Criminal Contempt for the Civil Practitioner

BY ADAM MUELLER

This article describes the unique substantive and procedural components of criminal (punitive) contempt and offers advice for civil practitioners who are asked to defend a criminal contempt allegation arising from a civil case.

Despite the name, criminal contempt allegations most commonly arise in civil cases. For that reason, a civil practitioner may be called upon to a defend a client accused of criminal contempt (the alleged contemnor), or the civil practitioner may be the alleged contemnor. In either case, practitioners are cautioned against treating a criminal contempt case as an adjunct to the civil proceeding in which it arose. A contempt conviction can result in steep penalties, including fines and incarceration, so a strong defense by a knowledgeable practitioner is essential.

This article outlines the unique substantive and procedural aspects of criminal contempt proceedings, focusing on the constitutional rights of alleged contemnors. It also offers practical advice for attorneys defending criminal contempt charges.

Contempt Generally

Every court has the inherent power to protect its "efficient function, dignity, independence, and integrity."[1] That inherent power includes the authority to hold a person in contempt of court for conduct that interferes with the administration of justice.[2]

> Colorado contempt proceedings are governed by Rule 107 of the Colorado Rules of Civil Procedure.[3] The rule defines contempt as [d]isorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbances 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.[4]

In turn, the rule distinguishes between two types of contempt: direct and indirect.[5]

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Direct Contempt

Direct (or summary) contempt is that which "the court has seen or heard."[6] In other words, it is disobedient conduct performed under a court's metaphorical nose, usually in a physical courtroom. For example, an attorney's purposeful introduction of evidence that a court has found inadmissible may constitute direct contempt.[7]

Most direct contempt findings follow repeated court warnings to desist from the contumacious conduct.[8] Sometimes, however, the conduct is so extreme that no advance warning is necessary.[9] A trial court has the power to impose direct contempt punishment immediately for courtroom behavior that obstructs justice, offends the court, or otherwise disturbs the peace.[10] The rationale behind this instantaneous authority is that courts must be able to properly administer justice at all times, which is possible only if courtroom disturbances can be addressed, punished, and dispensed with immediately.[11]

Unlike the allegations in most legal proceedings, direct contempt, by nature, is personally observed by a judge. For this reason, direct contempt may be punished summarily,[12] and there is no prescribed burden of proof for summary punishment. In other words, the only evidence required for a judge to impose summary punishment on a direct contemnor is the judge's own personal, impartial observations.[13] Due to this departure from traditional due process, courts have been cautioned to use summary punishment for direct contempt sparingly and only when necessary.[14]

“For example, in *People v. Aleem*, the trial court purported to hold Aleem in direct contempt after he refused to remove his Stanley Tookie Williams T-shirt, arrived 37 minutes late to court, yelled and called the court names such as ‘demonocracy,’ and orchestrated his supporters to stand and chant.”

For example, in *People v. Aleem*, the trial court purported to hold Aleem in direct contempt after he refused to remove his Stanley Tookie Williams T-shirt, arrived 37 minutes late to court, yelled and called the court names such as “demonocracy,” and orchestrated his supporters to stand and chant.[15] At first, the court warned Aleem that it would hold him in contempt if he did not remove his T-shirt, but it did not issue any specific warnings to cease the other conduct.[16] The court then had a change of heart, subsequently withdrawing its T-shirt removal order and permitting Aleem to wear the T-shirt for the rest of the day.[17] But following this withdrawal, the court reversed course again, ultimately holding Aleem in direct (summary) contempt for *all* his conduct. The court refused to permit Aleem to offer any defense to the contempt allegations.[18] Instead, it allowed Aleem and his attorney to speak only about what sentence the court should impose.[19]

Aleem filed a CAR 21 petition for a rule to show cause, which the Colorado Supreme Court granted and made absolute, thus reversing the trial court’s contempt finding.[20] The Court faulted the trial court for failing to warn Aleem before holding him in contempt for arriving late to court, yelling, and organizing a demonstration by his supporters.[21] And because the district court retracted its order to remove the T-shirt, its prior warning to Aleem about that conduct was ineffective.[22] Reasoned the Court:

