive to the authority and dignity of the court pursuant to this rule is not criminal conduct, and contempt is not a statutory criminal offense. The power to impose punitive sanctions for such conduct is an inherent and indispensable power of the court. It is not derived from statute and exists independent of legislative authority. *Eichhorn v. Kelley*, 111 P.3d 544 (Colo. App. 2004).

Lack of an express grant of authority in the Colorado Rules for Magistrates to award attorney fees on review does not divest or otherwise curtail the district court's already existing authority to make such an award under section (d)(2). In re Naekel, 181 P.3d 1177 (Colo. App. 2008).

Applied in *Catron v. Catron*, 40 Colo. App. 476, 577 P.2d 322 (1978); *Cavanaugh v. State, Dept. of Soc. Servs.*, 644 P.2d 1 (Colo. 1982); *People v. Coyle*, 654 P.2d 815 (Colo. 1982); *Menin v. County Court*, 697 P.2d 398 (Colo. App. 1984).

II. Definition.

A. In General.

Contempt consists as well in the manner of the person committing it as in the subject-matter of its foundation. Matters which, if true, would in their very nature be scandalous may be presented, hinted at, or brought to the attention of the court in so respectful a manner that no judge would ever think to construe a contempt therefrom; while, on the other hand, it is easy to see when, under the guise and pretense of setting out privilege and necessary matters, circumstances are detailed, and scandalous and insulting charges and innuendos are made and insinuated upon pretended "information and belief" in manner that bears the unmistakable earmarks of malice and deliberate contempt. *Hughes v. People*, 5 Colo. 436 (1880).

The question of contempt does not depend on intention, although, where the contempt was intended, this is an aggravating feature which goes to the

gravamen of the offense. *Hughes v. People*, 5 Colo. 436 (1880); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Rule is applicable to criminal contempt. This rule clearly includes a definition encompassing, and procedures governing, both civil and criminal contempt. *People v. Razatos*, 699 P.2d 970 (Colo. 1985).

Distinction between civil and criminal contempts. Contempts of court are civil where they consist in the disobedience of some judicial order entered for the benefit or advantage of another party to the proceeding and criminal where there are acts disrespectful to the court or its process, or obstructing the administration of justice, or tending to bring the court into disrepute. *Wyatt v. People*, 17 Colo. 252, 28 P. 961 (1892).

Two types of civil contempt are recognized: One, consisting of a present refusal to perform an act in the power of the person to perform, which normally constitutes injury to others for whose benefit it is required; the other, conduct which is derogatory to the authority or dignity of the court. In the former case, the court may order the respondent imprisoned, not for a definite time, but until he performs the act which he is commanded and is able to perform; in the latter case, the court may order punishment to vindicate the dignity of the court by fine or imprisonment, or both, which should be definite as to amount and time, regardless of subsequent compliance with the court order. In the former case, the court must, upon hearing, make a finding both of the facts constituting contempt and of a present duty and ability to perform; in the latter case, the court must make a finding of facts constituting misbehavior and that the conduct is offensive to the authority and dignity of the court. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Rules for civil contempt may guide, but do not control, procedures for prosecuting criminal contempt. *People v. Tyer*, 796 P.2d 15 (Colo. App. 1990).

B. Misbehavior.

There is no exact rule to define such contempts; but any disorderly conduct calculated to interrupt the proceedings; any disrespect or insolent behavior toward the judges presiding; any breach of order, decency, decorum, either by parties and persons connected with the tribunal, or by strangers present; or, a fortiori, any assault made in view of the court is punishable in this summary way. *Hughes v. People*, 5 Colo. 436 (1880).

Contempt by press. Courts have the inherent power to summarily convict and punish for a contempt of court those responsible for articles published

in reference to a cause pending when such articles are calculated to interfere with the due administration of justice in such cause. Neither the statutes nor the constitution present any barrier to the exercise of such powers, and the power to punish summarily in such cases is essential to the very existence of a court, since the contrary rule would place it in the power of a vicious person to so conduct himself as to prevent any kind of a trial. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

The press may without liability to punishment for contempt challenge, in the interest of the public good, the conduct of judges and other court officers and also of parties, jurors, and witnesses in connection with causes that have been wholly determined. It may also fairly and reasonably review and comment upon court proceedings from day to day as they take place. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

C. Disobedience of Court Orders.

Law reviews. For article, "The Enforcement of Divorce Decrees in Colorado", *see* 21 Rocky Mt. L. Rev. 364 (1949).

Refusal to obey an order of court entered in connection with a criminal investigation is a criminal contempt. *Mainland v. People*, 111 Colo. 198, 139 P.2d 366 (1943).

In order for court to enter punitive order in a criminal contempt proceeding, the court must find that the alleged contemner's behavior constitutes noncompliance with the court order and that such conduct is offensive to the authority and dignity of the court. *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).

Where an order of the court is made in a civil action, its violation constitutes a civil, not a criminal, contempt. *Zobel v. People ex rel. Kyle*, 49 Colo. 142, 111 P. 846 (1910).

Disobedience of a lawful order made by the court for the benefit of a private litigant comes clearly within this rule. *Zobel v. People ex rel. Kyle*, 49 Colo. 142, 111 P. 846 (1910).

Contempt of supreme court rule is punishable and enforceable by lower court before whom contempt occurred. *Wooden v. Park Sch. District*, 748 P.2d 1311 (Colo. App. 1987).

A person who has actual notice of an injunctive order violates it at his peril. *People ex rel. Darby v. District Court*, 19 Colo. 343, 35 P. 731 (1894).

Contempt proceedings are equally available to enforce a judgment determining the property rights of the parties to a divorce proceeding, as are orders for the payment of alimony, counsel fees, and other costs. *Harvey v. Harvey*, 153 Colo. 15, 384 P.2d 265 (1963).

Court may exercise power of contempt to enforce orders entered in a dissolution of marriage proceeding. *Gonzales v. District Court*, 629 P.2d 1074 (Colo. 1981).

A district court which has entered a decree of dissolution possesses continuing in personam and subject matter jurisdiction to enforce its child support orders by punishing a noncomplying obligor for contempt of court. *Gonzales v. District Court*, 629 P.2d 1074 (Colo. 1981).

There is a distinction between a contempt proceeding and an action to collect accrued alimony or support installments. *Hauck v. Schuck*, 143 Colo. 324, 353 P.2d 79 (1960).

One who refuses to pay money belonging to an estate into court in compliance with a judicial order is guilty of civil contempt. *Munson v. Luxford*, 95 Colo. 12, 34 P.2d 91 (1934).

