

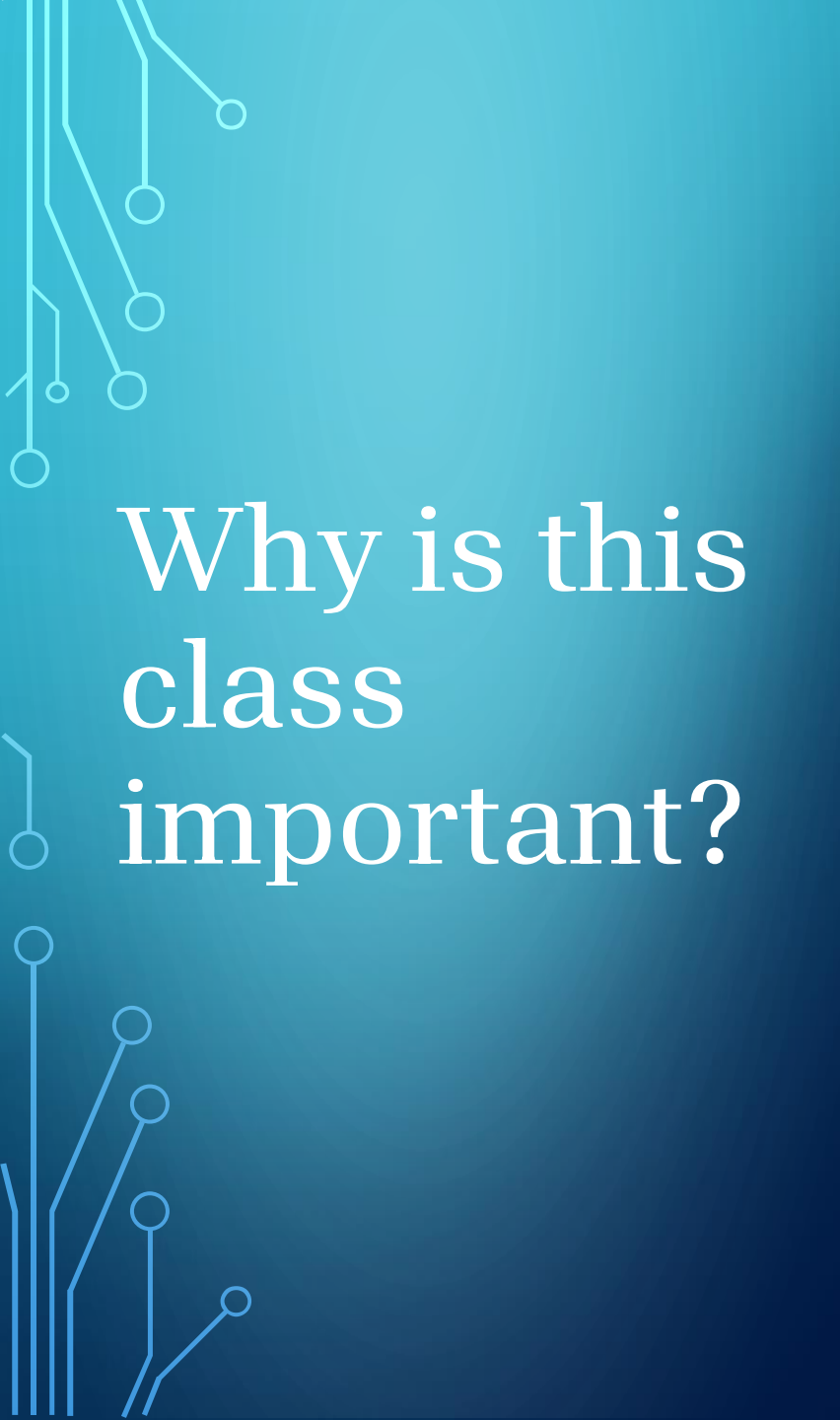


CONTEMPT OF COURT

Judge Cedric A. Kerns (ret)

Winter NJLJ 2025

Friday, 1/31



Why is this
class
important?

#1 reason judges get in
trouble for what they do on
the bench is **abuse of power**

#1 abuse of power is
“**misuse of contempt**”

What we should cover

What is Contempt?

How to avoid finding someone in Contempt

What is contempt?

NRS 22.010

Acts or omissions constituting contempts. The following acts or omissions shall be deemed contempts:

[1911 CPA § 452; RL § 5394; NCL § 8941]—
(NRS A 1983, 843)

1. Disorderly, contemptuous or insolent behavior toward the judge while the judge is holding court, or engaged in judicial duties at chambers...

2. A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of the trial or other judicial proceeding.

3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

4. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or judge at chambers.

6. Disobedience of the order or direction of the court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which the juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence the verdict.

7. Abusing the process or proceedings of the court or falsely pretending to act under the authority of an order or process of the court.

Distinction is important – Look at purpose

Civil Contempt

- Coerce compliance- future action
- Burden of proof- Preponderance of the evidence

Criminal Contempt

- Punish contemnor- past action
- Burden of Proof- Beyond a reasonable doubt

DIRECT/INDIRECT CONTEMPT

Direct

- Within the “ocular view” or immediate vicinity
- Jurisdiction

Indirect

- Not within the “ocular view”
- No jurisdiction w/o affidavit

Direct contempt - Order

1. If a contempt is committed in the immediate view and presence of the court or judge at chambers, the contempt may be punished summarily. If the court or judge summarily punishes a person for a contempt pursuant to this subsection, the court or judge shall enter an order that:

(a) Recites the **facts** constituting the contempt in the immediate view and presence of the court or judge;

(b) Finds the person **guilty** of the contempt; and

(c) Prescribes the **punishment** for the contempt.

