

Contempt Powers of a Justice of the Peace

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Agenda

- Introduction
- Contempt Powers
- Types of Contempt
 - Direct Contempt
 - Indirect Contempt
- Contemnor Presence and Procedure
- Punitive vs. Coercive Contempt
- Judgment and Order of Commitment
- Conclusion

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Resource

- Officeholding and Ethics
Deskbook, pages 39-48
- Legal Question Board
- Legal Calls

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Contempt Powers

- Government Code Section 21.002
 - Main statutory authority on contempt
- Common Law
 - Primarily governs contempt in Texas

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Direct vs. Indirect Contempt

- Types of Contempt
 - Direct contempt
 - Indirect contempt (constructive contempt)
- Types of Punishment
 - Punitive (criminal) contempt order
 - Coercive (civil) contempt order
- Determining Contempt Type
 - Direct or indirect based on location (in court or outside)
- Nature of Punishment
 - Depends on purpose (punish disrespect/violation or enforce compliance)

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General Contempt

Two main types

- Direct Contempt
- Indirect Contempt

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Direct Contempt of Court

- Occurs in the presence of the court
- Judge has personal knowledge of the behavior

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Examples of Direct Contempt

- Outbursts by trial participants or officers
- Disruptive behavior by observers
- Violating a judge's orders
- Repeatedly arguing
- Attempting to bribe or influence a juror in court

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Indirect Contempt of Court

- Indirect contempt of court occurs outside the presence of the court.
- Language that contemnor was supposed to abide by must be clear, specific, unambiguous and **in writing**
- Indirect contempt of court can have both civil and criminal consequences.

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Examples of INDirect Contempt

- Disobeying a court order
- Failing to pay a fine
- Failure to comply with a subpoena
- Disrupting a court proceeding outside of the court

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Direct contempt

Court Session and Immediate Punishment

- Direct Contempt
 - Contempt can be held during trial for disrespectful behavior by **Contemnor**
- Immediate Punishment
 - Punishment usually happens immediately after contempt
 - No formal notice needed if contempt occurs in judge's presence
 - Immediate punishment helps maintain court order
 - Notice of hearing required if immediate punishment is not necessary (hearing is over)

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Indirect / Constructive Contempt

NOTICE AND HEARING RIGHTS

- Written Notice Requirement
 - Details of how, when, and by what means the alleged contempt was committed
- Show Cause Hearing
 - Guilt must be proven beyond a reasonable doubt
 - Accused can present defenses or waive rights
 - Due process must be satisfied

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Indirect / Constructive Contempt

NOTICE AND HEARING RIGHTS

- Rights of the Accused
 - Right against self-incrimination
 - Right to hire and be represented by counsel
- Jury Trial and Counsel Appointment
 - Right to jury trial if potential jail time is six months or more
 - Right to appointed counsel if indigent and potential jail time is six months or more

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Contemnor Presence and Procedure

- Right to be Present
 - Fundamental right for contemnor
 - Justice of the peace cannot find indirect contempt without appearance
- Meaning of Appearing Before the Court
 - Does not necessarily mean physical presence
 - Hearing requirement can be satisfied by affidavits

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Contemnor Presence and Procedure

- Procedure for Non-Appearance
 - Issue an attachment if contemnor fails to appear after proper notice
 - Hold a hearing once contemnor is brought before the court

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Punitive vs. Coercive Contempt

- Punitive Contempt Orders
 - Punishes the contemnor for their behavior or act
 - Applies to both direct and indirect contempt
 - Unconditional punishment
 - Justice court penalties:
 - \$100 fine
 - Up to three days in jail
 - Both fine and confinement
- Coercive Contempt Orders
 - Seeks to remedy a violation
 - Encourages obedience with a court order
 - Contemnor must comply or remain in jail

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Punitive Contempt Orders

- Definition of Punitive Contempt Orders
 - Punish the contemnor for their behavior or act
 - Applicable to both direct and indirect contempt
- Characteristics of Punitive Contempt Orders
 - Unconditional punishment
 - Punishment remains even if compliance is achieved later
- Punishments in Justice Court
 - \$100 fine
 - Up to three days in jail
 - Both fine and confinement

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Coercive Contempt Orders

- Definition of Punitive Contempt Orders
 - Punish the contemnor for their behavior or act
 - Applicable to both direct and indirect contempt
- Characteristics of Punitive Contempt Orders
 - Seeks to remedy a violation and encourage obedience with court order
 - Contemnor must obey order or remain in jail until they obey