Where the contempt order is based on the failure of the husband to obtain drug counseling, the order is remedial in nature and the trial court must specify how the husband may purge himself of that contempt. In re Zebedee, 778 P.2d 694 (Colo. App. 1988).

Post-dissolution contempt proceeding to enforce permanent orders is remedial in nature if the court's order imposes remedial sanctions such as an attorney fees award, a requirement to pay amounts due plus arrearages, and the initial suspension of a sentence to imprisonment, but the order does not contain language concerning vindication of the court's authority and dignity. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004).

Court reporters may be held in contempt for failing to produce transcripts in a timely manner. *People v. McGlotten*, 134 P.3d 487 (Colo. App. 2005).

Constructive contempt. Where a court having jurisdiction has ordered the payment of money into the registry of the court and the person to whom the order is directed fails to make the payment as commanded and contempt proceedings are instituted, the alleged contempt is constructive or indirect. *Urbancich v. Mayberry*, 124 Colo. 311, 236 P.2d 535 (1951).

The violation of the term of a decree in a quiet-title action is not contempt of court unless the decree contained a mandatory or prohibitive provision. *McMullin v. City & County of Denver*, 125 Colo. 231, 242 P.2d 240 (1952).

Interference with a water commissioner in the discharge of his official duties does not constitute contempt of court within this rule declaring disobedience to any lawful writ, order, rule, or process issued by the court to be a contempt, since he is not an officer of the court in which the decree of priorities is entered under which he is distributing water, being appointed by the governor and, to a certain extent, being under the control and direction of the irrigation division engineer and the state engineer. *Roberson v. People ex rel. Soule*, 40 Colo. 119, 90 P. 79 (1907).

No contempt where one is unable to comply with court order. There was insufficient evidence, as a matter of law, to support the conclusion of the judge that the respondents had neglected or refused to comply with the writs of habeas corpus, which was the contempt with which they were charged, where the respondents could not produce children in court against the wishes of the mother, who had continuous control and custody. *Eatchel v. Lanphere*, 170 Colo. 545, 463 P.2d 457 (1970).

A mittimus issued by the district court ordering corrections officials to take custody of state prisoners is not a basis for contempt where the corrections officials lack the ability to admit the prisoners. *People v. Lockhart*, 699 P.2d 1332 (Colo. 1985).

Correction officials were guilty of contempt for disobeying a mittimus directing them to take custody of a juvenile, where their duty to take custody of the juvenile was statutorily mandated and adequate funds would have been available throughout the juvenile's period of commitment to enable the officials to take custody of the juvenile. Under such circumstances, the existence of a blanket administrative policy of refusing admittance to such juveniles, which was instituted because the department was running out of money, is not a defense. People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

Insufficient basis for contempt and abuse of trial court's discretion where attorney made a single comment, "Sir, it does not.", to the judge concerning a reference in the Code of Professional Responsibility. The test is whether or not the comment constitutes an obstruction of the court's administration of justice or operates to bring the judiciary into disrespect or disregard. Hill v. Boatright, 890 P.2d 180 (Colo. App. 1994), aff'd in part and rev'd in part on other grounds sub nom. *Boatright v. Derr*, 919 P.2d 221 (Colo. 1996).

Record does not support judge's finding that defense counsel violated the court's previous rulings. Therefore, the court abused its discretion in finding defense counsel in contempt. *People v. Jones*, 262 P.3d 982 (Colo. App. 2011).

Contempt of a court order does not supercede requirement to set a hearing pursuant to §13-54.5-109(1)(a). The court may not sanction a party for his or her failure to comply with a court order by refusing to set or by suspending a hearing on an objection or claim of exemption. The setting of a hearing is mandatory, not discretionary. *Borrayo v. Lefever*, 159 P.3d 657 (Colo. App. 2006).

Bankruptcy stay applicable to civil contempt action for post-divorce enforcement of separation agreement. The nature of the contempt action is determined by review of the purpose and character of the sanctions imposed against the contemnor. Where the contemnor had the ability to request reconsideration of the jail time once payment was made; the sanctions were designed to force payment to a third party, not to uphold the dignity of the court; the court imposed attorney fees for the enforcement proceeding; and the court's primary consideration was the impact on third parties, the contempt action was remedial in nature. In re Weis, 232 P.3d 789 (Colo. 2010).

Contemnor cannot turn an enforcement action into a criminal matter outside of the automatic bankruptcy stay simply by requesting punitive sanctions. In re Weis, 232 P.3d 789 (Colo. 2010).

Arbitrator's award is not a "court order" for purposes of contempt statute. Where neither party petitioned the district court for an order confirming the award, the court erred in finding husband guilty of indirect contempt for failing to comply with arbitrator's order to take the parties' children to therapy. In re Leverett, 2012 COA 69, ___ P.3d ___.

III. Direct Contempt.

In the absence of statutory regulation, courts may deal with matter of contempt in a summary manner. *Guiraud v. Nevada Canal Co.*, 79 Colo. 289, 245 P. 485 (1926).

This rule permits summary punishment of a contemner for acts committed in the court's presence. *DeMott v. Smith*, 29 Colo. App. 531, 486 P.2d 451 (1971).

The summary contempt power may be used to punish acts or conduct which take place in the immediate presence of the court and are witnessed by the trial judge. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

The summary contempt power is necessary to insure and preserve decorum in the courtroom. *People v. Ellis*, 189 Colo. 378, 540 P.2d 1082 (1975).

The summary contempt power is ample to prevent disruption and provides the trial judge with the power to punish contemptuous conduct which occurs in his presence. *People v. Ellis*, 189 Colo. 378, 540 P.2d 1082 (1975).

Design of contempt power. The power of a judge to punish contempt committed in his presence is not designed to protect his own dignity or person, but to protect the rights of litigants and the public by ensuring that the administration of justice shall not be thwarted or obstructed. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

Summary punishment for contempt is permitted because a court could not properly administer justice if disturbances within the courtroom could not be suppressed by immediate punishment. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

Punishment for contempt can only be imposed summarily when a direct contempt is committed; that is, when the judge has personal knowledge of the act which has disrupted court proceedings or demonstrated the contemner's disrespect for the court. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

Summary punishment for contempt of court must be strictly confined to those instances where the contemptuous conduct occurs in open court and is seen or heard by the trial judge. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973); *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

Attorney's alleged lack of preparation for a hearing was indirect, not direct, contempt, and therefore summary punishment was improper. *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

Fact that judge ordered a hearing two days after occurrence of allegedly contemptuous behavior was evidence that judge considered the contempt indirect rather than direct. *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

A court may hold a person in direct contempt only when the court has either given prior warning that a person's behavior, if repeated, will constitute contempt and the contemnor persists in such behavior or the person's conduct is so extreme that no warning is necessary. *People v. Aleem*, 149 P.3d 765 (Colo. 2007).