> When the trial court retracted its contempt finding and allowed Aleem to wear his shirt in front of the jury, it nullified any remedial or punitive justification for making him remove his shirt. If the court’s initial purpose was remedial, then sanctioning Aleem after the trial for refusing to remove his T-shirt served no legitimate purpose because there was no immediate need to restore courtroom order at the show cause hearing. Likewise, if the court’s purpose for sanctioning Aleem at trial was punitive, then allowing him to wear the shirt at trial undermined this purpose. The retraction of the contempt order followed by a finding of punitive contempt after the fact for conduct that the court expressly allowed appears fundamentally unfair.[23]

The Court concluded by warning district courts to use self-restraint when employing their contempt power.[24]

Indirect Contempt

Indirect contempt is “[c]ontempt that occurs out of the direct sight or hearing of the court.”[25] Unlike direct contempt, which a court may summarily punish, indirect contempt proceedings require notice and a hearing at which the alleged contemnor has a chance to defend against the allegations.[26]

Indirect contempt includes, for example, failing to make child support payments, failing to appear in court,[27] or failing to adequately prepare for court proceedings.[28] Because the requirement that direct contempt occur in the presence of the court is narrowly construed,[29] any contumacious conduct that does not fall within that narrow in-presence category is considered indirect contempt.[30] Unlike the in-presence misconduct in direct contempt proceedings, in indirect contempt proceedings the judge has not “[seen] or heard the contumacious conduct.”[31] Thus, process is due to alleged *indirect* contemnors, and summary punishment is not permitted.[32]

The Colorado Court of Appeals’ decision in *In re Marriage of Johnson* is illustrative.[33] There, an attorney in a divorce proceeding filed a motion for continuance and requested permission to appear by telephone from out-of-state.[34] Although the court had not ruled on her motion, the attorney telephoned the court on the day of the hearing.[35] The judge found that the attorney’s conduct constituted direct contempt for failure to appear.[36]

The Court of Appeals disagreed, holding that the trial court erred in its finding of direct contempt.[37] The appellate court reasoned that although she was “heard” in court by telephone, the attorney’s “allegedly contemptuous actions were committed outside the presence of the court.”[38] The court concluded that summary punishment for contempt is only appropriate where there is an immediate disturbance in the courtroom that obstructs the administration of justice—something that telephoning into a hearing is not.[39] As an indirect contempt defendant, the attorney had a right to notice

of the contempt charge, a right to a hearing on that charge, and a right to have a different judge preside over the contempt proceeding.[40]

Civil (Remedial) Contempt versus Criminal (Punitive) Contempt

The indirect-direct contempt dichotomy distinguishes between types of contumacious conduct. A second dichotomy distinguishes between the types of sanctions that follow a finding of contempt: remedial or punitive.[41]

Remedial sanctions are those imposed to compel compliance with a court order or to compel an individual to act a certain way.[42] Remedial sanctions are civil in nature. True to their name, punitive sanctions are punitive—they serve to punish. Punitive sanctions are reserved for contempt that is particularly offensive to the dignity of the court, requiring punishment in the form of a fine, incarceration, or a combination of the two.[43] Punitive sanctions are criminal in nature, and they are designed to "vindicate the dignity of the court by punishing the contemnor."[44]

Whether a contempt sanction is civil or criminal depends on "the purpose and character of the sanctions imposed."[45] If the contemnor can simply do as the court says to avoid further sanction, then the sanction is remedial and civil.[46] But if the court imposes a penalty "without any provision for purge of the contempt," such as a definite period of incarceration or an unconditional fine, and if that penalty "does not serve to redress a private right," then the sanction is punitive and criminal.[47]

The Constitutional Components of a Criminal (Punitive) Contempt Case

Because a criminal (punitive) contempt conviction may result in a deprivation of liberty in the form of a fine or even a jail sentence, the constitution guarantees a multitude of rights to individuals accused of criminal contempt.

