

Contempt of Court Benchbook—Fifth Edition



Michigan Supreme Court

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Note on Precedential Value

“A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this court rule.” [MCR 7.215\(J\)\(1\)](#).

Several cases in this book have been reversed, vacated, or overruled in part and/or to the extent that they contained a specific holding on one issue or another. Generally, trial courts are bound by decisions of the Court of Appeals “until another panel of the Court of Appeals or [the Supreme] Court rules otherwise[.]” *In re Hague*, 412 Mich 532, 552 (1982). While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated, or overruled in its entirety. Some cases state that “an overruled proposition in a case is no reason to ignore all other holdings in the case.” *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, “that portion of the Court of Appeals’ opinion [had] no precedential effect and the trial court [was] not bound by its reasoning”). But see *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing [MCR 7.215\(J\)\(1\)](#) and stating that “a prior Court of Appeals decision that has been reversed on other grounds has no value. . . . [W]here the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, no rule of law remains from the Court of Appeals decision.” See also *People v James*, 326 Mich App 98 (2018) (citing *Dunn* and [MCR 7.215\(J\)\(1\)](#) and stating that the decision, “*People v Crear*, 242 Mich App 158, 165-166 (2000), overruled in part on other grounds by *People v Miller*, 482 Mich 540 (2008), . . . [was] not binding”). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part.

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. Because it is unclear how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

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Chapter 1: The Nature of the Contempt Power

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1.1 Scope Note

This chapter addresses the contempt power of the court. Specifically, it reviews the definition of contempt, the purpose of the contempt power, the authority to exercise the contempt power, and jurisdiction over contempt proceedings.

1.2 Overview of the Contempt Power

“Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court.” *In re Contempt of Robertson*, 209 Mich App 433, 436 (1995). See also *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 708 (2000).

Examples of contempt of court include disruptive courtroom behavior, failure to appear in court when required, failure to testify when required, and failure to obey a lawful court order.¹ See, e.g., [MCL 600.1701](#) (setting forth acts punishable for contempt); [MCL 600.1711](#) (setting forth acts subject to summary punishment); [MCL 767.5](#) (providing that a witness who fails to appear or answer questions is guilty of contempt).

A. Purpose of Contempt Power

“[T]he primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts.” *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App at 708. See also *People v Kurz*, 35 Mich App 643, 656 (1971). A secondary purpose of the civil contempt power is “to preserve and enforce the rights of private parties to suits and to compel obedience of orders and decrees made to enforce those rights and administer the remedies to which the court has found the parties are entitled.” *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 500 (2000).

B. Sanctions for Contempt

Courts can impose three general types of sanctions to enforce the contempt power. *In re Contempt of United Stationers Supply Co*, 239 Mich App at 499. For criminal contempt, the court imposes punitive sanctions to vindicate its authority. *Id.* For civil contempt, the court imposes coercive sanctions to force compliance with its orders. *Id.* In addition, where actual damage is shown, the court may order compensatory relief for a party. *Id.* See also *United States v United Mine Workers*, 330 US 258, 303-304 (1947) (explaining the distinction between the two types of civil contempt sanctions); *In re Contempt of*

¹ See [Chapter 5](#) for discussion of common forms of contempt.

Dougherty, 429 Mich 81, 97-98 (1987) (noting that “there are two types of civil contempt sanctions, coercive and compensatory[.]” and that “there are three sanctions which may be available to a court to remedy or redress contemptuous behavior”); [MCL 600.1721](#) (codifying the compensatory sanction without specifically limiting it to civil contempt proceedings).

Criminal contempt sanctions typically include a jail term and fines that are intended to punish past contumacious behavior. See *In re Bradley Estate*, 494 Mich 367, 379 (2013); [MCL 600.1701](#). Probationary terms may also be imposed in cases of criminal contempt. [MCL 600.1715\(1\)](#). Civil contempt sanctions typically include a fine or jail term that ends when the offending behavior ends, and money damages may be awarded to the injured party. See *In re Moroun*, 295 Mich App 312, 331, 335 (2012); [MCL 600.1715](#); [MCL 600.1721](#).

For a detailed discussion of the differences between civil and criminal contempt, see [Section 2.2](#).

C. Courts Must Exercise Contempt Power With Restraint

There are limitations on the court’s power to punish individuals for contempt. *In re Contempt of Dudzinski*, 257 Mich App 96, 109 (2003). “The contempt power is awesome and must be used with the utmost restraint.” *Id.*, quoting *In re Hague*, 412 Mich 532, 555 (1982). The contempt power must be used “judiciously and only when the contempt is clearly and unequivocally shown.” *In re Contempt of Dudzinski*, 257 Mich App at 109.

When punishing for contempt, courts must exercise “the least possible power adequate to the end proposed[.]” *Anderson v Dunn*, 19 US 204, 231 (1821). See also *In re Contempt of Dudzinski*, 257 Mich App at 109.

“Abuse of the contempt power, including unjustified threats to hold persons in contempt, constitutes misconduct warranting discipline.” *In re Hague*, 412 Mich 532, 555 (1982).

The contempt power was misused under the following circumstances:

- The trial court improperly used the contempt power where it had an individual arrested and jailed for failing to follow an order to appear which contradicted an administrative order from the chief judge requiring all such hearings to be held at a youth home rather than at the court. *In re Seitz*, 441 Mich 590, 599-604 (1993).

- The trial court improperly used the contempt power where it threatened the prosecutor with contempt if he continued to file prostitution cases. *In re Hague*, 412 Mich at 554-555.
- The trial court improperly used the contempt power where it held a defense attorney in contempt for sending an associate attorney to represent the defendant instead of personally appearing on the date of the defendant’s trial after the trial court refused to adjourn the trial date at an earlier hearing. *People v Matish*, 384 Mich 568, 572 (1971) (noting that it could not infer “wilful disregard or disobedience of the authority or orders of the [trial] court[.]” in this case).
- The trial court committed legal error when it held three minor children in contempt for failing to comply with its parenting time orders; however, its improper use of the contempt power did not rise to the level of judicial misconduct. *In re Gorcyca*, 500 Mich 588, 626 (2017). The trial court erred by holding the oldest minor child in contempt for violation of a parenting time order under which he was not obligated and by “unlawfully delegating to the father the discretion to determine when any of the children had purged themselves of contempt.” *Id.* at 619-620.

1.3 Exercise of the Contempt Power

A. Inherent Authority

The authority of the courts to punish for contempt is inherent in the judicial power vested in courts by [Const 1963, art 6, § 1](#). *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 708 (2000). The Michigan Supreme Court explained this inherent power:

“There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute[,] which is merely declaratory and in affirmation thereof, to adjudge and punish for contempt, and determination of the issue is not for a jury but the court. Such inherent power extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court. Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its

validity or procedures to effectuate it.” *In re Huff*, 352 Mich 402, 415-416 (1958) (internal citations omitted).

“This inherent judicial power to punish contempt, which is essential to the administration of the law, does not include the power to mete out certain punishments for contemptuous acts beyond those contempt powers inherent in the judiciary.” *In re Bradley Estate*, 494 Mich 367, 394-395 (2013) (concluding that the punishment authorized in [MCL 600.1721](#), indemnification damages for civil contempt, does not implicate the judiciary’s inherent contempt power).