If conduct amounts to a direct contempt committed in the presence of the court, the record must show, with reference to the matter allegedly constituting the contempt, what actually happened with particularity. *Pittman v. District Court*, 149 Colo. 380, 369 P.2d 85 (1962).

Where full evidentiary hearing not necessary. Where the judge is aware of the contemptuous conduct from personal observation, where no lawful justification exists for the contemptuous behavior, and where the penalty is not of the type that can be mitigated by any evidence offered, a full-fledged evidentiary hearing is not necessary and summary procedure is appropriate. *People v. Lucero*, 196 Colo. 276, 584 P.2d 1208 (1978).

Where a judgment does not recite the facts constituting the contempt, the judgment is not properly supported. *Handler v. Gordon*, 108 Colo. 501, 120 P.2d 205 (1941).

This rule requires the order of commitment to recite the facts only where summary punishment is inflicted. *Shore v. People*, 26 Colo. 516, 59 P. 49 (1899); *Eykelboom v. People*, 71 Colo. 318, 206 P. 388 (1922).

Cases of criminal contempt are not within the provisions of this rule requiring the order of commitment to recite the facts only where summary punishment is inflicted. *Eykelboom v. People*, 71 Colo. 318, 206 P. 388 (1922).

For cases of criminal contempt for refusal to answer to grand jury question analogized to this rule, *see Smaldone v. People*, 158 Colo. 7, 405 P.2d 208 (1965), cert. denied, 382 U.S. 1012, 86 S. Ct. 616, 15 L. Ed. 2d 527 (1966); *see also Salardino v. People*, 158 Colo. 12, 405 P.2d 211 (1965), cert. denied, 382 U.S. 1012, 86 S. Ct. 617, 15 L. Ed. 2d 527 (1966); *Quintana v. People*, 158 Colo. 14, 405 P.2d 212 (1965), cert. denied, 382 U.S. 1013, 86 S. Ct. 618, 15 L. Ed. 2d 527 (1966); *Smaldone v. People*, 158 Colo. 16, 404 P.2d 276 (1965); *Smaldone v. People*, 158 Colo. 21, 404 P.2d 279 (1965); *Tomeo v. People*, 158 Colo. 26, 404 P.2d 287 (1965).

Trial judge has power to punish summarily for contempt any lawyer who in his presence willfully contributes to disorder or disruption in the courtroom. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

Voluntary appearance in court subjects one to contempt power of court. Where defendant was served an unsigned copy of summons and default judgment was therefore rendered invalid, defendant's voluntary appearance in court submitted him nevertheless to the jurisdiction of the court and would support a contempt judgment where he was found to have committed perjury in the presence of the court. *Brown v. Amen*, 147 Colo. 468, 364 P.2d 735 (1961).

Contempt sentence of contemnor who has left the court will be upheld. Where the contempt is a direct one made in the presence of the court and the court proceeds at once to try the contemnor and sentence him, such

sentence will be upheld, though made after the contemnor has left the presence of the court. *Shotkin v. Atchison, T. & S. F. R. R.*, 124 Colo. 141, 235 P.2d 990 (1951), cert. denied, 343 U.S. 906, 72 S. Ct. 638, 96 L. Ed. 1325 (1952).

Refusal of witness receiving immunity to supply grand jury testimony. A witness who, despite receiving immunity, persists before a trial court judge in refusing on fifth amendment grounds to supply grand jury testimony, commits contempt "in the presence of the court" and may be punished summarily. *People v. Lucero*, 196 Colo. 276, 584 P.2d 1208 (1978).

A court has the right to punish one summarily for contempt for manifest perjury committed in the court's presence where it knows judicially that his testimony was false. *Eykelboom v. People*, 71 Colo. 318, 206 P. 388 (1922); *Murer v. Rogowski*, 29 Colo. App. 235, 480 P.2d 853 (1971).

In order that perjury may be a contempt of court it must appear that: (1) The alleged false answers had an obstructive effect, (2) that there existed judicial knowledge of the falsity of the testimony, and (3) that the question was pertinent to the issue. *Handler v. Gordon*, 111 Colo. 234, 140 P.2d 622 (1943).

Perjurious statements do not by themselves substantially obstruct or halt a trial or demonstrate contempt for the judicial process if the court cannot judicially know that the testimony is false without the presentation of collateral evidence to establish such falsity. *Murer v. Rogowski*, 29 Colo. App. 235, 480 P.2d 853 (1971).

Where the trial court's finding of perjury is based on collateral evidence introduced by a party to impeach the other party's testimony, and not upon anything inherently incredible or self-contradictory in the other party's testimony itself, such perjury does not have the effect of substantially obstructing or halting the judicial process, and thus a contempt finding would be in error. *Murer v. Rogowski*, 29 Colo. App. 235, 480 P.2d 853 (1971).

Where a party is using delaying tactics in his request for continuance, the court should deny request rather than holding him in contempt. *Altobella v. Priest*, 153 Colo. 309, 385 P.2d 585 (1963).

Facts would not support a finding of direct contempt, where no warning was given at the time defendant allegedly made offensive statement to the court, and the primary factual foundation consisted of the defendant's responses to the courts questions. *People v. Ellis*, 189 Colo. 378, 540 P.2d 1082 (1975).

Facts supported finding of direct contempt when defendant admittedly made offensive statement during the course of proceedings even though obscenity was directed toward counsel for the People and merely overheard by the court. There was no abuse of discretion by the trial court given the fact that the defendant admitted it was inappropriate and an affront to the dignity of the court and its proceedings, and given the fact that defendant was an attorney admitted to the Bar. *People v. Holmes*, 967 P.2d 192 (Colo. App. 1998).

Oral stipulations rescinded. Behavior was not direct contempt punishable by summary proceedings, where all respondent did was to rescind a previous oral stipulation entered into in open court by directing her attorney to repudiate the stipulation. *Ealy v. District Court*, 189 Colo. 308, 539 P.2d 1244 (1975).

Provision in this rule that judgments shall be "final" refers only to extent of review. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

IV. Indirect Contempt.

Law reviews. For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990).

Contempt, which does not occur in the presence of the court, is either criminal or civil, depending on the purpose and character of the sanctions sought to be imposed in the citation. *People v. Razatos*, 699 P.2d 970 (Colo. 1985); *Groves v. District Court*, 806 P.2d 947 (Colo. 1991).

