



Criminal v. Civil Contempt: What is the Difference?

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(less than 24 months) and administered by
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Presenter

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Criminal v. Civil Contempt: What is the Difference?

PRESENTED BY THE HON. BRIAN M. RUDNER, TOWN JUSTICE, TOWN OF
EAST FISHKILL, AND LAW CLERK TO THE HON. EDWARD T. MCLOUGHLIN

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- ▶ Differences between criminal and civil contempt
- ▶ Not the prosecution of individuals for criminal contempt in the domestic violence context

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CONTROLLING THE COURTROOM

▶ "Disorder in courtrooms and the summary control of such disorder is not new. The applicable rules are ancient, going back to the common law, and there is little novelty to be discerned or devised."

▶ Matter of Katz v. Murtagh, 28 NY2d 234 [1971]

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CIVIL CONTEMPT Governed by Judiciary Law §753

"A civil contempt is one where the rights of an individual have been harmed by the contemnor's failure to obey a court order ... Any penalty imposed is designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both." Matter of Department of Environmental Protection v. Department of Environmental Conservation, 70 NY2d 233 [1987]

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- ▶ 1. That a lawfully issued court order, clearly expressing an unequivocal mandate, was in effect;
- 2. That the order was disobeyed and the party disobeying the order had knowledge of its terms; and
- 3. That the movant was prejudiced by the offending conduct

Matter of Figueroa-Rolon v. Torres, 121 AD3d 684 [2d Dept. 2014]

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- ▶ "A criminal contempt ... involves an offense against judicial authority and is utilized to protect the integrity of the judicial process and to compel respect for its mandates."
- ▶ "Unlike civil contempt, the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory."
- ▶ Matter of Department of Environmental Protection v. Department of Environmental Conservation, 70 NY2d 233 [1987]

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Unlike civil contempt, no showing of prejudice by a party is necessary

Focus is on "willfulness"

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Criminal Contempt is governed by Judiciary Law Sections 750, 751, 752, and 755

▶ Uniform Justice Court Act § 210

▶ All of the provisions of law governing civil and criminal contempts in like instances in the supreme court shall apply in this court, except that this court shall have no power to punish for contempt a judge or justice of any court.

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Judiciary Law §750 sets forth acts that may subject a person to criminal contempt:

- ▶ 1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority;
- ▶ 2. Breach of the peace, noise, or other disturbance, directly tending to interrupt its proceedings;
- ▶ 3. Willful disobedience to its lawful mandate;
- ▶ 4. Resistance willfully offered to its lawful mandate;
- ▶ 5. Contumacious and unlawful refusal to be sworn as a witness; or, after being sworn, to answer any legal and proper interrogatory;

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Judiciary Law §750 sets forth acts that may subject a person to criminal contempt:

- ▶ 6. Publication of a false, or grossly inaccurate report of its proceedings. But a court can not punish as a contempt, the publication of a true, full, and fair report of a trial, argument, decision, or other proceeding therein;
- ▶ 7. Willful failure to obey any mandate, process or notice issued pursuant to articles sixteen, seventeen, eighteen, eighteen-a or eighteen-b of the judiciary law (relating to jury duty) or refusal to be sworn as provided therein, or subtraction of an employee to discharge or penalty on account of his absence from employment by reason of jury or subpoenaed witness service in violation of this chapter or section 215.11 of the penal law.

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1. Summary criminal contempt

2. Plenary contempt proceeding, requiring notice and a hearing

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Summary Criminal Contempt

▶ Judiciary Law § 751:

▶ "Such a contempt [referring to a finding of contempt under Judiciary Law §750], committed in the immediate view and presence of the court, may be punished summarily; when not so committed, the party charged must be notified of the accusation, and have a reasonable time to make a defense."

▶ Judiciary Law § 755:

▶ "Where the offense is committed in the immediate view and presence of the court, or of the judge or referee, upon a trial or hearing, it may be punished summarily."