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Coercive Contempt Orders

- Punishments in Justice Court
 - can be for a set period of time or an open ended amount of time (18 months max from date of confinement)
 - Right to trial if 6 months or more
 - Contemnor holds the keys to the jail

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Indirect Contempt

- Definition of Indirect Contempt
 - Occurs outside the presence of the court
 - Involves failure to obey a court order
- Requirements for Indirect Contempt
 - Willful disobedience of the court's order
 - Original court order must be clear, specific, and unambiguous
 - Order must be in writing
 - Oral orders do not meet the required specificity

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Coercive Contempt Orders

- Purpose of Coercive Contempt Orders
 - Remedy a violation of a court order
 - Encourage obedience with the court order
- Consequences for the Contemnor
 - Must obey the court order
 - Remain in jail until compliance

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Contempt by an officer of the court

- Who is an Officer of the Court
 - Attorneys representing clients or the state
 - Court reporters, clerks, bailiffs, probation officers, law enforcement
- Notice and Hearing
 - Notice must be given
 - A new judge will be holding the hearing and determine guilt or innocence
 - the justice where the contempt occurred must notify presiding judge of the administrative judicial district
 - An officer of the court must be released on his/her own PR bond until case is finalized

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Elements of Contempt Judgment

- Requirements for Contempt Judgment
 - Must be in writing
 - Include all necessary facts to show jurisdiction
 - State the facts and allegations of the contempt in definite and specific terms
 - Contain an order of commitment if the contemnor is committed to jail
 - Alternatively, a separate order of commitment must accompany the judgment

*a contemnor may be detained by bailiff or sheriff while the Justice prepares the written judgment and signs the order of commitment. Only for a reasonable amount of time

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Order of Commitment Requirements

- State any fine assessed
 - Specify the amount and reason for the fine
- Direct the bailiff to take the contemnor into custody
 - Ensure proper legal procedures are followed
- Specify how contempt can be removed
 - Compliance with the judge's orders
- Order of Commitment Requirements
 - Fully describe the contemptuous act
 - State specific jail time assessed

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NO RIGHT TO APPEAL

- If a judge holds a person in contempt of court, the ruling cannot be appealed. The only remedy is by writ of habeas corpus

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With great power comes great responsibility

- Last resort and only available when no other remedies
- Use confinement only sparingly (consider other options)
- Other options include a fine
- Also the threat of confinement is more than sufficient to get a compliance
- What alternatives have you used?

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Other Potential remedies

- Deferred Disposition Violations
- Failure to attend alcohol awareness class
- Failure to pay fines and costs

- Other issues
 - Justices of the peace can hold someone in contempt under Chapter 92 of the Property Code when person fails to obey

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Contempt in Truancy

- If a parent fails to attend a truancy hearing, they can face a contempt hearing (Family Code § 65.253)
- If a child fails to obey a remedial order, or if child is in direct contempt of court, after providing notice and opportunity for hearing, the court may hold the child in contempt and order either both or the following:
 - The child pays a fine not to exceed \$100
 - Suspend the child's driver's license or permit, or DPS will not issue a license until the child complies with the order

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Example 1

- During a heated trial, Judge Gavelbottom rules against a motion made by the defense, and the defendant, Mr. Rocco Fizzlebottom, visibly frustrated, stands up abruptly. Ignoring his attorney, Mr. Alvin T. Noodlenose, who is frantically tugging at his sleeve to calm him, Rocco raises his voice, shouting profanities at Judge Gavelbottom and accusing the court of “carnival-level bias.” His voice echoes through the courtroom, causing the jurors and observers, including Mrs. Mabel Snickerdoodle in the front row, to gasp in shock. Judge Gavelbottom orders him to sit, but Rocco slams his hands on the table and sarcastically calls her “Your Royal Crankiness.” This outburst is a clear case of direct contempt of court.
What type of contempt is this? Direct or indirect?

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Example 2

- Judge Wilhelmina Wobbleplonk issued a writ of reentry, requiring Bertie McFluffernutter to let Alvin T. Noodlenose back into his apartment. However, Bertie decided the judge “didn't understand what was going on” and ignored the order entirely. When questioned later, he told Officer Dilly Dinglenuts he thought the court order was “just a friendly suggestion.”
- What type of contempt is this? Direct or indirect?

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Example 3

One evening after court adjourned, Mr. Jimmy Bluster encountered Judge Prudence Peabody in a nearby café. Upset over a recent ruling, he loudly accused her of bias and incompetence, creating a scene. His behavior was disrespectful, and a little unnerving.

- What can be done about this? Is it direct or indirect contempt?

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Thank You!

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