A delay in trial caused by counsel's preparation of jury instructions should have been evaluated as indirect contempt rather than direct contempt because the court did not observe or hear any of the offending behavior. The order for sanctions was set aside because none of the procedures for a hearing and the imposition of sanctions was followed by the trial court. *Martinez v. Affordable Hous. Network, Inc.*, 109 P.3d 983 (Colo. App. 2004), rev'd on other grounds, 121 P.3d 1201 (Colo. 2005).

This rule is applicable to civil contempt for violating an injunction. *Shore v. People*, 26 Colo. 516, 59 P. 49 (1899).

Those to be adjudged in contempt must be subject to court's jurisdiction. Where contempt citations were issued to officers of home for the mentally defective because they had refused admission of child ordered there by court, said officials were parties to no proceeding and had not submitted themselves to jurisdiction of court and consequently were not amenable to

its commands. *People ex rel. Dunbar v. County Court*, 128 Colo. 374, 262 P.2d 550 (1953).

A court which acquires personal jurisdiction over party in divorce proceedings has continuing "in personam" jurisdiction to modify child support orders and to enforce original custody orders through exercise power of contempt; therefore, personal service on party out of state is sufficient and party's failure to appear does not deprive court of jurisdiction or power to punish for contempt. *Brown v. Brown*, 31 Colo. App. 557, 506 P.2d 386 (1972), modified, 183 Colo. 356, 516 P.2d 1129 (1974).

Compliance with the procedure governing contempt matters is essential before jurisdiction to punish for contempt attaches. *Urbancich v. Mayberry*, 124 Colo. 311, 236 P.2d 535 (1951).

The procedural provisions of section (c) are not exclusive. In re Peper, 38 Colo. App. 177, 554 P.2d 727 (1976).

There is no fixed procedural formula for contempt proceedings; rather the polestar in determining the validity of contempt procedures is whether due process of law is accorded. In re Peper, 38 Colo. App. 177, 554 P.2d 727 (1976).

Section (c) does not mandate a conference with opposing counsel before filing a motion for an indirect contempt citation, although doing so could be useful, or even advisable. In re Cyr, 186 P.3d 88 (Colo. App. 2008).

The provision in this rule, requiring an affidavit of facts constituting contempt, is designed to meet actual contemptuous acts committed out of the presence of the court; it has no application to contempt committed in the immediate presence of the court. *Jensen v. Jensen*, 96 Colo. 151, 40 P.2d 238 (1935).

A constructive contempt must be brought to the court's attention by affidavit; this affidavit must state facts which, if established, would constitute a contempt, and if it does not do so the court is without jurisdiction to proceed. *Wyatt v. People*, 17 Colo. 252, 28 P. 961 (1892).

This provision as to affidavits is simply declaratory common-law practice, and the rule concerning the materiality of the affidavit should prevail to the same extent in the absence of statute. *Wyatt v. People*, 17 Colo. 252, 28 P. 961 (1892).

The affidavit must contain an averment that the charges were false as well as malicious. *Fort v. Coop. Farmers' Exch., Inc.*, 81 Colo. 431, 256 P. 319 (1927).

It is not necessary that the affidavit charging the offense set forth the evidence by which the general declarations therein are to be established; general declarations or ultimate facts only are required. *Guiraud v. Nevada Canal Co.*, 79 Colo. 289, 245 P. 485 (1926); In re Roberts, 757 P.2d 1108 (Colo. App. 1988).

If the petition and affidavit state facts which if true show that a contempt was committed, the court acquires jurisdiction, otherwise not. *Fort v. People ex rel. Coop. Farmers' Exch., Inc.*, 81 Colo. 420, 256 P. 325 (1927).

Where affidavit fails to state facts showing contempt, court is without jurisdiction. When an affidavit is presented as a basis of a proceeding for contempt, the court must, in the first instance, examine the same, and, if the facts presented do not show that a contempt has been committed, the court will be without jurisdiction to proceed; but if the facts are sufficient, the court may take jurisdiction, and its subsequent orders will not be reviewed for mere errors. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

Notice of charge required. A contempt sanction may not be imposed until the alleged contemner has received notice of the charge, including the nature of the act of contempt that he is alleged to have committed. *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988); *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

Right to notice of purpose of hearing. Under section (c), a defendant has the right to have notice of the purpose of the hearing and to have an opportunity to be heard. *Wright v. District Court*, 192 Colo. 553, 561 P.2d 15 (1977).

Essential to due process in contempt proceedings is the right of one to know that the purpose of the hearing is the ascertainment of whether he is guilty of contempt. In re Peper, 38 Colo. App. 177, 554 P.2d 727 (1976).

A judgment of contempt entered without affidavit, notice, or hearing is void for want of jurisdiction. *Pomeranz v. Class*, 82 Colo. 173, 257 P. 1086 (1927).

Direct criminal contempts are punishable summarily without affidavit, notice, rule to show cause, or other process. *Shotkin v. Atchison, T. & S. F. R. R.*, 124 Colo. 141, 235 P.2d 990 (1951), cert. denied, 343 U.S. 906, 72 S. Ct. 638, 96 L. Ed. 1325 (1952).

Jurisdiction over a criminal contempt charge was not lost because it was initiated by the filing of a verified information rather than by the citation procedure under this rule, which would have been the better practice. *People v. Barron*, 677 P.2d 1370 (Colo. 1984).

Motion may be included in affidavit. An affidavit containing a statement equivalent to a motion for the issuance of a citation is a sufficient "motion supported by affidavit"; the fact that the motion is included in the affidavit instead of being presented as a separate document does not invalidate it. *Shapiro v. Shapiro*, 115 Colo. 501, 175 P.2d 387 (1946).

Court must issue a citation in order to obtain jurisdiction. To obtain jurisdiction to punish for contempt based on interference with the execution of legal process or the administration of justice, it is necessary for the trial court to issue a citation commanding the respondents to show cause why they should not be held in contempt for interfering with the execution of legal process or obstructing the administration of justice. Where this is not done, the trial court has no power to punish for contempt based on the grounds of interference and obstruction. *Eatchel v. Lanphere*, 170 Colo. 545, 463 P.2d 457 (1970).

The accused can be convicted of no contempt other than that charged in the citation, since the citation for contempt plays a very important role in enabling the person charged to understandingly shape his course and prepare his defense. Eatchel v. Lanphere, 170 Colo. 545, 463 P.2d 457 (1970); *Wright v. District Court*, 192 Colo. 553, 561 P.2d 15 (1977); *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

Where contempt citation alleged only that attorney failed to prepare for hearing, court's findings referring to attorney's habits in courtroom and in his preparation and filing of motions and briefs could not stand. *Dooley v. District Court*, 811 P.2d 809 (Colo. 1991).