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Summary Criminal Contempt - extraordinary nature of the procedure

- ▶ "The power is extraordinary, because it authorizes the Judge to act as prosecutor, jury and Judge at once, and to impose incarcerative sanctions without affording an alleged contemnor the right to an evidentiary hearing, the right to counsel, or the opportunity for adjournment to prepare a defense. "
- ▶ Matter of Williams v. Cornelius, 76 NY2d 542 [1990]
 - Focus is on the urgency of the situation
 - A necessary tool to preserve the immediate order in the courtroom

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Summary Criminal Contempt - extraordinary nature of the procedure

- ▶ If the offending conduct does not take place in your immediate view and presence, you must give the offending party notice of the accusation and a hearing.
- ▶ Can initiate by order to show cause
 - Failure to personally serve the alleged contemnor is a jurisdictional defect requiring dismissal of the contempt proceeding (Caiola v. Allcity Ins. Co., 305 AD2d 350 [2d Dept. 2003]).

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Summary Criminal Contempt - extraordinary nature of the procedure

- ▶ Rules and Regulations, Supreme Court, Second Department (22 NYCRR §701.2)
- ▶ (a) The power of the court to punish summarily any contempt committed in its immediate view and presence shall be exercised only in *exceptional and necessitous circumstances*, as follows:
 - ▶ (1) Where the offending conduct disrupts or threatens to disrupt proceedings actually in progress; or
 - ▶ (2) where the offending conduct destroys or undermines or tends seriously to destroy or undermine the dignity and authority of the court in a manner and to the extent that it appears unlikely that the court will be able to continue to conduct its normal business in an appropriate way, provided that in either case the court reasonably believes that a prompt summary adjudication of contempt may aid in maintaining or restoring and maintaining proper order and decorum.

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Summary Criminal Contempt - extraordinary nature of the procedure

- ▶ First Department has similar rule (22 NYCRR 604.2[a][1]).
- ▶ Third Department has no such rule but has recognized the limitations imposed by the First and Second Department rules (see Matter of Doyle v. Aison, 216 AD2d 634 [3d Dept. 1995]).

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In a criminal contempt proceeding (whether summary or plenary), proof of guilt must be established beyond a reasonable doubt

What acts can constitute contempt?

- Refer back to Judiciary Law §750
 - List of offenses is exhaustive ("... and no others")

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Example: Willful disobedience and/or resistance to its lawful mandate (Judiciary Law §750 [A][3] & [4])

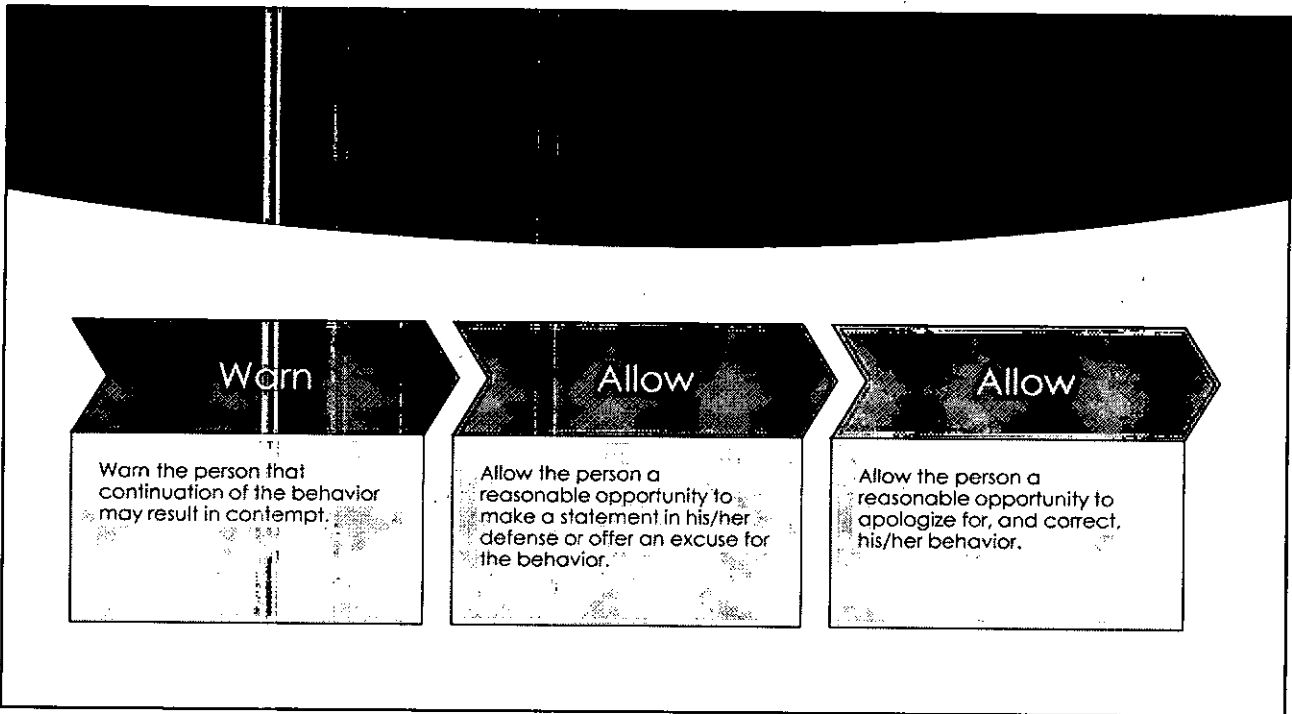
- Can you think of examples?
- What you must find:
 - Mandate is clear and unambiguous
 - Contemnor has knowledge of the mandate/order
 - Contemnor fails or refuses to comply with mandate/order; and
 - The failure or refusal is willful