B. Specific Authority Granting Courts Contempt Powers

In addition to the inherent judicial power to punish for contempt, specific laws have affirmed the authority of courts to use the contempt power. The following courts possess the contempt power:

- **The Michigan Supreme Court.** [MCL 600.1701](#).
- **The Michigan Court of Appeals.** [Const 1963, art 6, § 19](#) (providing that the Court of Appeals is a court of record); [MCL 600.1701](#) (providing all courts of record have the contempt power). See also *In re Albert*, 383 Mich 722, 724 (1970).
- **Circuit Courts.** [MCL 600.1701](#).
- **Court of Claims.** [MCL 600.6428](#) states that “[t]he [C]ourt of [C]laims is hereby given the same power . . . to punish for contempt as the circuit courts of this state now have or may hereafter have.” See also [MCL 600.1416\(1\)\(e\)](#) (providing that the Court of Claims is a court of record); [MCL 600.1701](#) (providing all courts of record have the contempt power).
- **District and Municipal Courts.** [MCL 600.8317](#) states in part that district courts have “the same power to . . . punish for contempt as the circuit court now has or may hereafter have.” [MCL 600.6502](#) states that municipal courts are “governed by statutes and supreme court rules applicable to the district court,” except as otherwise provided.
- **Probate Courts.** [MCL 600.801](#) (providing that the probate court is a court of record); [MCL 600.1416\(1\)\(c\)](#) (providing that the probate court is a court of record); [MCL 600.1701](#) (providing all courts of record have the contempt power).

C. Statutory Provisions Illustrating Use of Courts' Contempt Powers

The courts' inherent power to punish contempt of court is not limited by statute. See *In re Bradley Estate*, 494 Mich at 394; *Langdon v Judges of Wayne Circuit Court*, 76 Mich 358, 367 (1889) ("The statutes are in affirmation of the common-law power of courts to punish for contempts, and, while not attempting to curtail the power, they have regulated the mode of proceeding and prescribed what punishment may be inflicted."). However, the penalties available are limited to those provided by statute. See *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966). The Legislature has provided for the use of the contempt power in certain situations, codifying the courts' inherent power. See [MCL 600.1701](#) *et seq.* The broadest of these statutes, [MCL 600.1701](#), contains provisions illustrative of the uses of the contempt power, stating:

"The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

- (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.
- (b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.
- (c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.
- (d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.
- (e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons that are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he or she is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.

(i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(i) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.

(j) Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for

receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.

(l) The publication of a false or grossly inaccurate report of the court's proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

(m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party." [MCL 600.1701](#).

D. Contempt Penalties Limited by Statute

Although courts have inherent contempt powers, where the Legislature provides penalties for contempt of court, courts must abide by such provisions unless they are unconstitutional. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966); *Catsman v Flint*, 18 Mich App 641, 648-650 (1969). Accordingly, "even though a court's power to punish for contempt has been conceived of as inherent and not created by statute, where the legislature has laid down prescriptions for the punishment of contempt, courts must act within the framework and limits of the statutory enactment." *Catsman*, 18 Mich App at 649, discussing *Cross*, 377 Mich 202.

For example, the Court of Appeals held that [MCL 600.1715\(1\)](#) unambiguously limits the amount a trial court may order a contemnor to pay for a single act of contempt, and noted the trial court's imposition of a greater fine would require "corrective action." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 718-719 (2000).²

²At the time *In re Contempt of Auto Club Ins Ass'n* was decided, [MCL 600.1715\(1\)](#) limited the fine for a single act of contempt to \$250; however, the statute was amended by 2006 PA 544 to allow a fine of not more than \$7,500.

E. Basis of Order Violated Cannot be Reconsidered

“[T]he longstanding rule is that ‘a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy.’” *In re JCB*, 336 Mich App 736, 747 (2021), quoting *United States v Rylander*, 460 US 752, 756 (1983).

1.4 Contempt of Court and Quasi-Judicial Officers

A. Availability of Contempt Sanctions for Violating Quasi-Judicial Officer’s Order

Courts have the power to find persons in contempt for disobeying the lawful orders of the court, a judge of the court, or “any officer authorized to perform the duties of the judge.” [MCL 600.1701\(c\)](#). Accordingly, disobedience of an order issued by a quasi-judicial officer may be punished by a finding of contempt. *Id.* In addition to this general recognition of contempt as a punishment for disobedience of the orders of officers authorized to perform the duties of a judge, several statutes and court rules provide more specific guidance on the authority of quasi-judicial officers to punish for contempt.

Committee Tip:

Contempt allegations from a quasi-judicial officer generally cannot be punished summarily because the judge will hear about the contempt from the quasi-judicial officer and it will not be taking place directly in front of the judge.

B. Contempt Powers of District Court Magistrates

District court magistrates may “arraign, if authorized by the chief judge of the district court district, for a contempt violation” if the violation “arises directly out of a case for which a judge or district court magistrate conducted the arraignment under [[MCL 600.8511\(a\)-\(c\)](#)], or the first appearance under [[MCL 600.8513](#)],” and the offense is punishable by imprisonment for not more than one year, a fine, or both. [MCL 600.8511\(d\)](#). District court magistrates may accept a plea in regard to these contempt violations. *Id.*

However, district court magistrates may **not** conduct a contempt hearing or sentencing. See *id.*

For more information on the authority of district court magistrates, see the Michigan Judicial Institute's [District Court Magistrate Manual](#).

C. Contempt Powers of Referees

Referees may conduct contempt proceedings, but may not issue contempt orders or impose sentences. *In re Contempt of Steingold*, 244 Mich App 153, 157 (2000).³ See also [MCL 712A.10\(1\)\(c\)](#); [MCR 3.913\(A\)](#).

D. Contempt Powers of Administrative Hearing Officers

Some governmental agencies have statutory contempt powers to punish disobedience of their hearing officers' orders; in these instances, a statute will either provide for direct authority to exercise the contempt power or require the agency to apply to the circuit court to initiate contempt proceedings or enforce a contempt citation. See for example:

- In hearings or other matters properly before a Secretary of State hearing officer, the officer may “[p]unish for contempt any witness failing to appear or testify in the same manner as provided by the rules and practice in the circuit court.” [MCL 257.322\(3\)\(c\)](#).
- Persons guilty of any contempt while in attendance at any hearing held under the Worker’s Disability Compensation Act may be punished for contempt of court. [MCL 418.853](#). “An application for this purpose may be made to any circuit court within whose jurisdiction the offense is committed and for which purpose the court is given jurisdiction.”⁴ *Id.*
- In the course of inspections and investigations under the Michigan Occupational Safety and Health Act, the appropriate department may apply to the circuit court for an order compelling evidence or testimony, and the failure to obey such an order may be punished as contempt. [MCL 408.1029\(3\)](#).

³ See [Chapter 5](#) for detailed discussion of [juvenile](#) and domestic relations contempt proceedings.

⁴ See also *In re Contempt of Robertson*, 209 Mich App 433, 439 (1995) (recognizing that contempt orders can be entered under [MCL 418.853](#) and enforced by applying to the appropriate circuit court).

1.5 Jurisdiction

Whether a contempt is direct or indirect affects the analysis of whether a court has jurisdiction over the action. For a detailed discussion of what constitutes direct and indirect contempt, see [Chapter 2](#).

A. Direct Contempt

“A direct contempt, committed in the immediate view and presence of the court, will be noticed by the court, and, on its own motion, it will punish summarily in the mode pointed out by the statute.” *In re Wood*, 82 Mich 75, 82 (1890). See also [MCL 600.1711\(1\)](#) (“When any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, or imprisonment, or both.”).

B. Indirect Contempt Generally

When the allegedly contemptuous behavior takes place outside the immediate view of the court, i.e., when the contempt is indirect, the court may only punish the alleged contemnor after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend the charges. *In re Contempt of Steingold*, 244 Mich App 153, 157-158 (2000). See also [MCL 600.1711\(2\)](#) (“When any contempt is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend”); [MCR 3.606\(A\)](#) (requiring a “proper showing on ex parte motion supported by affidavits”).⁵

Generally, the court’s personal jurisdiction over the alleged contemnor is dependent on adequate proof of the facts charged. *Ferranti v Electrical Resources Co*, 330 Mich App 439, 446 (2019), citing *In re Contempt of Steingold*, 244 Mich App at 159 (“If an inadequate affidavit is the predicate which underlies the contempt proceeding or if no affidavit at all accompanies the petition, the court lacks jurisdiction over the person of the alleged contemnor.”). In *Ferranti*, the Court held that “the trial court erred by ordering a show-cause hearing on the basis of the submitted affidavit” where the affidavit was “insufficient to establish contemptuous acts.” *Ferranti*, 330 Mich App at 446.