Even though the citation did not include all of the grounds for contempt that were specified in the verified motion attached to the citation, the court held that the issues specified in the motion could be raised as grounds for contempt because the husband received full notice of them through the motion and was not denied due process. In re Lamutt, 881 P.2d 445 (Colo. App. 1994).

Citation for failing to appear in court as directed is specific enough. A citation reciting that one is to appear on a certain day to show cause why he should not be adjudged in contempt in accordance with an attached court order citing him for contempt for failure to appear in court as directed is specific enough to enable him either to defend or explain in mitigation his absence from court. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

Hearing necessary for out-of-court contempt. In those cases where the judge did not personally observe the contemptuous conduct, a hearing is necessary

to find the facts, and the hearing enables the judge to ascertain the facts of the occurrence and permits the defendant to explain his behavior and offer evidence to mitigate the penalty. *People v. Lucero*, 196 Colo. 276, 584 P.2d 1208 (1978).

A hearing is essential to due process. When it is clear that matters happened outside the presence of the court, it is necessary to hold a hearing on the contempt charge, for a procedure which accords with due process of law is essential. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

A situation, involving a possible indirect contempt, requires, as a minimum, notice of the charge, the right to be represented by counsel, a hearing, the right to call and confront witnesses, and specific findings by the court. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

Due process is a sham when a judge is both prosecutor and judge in an indirect contempt case. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

Procedure held violative of provisions of this rule. Where the only citation served upon the defendant was that which commanded him to appear before the court "for examination upon oath on the matter of said complaint and to abide by the orders of this court entered upon said hearing"; at the time he appeared he was not informed by the citation that he was being subjected to proceedings in contempt; no order of the court had as yet been entered requiring any act on his part; on the date of his appearance, the court at one and the same time, entered the order requiring the performance of an act within 30 days, and erroneously adjudged that a warrant for the imprisonment might issue at the expiration of that time if the act commanded was not performed; this procedure was in violation of the mandatory provisions of this rule. *Urbancich v. Mayberry*, 124 Colo. 311, 236 P.2d 535 (1951).

Failure of defendant to appear as ordered by the court may constitute an indirect contempt of court. As an indirect contempt, the procedure prescribed by sections (c) and (d) must be followed. *People v. Madonna*, 651 P.2d 378 (Colo. 1982).

Attorney's appearance by telephone rather than in person at court hearing constituted indirect contempt instead of direct contempt. Attorney did nothing during telephone call to disrupt court proceedings and attorney's alleged violation was her failure to appear at a scheduled hearing. In re Johnson, 939 P.2d 479 (Colo. App. 1997).

An alleged assault by a third party could in no way constitute contempt by defendant either within or without the presence of the court, even if he "instigated" or was indirectly involved in the attack, such behavior (occurring in front of the courthouse, outside of the judge's view) would in no event be punishable under the summary procedures of this rule. *Duran v. District Court*, 190 Colo. 272, 545 P.2d 1365 (1976).

Rule held not complied with. *McMullin v. City & County of Denver*, 125 Colo. 231, 242 P.2d 240 (1952).

V. Trial and Punishment.

Law reviews. For note, "Trial by Jury in Contempt Cases", *see* 2 Rocky Mt. L. Rev. 115 (1930). For article, "Expediting Court Procedure", *see* 10 Dicta 113 (1933).

Two types of civil contempt are provided for by section (d). *Marshall v. Marshall*, 35 Colo. App. 442, 536 P.2d 845 (1975), modified, 191 Colo. 165, 551 P.2d 709 (1976).

The first type of civil contempt consists of a present refusal to perform an act in the power of the person to perform, normally constituting injury to others for whose benefit the act is required. Where such contempt is found, a court may enter a remedial order to enforce obedience consisting of an imposition of imprisonment, not for a definite time, but only until respondent performs the act which he is commanded and is able to perform. However, before a court can make a finding of contempt which would justify a remedial order, it must make findings which are supported by evidence that there is a refusal to perform the act in question, that there is a present duty to perform such act, and that there is a present ability to perform. *Marshall v. Marshall*, 35 Colo. App. 442, 536 P.2d 845 (1975), modified, 191 Colo. 165, 551 P.2d 709 (1976); In re Hartt, 43 Colo. App. 335, 603 P.2d 970 (1979).

To justify punishment for civil contempt consisting of a refusal to perform a required act for the benefit of others, the trial court must upon hearing make a finding both of the facts constituting contempt and of the present duty and ability to perform. *Marshall v. Marshall*, 191 Colo. 165, 551 P.2d 709 (1976).

There must be two findings of present duty and ability to pay: one which supports the contempt finding, and a second which justifies the imposition of a remedial order. In re Hartt, 43 Colo. App. 335, 603 P.2d 970 (1979).

The second type of civil contempt consists of conduct derogatory to the authority or dignity of the court. For such contempt, the court may enter a punitive order to vindicate its dignity, imposing a fine or imprisonment, or

both, but that punishment should be definite as to amount and time, regardless of subsequent compliance with the court order. The court must, however, make findings of fact which are supported by evidence that respondent's conduct constitutes misbehavior and that such conduct is offensive to the authority and dignity of the court. Furthermore, before a court may consider the issue of contempt which would support a punitive order the citation issued to the respondent must state that punishment may be imposed to vindicate the dignity of the court. *Marshall v. Marshall*, 35 Colo. App. 442, 536 P.2d 845 (1975), modified, 191 Colo. 165, 551 P.2d 709 (1976).

Requirement of finding that conduct offends court's dignity constitutionally grounded. Although there is no fixed procedural formula for contempt proceeding, the requirement that there be an explicit finding by the trial court that the contemner's conduct offends the dignity of the court is grounded in constitutional principles. *Lobb v. Hodges*, 641 P.2d 310 (Colo. App. 1982).

Finding need not be in exact language of rule. Although a trial court need not make a finding in the exact language of section (d), i.e., "to vindicate the dignity of the court," nevertheless, the language used must be sufficient to comply with the rule. *Lobb v. Hodges*, 641 P.2d 310 (Colo. App. 1982).

Contempt proceedings should accord due process. Although there is no fixed procedural formula for contempt proceedings, so that technical nicety is not required, courts should improvise a procedure which accords with due process of law. Essential to due process in contempt proceedings is the right of one to know that the purpose of a hearing is the ascertainment of whether he is guilty of contempt. *Austin v. City & County of Denver*, 156 Colo. 180, 397 P.2d 743 (1964).