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Summary
Criminal
Contempt –
what is the
procedure?

- ▶ (Assuming you have personal knowledge of the facts that constitute the contempt and you are convinced beyond a reasonable doubt)
- ▶ Unless the conduct is flagrant and offensive requiring immediate action to preserve order, the court should:

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Summary Contempt - Order

▶ "... an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor."

▶ Judiciary Law §755

▶ An order of contempt is reviewable in an Article 78 proceeding.



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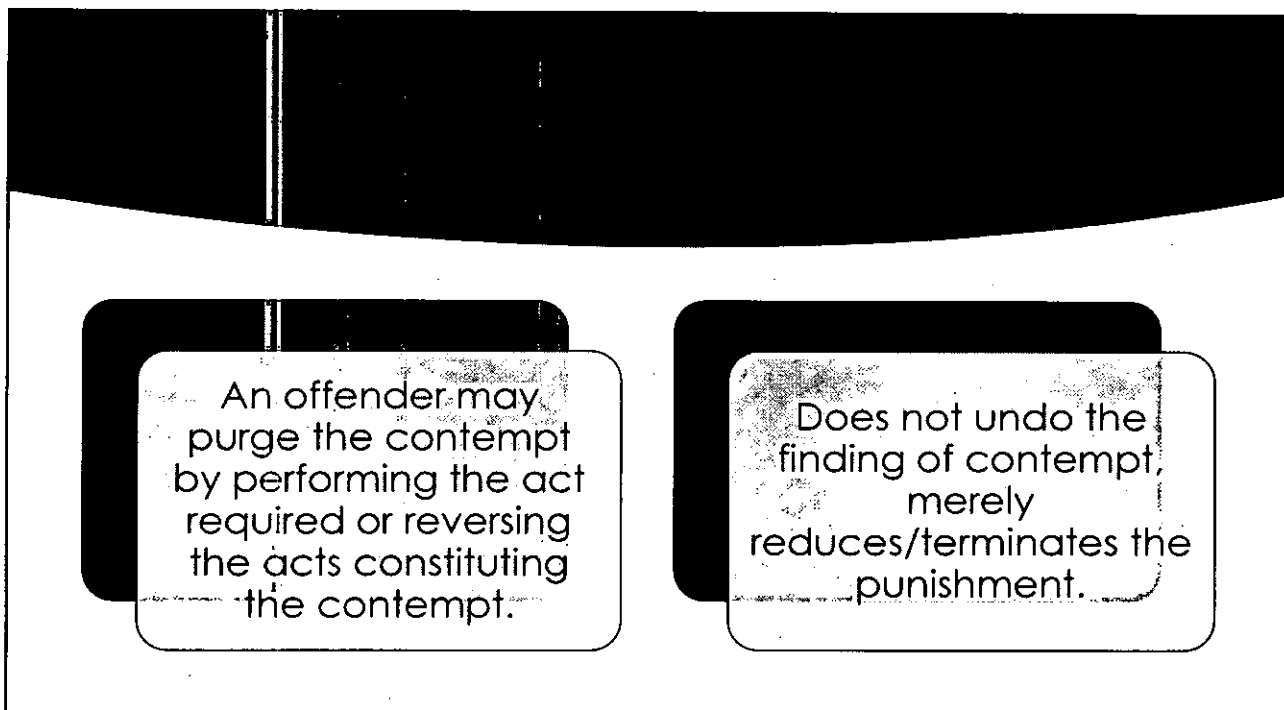
▶ Judiciary Law §751 [1]:

- A fine not exceeding \$1,000
- Incarceration not exceeding 30 days
- Both
- No other sentence authorized

▶ Amount/type of punishment in the discretion of the Court

▶ Should be imposed commensurate with nature and character of the offense

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An offender may purge the contempt by performing the act required or reversing the acts constituting the contempt.