- **Must also have date and signature**

1 IN THE MUNICIPAL COURT OF THE CITY OF LAS VEGAS

2 COUNTY OF CLARK, STATE OF NEVADA

3 CITY OF LAS VEGAS,) Case No.: 23-006646
4 Plaintiff,) Dept.: 4
5 vs.) **ORDER AND JUDGMENT**
6 ~~BOEDICKER, KENT~~)
7 ID: 6052949,)
8 Defendant.)

9
10 This matter having come on video court in Department 4 on June 27, 2023 and the
11 Defendant being present and represented by the Public Attorney, it is found by the Court
12 that the Defendant is guilty of Contempt of Court for:

13 Disrupting court by saying, "Fuck me again"

14 Wherefore, it is ORDERED and ADJUDGED that the Defendant is guilty of
15 Contempt of Court and shall be sentenced to twenty-five (25) days in jail with zero (0)
16 days credit for time served.

17 Defendant disrupted court again by saying, "Brown, it's not my fault you didn't
18 get laid last night."

19 Wherefore, it is ORDERED and ADJUDGED that the Defendant is guilty of
20 Contempt of Court and shall be sentenced to another twenty-five (25) days in jail with
21 zero (0) days credit for time served for a total of fifty (50) days in jail with zero (0) days
22 credit for time served.
23

24 DATED June 27, 2023.

25 _____
Judge Bert Brown
Municipal Court Judge



Date



Finding



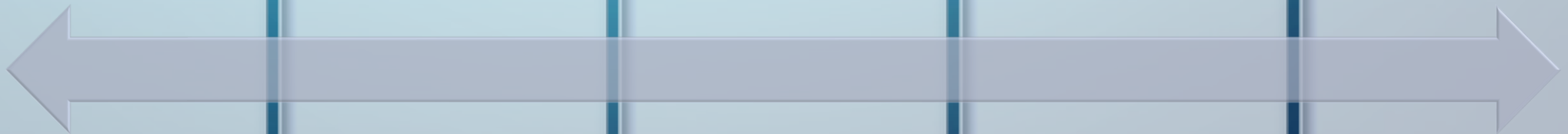
Reason



Sentence



Signature



A decorative graphic on the left side of the image, consisting of white lines and circles on a blue background, resembling a circuit board or a network diagram. The lines are vertical and horizontal, with some diagonal connections, and the circles are small and white.

DON'T
MAKE IT
PERSONAL

A thin, vertical white line on the right side of the image, extending from the top to the bottom of the text area.



'60 Days In': Former Indiana sheriff Jamey Noel found in contempt of court | FULL
<https://www.youtube.com/watch?v=AdRVTQ7kDxE>

Indirect Contempt

2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, **an affidavit must be presented to the court or judge of the facts constituting the contempt,** or a statement of the facts by the masters or arbitrators.
3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt **over the objection of the person.** The provisions of this subsection do not apply in:
 - (a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree was entered in such court by a predecessor judge thereof 10 years or more preceding the bringing of contempt proceedings for the violation of the judgment or decree.
 - (b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district.



Determine that the affidavit accompanying the motion:

1. states with specificity factual allegations that will support a

- finding of contempt.

2. contains the required verification by a person with personal

- knowledge of the facts alleged.

Affidavit

1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.

2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, **a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both.**

3. In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.

**** Can not give more than 179 days without a jury**

[1911 CPA § 461; A 1913, 117; NCL § 8950]—(NRS A 2005, 62)

Penalty




A&E



NEVER GIVE MORE THAN 179 DAYS

The Supreme Court has adopted the standard set forth in 18 U.S.C. § 1(3) regarding the definition of a "petty offense," insofar as it has ruled that imprisonment for no more than six months for contempt is constitutionally permissible without a jury trial. *Taylor v. Hayes*, 418 U.S. 488 (1974).

A court may not, during the course of a trial, impose successive summary contempt orders resulting in an aggregate sentence of imprisonment of more than six months in the absence of a jury trial. See *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974).



NRS 199.340

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

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

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

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

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

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

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

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

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

[1911 C&P § 103; RL § 6368; NCL § 10052]

CONTEMPT IS AND SHOULD BE THE **LAST RESORT**. CONTROL OF THE COURTROOM IS ESSENTIAL TO THE ADMINISTRATION OF JUSTICE. ALTHOUGH CONTEMPT MAY BE THE ULTIMATE TOOL OF CONTROL, IT IS THE LAST ONE TO USE. **“BECAUSE IT CARRIES WITH IT A ‘HEIGHTENED POTENTIAL FOR ABUSE’**, THE CONTEMPT POWER SHOULD BE THE LAST RESORT OF A JUDGE IN MAINTAINING CONTROL IN HIS COURTROOM.” (KLOEPFER V COMMISSION (1989) 49 C3D 826, 858.)

What is our water?

American Judges Association

Procedural Fairness: A key Ingredient in Public Satisfaction

https://www.amjudges.org/__data/assets/pdf_file/0030/96627/Procedural-Fairness-and-Public-Satisfaction.pdf

Quick Review

Direct Contempt

In our ocular view – no affidavit needed – almost always considered criminal contempt because they are punished for past behavior.

Indirect Contempt

You did not witness the violation- must have an affidavit for jurisdiction- can be either civil or criminal contempt- depending on your purpose.



QUESTIONS?