Elements and Burden of Proof

The US and Colorado Constitutions protect due process of law.[48] Because punitive contempt is criminal in nature, a person can be convicted only upon proof beyond a reasonable doubt.[49] This proof must be "[m]ore than a modicum of evidence."[50] It must be both "substantial and sufficient."[51]

There are four elements to a punitive contempt charge: (1) the existence of a lawful order of the court, (2) the contemnor's knowledge of the order, (3) the contemnor's ability to comply with the order, and (4) the contemnor's willful refusal to comply with the order.[52]

Moreover, criminal contempt proceedings protect the court's dignity by imposing tangible punishments for conduct that exceedingly disrespects or disregards the court's authority.[53] Thus, before imposing punitive sanctions, the court "must make an express finding that the contemnor's conduct is offensive to the authority and dignity of the court."[54] And because punitive sanctions aim to punish a contemnor's deliberate misconduct, "willful disobedience" must be proven[55] by showing that the alleged contemnor acted voluntarily, knowingly, and with conscious regard for the consequences of the conduct.[56]

The Right to Notice

A court can hold an individual in contempt for violating a court order only "if the action is clearly, specifically, and unequivocally commanded by that order."[57] If a court order is inconsistent, equivocal, or ambiguous, then the individual cannot be held in contempt for refusing to act.[58] A person may be held in contempt only for refusal to do exactly what the court order requires. In the words of Judge Learned Hand, "it is cardinal . . . that no one shall be punished for the disobedience of an order which does not definitely prescribe what he is to do."[59]

The First Circuit's decision in *United States v. Wefers* illustrates these principles.[60] There, after the Trustees of the University of New Hampshire passed a resolution prohibiting members of the Chicago Seven from speaking on campus except between 2 p.m. and 5 p.m., the district court blocked the resolution with a temporary restraining order.[61] The restraining order further provided that

> Abbie Hoffman, David Dellinger and Jerry Rubin shall be allowed to speak at the University of New Hampshire on Tuesday, May 5, 1970, between the hours of 3:30 P.M. and 6:30 P.M., Tuesday, May 5, 1970. So ordered.[62]

Wefers, the student body president, directed the speakers to wait until 7:30 p.m. to begin their talk.[63] Afterward, the district court held Wefers in criminal contempt for willfully violating the restraining order.[64]

On appeal, the First Circuit reversed, concluding that the order did not unambiguously prohibit the Chicago Seven from speaking after 6:30 p.m.[65] The Court stated:

> We can understand that the [district] court felt that, in allowing something, it was implicit that anything beyond what was allowed was forbidden, but looking at the totality of the circumstances we cannot find, on the face of the order, that such implication was clear and unambiguous. The court's intent is reasonably clear to us, but it is to be remembered that this is criminal contempt. The conviction must be vacated, and the defendant discharged.[66]

The Right to be Heard

Due process also guarantees the right to be heard and to defend against contempt charges. As discussed above, the rare exception to this rule is in cases of direct (summary) contempt, because when conduct occurs in front of the court, the alleged contemnor is considered "heard."

The decision in *People v. Jones* illustrates the due process right to be heard.[67] There, the District Court of El Paso County purported to hold a public defender in direct contempt for violating a court order in the presence of the court.[68] The district court declined to impose summary punishment and instead deferred sentencing on the alleged contempt finding until after the trial.[69]

The Court of Appeals unanimously vacated the contempt finding. The court explained that when punishment for "direct" contempt is deferred and not imposed summarily, "the usual reasons for dispensing with fundamental requirements of due process [do] not exist."[70] The court ruled that when a finding of "direct" contempt is made but sentencing is deferred, due process requires that the attorney be given notice of the specific charges and an opportunity to defend against them.[71] In effect, when direct contempt is not summarily punished, it must

be treated as indirect contempt and the alleged contemnor given the opportunity to be heard, as required by due process and CRCP 107. Because the district court in *Jones* "did not afford [the public defender] these rights, [it] accordingly abused [its] discretion in holding [the public defender] in contempt and punishing her therefor."[72]