Does not undo the finding of contempt; merely reduces/terminates the punishment.

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Mandate of Commitment

- ▶ Judiciary Law §752: "Where a person is committed for contempt, as prescribed in section seven hundred fifty-one, the particular circumstances of his offense must be set forth in the mandate of commitment."

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▶ Attorney Conduct

▶ 1. Disrespectful language/behavior in courtroom:

▶ Matter of Kunstler v. Galligan, 168 AD2d 146 [1st Dept. 1991]

▶ Matter of Werlin v. Goldberg, 129 AD2d 334 [2d Dept. 1987]

▶ 2. Refusal to start trial when directed

▶ Matter of Harris v. Rowley, 72 AD3d 1252 [3d Dept. 2010]

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SPECTATORS

▶ "It is essential to the public trial that there be access to spectators, but any particular spectator is quite dispensable, as are all the spectators if disorderly. What is essential is that spectators not be allowed or encouraged to inject themselves into the trial process, or to spawn time-consuming or distracting collateral proceedings to determine their responsibility for disorder in the courtroom."

▶ Matter of Katz v. Murtagh, 28 NY2d 234 [1971]

▶ Matter of Williams v. Cornelius, 76 NY2d 542 [1990]

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JURORS

- ▶ Matter of Caruso v. Wetzel, 33 AD3d 161 [1st Dept. 2006]
- ▶ Matter of Richard N., 45 Misc3d 632 [Sup Ct, Queens County, 2014]
- ▶ Matter of Pringle, 6 Misc3d 1025(A) [Sup Ct, New York County, 2005]

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CLOTHING IN THE COURTROOM

- ▶ Matter of Brodeur v. Levitt, 285 AD2d 365 [1st Dept. 2001]
- ▶ Matter of Doyle v. Aison, 216 AD2d 634 [3d Dept. 1995]

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** Abuse/Misuse of Summary Contempt Power
can lead to disciplinary sanctions from the
State Commission on Judicial Conduct **

Matter of Hart, 7 NY3d 1 [2006]

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QUESTIONS?

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McKinney's Consolidated Laws of New York Annotated
Uniform Justice Court Act (Refs & Annos)
Article 2. Jurisdiction (Refs & Annos)

McKinney's Uniform Justice Court Act § 210

§ 210. Contempt

[Currentness](#)

All of the provisions of law governing civil and criminal contempts in like instances in the supreme court shall apply in this court, except that this court shall have no power to punish for contempt a judge or justice of any court.

Credits

(L.1966, c. 898.)

Editors' Notes

PRACTICE COMMENTARIES

by Kevin Anthony Reilly


2019

Aside from the contempt provision set forth in [CPLR 7109\(b\)](#) which is noted in the Commentary for section 209, *supra*, section 210 extends to Justice Courts all of the powers relating to contempt that are available to a Supreme Court. Similar power is afforded to the New York City Courts, District Courts and City Courts under the same section number in their respective statutes. However, readers should also note the general jurisdiction of Supreme Court, possessing powers such as broad equitable jurisdiction and jurisdiction over matrimonial and other actions which are not conferred on these lesser courts for which contempt is available, so that as a practical matter contempt in these lower courts remains tethered to their subject matter jurisdiction.

[Notes of Decisions \(1\)](#)

McKinney's Uniform Justice Court Act § 210, NY UN JUS CT § 210

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Chapter 30. Of the Consolidated Laws
Article 19. Contempts (Refs & Annos)

McKinney's Judiciary Law § 751

§ 751. Punishment for criminal contempts

Currentness

1. Except as provided in subdivisions (2), (3) and (4), punishment for a contempt, specified in [section seven hundred fifty](#), may be by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where the punishment for contempt is based on a violation of an order of protection issued under [section 530.12](#) or [530.13 of the criminal procedure law](#), imprisonment may be for a term not exceeding three months. Where a person is committed to jail, for the nonpayment of a fine, imposed under this section, he must be discharged at the expiration of thirty days; but where he is also committed for a definite time, the thirty days must be computed from the expiration of the definite time.