A court violates an attorney's due process rights if the court does not provide reasonable notice of the charges and an opportunity to be heard when it delays final adjudication and sentencing on a contempt charge until after the trial that created the contempt situation. *People v. Jones*, 262 P.3d 982 (Colo. App. 2011).

Fifth amendment protection against self-incrimination operates in a contempt proceeding. *Griffin v. Western Realty Sales Corp.*, 665 P.2d 1031 (Colo. App. 1983); *People v. Razatos*, 699 P.2d 970 (Colo. 1985).

Sixth amendment right to be present at trial applies to criminal contempt proceedings. The conclusions and findings made by a presiding disciplinary judge when the respondent was not present were rejected by the court. While the record indicated that respondent had proper notice of the hearing,

it contained no affirmative waiver of his right to be present, and no findings that respondent knowingly, intelligently, and voluntarily waived his right to be present and participate at the hearing. In re Bauer, 30 P.3d 185 (Colo. 2001).

Although punitive contempt is not a common law or statutory crime, the possibility of incarceration associated with such proceedings is sufficient to require recognition and protection of the rights afforded to criminal defendants, including the right not to be called as a witness. In re Alverson, 981 P.2d 1123 (Colo. App. 1999).

Magistrate's error of requiring father to take the stand to invoke the privilege on a question by question basis after magistrate had been informed that father would assert the privilege violated father's fifth amendment right not to be called as a witness, and because the magistrate error was not harmless beyond a reasonable doubt, it required reversal of the contempt order. In re Alverson, 981 P.2d 1123 (Colo. App. 1999).

Petitioner is entitled to detailed notice and an opportunity to be heard before a contempt sanction can be imposed against her. *Ealy v. District Court*, 189 Colo. 308, 539 P.2d 1244 (1975); *Wright v. District Court*, 192 Colo. 553, 561 P.2d 15 (1977); People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

Defendant's due process rights were not violated when trial court entered judgment in the amount of accrued fines under contempt order without conducting an additional hearing. Due process entitles contemnor to an evidentiary hearing only if, in response to county's motion, he raised a genuine issue of material fact as to whether he complied with original order. Court's November 2003 contempt order put defendant on notice that remedial fines would accrue until he had complied with original July 2003 order, and county's motion in April 2006 put defendant on notice that fines had accrued for noncompliance with original order and that county had asked court to enter judgment in that amount. Defendant's response to county's motion failed to raise genuine issues of material fact that required trial court to conduct an evidentiary hearing. *Bd. of County Comm'rs for Larimer v. Gurtler*, 181 P.3d 315 (Colo. App. 2007).

Where a jail sentence may be imposed in a contempt proceeding, the alleged contemnor, if indigent, is entitled to the appointment of counsel. If a husband cited for contempt for failure to make child support payments to his former wife was refused legal services by at least two private attorneys because he was unable to pay requested fee, he was entitled to have his assets examined and considered by court in determining eligibility for court-

appointed counsel under supreme court indigency guidelines. In re Wyatt, 728 P.2d 734 (Colo. App. 1986).

The question of whether there was any willful intent to interfere with the administration of justice requires a notice and hearing as a prerequisite to a judgment of contempt. *District Att'y v. District Court*, 150 Colo. 136, 371 P.2d 271 (1962).

When a trial court renders judgment "regardless of intent", it commits error in failing to determine intent because willful intent to inconvenience and delay the court is essential to a finding of contempt where an attorney fails to appear. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

It is error for a judge who cites one for indirect contempt to also act as trial judge and prosecutor in a later hearing on the charge. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

It is proper to ask a fellow judge to take his place. Where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt in which he is involved may, without flinching from his duty, properly ask that one of his fellow judges take his place. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

A person is entitled to have a different judge hear a contempt proceeding than the judge who issued the contempt charge if there is actual bias or the appearance of bias. The appearance of bias may be shown by a running controversy between the judge and the accused. *People v. Jones*, 262 P.3d 982 (Colo. App. 2011).

Where the contempt is charged by affidavit and the contemner makes no denial thereof, the court need not examine witnesses, in the absence of a request therefor by the accused. *Zobel v. People ex rel. Kyle*, 49 Colo. 142, 111 P. 846 (1910).

In any event, the right of trial by jury does not extend to cases of contempt. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

Statutory provisions relating to change of venue have no application to proceedings to punish contempts unless such proceedings are expressly included in the written law. *Guiraud v. Nevada Canal Co.*, 79 Colo. 289, 245 P. 485 (1926).

One charged with contempt of court has no right to a change of venue. *Guiraud v. Nevada Canal Co.*, 79 Colo. 289, 245 P. 485 (1926).

The doctrine of laches is applicable to enforcement procedures for contempt. *Hauck v. Schuck*, 143 Colo. 324, 353 P.2d 79 (1960).

An accused can be convicted of no contempt other than that charged in the citation. *Harthun v. District Court*, 178 Colo. 118, 495 P.2d 539 (1972).

An order for attorney's fees is an adjunct of a finding of guilty of contempt, and so an award of attorney's fees by the trial court must be set aside if the judgment of contempt cannot stand. *Eatchel v. Lanphere*, 170 Colo. 545, 463 P.2d 457 (1970).

Awards of reasonable attorneys' fees to the person damaged by the contemner's behavior are an adjunct of a finding that the contemner is guilty of contempt and are not conditioned upon the ability to pay. In re Weisbart, 39 Colo. App. 115, 564 P.2d 961 (1977).

Imposition of attorney's fees limited. This rule does not authorize imposition of attorney's fees to recompense the contemnor, no matter how inappropriate may be the contempt proceeding initiated by the person claiming damage. *Avco Fin. Servs. of Colo., Inc. v. Gonzales*, 653 P.2d 751 (Colo. App. 1982).

This rule does not extend beyond authorization for imposition of attorney's fees against a contemnor for the benefit of the person damaged by the contempt. *Avco Fin. Servs. of Colo., Inc. v. Gonzales*, 653 P.2d 751 (Colo. App. 1982).

Attorney fees cannot be awarded as a punitive sanction in a contempt proceeding. *Eichhorn v. Kelley*, 56 P.3d 124 (Colo. App. 2002); In re Lopez, 109 P.3d 1021 (Colo. App. 2004).

Although attorney fees cannot be awarded as a punitive sanction in a contempt proceeding, attorney fees can be awarded if the case involves an agreement or contract for an award of such fees to the prevailing party. This rule does not preclude the trial court from enforcing a valid fee-shifting agreement. In re Sanchez-Vigil, 151 P.3d 621 (Colo. App. 2006).