Corporations and Companies. “Regarding personal jurisdiction, the key decision-maker of a company may be held personally liable

⁵See [Chapter 3](#) for a detailed discussion of the required affidavits or other methods of proof.

for the contempt of the company, irrespective of whether the decision-maker was a party to the litigation or named in an order.” *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 664 (2022) (holding that where the evidence showed that a specific individual was the owner of a restaurant and the person in charge of making decisions on behalf of the restaurant, the trial court had personal jurisdiction to issue contempt orders against that individual, personally, on the basis of any failure by the restaurant to comply with the court’s orders). Similarly, while a corporation is a separate entity from its individual shareholders, officers, and directors, it can only act through its officers and agents; accordingly, “when a court acquires jurisdiction over a corporation as a party, it obtains jurisdiction over the official conduct of the corporate officers so far as the conduct may be involved in the remedy against the corporation which the court is called upon to enforce,” and these individuals “may be sanctioned if they fail to take appropriate action within their power to ensure that the corporation complies with the court order.” *Id.* at 668 (cleaned up).

C. Indirect Contempt–Domestic Relations

In the context of enforcement of parenting time orders, the failure to attach a supporting affidavit to the motions for orders to show cause as required by [MCR 3.606\(A\)](#) did not deprive the trial court of its jurisdiction over the contempt proceedings. *Porter v Porter*, 285 Mich App 450, 458 (2009).

The *Porter* Court distinguished cases requiring the attachment of an affidavit by noting that none of the cases apply current statutes or court rules governing domestic relations matters. *Id.* at 459. Specifically, the Court pointed out that [MCL 600.1711\(2\)](#) allows for facts to be proved by “affidavit or other method[,]” and [MCL 552.511b\(1\)](#) requires the Friend of the Court to “initiate enforcement under the support and parenting time enforcement act if the office receives a written complaint that states specific facts constituting a custody or parenting time order violation.” *Porter*, 285 Mich App at 459-460 (emphasis added by the Court).⁶ *Porter* also notes that [MCR 3.208\(B\)](#) “permits the friend of the court to initiate contempt proceedings on a petition for an order to show cause.” *Porter*, 285 Mich App at 460. The Court noted that the motion to show cause in this case included proof of service, letters, and e-mails, and that it “arguably stated with specificity facts regarding missed parenting time and telephone contact, which were sufficient to support a finding of contempt.” *Id.* at 461. Further, the facts were based on

⁶*Porter* also cited [MCL 552.644](#); however, that statute has been amended to remove the language discussed by *Porter*.

personal knowledge, the motion was signed, and the signor would be subject to sanctions under [MCR 1.109\(E\)\(5\)-\(6\)](#) if the allegations were untrue or submitted for an improper purpose, thus, affording similar protection against false allegations as those afforded by the signing of an affidavit. *Porter*, 285 Mich App at 461.⁷ Finally, the Court noted that:

“Once a circuit court obtains jurisdiction over divorce proceedings, it retains that jurisdiction over custody and visitation matters until the child attains the age of 18. Moreover, Michigan courts have the inherent independent authority to punish a person for contempt. Consequently, even if the contempt proceedings were procedurally defective, the trial court was not deprived of its jurisdiction over the subject matter or the parties.” *Porter*, 285 Mich App at 462 (internal quotation marks and citation omitted).

Where “the grandparenting time statute was declared unconstitutional before the contempt judgment [for violation of the court’s grandparenting time order] was entered, the court did not have jurisdiction over the subject matter of the contempt judgment,” and “the trial court erred in denying defendant’s subsequent motion to vacate the contempt judgment.” *Johnson v White*, 261 Mich App 332, 346, 350 (2004) (noting that the general rule that a person may not disregard a court order because of their view that the order is incorrect applies only when the order is issued by a court with jurisdiction over the person and over the subject matter).⁸

D. Indirect Contempt–Juveniles

“[T]he **juvenile** court has jurisdiction over contempt proceedings involving contempt of juvenile court orders, even where the [contemnor] is over 19 years of age at the time of the hearing.” *In re Summerville*, 148 Mich App 334, 341 (1986). See also *In re Reiszwitz*, 236 Mich App 158, 172 (1999).

1.6 Ability to Pay

“The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#).” [MCR 3.606\(F\)](#) ([MCR 3.606](#) addresses the

⁷*Porter* refers to [MCR 2.114\(D\)](#); however, this rule was deleted by ADM File No. 2002-37, effective September 1, 2018. The content that was previously in [MCR 2.114\(D\)](#) is now in [MCR 1.109\(E\)\(5\)](#), and [MCR 1.109\(E\)\(6\)](#) provides for sanctions for signatures in violation of the rule.

⁸For a detailed discussion of *Johnson*, see [Section 5.8\(E\)](#).

procedure for contempts outside the immediate presence of the court).⁹ [MCR 6.425\(D\)\(3\)\(a\)](#) states that “[t]he court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order.” [MCR 6.425\(D\)\(3\)](#) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. See also the Michigan Judicial Institute’s *Ability to Pay Benchcard* addressing the ability to pay requirements.

⁹Note that “[p]roceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

Chapter 2: Types of Contempt of Court

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2.1 Scope Note and Quick Reference Material

This chapter addresses the different categories of contempt. Contempt may be civil or criminal. Additionally, both civil and criminal contempt may be direct or indirect. This chapter addresses the characteristics of each type of contempt and how to distinguish between them. For quick reference material, see the Michigan Judicial Institute’s [flowchart](#) depicting different contempt of court proceedings, and the Michigan Judicial Institute’s [table](#) comparing civil and criminal contempt.

2.2 Distinguishing Civil and Criminal Contempt

“[C]ontempts are ‘neither wholly civil nor altogether criminal’” *In re Contempt of Dougherty*, 429 Mich 81, 91 (1987), quoting *Gompers v Bucks Stove & Range Co*, 221 US 418, 441 (1911). “Although it may be difficult to distinguish between criminal and civil contempts, this distinction is often critical since a criminal contempt proceeding requires some, but not all, of the due process safeguards of an ordinary criminal trial^[1] and because the purpose sought to be achieved by imprisoning a civil contemnor (coercion) varies significantly from the purpose of imprisoning a criminal contemnor (punishment).” *In re Contempt of Dougherty*, 429 Mich at 91.

Both civil and criminal contempt may be punished by imprisonment, a fine, or both.² [MCL 600.1715\(1\)](#). There are three different sanctions available to a court to remedy or redress contemptuous behavior:

- criminal punishment to vindicate the court’s authority;
- civil coercion, to force compliance with an order; and
- compensatory relief to the complainant. *Id* at 98.

“Another test of whether the contempt is civil or criminal involves consideration of subsequent conduct—an ‘after the fact’ determination. It may be summarized: Where the contemnor’s conduct of noncompliance with the court order has altered the *status quo* so that it cannot be restored or the relief intended becomes impossible, there is criminal contempt; however, where the contemnor’s conduct of noncompliance with the court order is such that the *status quo* can be restored and it is still possible to grant the relief originally sought, there is civil contempt.” *Harvey v Lewis*, 10 Mich App 709, 716 (1968).

¹See [Chapter 3](#) for a detailed discussion of the required procedural safeguards applicable in criminal contempt proceedings.

²For a detailed discussion of applicable sanctions, see [Chapter 4](#).

See also the Michigan Judicial Institute's [table](#) comparing civil and criminal contempt.