Such a contempt, committed in the immediate view and presence of the court, may be punished summarily; when not so committed, the party charged must be notified of the accusation, and have a reasonable time to make a defense.

2. (a) Where an employee organization, as defined in [section two hundred one of the civil service law](#), wilfully disobeys a lawful mandate of a court of record, or wilfully offers resistance to such lawful mandate, in a case involving or growing out of a strike in violation of [subdivision one of section two hundred ten of the civil service law](#), the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court. In the case of a government exempt from certain provisions of article fourteen of the civil service law, pursuant to section two hundred twelve of such law, the court may, as an additional punishment for such contempt, order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of such law, for such specified period of time, as the court shall determine or, in the discretion of the court, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of [subdivision one of section two hundred ten of the civil service law](#) since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of [subdivision one of section two hundred ten of the civil service law](#), of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed pursuant to this subdivision remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, such forfeiture shall be suspended to the extent necessary for the unpaid portion of such fine to be accumulated by the public employer and transmitted to the court. In fixing the amount of the fine and/or duration of the forfeiture, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the wilful defiance of or a resistance to the court's mandate (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the ability of the employee organization to pay the fine imposed; and the court may consider (i) the refusal of the employee organization or the appropriate public employer, as defined in [section two hundred one of the civil service law](#), or the representatives thereof, to submit to the mediation and fact-finding procedures provided in [section two hundred nine of the civil service law](#) and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such

acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the ability of the employee organization to pay the fine imposed, the court shall consider both the income and the assets of such employee organization.

(b) In the event membership dues and sums equivalent to dues are collected by the public employer as provided respectively in paragraph (b) of [subdivision one](#) and [subdivision three of section two hundred eight of the civil service law](#), the books and records of such public employer shall be prima facie evidence of the amount so collected.

(c)(i) An employee organization appealing an adjudication and fine for criminal contempt imposed pursuant to subdivision two of this section, shall not be required to pay such fine until such appeal is finally determined.

(ii) The court to which such an appeal is taken shall, on motion of any party thereto, grant a preference in the hearing thereof.

3. (a) Where a union or hospital wilfully disobeys a lawful mandate of a court of record, or wilfully offers resistance to such lawful mandate, in a case involving or growing out of a violation of [section seven hundred thirteen of the labor law](#), the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court. In fixing the amount of such fine, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the wilful defiance of, or resistance to, the court's mandate (ii) the impact of the strike or lockout on the public health, safety and welfare of the community and (iii) the ability of the union or hospital to pay the fine imposed; and the court may consider (i) the refusal of the union or hospital, or the representatives thereof, to submit to or comply with, the fact-finding and arbitration procedures provided in [section seven hundred sixteen of the labor law](#). In determining the ability of the union or hospital to pay the fine imposed, the court shall consider both the income and the assets of such union or hospital.

(b) A union or hospital appealing an adjudication and fine for criminal contempt imposed pursuant to this subdivision, shall not be required to pay such fine until such appeal is finally determined. The court to which such an appeal is taken shall, on motion of any party thereto, grant a preference in the hearing thereof.

(c) As used in this subdivision, "union" shall mean any labor organization or company union as defined in [section seven hundred one of the labor law](#), and "hospital" shall mean any non-profit-making hospital or residential care center as defined in that section.

4. Where any person wilfully disobeys a lawful mandate of the supreme court issued pursuant to [subdivision twelve of section sixty-three of the executive law](#), the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court, but not to exceed five thousand dollars per day. In fixing the amount of the fine, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the wilful defiance of or resistance to the court's mandate, (ii) the amount of gain obtained by the wilful disobedience of the mandate, and (iii) the effect upon the public of the wilful disobedience.

5. Where any member of the news media as defined in [subdivision two of section two hundred eighteen](#) of this chapter, wilfully disobeys a lawful mandate of a court issued pursuant to such section, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court, but not to exceed five thousand dollars per day or imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting or both, in the discretion of the court. In fixing the amount of the fine, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited

to: (i) the extent of the willful defiance of or resistance to the court's mandate, (ii) the amount of gain obtained by the willful disobedience of the mandate, and (iii) the effect upon the public and the parties to the proceeding of the willful disobedience.