Specific findings as to the reasonableness of attorney fees not required. In re Bernardoni, 731 P.2d 146 (Colo. App. 1986).

Trial court did not abuse its discretion in awarding plaintiff costs for travel and meal expenses related to contempt order because the costs were reasonable and necessary. *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557 (Colo. App. 2009).

Trial court abused its discretion in awarding plaintiff costs for a client fee related to contempt order because the affidavit submitted for recovery of the fee failed to establish that it was incurred solely for the related litigation. At least some portion of the fee was for general business costs; therefore, the fee is not recoverable. *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557 (Colo. App. 2009).

Plaintiff's costs and attorney fees incurred in connection with defendants' appeal of contempt order may be awarded under section (d)(2) rule since they were incurred in connection with the contempt proceedings. However, plaintiff's fees and costs incurred in connection with defendants' appeal of award of said attorney fees may not be awarded under section (d)(2) because they were not incurred in connection with the related contempt proceedings. Rather, they were incurred as a consequence of defendants' appeal of the standards applied by the trial court in awarding said fees and costs. *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557 (Colo. App. 2009).

Words apparently scandalous or offensive, but susceptible of a different construction, may be explained by the speaker or writer, and he be relieved of the charge of contempt on sworn disavowal of intent to commit it; but when the words are necessarily offensive and insulting, such disavowal, while it may excuse, cannot justify. *Hughes v. People*, 5 Colo. 436 (1880).

No contempt where "not in the power of the person to perform". Where evidence disclosed that parent was unable to make immediate payment of support for minor child ordered by juvenile court, there was no failure to perform "an act in the power of the person to perform", and contempt proceeding should have been dismissed. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

If the evidence in a contempt proceeding discloses that a party is unable to make the payments required by a support order, there is no refusal to perform an act within his power under section (d) and the contempt proceeding must be dismissed. In re Crowley, 663 P.2d 267 (Colo. App. 1983); *McVay v. Johnson*, 727 P.2d 416 (Colo. App. 1986).

Remedial contempt sanctions cannot be imposed on an attorney who failed to pay restitution ordered by the court when the master's findings did not establish the attorney's present ability to pay the ordered restitution. *People v. Razatos*, 699 P.2d 970 (Colo. 1985).

Before a remedial contempt order under section (c) can enter, the court must find that the contemnor has the ability to comply with its order and make findings that justify the imposition of the remedial sanction.

Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993); In re Estate of Elliott, 993 P.2d 474 (Colo. 2000).

A court may not impose remedial contempt sanctions without making the required finding of a present ability to comply or without including a purge clause. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004).

Exclusive penalties. Since section (d) precisely delineates the penalties to be assessed for the purpose of vindicating the dignity of the court, the only remedies available are a fine or imprisonment. *Blank v. District Court*, 190 Colo. 114, 543 P.2d 1255 (1975).

Remedial orders and punitive orders distinguished. Under section (d) of this rule, there is recognized the distinction between a remedial order, the purpose of which is primarily to enforce obedience to a writ, and a punitive order to vindicate the authority of the law and uphold the dignity of the court. In the former case the fine which may be imposed is limited to the damages and expense resulting from the contempt and is payable to the person damaged thereby, and the imprisonment which may be imposed may continue only until the contemnor shall comply with the order of the court. In the latter case the fine or imprisonment is not dependent on damage or subsequent performance but is a matter solely within judicial discretion. *Shapiro v. Shapiro*, 115 Colo. 501, 175 P.2d 387 (1946).

If punishment for contempt of court is conditioned upon the contemner's future performance of a duty he has to another person, then the contempt order is no longer punitive, but becomes remedial. In re Crowley, 663 P.2d 267 (Colo. App. 1983); *McVay v. Johnson*, 727 P.2d 416 (Colo. App. 1986).

Where sanctions could not be clearly categorized as punitive or remedial, but appeared to contain attributes of both, order was vacated and remanded. *People ex rel. Pub. Utils. Comm'n v. Entrup*, 143 P.3d 1120 (Colo. App. 2006).

One thousand dollar fine for attorney's failure to timely file jury instructions is necessary to vindicate dignity of court and is not arbitrary or vindictive. *Wooden v. Park Sch. District*, 748 P.2d 1311 (Colo. App. 1987).

Proof of willfulness need not predicate a court's order for remedial contempt sanctions. In re Cyr, 186 P.3d 88 (Colo. App. 2008).

Contempt order cannot be construed to constitute both a punitive and remedial contempt order where single sanction was imposed to compel performance of act. *McVay v. Johnson*, 727 P.2d 416 (Colo. App. 1986).

Fine in any amount is permissible for vindication of the dignity of the court, but it is made payable to the court, not to the parties. *Brown v. Brown*, 183 Colo. 356, 516 P.2d 1129 (1973).

When court levies fine, it must make findings of fact that the parties' conduct constituted misbehavior which offended the court's authority and dignity. *Bd. of Water Works v. Pueblo Water Works Employees Local 1045*, 196 Colo. 308, 586 P.2d 18 (1978).

Imposition of jail sentence could not be sustained when the trial court did not make any finding that appellant had the present ability to comply with its remedial orders for the payment of money. In re Roberts, 757 P.2d 1108 (Colo. App. 1988).

A court may imprison a receiver for contempt for failure to pay over funds as ordered. *Taylor v. Taylor*, 79 Colo. 487, 247 P. 174 (1926).

Penal sanctions imposed only to prevent obstruction of justice. A court before imposing penal sanctions for contempt should proceed with caution and deliberation as the power should be exercised only when necessary to prevent obstruction or interference with the administration of justice. *Lobb v. Hodges*, 641 P.2d 310 (Colo. App. 1982).

Confinement for contempt for longer than six months is constitutionally impermissible unless the person has been given the opportunity for a jury trial. *People v. Zamora*, 665 P.2d 153 (Colo. App. 1983).

Language of court imposing jail term for punitive contempt complies with rule. Language of trial court imposing jail term for punitive contempt that: "The reason for the punitive finding or punitive order of the court was to vindicate the dignity of this court and I think that vindication is long overdue in this case" was sufficient to comply with the requirements of this rule. In re Joseph, 44 Colo. App. 128, 613 P.2d 344 (1980).

A commitment to jail for contempt is justified for failure to pay alimony and attorneys' fees in a divorce action, but any commitment for failure of the defendant-husband to pay the plaintiff-wife for money loaned is not justified. *Harvey v. Harvey*, 153 Colo. 15, 384 P.2d 265 (1963).

Trial court can enforce its temporary maintenance and child support orders through punitive contempt proceedings, despite the fact that a judgment had entered on amounts due and not paid under such orders. In re Nussbeck, 974 P.2d 493 (Colo. 1999).