The Right to Assistance of Counsel

Due process and the Sixth Amendment guarantee the right to assistance of counsel to criminal defendants.[73] For this reason, the remedial-punitive (or civil-criminal) dichotomy is highly relevant in determining whether a right to counsel exists in a contempt proceeding. Alleged criminal contemnors are entitled to counsel if the court is considering a jail sentence as a punitive sanction.[74] But the same is not automatically true when the court is considering a jail sentence as a *remedial* sanction in a *civil* contempt proceeding.[75]

In *In re A.C.B.*, the Colorado Court of Appeals addressed when civil contempt charges include a right to counsel.[76] The court held that "when . . . a contempt proceeding is initiated by a governmental entity and where a jail sentence is an available remedial sanction, an alleged contemnor who is indigent has the right to court-appointed counsel."[77]

In *In re A.C.B.*, the trial court found defendant Broyhill to be in indirect contempt for failure to pay child support, despite Broyhill's repeated claims of indigency.[78] Broyhill explained to the court that he could not pay child support because a disability prevented him from maintaining employment. Defending himself pro se, Broyhill neither provided evidence of his disability nor called any witnesses to testify about his inability to pay.[79] Broyhill was sentenced to an indefinite period of incarceration, until he paid the child support. The trial court found that the sanction was remedial because Broyhill's incarceration could be ended by the purging of the contempt. Therefore, the trial court did not appoint counsel or inquire into Broyhill's indigency, as it would in cases of punitive sanctions.[80]

On appeal, however, the court reversed the judgment and sentence, remanding the matter to appoint counsel upon a finding of indigency. To make this determination, the court balanced the factors set forth in *Mathews v. Eldridge*:[81] (1) "the private interest that will be affected;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) the government interest.[82]

> "Alleged criminal contemnors are entitled to counsel if the court is considering a jail sentence as a punitive sanction. But the same is not automatically true when the court is considering a jail sentence as a remedial sanction in a civil contempt proceeding."

The court held that all three factors supported appointment of counsel for Broyhill: (1) because incarceration was the remedial sanction imposed in Broyhill's case, Broyhill's liberty interests were at issue; (2) because Child Support Services (CSS) was represented by experienced counsel, representation asymmetry in the proceedings severely disfavored Broyhill; and (3) CSS shared in Broyhill's interest in fair proceedings. Accordingly, the *Eldridge* factors justified treating the civil contempt proceedings in *A.C.B.* like criminal contempt proceedings, affording Sixth Amendment rights to Broyhill.

The Right to Remain Silent

Like the right to counsel, the Fifth Amendment right to remain silent in contempt proceedings traces the line that divides remedial (civil) contempt and punitive (criminal) contempt. The criminal nature of punitive contempt proceedings consequently affords the alleged contemnor the right against self-incrimination and, as in all criminal prosecutions, the court may not make an adverse inference from such silence.[83] By contrast, in civil proceedings courts may make appropriate inferences based on an alleged contemnor's silence.[84]

For example, in *In re Marriage of Barber*, the Colorado Court of Appeals held that the husband-appellant could not invoke his right against self-incrimination "[a]s long as the contempt sanction . . . is remedial, not punitive."[85] Barber was held in civil contempt for failure to pay attorney fees and child support as ordered by the court.[86] He was sentenced to the remedial sanction of jail time, which could be purged by paying his outstanding dues in full.[87] The *Barber* court relied on *People v. Razatos*, where the Colorado Supreme Court held that remedial sanctions for contempt were inappropriate based on the record, and "the threat of incarceration *for punitive reasons* arising out of contempt proceedings is sufficient to support an exercise of the privilege against self-incrimination."[88]

Advice for Defending a Criminal Contempt Case

Because the stakes of a criminal contempt case are so significant—including potential jail sentences—alleged criminal contemnors are

entitled to an array of substantive and procedural protections. At the outset of any criminal contempt proceeding, the alleged contemnor has a right to full advisement by the court.[89] If the contempt proceeding is initiated by the court, the person must be advised of their right to have the issue decided by another judge. In turn, the judge must advise the person of their right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, of their right to court-appointed counsel. The court must advise the person that the maximum jail sentence will not exceed six months unless the person has been advised of the right to a jury trial. The court must also advise the person of the right to plead either guilty or not guilty to the charges, the right to 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.