Credits

(L.1909, c. 35. Amended L.1967, c. 392, § 3; L.1969, c. 24, § 12; L.1969, c. 526, §§ 4, 5; L.1971, c. 503, § 17; L.1975, c. 440, §§ 1, 2; L.1977, c. 677, § 5; L.1980, c. 530, § 12; L.1983, c. 254, § 4; L.1985, c. 672, § 6; L.1988, c. 399, § 1; L.1992, c. 187, § 2.)

[Notes of Decisions \(120\)](#)

McKinney's Judiciary Law § 751, NY JUD § 751

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Chapter 30. Of the Consolidated Laws
Article 19. Contempts (Refs & Annos)

McKinney's Judiciary Law § 755

§ 755. When punishment may be summary

[Currentness](#)

Where the offense is committed in the immediate view and presence of the court, or of the judge or referee, upon a trial or hearing, it may be punished summarily. For that purpose, an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor. Such order is reviewable by a proceeding under article seventy-eight of the civil practice law and rules.

Credits

(L.1909, c. 35. Amended L.1947, c. 900, § 4; L.1962, c. 310, § 241.)

[Notes of Decisions \(68\)](#)

McKinney's Judiciary Law § 755, NY JUD § 755

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

Compilation of Codes, Rules and Regulations of the State of New York
Title 22. Judiciary
Subtitle B. Courts.
Chapter IV. Supreme Court
Subchapter B. Second Judicial Department
Article 1. Appellate Division
Subarticle B. Special Rules.
Part 701. Exercise of the Judicial Contempt Power (Refs & Annos)

22 NYCRR 701.2

Section 701.2. Exercise of the summary contempt power

Currentness

(a) The power of the court to punish summarily any contempt committed in its immediate view and presence shall be exercised only in exceptional and necessitous circumstances, as follows:

(1) Where the offending conduct disrupts or threatens to disrupt proceedings actually in progress; or

(2) where the offending conduct destroys or undermines or tends seriously to destroy or undermine the dignity and authority of the court in a manner and to the extent that it appears unlikely that the court will be able to continue to conduct its normal business in an appropriate way, provided that in either case the court reasonably believes that a prompt summary adjudication of contempt may aid in maintaining or restoring and maintaining proper order and decorum.

(b) Wherever practical, punishment should be determined and imposed at the time of the adjudication of contempt. However, where the court deems it advisable the determination and imposition of punishment may be deferred following a prompt summary adjudication of contempt which satisfies the necessity for immediate judicial corrective or disciplinary action.

(c) Before any summary adjudication of contempt the accused shall be given a reasonable opportunity to make a statement in his defense or in extenuation of his conduct.

Credits

Sec. filed March 24, 1971 eff. March 24, 1971.

Current with amendments included in the New York State Register, Volume XLIV, Issue 31 dated August 3, 2022. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 22, § 701.2, 22 NY ADC 701.2

TOWN/VILLAGE COURT OF _____
COUNTY OF _____

STATE OF NEW YORK

IN THE MATTER OF _____,
CONTEMNOR

MANDATE OF COMMITMENT FOR
CRIMINAL CONTEMPT
(Judiciary Law §750, 751, 752)

TO THE SHERIFF OF _____ COUNTY:

Whereas on the ____ day of _____, 201_, this court adjudicated the above named contemnor to be in criminal contempt based upon:

Disorderly or insolent behavior in the immediate view and the presence of the court directly tending to interrupt its proceedings or impair respect for its authority in violation of Jud. L. §750(1) occurring in relation to proceedings entitled _____ v. _____ on the ____ day of _____, 201_, the more particular circumstances of such offense being described as follows:

This court having fixed the punishment for said contempt as aforesaid, committed in the immediate view and presence of the court, as {choose applicable}: fine in the amount of _____ and/or imprisonment in the _____ County Jail for a period of _____ days, punishing said person summarily, it is hereby

ORDERED, ADJUDGED AND DECREED, that the contemnor be committed to the _____ County Jail for a period of ____ days consecutive to any sentence s/he may now be serving, and it is further

ORDERED, that said defendant be produced before this court on the ____ day of _____, at ____ o'clock so as to give said contemnor the opportunity to cure him/herself of said contempt prior to the expiration of this Order.

Hon.