An order of imprisonment for making false report held unauthorized. An order imprisoning a quasi-receiver for making false reports, unless she pay a

judgment rendered against her based in part, at least, on rents and issues received from the property under claim of right is unauthorized. *Taylor v. Taylor*, 79 Colo. 487, 247 P. 174 (1926).

One may be imprisoned until he performs instead of a term certain. This rule, by providing that a party guilty of contempt consisting of failure to perform an act in the power of such person to perform may be imprisoned until its performance, negates a claim that one may be committed only for a term certain. *Harvey v. Harvey*, 153 Colo. 15, 384 P.2d 265 (1963).

When imprisonment of contemnor for indefinite period prohibited. Where the trial court fails to find that contemnor had resources at the time of sentence with which he could purge himself of contempt, it may not order his imprisonment for an indefinite period. In re Hartt, 43 Colo. App. 335, 603 P.2d 970 (1979).

A punitive fine or imprisonment may be imposed only if the citation so states. *Shapiro v. Shapiro*, 115 Colo. 501, 175 P.2d 387 (1946); *People v. Razatos*, 699 P.2d 970 (Colo. 1985).

Unconditional fine imposed as punitive sanction in remedial contempt proceeding was error because a separate contempt proceeding to address the failure to submit a financial affidavit as ordered was never commenced. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004).

Finding required to enter punitive order. In order for a court to enter a punitive order for contempt, it must, on supporting evidence, find that the alleged contemner's conduct constitutes misbehavior and that such conduct is offensive to the authority and dignity of the court. *Lobb v. Hodges*, 641 P.2d 310 (Colo. App. 1982).

Damages and attorney fees. Awards of attorney fees are incidental to a finding of contempt and are not conditioned upon the ability to pay. Likewise, awards of damages suffered by the contempt, plus costs, are incidental to the contempt finding and are not conditioned upon the ability to pay. In re Harris, 670 P.2d 446 (Colo. App. 1983).

In a proceeding involving only contempt for violation of a temporary restraining order, it is not proper for a court to make a restraining order permanent. *Renner v. Williams*, 140 Colo. 432, 344 P.2d 966 (1959).

The matter of dealing with contempt is within the sound discretion of the trial court, and its determination is final unless an abuse of such discretion is clearly shown. *Conway v. Conway*, 134 Colo. 79, 299 P.2d 509 (1956); *DeMott v. Smith*, 29 Colo. App. 531, 486 P.2d 451 (1971).

Trial court's decision on facts is conclusive. Where the trial court has jurisdiction, regularly pursues its authority, and there is evidence of contempt, its decision on the facts is conclusive. *Wall v. District Court*, 146 Colo. 74, 360 P.2d 452 (1961).

In the review of judgments in contempt, the supreme court goes no farther than to inquire if the court pronouncing sentence had jurisdiction of the parties and of the offense charged. *Wall v. District Court*, 146 Colo. 74, 360 P.2d 452 (1961).

Hearing required before revocation of suspended contempt sentence. In re Bernardoni, 731 P.2d 146 (Colo. App. 1986).

Review must be within the appellate court's jurisdiction. The supreme court has no jurisdiction to review the judgment of the district court imposing a penalty for a contempt of court civil in character, unless some question is involved such as is required to give the supreme court jurisdiction in other civil actions. *Naturita Canal & Reservoir Co. v. People ex rel. Meenan*, 30 Colo. 407, 70 P. 691 (1902).

Appellate court lacked jurisdiction to consider defendants' appeal of contempt order because defendants did not file a timely appeal of the order. Order entering remedial sanctions against defendant was final and appealable under this rule, but defendants failed to file appeal within 45 days after the order was entered pursuant to C.A.R. 4(a) and section (f) of this rule. *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557 (Colo. App. 2009).

Review is confined to whether the trial court had jurisdiction and regularly pursued its authority. *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889); *Guiraud v. Nevada Canal Co.*, 79 Colo. 289, 245 P. 485 (1926); *Clear Creek Power & Dev. Co. v. Cutler*, 79 Colo. 355, 245 P. 939 (1926); *Fort v. Coop. Farmers' Exch., Inc.*, 81 Colo. 431, 256 P. 319 (1927); *Fort v. People ex rel. Coop. Farmers' Exch., Inc.*, 81 Colo. 420, 256 P. 325 (1927).

An order in contempt proceedings, if beyond the power of the trial court to enter, is subject to review. *Wyatt v. People*, 17 Colo. 252, 28 P. 961 (1892); *Taylor v. Taylor*, 79 Colo. 487, 247 P. 174 (1926).

Although, in reviewing a contempt proceeding, the appellate court is not privileged to pass upon the weight or sufficiency of the evidence but is limited to the question of whether the trial court had jurisdiction. *Coolidge v. People ex rel. District Att'y*, 72 Colo. 35, 209 P. 504 (1922).

Mere irregularities are not reviewable. Where in a proceeding to punish a contempt the court acts within its jurisdiction, mere irregularities are not reviewable on error. *Zobel v. People ex rel. Kyle*, 49 Colo. 142, 111 P. 846 (1910).

However, the punishment may be reviewed to determine whether excessive or arbitrary. While punishment for contempt which consists of conduct derogatory is discretionary, the supreme court not only may inquire as to jurisdiction and regularity of procedure, but also may determine whether or not the punishment imposed is so excessive and incommensurate with the gravity of the offense as to be arbitrary and vindictive. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Combining contempt and alimony findings inappropriate. Where respondent court combined its ruling on contempt issue with its decision to terminate alimony, there is no alternative but to remand this case to the trial court to take further evidence on the alimony issue and to make more appropriate findings. *Blank v. District Court*, 190 Colo. 114, 543 P.2d 1255 (1975).

Punishment held excessive. *Shotkin v. Atchison, T. & S. F. R. R.*, 124 Colo. 141, 235 P.2d 990 (1951), cert. denied, 343 U.S. 906, 72 S. Ct. 638, 96 L. Ed. 1325, reh'g denied, 343 U.S. 937, 970, 72 S. Ct. 772, 1062, 96 L. Ed. 1350, 1365 (1952).

Punishment held arbitrary and oppressive. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Applied in *Schnier v. District Court*, 696 P.2d 264 (Colo. 1985).

For failure to comply with deposition order, see C.R.C.P. 37(b)(1); for disobedience of writ of habeas corpus by jailer, see §13-45-113, C.R.S.; for refusal to answer questions of the assessor concerning taxable property, see §39-5-119, C.R.S.