Attorneys should rarely waive this advisement, even though some view it as a formality. For one thing, the advisement impresses upon the court the serious nature of criminal contempt. For another, if the court makes a mistake in advising the alleged contemnor, that error could serve as a basis for reversal on appeal or in a collateral proceeding.[90]

At or right after the advisement, defense attorneys should invoke *Brady v. Maryland*[91] and the disclosure obligations of Rule 16 of the Colorado Rules of Criminal Procedure.[92] Both are mandatory and self-executing.[93]

Rule 16 governs the parties' discovery obligations in criminal cases.[94] Unlike a civil case, in a criminal case the parties do not have co-extensive, reciprocal discovery obligations. To the contrary, the criminal rules impose substantial and continuing discovery obligations on the prosecution (or in a criminal contempt case, the movant) while requiring little from the defendant (or alleged contemnor) in exchange. For example, Crim. P. 16(I)(a) requires the prosecutor to hand over all police reports, witness statements, expert reports, photographs, and all other documents, physical evidence, and electronic material related to the case, as well as any exculpatory evidence. The prosecutor must also disclose their intended witness list, the criminal records of the accused and any potential witnesses, and any statements made by the accused.

Unlike the significant discovery obligations imposed on the movant, an alleged contemnor who does not intend to call an expert witness in defense need only disclose (1) the nature of any defense intended to be used at trial, and (2) the names and addresses of persons whom the defense intends to call as witnesses at trial.[95]

Finally, a trial court may not rely on its case-management discretion to order disclosures that exceed the discovery authorized by the Rules of Criminal Procedure.[96] Thus, for instance, a district court cannot require an alleged contemnor to disclose exhibits to the movant before trial.[97] To do so could infringe on an alleged contemnor's due process rights.[98]

There does not appear to be a published decision in Colorado addressing the applicability of the Rules of Criminal Procedure, and Rule 16 in particular, to criminal contempt proceedings. But courts may be persuaded that Rule 16 applies. And if a court disagrees, that leaves another ground for appeal.

Whatever rules of procedure apply, alleged contemnors should invoke their guaranteed Constitutional rights, such as the right to compulsory process—that is, the right to issuance of subpoenas.[99] If defense of a criminal contempt allegation requires evidence from a third party, defense attorneys should not hesitate to issue a subpoena under Crim. P. 17. (But read the rule carefully, because the subpoena and any responsive material must be provided to opposing counsel.[100])

The US and Colorado Constitutions also guarantee the right to testify or, more commonly, the right to remain silent.[101] Although each situation is different, in most cases an alleged contemnor should remain silent and not testify in a criminal contempt proceeding. More often than not, a movant's case is only helped when the defendant testifies, if only because it makes it easier for the movant to prove beyond a reasonable doubt the alleged contemnor's state of mind (willfulness). To be sure, a defendant's intent can be inferred from the circumstances, but the movant's job is usually considerably easier when the alleged contemnor is on the stand and subject to leading questions. Never forget just how high the proof-beyond-a-reasonable-doubt standard is. Attorneys do their clients a disservice by making it easier to clear.

Given the right to remain silent, defense attorneys should resist any effort by the movant to put their client on the stand. In an ordinary criminal case, the prosecution cannot force a defendant to answer questions unless the defendant waives their right to remain silent and elects to testify after receiving the Curtis Advisement. In a contempt proceeding, therefore, defense attorneys should ask the court to give a Curtis Advisement to their client as well. If the court declines, that could be an error raised on appeal. And if the court requires the alleged contemnor to get on the stand, then the right to remain silent can be invoked as appropriate in response to questions.