A. Civil Sanctions

Civil contempt sanctions are “remedial, and for the benefit of the complainant.” *In re Contempt of Dougherty*, 429 Mich at 93, quoting *Gompers*, 221 US at 441. The court may also order the contemnor to pay any fines, costs, and expenses of the proceedings. See [MCL 600.1715\(2\)](#). In civil contempt proceedings, the contemnor must be given an opportunity to purge himself or herself of the contempt by complying with the conditions set by the court to remedy the situation. *Casbergue v Casbergue*, 124 Mich App 491, 495 (1983). See also *In re Gorcyca*, 500 Mich 588, 619-620 (2017) (where the trial court found three children in contempt and stated that the children would no longer be in contempt once they participated in court-ordered parenting time with their father, and that the father would inform the court when the children complied, the trial court committed legal error by “unlawfully delegating to the father the discretion to determine when any of the children had purged themselves of contempt[;]” thus, the order of contempt “left the impression that only the father had the ‘keys to the jailhouse’”).

1. Compensatory Civil Sanctions

Compensatory civil contempt sanctions are required where the misconduct has caused an actual loss or injury to a person. [MCL 600.1721](#). See also *In re Contempt of Dougherty*, 429 Mich at 97.

“Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant’s actual loss, and his [or her] right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.”³ *United States v United Mine Workers*, 330 US 258, 304 (1947).

Compensation under [MCL 600.1721](#) “may include attorney fees that occurred as a result of the other party’s contemptuous conduct.” *Taylor*, 277 Mich App at 100 (quotation marks and citation omitted).

³ The Court uses the term “fine” here to describe what [MCL 600.1721](#) refers to as “damages.”

2. Coercive Civil Sanctions⁴

When determining whether a coercive sanction may be imposed, the court should consider “whether there is some act that can be coerced by the sanction so that the contemnor’s performance of the act will put him [or her] into compliance with the underlying order.” *In re Contempt of Dougherty*, 429 Mich at 99. The trial court must also consider “the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *In re Moroun*, 295 Mich App 312, 337 (2012) (quotation marks and citations omitted).

Coercive civil contempt sanctions are only appropriate “where the contemnor, at the time of the contempt hearing, is under a present duty to comply with the order and is in *present violation* of the order.” *In re Contempt of Dougherty*, 429 Mich at 99. See also *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 672 (2022) (holding that coercive sanctions were appropriate and the trial court properly refused to accept a promise not to continue violating the court order where the contemnor had an “extensive history of [publicly] vowing to disobey the court’s orders”). A coercive civil sanction is not appropriate if the defendant is either in actual compliance with the order or under no present duty to comply at the time of the contempt hearing. *In re Contempt of Dougherty*, 429 Mich at 100. “In such a case the court is limited to imposing a criminal sanction, after a properly conducted criminal contempt proceeding, or issuing a civil contempt order compensating the complainant for actual losses.” *Id.*

“[I]mprisonment for civil contempt is properly ordered ‘where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character.’” *In re Contempt of Dougherty*, 429 Mich at 93, quoting *Gompers*, 221 US at 442. Unlike criminal contempt cases where the court cannot imprison the contemnor for more than 93 days, there is no corresponding limitation “in those cases where the commitment is for the omission to perform an act or duty which is still within the

⁴Note that “[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#).” [MCR 3.606\(F\)](#). [MCR 6.425\(D\)\(3\)](#) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. “Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#). See also the Michigan Judicial Institute’s *Ability to Pay Benchcard*.

power of the person to perform[.]” [MCL 600.1715\(2\)](#). “[A] commitment for the omission to perform an act or duty that is within the power of the party to perform is the classical case of civil contempt that permits the use of a coercive sanction.” *In re Contempt of Dougherty*, 429 Mich at 91-92.

Coercive commitment must end when the contemnor performs the required act or no longer has the ability to perform the act, and has paid all fines, costs, and expenses of the proceedings.⁵ [MCL 600.1715\(2\)](#). See also *Moroun*, 295 Mich App at 336 (“Civil contempt imposes a term of imprisonment which ceases when the contemnor complies with the court’s order or when it is no longer within his or her power to comply.”).

The “dichotomy between coercive and punitive imprisonment has been extended to the fine context.” *United Mine Workers v Bagwell*, 512 US 821, 829 (1994). “A contempt fine accordingly is considered civil and remedial if it either coerces the defendant into compliance with the court’s order, or compensates the complainant for losses sustained.” *Id.* (alterations and citation omitted). “Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge.” *Id.* (noting that even a very small flat, unconditional contempt fine is criminal “if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance”). Specific fines imposed for each day the contemnor fails to comply with an affirmative court order are clearly coercive and civil because as soon as the order is obeyed, the daily fines are purged. *Id.* Coercive fines may not be more than \$7,500 for each single contumacious act. [MCL 600.1715\(1\)](#). See also *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 718-719 (2000) (holding that [MCL 600.1715](#) unambiguously limits the amount of the fine that may be imposed “for a single act of contempt”).⁶

B. Criminal Sanctions

Criminal contempt sanctions are imposed to punish for past misconduct and to “vindicate the authority of the court.” *In re*

⁵Note that “[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#).” [MCR 3.606\(F\)](#). [MCR 6.425\(D\)\(3\)](#) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. “Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#). See also the Michigan Judicial Institute’s *Ability to Pay Benchcard*.

⁶At the time *In re Contempt of Auto Club Ins Ass’n* was decided, [MCL 600.1715\(1\)](#) limited the fine for a single act of contempt to \$250; however, the statute was amended by 2006 PA 544 to allow a fine of not more than \$7,500.

Contempt of Dougherty, 429 Mich at 93, citing *Gompers*, 221 US at 441. “[I]mprisonment for criminal contempt is appropriate where ‘the defendant does that which he [or she] has been commanded not to do’” *In re Contempt of Dougherty*, 429 Mich at 93, quoting *Gompers*, 221 US at 442. Imprisonment for criminal contempt operates “solely as punishment for the completed act of disobedience.” *In re Contempt of Dougherty*, 429 Mich at 93-94, quoting *Gompers*, 221 US at 442-443. Criminal contempt penalties are unconditional and imposed as punishment for past misconduct; accordingly, the contemnor does not have the ability to purge himself or herself of the contempt. *State Bar v Cramer*, 399 Mich 116, 128 (1976), abrogated in part on other grounds by *Dressel v Ameribank*, 468 Mich 557, 562 (2003).

1. Permissible Punishments for Criminal Contempt

Sentencing discretion for criminal contempt is limited by statute to a fine of not more than \$7,500, imprisonment not to exceed 93 days, or both. [MCL 600.1715\(1\)](#). The court may also place a contemnor on probation in the manner provided for persons guilty of a misdemeanor. *Id.*

However, some statutes and court rules may impose more specific limits. See, e.g., [MCR 3.708\(H\)\(5\)\(a\)](#); [MCL 600.2950\(23\)](#); [MCL 600.2950a\(23\)](#) (limiting the fine for contempt to \$500 in the context of contempt for violation of a PPO); [MCL 552.633\(2\)](#) (limiting the fine for contempt to \$100 in the context of contempt for failure to pay child or spousal support).

“[A] court may not deprive a prisoner of good-time credit to which the prisoner may be entitled under statute before that prisoner has even begun serving the term of imprisonment.” *ARM v KJL*, 342 Mich App 283, 302-303 (2022) (quotation marks and citation omitted) (holding that the sentence credit statute was violated where the trial court’s sentencing orders specified that the respondent was not entitled to credit on the basis of a local sheriff’s policy that categorically prohibited certain offenders from earning good-time credit, including offenders incarcerated for contempt of court).

2. Compensatory Sanctions for Criminal Contempt

A compensatory sanction must be ordered to reimburse any person who has suffered an actual loss or injury as a result of contumacious conduct. [MCL 600.1721](#).

[MCL 600.1721](#) applies to both criminal and civil contempts. *Taylor v Currie*, 277 Mich App 85, 100 (2007). “Because [MCL](#)

[600.1721](#) does not make a distinction between civil and criminal contempt, but rather requires a trial court to order a contemnor to indemnify any person who suffers an ‘actual loss or injury’ caused by the contemnor’s ‘misconduct,’ we hold that the indemnification sanction mandated by [MCL 600.1721](#) applies even when a trial court imposes a punitive (i.e., criminal) sanction on a contemnor.” *Taylor*, 277 Mich App at 100. However, because compensation is a type of civil contempt sanction, enforcement under [MCL 600.1721](#) is accomplished by way of a civil contempt proceeding. *In re Contempt of Dougherty*, 429 Mich at 97, 100, 102.

“Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant’s actual loss, and his [or her] right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.”⁷ *United States v United Mine Workers*, 330 US 258, 304 (1947). In other words, compensatory fines are awarded only to the prevailing party’s benefit. See *id.*

Compensation under [MCL 600.1721](#) “may include attorney fees that occurred as a result of the other party’s contemptuous conduct.” *Taylor*, 277 Mich App at 100 (quotation marks and citation omitted).

C. Requirement of Willfulness

1. Criminal Contempt

“In a criminal contempt proceeding, a willful disregard or disobedience of a court order must be clearly and unequivocally shown[.]” *DeGeorge v Warheit*, 276 Mich App 587, 592 (2007). “Willfulness . . . implies a deliberate or intended violation, as distinguished from an accidental, inadvertent or negligent violation.” *Vaughn v City of Flint*, 752 F2d 1160, 1168 (CA 6, 1985) (quotation marks and citations omitted).⁸ See also *People v MacLean*, 168 Mich App 577, 579 (1988) (“A wilful disregard consists of an act, omission, or statement tending to impair the authority or impede the functioning of the court.”).

There was insufficient evidence of willfulness where the defendant moved to withdraw his guilty plea, stating that he lied to the court by misstating the facts to have his plea

⁷ The Court uses the term “fine” here to describe what [MCL 600.1721](#) refers to as “damages.”

⁸ Decisions of lower federal courts are not binding on Michigan courts, but they may be persuasive and instructive. *Abela v Gen Motors Corp*, 469 Mich 603, 607 (2004).

accepted, and testimony from the defendant's former trial attorney at the show cause hearing established that the defendant denied committing the crime to his attorney but pleaded guilty on his advice that the case was "unwinnable and impossible and that the plea bargain would achieve the best possible result[.]" *People v Little*, 115 Mich App 662, 664-665 (1982). The Court held that it could not "conclude beyond a reasonable doubt that the defendant's statements at the plea-taking proceeding were motivated by bad faith rather than the assortment of personal reasons that the defendant suggests." *Id.* at 665.

2. Civil Contempt

Willfulness is not a necessary element of civil contempt. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 501 (2000). In a civil contempt case, the court need only find that the alleged contemnor "was neglectful or violated [a] duty to obey an order of the court." *Id.*

Committee Tip:

In order to hold a person in civil contempt, the finding that the alleged contemnor was neglectful or violated a duty to obey a court order should be paired with a finding that the alleged contemnor had the ability to comply with the court order. See generally [MCL 600.1715\(2\)](#).

D. Standard of Proof

1. Criminal Contempt

In cases of criminal contempt, it must be proved beyond a reasonable doubt that the individual engaged in a willful disregard or disobedience of the authority or orders of the court. *DeGeorge*, 276 Mich App at 592. See also [MCR 3.708\(H\)\(3\)](#) (requiring proof beyond a reasonable doubt in criminal contempt cases for alleged violations of personal protection orders). "A party charged with criminal contempt has a presumption of innocence and a right against self-incrimination." *DeGeorge*, 276 Mich App at 592.

See also *People v MacLean*, 168 Mich App 577, 579 (1988) (“The elements necessary to support a conviction of criminal contempt are (1) a wilful disregard or disobedience of the order of the court, and (2) that the contempt is clearly and unequivocally shown.”)

2. Civil Contempt

Caselaw has not clearly set out the standard of proof in civil contempt cases. Many cases apply a “clear and unequivocal” evidence standard. *In re Contempt of Robertson*, 209 Mich App 433, 439 (1995); *In re Contempt of Calcutt*, 184 Mich App 749, 757 (1990). See also *In re Moroun*, 295 Mich App at 323-324 (noting twice that the trial court found “clear and unequivocal evidence” of contempt). However, the preponderance of the evidence standard has also been applied. *Porter v Porter*, 285 Mich App 450, 457 (2009); *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App at 712.

Additionally, [MCR 3.708\(H\)\(3\)](#) applies a clear and convincing evidence standard in the context of civil contempt proceedings after an alleged violation of a personal protection order.

E. Caselaw Examples

The following cases examine whether a contempt proceeding or sanction is properly characterized as civil or criminal:

- The actions were properly characterized as civil contempt proceedings where the contemnors were sentenced to imprisonment for two years for refusing to answer questions in front of a grand jury because the sentence contained the proviso that the contemnors would be released if they answered the questions before the two-year sentence ended. *Shillitani v United States*, 384 US 364, 365-368 (1971). The Court reasoned that the purpose of the imprisonment was to compel the contemnors to obey the orders to testify because the contemnors carried “the keys of their prison in their own pockets,” and if they “had chosen to obey the order they would not have faced jail.” *Id.* at 368 (quotation marks and citations omitted).
- The Court rejected the defendant’s argument that he should have been charged with civil contempt rather than criminal contempt where the defendant took almost eight months to return hundreds of files he was ordered to return immediately, and further attempted to take additional files, stating that “he could do anything he wanted to,” after the court ordered the defendant to return all the files. *In re Contempt of Rapanos*, 143 Mich App 483,

496-497 (1985). The Court concluded that the criminal contempt charge was proper because the “defendant’s conduct constituted an affront to the dignity of the court[,]” and because the defendant’s conduct impaired business operations of a company and delayed preparation of a civil lawsuit. *Id.* at 497-498 (noting that while the defendant ultimately returned all the files in question, the status quo could not be restored because of the defendant’s delay in returning the files).

- The trial court improperly imposed civil contempt sanctions on the defendants where the defendants had violated an injunction in the past, but were not in current violation of the injunction; rather, the defendants simply refused to promise to obey the injunction in the future. *In re Contempt of Dougherty*, 429 Mich at 102-103. The Court explained that the trial court could not sanction the defendants with coercive civil sanctions and that under these circumstances, the court was limited to holding the defendants in criminal contempt to punish them for their past violations or to the imposition of compensatory sanctions for any actual damages. *Id.* (noting that there was no act that could be coerced to put the defendants into compliance with the injunction when the injunction prohibited trespassing and the defendants were not trespassing at the time of the contempt hearing; thus, any coercive sanction would accomplish nothing).
- After several unions were found in contempt for repeated violations of a labor injunction, the trial court imposed determinate fines of \$20,000 or \$100,000 (depending on whether violence was involved) that would be levied for future contempts; the trial court held that these fines were civil. *United Mine Workers*, 512 US at 824, 836-837. The issue on appeal was whether the fines were coercive civil or criminal sanctions. *Id.* at 834. The Court held that the fines were criminal because “[t]he union’s ability to avoid the contempt fines was indistinguishable from the ability of any ordinary citizen to avoid a criminal sanction by conforming his [or her] behavior to the law. The fines are not coercive day fines, or even suspended fines, but are more closely analogous to fixed, determinate, retrospective criminal fines which petitioners had no opportunity to purge once imposed.” *Id.* at 837. Accordingly, the Court declined “to conclude that the mere fact that the sanctions were announced in advance rendered them coercive and civil as a matter of constitutional law.” *Id.* The Court noted that additional considerations further supported the finding that the fines were criminal: “The union’s sanctionable conduct did not occur in the court’s presence or otherwise implicate the court’s ability to maintain order and adjudicate the proceedings before it. Nor did the

union's contumacy involve simple, affirmative acts Instead, the Virginia trial court levied contempt fines for widespread, ongoing, out-of-court violations of a complex injunction. In so doing, the court effectively policed petitioners' compliance with an entire code of conduct that the court itself had imposed. The union's contumacy lasted many months and spanned a substantial portion of the State. The fines assessed were serious, totaling over \$52 million. Under such circumstances, disinterested factfinding and evenhanded adjudication were essential, and petitioners were entitled to a criminal jury trial." *Id.* at 837-838.

