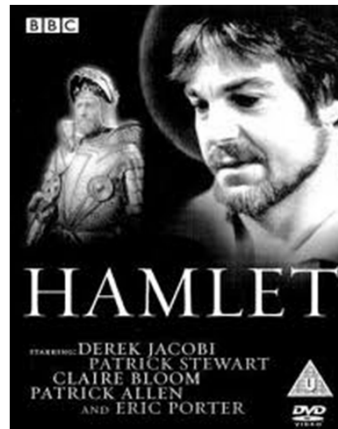


Contempt

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For Courts, Contempt is Existential



In *Anderson v. Dunn*, 6 Wheat. 204, 227, (1821) it was said that ‘courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates.’ So, in *Ex parte Robinson*, 19 Wall. 505, 510 (1873): ‘The power to punish for contempts is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts; and consequently to the due administration of justice.

In *Re Terry*, 128 US 289 (1888)

“In every species of contempt there is said to be necessarily inherent an element of offense against the majesty of the law savoring more or less of criminality.” 275 NC 503.

Rank, In Your Own Mind, These Tools
for Handling Attorney Misconduct,
From Most Serious to Least Serious, or
From Most Effective to Least Effective

- Case specific sanctions
- Attorney discipline by judge
- State Bar
- Contempt

Cautions from USSC

- The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil . . .
- (T)he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be [people]. . . of fortitude, able to thrive in a hardy climate.'
- 'Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.'

In Re Little, 404 US 553 (1972)

Unusual Features of Summary Contempt

- Court system is the victim of the behavior
 - In most other settings would not want the victim being the prosecutor, judge and jury
 - Due process at its least protective
- Presumes that judge is knowledgeable, dispassionate, and unbiased
- Places very high value on court integrity

Questions to Ask

- What is the purpose of this contempt?
 - Punish—criminal
 - Coerce compliance—civil
- Criminal contempt can occur in a civil or criminal case
- Civil contempt can occur in a civil or criminal case

Questions to Ask-Criminal

- Where did it happen?
 - In court—direct
 - Out of court—indirect
- What process must be used?
 - Direct—summary or plenary, in court's discretion
 - Indirect—plenary

Most Common Criminal Contempt

- Interrupting a sitting court's proceedings
- Disrespect for the court, in its presence
- Disobedience of court order
- Failure of court officer to perform duties
- Failure to comply with the schedules and practices of the court

All violations must be either **willful** (or, in some cases, grossly negligent)

Summary vs. Plenary

- Summary
 - Judge is witness, so procedure is minimal
 - Statutory right to be heard before judgment
 - No right to counsel
 - Contemporaneous with conduct
- Plenary
 - Judge should consider who hears matter
 - Show cause
 - Judge may appoint prosecutor
 - Full hearing

Blackstone

'If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination. But in matters that arise at a distance, and of which the court cannot have so perfect a knowledge, . . . they either make a rule on the suspected party to show cause why an attachment should not issue against him, or, in very flagrant instances of contempt, the attachment issues in the first instance, . . . thereupon the court confirms and makes absolute the original rule.' 4 Bl. Comm. 286., quoted in *Ex Parte Terry*, 128 US 289 (1888).

Proof

- Standard—Beyond a reasonable doubt
- Burden—On state

Appeal

- If in district, magistrate or clerk, to superior court *de novo*
- If in superior court, to appellate courts, on the record

Bond on Appeal

- When appeal to Superior Court, power to modify conditions governed by:
 - GS 15A-534: District court has no authority after “the noting of an appeal”
 - GS 15A-534: Superior court has authority “after a case is before the superior court”
 - Other statute (GS 7A-290 and 15A-1431) give authority to “the judge”

Civil Contempt

- Solely to coerce compliance
- Must be willful and have ability to comply
- Process
 - Show cause
 - Court initiated
 - Party initiated
 - Motion of party
- Preponderance of evidence
- Burden on movant, unless court initiates proceeding

Clerks and Contempt

- To compel will—GS 28A-2A-4
- To recover decedent's property—GS 28A-15-12
- To compel inventory—GS 28A-20-2
- To compel accounting—GS 28A-21-4
- To compel distribution of small estates proceeds--28A-25-4

Clerk and Contempt, Cont.

- **To compel status reports. GS 35A-1244**
- **To compel inventory or account. GS 35A-1262.**
- **To compel accounting. GS 35A-1265**
- **Elective share "standstill order". GS 30-3.5**
- **Compel reports in foreclosure sales. GS 45-21.14**
- **Compel report or accounting in judicial sales. GS 1-339.12**

Contempt is a means, not an end

- The end that is sought is respect for the court and professionalism
- Contempt is at apex of judicial discretion
 - Never use, lose
 - Abuse , lose
- How much is enough?