Conclusion

Criminal contempt allegations have little in common with the civil cases in which they often arise. The stakes are different (liberty is potentially on the line), the burden of proof is different (due process demands proof beyond a reasonable doubt), and the rights implicated are fundamental (arising from the Constitution). Unless attorneys treat criminal contempt allegations with the seriousness they deserve, they do a disservice to their clients, and they are likely to increase the odds of a conviction. Hopefully this article has provided useful guidance for attorneys called upon to defend a criminal contempt allegation. CL

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NOTES

1. *People v. Aleem*, 149 P.3d 765, 774 (Colo. 2007).
2. *Id.*
3. *People v. Razatos*, 699 P.2d 970, 974 (Colo. 1985) ("The power to punish for criminal contempt is an inherent and indispensable power of the court and exists independent of legislative authority, although criminal contempt is not a common law or statutory crime."). *See* CRCP 107.
4. CRCP 107(a)(1).
5. *In re Marriage of Cyr*, 186 P.3d 88, 91 (Colo.App. 2008). *See* CRCP 107(a)(1).
6. CRCP 107(a)(2). *See also In re Marriage of Johnson*, 939 P.2d 479, 481–82 (Colo.App. 1997); *People v. Palmer*, 595 P.2d 1060, 1062 (Colo.App. 1979).
7. *See generally Autry v. State*, 172 P.3d 212 (Okla.Crim.App. 2007).
8. *Palmer*, 595 P.2d at 1062.
9. CRCP 107(a)(2).
10. *Hill v. Boatright*, 890 P.2d 180, 187 (Colo.App. 1994).
11. *Losavio v Dist. Ct.*, 512 P.2d 266, 268 (Colo. 1973).
12. CRCP 107(b).
13. *People v. Jones*, 262 P.3d 982, 990 (Colo.App. 2011).
14. *Sacher v. United States*, 343 U.S. 1, 8 (1952) ("Summary punishment always, and rightly, is regarded with disfavor."); *Lobb v. Hodges*, 641 P.2d 310, 311 (Colo.App. 1982) ("A court before imposing penal sanctions for contempt should proceed with caution and deliberation."); *State v. Turner*, 914 S.W.2d 951, 957 (Tenn.Crim.Ct.App. 1995) ("Concomitant with the court's authority, however, has been the recognition that summary punishment departs, often dramatically, from traditional notions of due process that are the hallmarks of criminal justice. Consequently, it is reserved for those circumstances in which it is essential.").
15. *Aleem*, 149 P.3d at 770.
16. *Id.* at 784.
17. *Id.* at 785.
18. *Id.* at 782.
19. *Id.* The court ultimately imposed a 45-day jail sentence, which it refused to stay. *Id.* at 770.
20. *Id.* at 771. The Supreme Court disagreed with Aleem's alternative argument that the order to remove his T-shirt violated the First Amendment. *Id.* at 774–81.
21. *Id.* at 784.
22. *Id.* at 784–85.
23. *Id.* at 785.
24. *Id.*
25. CRCP 107(a)(3).
26. *In re Marriage of Johnson*, 939 P.2d at 481. *See* CRCP 107(c).
27. *People v. Madonna*, 651 P.2d 378, 388 (Colo. 1982) ("The failure of the defendant to appear as ordered by the court may constitute an indirect contempt of court."); *Harthun v. Dist. Ct.*, 495 P.2d 539, 541 (Colo. 1972) (attorney's failure to appear is indirect contempt "where the determination thereof involves matters which occurred outside of the immediate presence of the court when sitting as such"); *Dist. Att'y v. Dist. Ct.*, 371 P.2d 271, 272–73 (Colo. 1962) (court had no jurisdiction to hold district attorney in direct contempt for failing to appear); *In re Marriage of Johnson*, 939 P.2d at 482 (attorney's conduct of calling into permanent orders hearing and failing to appear in person "constitutes, at best, an indirect contempt"); *Palmer*, 595 P.2d at 1062 ("Palmer also contends the sentence for contempt [for failing to appear] must be vacated, because it was imposed summarily for contempt not in the presence of the court. We agree.").
28. *Dooley v. Dist. Ct.*, 811 P.2d 809, 811 (Colo. 1991) (attorneys' failure to prepare "did not take place in open court, and thus must be treated as an allegation of indirect contempt").
29. *Duran v. Dist. Ct.*, 545 P.2d 1365, 1366 (Colo. 1976) (rejecting contention that contempt

"substantially" within the presence of the court is direct contempt).