- Where the defendant "had been discharged in bankruptcy, and [the] plaintiff either had received or no longer needed the records [the] defendant had been ordered to produce," the contempt sanctions were criminal. *In re Contempt of Rochlin*, 186 Mich App 639, 648 (1990). The Court held the proceeding was criminal because "the trial court's purpose in imposing sanctions was to remedy acts which constituted an imminent threat to the orderly administration of justice[.]" *Id.* (quotation marks omitted). Further, the trial court's "intent was to punish defendant for his past failure to produce the records, not to coerce him into producing the records at the time of the contempt hearing." *Id.* (noting that the defendant could no longer comply with the court order to produce records or pay damages).
- The Court determined that contempt was criminal where the trial court made no indication that payment of a court-ordered settlement would purge the contempt and trigger the release of the contemnor from detention. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 715-716 (2000). The Court reasoned that despite the fact the ordered payment was to be made to the opposing party, the contempt order was in no way discharged simply by complying with the order. *Id.* The Court further explained that the sanction must be criminal when the contempt orders "showed an intent to punish [the contemnors] for actions and arguments that the trial court plainly found frustrating and obstructive." *Id.* at 715.
- The Court of Appeals disagreed with the plaintiff's argument "that the contempt proceedings at issue . . . were criminal" where the plaintiff failed on multiple occasions to comply with court-mandated parental visitation for the defendant and also failed to pay court ordered sanctions stemming from the failure to allow defendant to visit their child. *Porter v Porter*, 285 Mich App 450, 452-455 (2009). The Court reasoned that the trial court's use of the contempt power was not "to punish [the] plaintiff for past

misconduct because its dignity had been offended;” rather, the trial court used the contempt power “to coerce [the] plaintiff into complying with its orders” and therefore, the contempt was civil. *Id.* at 457 (noting as further evidence of the civil nature of the contempt that defendant had the present ability to “purge herself of the contempt by paying the \$1,000 sanction and complying with” the trial court’s visitation orders).

- The Court rejected the contemnor’s argument “that the contempts were necessarily criminal because she was imprisoned only after she pledged to close the restaurant, and her release was conditioned upon [the Michigan Department of Agriculture and Rural Development (MDARD)] verifying that the restaurant was closed, thereby depriving her of the ‘keys to her cell.’” *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 671 (2022). Specifically, the contemnor was “undisputedly still operating her restaurant [in violation of the court’s order] at the time she was arrested,” and the restaurant’s “closure at its normal closing time was not evidence of compliance with the court’s order.” *Id.* at 672. The trial court did not err by imposing coercive sanctions and refusing to accept a promise not to continue violating the court order where the contemnor had an “extensive history of [publicly] vowing to disobey the court’s orders[.]” *Id.* Further, the “keys to her cell” were not “handed over to MDARD merely because MDARD was charged with confirming that [the restaurant] had not reopened” because “the decision whether to reopen remained vested in [the contemnor].” *Id.* at 672-673.

2.3 Anticipatory Contempt

“Anticipatory contempt” is not a proper use of the court’s contempt power; accordingly, the future intent to violate a court order is not subject to the court’s contempt power. *In re Contempt of Dougherty*, 429 Mich 81, 102-107 (1987). “[A] coercive sanction is proper only when the contemnor, at the time of the contempt proceeding, is in present violation of the court’s order[.]” *Id.* at 104-107, citing and discussing *United States v Johnson*, 736 F2d 358 (CA 6, 1984), *United States v Bryan*, 399 US 323 (1950), and *In re McConnell*, 370 US 230 (1962).

2.4 Direct Contempt (“Summary Contempt Proceedings”)

Generally, the first step in analyzing contempt is determining whether the contempt is civil or criminal; of equal importance is determining whether the contempt is direct or indirect. Often distinguishing between

criminal and civil contempt is not necessary in the context of direct contempt. *United Mine Workers v Bagwell*, 512 US 821, 827 n 2 (1994) (“Direct contempts that occur in the court’s presence may be immediately adjudged and sanctioned summarily, and, except for serious criminal contempts in which a jury trial is required, the traditional distinction between civil and criminal contempt proceedings does not pertain.”) (citations omitted).

Both [MCL 600.1701\(a\)](#) and [MCL 600.1711\(1\)](#) authorize the punishment of direct contempt. Direct contempt occurs “during [the court’s] sitting[.]” and “in [the court’s] immediate view and presence.” [MCL 600.1701\(a\)](#). Similarly, [MCL 600.1711\(1\)](#) provides that direct contempt of court occurs when the contemptuous action is committed “in the immediate view and presence of the court,” and permits the court to “punish it summarily.” [MCL 600.1711\(1\)](#). See also *In re Contempt of Henry*, 282 Mich App 656, 675 (2009) (“When a contempt is committed in the immediate view and presence of a court and immediate corrective action is necessary, the court may summarily punish it.”).

“Punishment for contempt is appropriate when it is required to restore order in the courtroom and to ensure respect for the judicial process.” *In re Contempt of Dudzinski*, 257 Mich App 96, 108-109 (2003) (quotation marks and citation omitted). See also *Johnson v Mississippi*, 403 US 212, 214 (1971).

The United States Supreme Court has held that the summary punishment of contempt satisfies due process requirements. *Fisher v Pace*, 336 US 155 (1949); *Ex parte Terry*, 128 US 289 (1888). However, it has also cautioned that “for a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court’s immediate presence, but that the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct.” *In re Oliver*, 333 US 257, 274-275 (1948). Further, summary punishment should be reserved only for conduct that is “an open threat to the orderly procedure of the court and such a flagrant defiance of the person and presence of the judge before the public’ that, if ‘not instantly suppressed and punished, demoralization of the court’s authority will follow.’” *Id.* at 275, quoting *Cooke v United States*, 267 US 517, 536 (1925).

A. “Immediate View and Presence”

The Michigan Supreme Court defined “immediate view and presence” as follows:

“‘[I]mmediate view and presence’ are words of limitation, and exclude the idea of constructive

presence. The immediate view and presence does not extend beyond the range of vision of the judge, and the term applies only to such contempts as are committed in the face of the court. Of such contempts, he [or she] may take cognizance of his [or her] own knowledge, and may proceed to punish summarily such contempts, basing his [or her] action entirely upon his [or her] own knowledge. All other alleged contempts depend solely upon evidence, and are inferences from fact[.]” *In re Wood*, 82 Mich 75, 82 (1890).

See also *In re Scott*, 342 Mich 614, 618-619 (1955) (discussing and quoting *In re Wood*).

B. “During Its Sitting”

As used in [MCL 600.1701\(a\)](#), the phrase “during its sitting” includes the period of time when the judge is actually in the courtroom conducting judicial business. *In re Contempt of Warriner*, 113 Mich App at 553-554. Therefore, if the contempt occurs in the courtroom during a period when the court has concluded one case and is about to proceed with another, it qualifies as having occurred during “the sitting of the court.” *Id.*

C. Personal Knowledge of All Necessary Facts

Contempt is only direct “when all the facts necessary to find the contempt are within the personal knowledge of the judge.” *In re Contempt of Henry*, 282 Mich App at 675. See also *In re Scott*, 342 Mich at 618 (holding that “in order to have a valid summary conviction, due process requires that the salient facts constituting the contempt be within the personal knowledge of the judge”). A judge does not have personal knowledge for purposes of summary contempt if the judge must rely on the testimony of other persons to establish the case against the contemnor. *Id.* at 619-622.

D. Must Make a Record

“When contemptuous behavior occurs in open court but off the record, it is imperative that the judge make an adequate record before holding the person in contempt[.]” *In re Murphy Contempt*, ___ Mich App ___, ___ (2023) (agreeing with the circuit court that the district court failed to make an adequate record for the circuit court to find that the district court had sufficient evidence to hold the person in direct contempt where the district court did not specify what happened and the contempt was committed in direct view of the judge but off the record).