30. *In re Marriage of Johnson*, 939 P.2d at 482.

31. Fed. R. Crim. P. 42(b).

32. Fed. R. Crim. P. 42(a).

33. *In re Marriage of Johnson*, 939 P.2d 479.

34. *Id.* at 480.

35. *Id.*

36. *Id.* at 481.

37. *Id.*

38. *Id.*

39. *Id.* at 482.

40. *Id.* at 481.

41. CRCP 107.

42. CRCP 107(a)(5).

43. CRCP 107(a)(4).

44. *In re Marriage of Weis*, 232 P.3d 789, 796 (Colo. 2010) (citing *People v. Barron*, 677 P.2d 1370, 1372 n.2 (Colo. 1984)).

45. *Id.* (quoting *Barron*, 677 P.2d at 1372 n.2).

46. *Id.* (quoting *In re Maloney*, 204 B.R. 671, 674 (Bankr. E.D.N.Y. 1996) (citing *In re Marriage of Nussbeck*, 974 P.2d 493, 498 (Colo. 1999)).

47. *Id.* (quoting *Maloney*, 204 B.R. at 674).

48. U.S. Const. amend. XIV; Colo. Const. art. II, § 25.

49. U.S. Const. amend. XIV; Colo. Const. art. II, § 25; *In re Marriage of Cyr*, 186 P.3d at 92.

50. *People v. Whitaker*, 32 P.3d 511, 519 (Colo. App. 2000), *aff'd*, 48 P.3d 555 (Colo. 2002) (citing *Kogan v. People*, 756 P.2d 945 (Colo. 1988)).

51. *People v. Perez*, 367 P.3d 695, 697 ¶ 8 (Colo. 2016) (quoting *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005); *People v. Bennett*, 515 P.2d 466, 469 (Colo. 1973)).

52. *In re Marriage of Nussbeck*, 974 P.2d at 497; *In re Marriage of Cyr*, 186 P.3d at 92. *See* CRCP 107(d)(1).

53. *Razatos*, 699 P.2d at 974.

54. *In re Marriage of Zebedee*, 778 P.2d 694, 698 (Colo.App. 1988).

55. *In re Marriage of Cyr*, 186 P.3d at 91–92 (citing *In re Marriage of Nussbeck*, 974 P.2d at 499).

56. *In re Marriage of Nussbeck*, 974 P.2d at 499.

57. *United States v. Fleischman*, 339 U.S. 349, 370–71 and n.7 (1950). *E.g.*, *U.S. Polo Ass'n, Inc. v. PRL USA Holdings, Inc.*, 789 F.3d 29, 33 (2d Cir. 2015) ("Before issuing a contempt order, a district court must find that the alleged contemnor had notice of the underlying order, that the terms of the order were clear and unambiguous, and that proof of noncompliance was clear and convincing."); *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 17 (1st Cir. 1991) ("For a party to be held in contempt, it must have violated a clear and unambiguous order that left no reasonable doubt as to what behavior was expected and who was expected to behave in the indicated fashion."); *United States v. Joyce*, 498 F.2d 592, 596 (7th Cir. 1974) ("It is well established that before one may be punished for contempt for violating a court order, the terms of such order should be clear and specific, and leave no doubt or uncertainty in the minds of those to whom it is addressed."); *United States v. Wefers*, 435 F.2d 826, 830 (1st Cir. 1970) (vacating criminal contempt conviction because court order did not clearly and unambiguously prohibit the defendant's conduct).

58. *In re Marriage of Davis*, 252 P.3d 530, 537 (Colo.App. 2011) (quoting *People v. Lockhart*, 699 P.2d 1332, 1336 (Colo. 1985)).

59. *N.L.R.B. v. New York Merch. Co.*, 134 F.2d 949, 952 (2d Cir. 1943), *disapproved of on other grounds by N.L.R.B. v. Deena Artware, Inc.*, 361 U.S. 398 (1960).

60. *Wefers*, 435 F.2d 826.

61. *Id.* at 827–28.

62. *Id.* at 828.

63. *Id.*

64. *Id.* at 827.

65. *Id.* at 829–30.

66. *Id.* at 830.

67. *Jones*, 262 P.3d 982.

68. *Id.* at 985.

69. *Id.* at 984.

70. *Id.* at 988 (citing *Taylor v. Hayes*, 418 U.S. 488, 497–98 (1974)).

71. *Id.* at 988 ("In circumstances like those here, where final adjudication and sentencing for conduct occurring during trial are deferred until after trial, an attorney 'should have reasonable notice of the specific charges and opportunity to be heard in his own behalf.'" (quoting *Taylor*, 418 U.S. at 498–99)).

72. *Id.* at 989.

73. U.S. Const. amends. VI, XIV: Colo. Const. art. II, §§ 16, 25.

74. CRCP 107(d)(1); *In re Marriage of Barber*, 811 P.2d 451, 456 (Colo.App. 1991).

75. *Turner v. Rogers*, 564 U.S. 431, 448 (2011).

76. *In re A.C.B.*, 507 P.3d 1078 (Colo.App. 2022).

77. *Id.* at 1081.

78. *Id.*

79. *Id.* at 1082.

80. *Id.* at 1081.

81. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

82. *In re A.C.B.*, 507 P.3d at 1086.

83. *Razatos*, 699 P.2d at 974.

84. *McGillis Inv. Co. v. First Interstate Fin. Utah LLC*, 370 P.3d 295, 300 (Colo.App. 2015).

85. *In re Marriage of Barber*, 811 P.2d at 456.

86. *Id.* at 454.

87. *Id.*

88. *Razatos*, 699 P.2d at 977 (emphasis added).

89. CRCP 107(d)(1).

90. In ordinary criminal cases, Colorado courts no longer permit parties to challenge, on direct appeal, the adequacy of the so-called Curtis Advisement, which addresses a criminal defendant's right to remain silent or testify. *People v. Curtis*, 681 P.2d 504 (Colo. 1984). A criminal defendant can challenge a Curtis Advisement only in a post-conviction proceeding under Crim. P. 35(c). *Moore v. People*, 318 P.3d 511, 514 (Colo. 2014).

The Court of Appeals has ruled that individuals convicted of criminal contempt *cannot* bring Crim. P. 35(c) motions challenging their contempt convictions because a contempt conviction is not a "statutory crime." *Benninghoven v. Dees*, 849 P.2d 906, 908 (Colo. App. 1993). Whether this decision is correct as a statutory or constitutional matter is debatable. If the decision were correct, then an alleged contemnor would presumably have no mechanism to raise an ineffective assistance of counsel claim, which generally cannot be raised direct appeal, *Ardolino v. People*, 69 P.3d 73, 77 (Colo. 2003), despite having a constitutional right to effective assistance of counsel.

91. *Brady v. Maryland*, 373 U.S. 83 (1963).

92. Crim. P. 16(I)(a)(1).

93. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *People v. James*, No. 05CR2978, 2006 WL 6602408 (Colo.Dist.Ct. Apr. 19, 2006) ("The provisions of Rule 16 are self-executing and require no specific order by the Court.").

94. Crim. P. 16.

95. Crim. P. 16(II)(c).

96. *People v. Kilgore*, 455 P.3d 746, 747–48 ¶ 1 (Colo. 2020).

97. *See id.* ¶ 25.

98. *See id.* ¶ 29.

99. U.S. Const. amends. VI, XIV; Colo. Const. art. II, §§ 16, 25; Crim. P. 17.

100. Crim. P. 17(c).

101. U.S. Const. amends. V, XIV; Colo. Const. art. II, §§ 18, 25.