E. No First Amendment Protection for Contemptuous Speech

“[D]isruptive, contemptuous behavior in a courtroom is not protected by the constitution.” *People v Kammeraad*, 307 Mich App 98, 149 (2014) (quotation marks and citation omitted). The defendant’s First Amendment rights were not violated by the trial court’s finding of contempt where his actions and remarks disturbed the administration of justice. *Id.* at 148-149 (noting that the defendant appeared at the sentencing hearing partially undressed, interrupted defense counsel, and when given the chance to make a statement, stated that he was “not the defendant” and that he believed the trial court had acted criminally).

However, “[c]riticism of the courts within limits should not be discouraged and it is a proper exercise of the rights of free speech and press. Such criticism should not subject the critic to contempt proceedings unless it tends to impede or disturb the administration of justice.” *In re Contempt of Dudzinski*, 257 Mich App 96, 101-102 (2003), quoting *In re Gilliland*, 284 Mich 604, 610-611 (1938). Courts must use a balancing test to determine whether speech is punishable by contempt. *In re Contempt of Dudzinski*, 257 Mich App at 102. When determining whether certain speech constitutes contempt, courts must “appraise the comment on a balance between the desirability of free discussion and the necessity for fair adjudication, free from interruption of its processes.” *Pennekamp v Florida*, 328 US 331, 336, 349-350 (1946) (weighing the danger to fair judicial administration against First Amendment protections and determining that two newspaper editorials criticizing the trial court did not present a clear and immediate danger to fair judicial administration).

Nevertheless, where the trial court found a trial spectator in direct criminal contempt after the spectator refused to obey the trial court’s order to remove a shirt with politically protected speech on it, the Court of Appeals upheld the finding of criminal contempt. *In re Contempt of Dudzinski*, 257 Mich App at 111. The Court explained that even though the statement on the shirt was constitutionally protected speech, the “willful violation of the trial court’s order, regardless of its legal correctness, warranted the trial court’s finding of criminal contempt.” *Id.*

F. Deferring Consideration of Direct Contempt

“When a court defers consideration of contempt until the conclusion of the trial, another judge must consider the charges.” *In re Contempt of Scharg*, 207 Mich App 438, 440 (1994).

In *In re Contempt of Scharg*, the trial court found the defendant, a defense attorney, in contempt at the conclusion of a criminal trial at which the defendant was representing a client. *Scharg*, 207 Mich App at 439. The trial court cited five separate disruptive incidents that occurred during the course of the trial and in the court's presence and found the defendant in contempt; the defendant requested a hearing and the trial court denied the request. *Id.* The Court of Appeals reversed the trial court's summary finding of contempt, holding that "[w]here the contumacious behavior does not require an immediate response, there is no need to sacrifice traditional procedural safeguards." *Id.* at 439-440.

In *In re Contempt of Henry*, the defendant was held in contempt for perjuring herself during three indirect criminal contempt hearings. *In re Contempt of Henry*, 282 Mich App at 676. The defendant argued that the perjury was a direct contempt because it was committed in the presence of the trial court, and she was entitled to a full hearing before a different judge because the trial court did not immediately find her in contempt for the perjury. *Id.* at 675. The Court rejected the defendant's argument, finding that the defendant was already participating in the evidentiary hearings required by [MCL 600.1711\(2\)](#), and after hearing all the evidence at the three hearings, the trial court found that the evidence showed that the defendant had perjured herself. *In re Contempt of Henry*, 282 Mich App at 676. Accordingly, "[t]he trial court certainly did not find that contempt occurred during a trial and then defer the contempt order until the conclusion of the trial like the court did in *Scharg*." *Id.*

2.5 Indirect Contempt

Indirect contempt occurs outside the immediate view and presence of the court. See [MCL 600.1711\(2\)](#). Indirect contempt may not be punished summarily, and may only be punished "after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend." *Id.*

Indirect contempt is also governed by [MCR 3.606](#), which requires "a proper showing on ex parte motion supported by affidavits" to initiate a contempt proceeding when the contempt occurs outside the immediate presence of the court. [MCR 3.606\(A\)](#).⁹

⁹ See [Chapter 3](#) for a complete discussion of procedural requirements.

2.6 Caselaw Examples—Direct and Indirect Contempt

Alleged contempt was indirect where allegedly contemptuous words were written on the back of a check that was delivered to the court clerk because the writing was not done “during the sitting of the court, in its immediate view and presence.” *In re Wood*, 82 Mich at 78-79, 82. Accordingly, an affidavit proving the facts regarding the alleged contempt was required before the trial court could order the alleged contemnor to appear. *Id.* at 82-83.

The trial court erred by summarily punishing the alleged contemnor where the alleged contempt was the filing of false pleadings because the alleged contempt occurred “at the time she swore to her bill of complaint and filed it[;]” thus, the filing did not occur “in the immediate view and presence of the court.” *In re Collins*, 329 Mich 192, 195 (1950) (quotation marks omitted).

The worker’s compensation magistrate erred by summarily holding in contempt a witness who was served with a subpoena to appear but failed to appear at the scheduled administrative hearing date. *In re Contempt of Robertson*, 209 Mich App 433, 434, 439 (1995).¹⁰ The Court explained that while the witness’s “failure to appear undermined or at least implicated the administration of justice, the offense was not committed within the immediate view and presence of the magistrate.” *Id.* at 439. Although the absence of the witness “was certainly within the personal knowledge of the magistrate, the reason for his absence was not.” *Id.* at 440. The Court explained that the order of contempt “was based on the representations of [the] plaintiff’s counsel[,]” and accordingly, all the facts necessary to find the contempt were not within the magistrate’s personal knowledge. *Id.* at 440-441.

Summary punishment of the defendant was proper where he “repeatedly refused to obey the trial court’s orders, even after being warned that he would be held in contempt.” *People v Ahumada*, 222 Mich App 612, 618 (1997) (finding that “[s]ummary punishment was required to restore order in the courtroom and to ensure respect for the judicial process”).

An attorney was properly held in direct contempt for failing to instruct her client to comply with the trial court’s order. *Schoensee v Bennett*, 228 Mich App 305, 318 (1998). While the attorney first stated she would not instruct her client to comply with the trial court’s order because they were seeking a stay of the order in a letter to defense counsel, the contempt was committed in the presence of the court where the attorney

¹⁰The Court noted that “the due process safeguards that apply in a civil contempt proceeding likewise apply in worker’s compensation contempt proceedings.” *In re Contempt of Robertson*, 209 Mich App at 438.

acknowledged at the hearing that merely seeking a stay from the Court of Appeals did not stay the trial court's order, but still responded that she could "do no more than seek . . . relief" from the Court of Appeals. *Id.* at 317-318 (quotation marks omitted). Accordingly, the Court held that the attorney essentially defied the trial court's order by failing to instruct her client to comply with the order while waiting for relief from the Court of Appeals. *Id.* at 318.

Summary punishment was inappropriate where the allegedly contemptuous statements were made in the hallway outside of the courtroom. *In re Contempt of Barnett*, 233 Mich App 188, 190, 192 (1998) (where information concerning the alleged contemnor's statements was relayed to the judge by a bailiff, the contempt did not occur in the immediate view and presence of the court). Similarly, see also *In re Nathan*, 99 Mich App 492, 494-495 (1980) (the contempt was committed outside the presence of the court where the defendant allegedly threatened a witness just outside the courtroom and the threat was overheard by a police officer).

Chapter 3: Procedural Requirements

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3.1 Scope Note and Quick Reference Material

This chapter addresses the rights of alleged contemnors, the procedural requirements for commencing a contempt action, the procedures applicable to presiding over a contempt action, the requirements for the trial court's opinion and order in a contempt case, and appeals in contempt cases.

For relevant quick reference material, see the Michigan Judicial Institute's [checklist](#) describing summary punishment proceedings; the Michigan Judicial Institute's [checklist](#) describing indirect criminal contempt proceedings; the Michigan Judicial Institute's [checklist](#) describing indirect civil contempt proceedings; the Michigan Judicial Institute's [flowchart](#) depicting different contempt of court proceedings; the Michigan Judicial Institute's [flowchart](#) depicting due process requirements; and the Michigan Judicial Institute's [table](#) detailing procedures and sanctions for common forms of contempt.

3.2 Threshold Determinations

A. Civil or Criminal Contempt

The trial court must determine whether a contempt is criminal or civil before initiating proceedings because “[a] defendant charged with contempt is entitled to be informed not only whether the contempt proceedings are civil or criminal, but also the specific offenses with which he or she is charged.” *DeGeorge v Warheit*, 276 Mich App 587, 592 (2007). See Chapter 2 for a detailed discussion on differentiating between civil and criminal contempt; see also the Michigan Judicial Institute's [table](#) comparing civil and criminal contempt.

B. Direct or Indirect Contempt

The trial court must determine whether the contempt was direct or indirect to determine whether a hearing is required. [MCL 600.1711](#). See [Chapter 2](#) for a detailed discussion on differentiating between direct and indirect contempt.

Indirect contempts require a hearing; punishment may occur only “after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend.” [MCL 600.1711\(2\)](#). See [Section 3.3](#) for a discussion of the due process requirements for indirect contempt hearings. Direct contempts may be punished summarily, and accordingly, do not require separate hearings. [MCL 600.1711\(1\)](#). See [Section 2.4](#) for a detailed discussion of summary proceedings. However, if the trial court defers

punishment of a direct contempt, a hearing is required. *In re Contempt of Henry*, 282 Mich App 656, 676 (2009). See [Section 2.4\(F\)](#) for additional discussion of deferred consideration of direct contempt.

3.3 Procedural Due Process Requirements

An alleged contemnor is entitled to procedural due process in cases of indirect contempt; cases of direct contempt may be addressed immediately using a summary procedure. See [MCL 600.1711\(2\)](#) (requiring proof of the facts charged and opportunity to defend); [MCL 600.1701\(a\)](#) (authorizing summary proceedings); [MCL 600.1711\(1\)](#) (authorizing summary proceedings). Accordingly, the court must first ask whether the contempt is direct or indirect. See [Chapter 2](#) for a detailed discussion of direct and indirect contempt.

If the contempt is indirect, the level of due process required is dictated by whether the contempt is criminal or civil. See, e.g., *Porter v Porter*, 285 Mich App 450, 456-457 (2009) (discussing due process requirements in criminal and civil contempt proceedings). See [Section 2.2](#) for a detailed discussion of criminal versus civil contempt.

“What process is due in a particular proceeding depends on the nature of the proceeding, the risks involved, and the private and governmental interests that might be affected.” *Ferranti v Electrical Resources Co*, 330 Mich App 439, 448-449 (2019).

See also the Michigan Judicial Institute’s [flowchart](#) depicting due process requirements.

A. Due Process Requirements in Indirect Civil Contempt Cases

“[I]n a civil contempt proceeding, the accused must be accorded rudimentary due process, i.e., notice and an opportunity to present a defense, and the party seeking enforcement of the court’s order bears the burden of proving by a preponderance of the evidence that the order was violated.” *Porter*, 285 Mich App at 456-457.

Accordingly, caselaw has held that in a civil contempt proceeding the alleged contemnor must be:

- informed of the nature of the offense and given notice of the charges;
- afforded a hearing regarding the charges; and

- given a reasonable opportunity to prepare and present a defense. *In re Collins*, 329 Mich 192, 196 (1950); *In re Contempt of Robertson*, 209 Mich App 433, 438 (1995).

It is possible that notice of the possibility of incarceration is required in an indirect civil contempt proceeding when applicable. See *Cassidy v Cassidy*, 318 Mich App 463, 500-509 (2017). In *Cassidy*, the defendant in a civil contempt proceeding argued that “he was denied due process when the trial court ordered him to jail when he had no prior notice[of the possibility of jail time] and when the trial court’s written order for contempt contained harsher terms than what the trial court had verbally indicated at the hearing.” *Id.* at 500. The Court noted that the defendant was represented by counsel and had the present ability to pay his obligations. *Id.* The Court concluded that the defendant was not denied due process because the record clearly indicated that the “defendant was made well aware that incarceration was a possible sanction if he was found in contempt of court.” *Id.* at 506, 509 (“There is no merit to defendant’s claim that he was deprived of due process[; a] rudimentary review of the record reveals that defendant feared incarceration and, as such, was clearly aware that incarceration was a possibility.”). The Court further rejected the defendant’s claim that the trial court’s verbal order conflicted with its written order. *Id.* at 509-510 (noting that “to the extent that the trial court’s oral pronouncement varied from the actual order, the [written] order controls”).

See also the Michigan Judicial Institute’s [checklist](#) describing indirect civil contempt proceedings.

B. Due Process Requirements in Indirect Criminal Contempt Cases

“[C]riminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings,” including protection against double jeopardy, notice of charges, assistance of counsel, the ability to present a defense, the privilege against self-incrimination, and a right to proof beyond a reasonable doubt. *United Mine Workers v Bagwell*, 512 US 821, 826 (1994) (quotation marks and citations omitted). See also *People v Johns*, 384 Mich 325, 333 (1971) (holding that a “conviction for criminal contempt can be sustained only upon a record which shows compliance with the procedural safeguards established for the prosecution of any other crime of equal gravity”); *Porter*, 285 Mich App at 456 (noting that a person charged with criminal contempt “is presumed innocent, enjoys the right against self-incrimination, and the contempt must be proved beyond a reasonable doubt”).

Accordingly, caselaw holds that in a criminal contempt proceeding the alleged contemnor:

- must be presumed innocent and proven guilty beyond a reasonable doubt;
- must be informed of the nature of the charged offense(s) and given notice of the specific offense(s) with which he or she is charged;
- has the right against self-incrimination;
- must be afforded a hearing regarding the charges, including the opportunity to produce witnesses;
- must be given a reasonable opportunity to prepare and present a defense; and
- must be given reasonable time to secure the assistance of counsel. *Ferranti v Electrical Resources Co*, 330 Mich App 439, 448 (2019); *In re Collins*, 329 Mich at 196; *In re Contempt of Henry*, 282 Mich App 656, 672 (2009); *DeGeorge v Warheit*, 276 Mich App 587, 592 (2007).

While a person charged with criminal contempt must be informed of the specific offenses with which he or she is charged; “the charges need not be set forth in the form and detail of a criminal information” *In re Contempt of Henry*, 282 Mich App at 672-673 (quotation marks and citation omitted). See also *In re Contempt of Rochlin*, 186 Mich App 639, 648-649 (1990) (reversing the defendant’s criminal contempt conviction where the defendant was not given notice of one of the charges until the plaintiff’s opening statement).

Generally, there is no right to a jury trial in contempt cases; however, the accused does have a right to a jury in “serious” criminal contempt cases. *People v Antkoviak*, 242 Mich App 424, 464 (2000). See [Section 3.14](#) for a detailed discussion.

“While Michigan courts have recognized that there is no general constitutional right to discovery, it is well-established that disclosure of exculpatory material and impeachment evidence is mandated by due-process principles.” *Ferranti*, 330 Mich App at 448 (citations omitted). “[T]he nature of criminal contempt, the necessity for due process, and the possibility of imprisonment as a penalty warrant application of the court rules governing discovery, [MCR 6.201](#).” *Ferranti*, 330 Mich App at 450. See the Michigan Judicial Institute’s [Criminal Proceedings Benchbook, Vol. 1](#), Chapter 9 for a detailed discussion of discovery in criminal cases.

See also the Michigan Judicial Institute's [checklist](#) describing indirect criminal contempt proceedings.

C. Reasonable Opportunity to Prepare a Defense

Parties charged with both civil and criminal contempt must be given a reasonable opportunity to prepare a defense. See, e.g., *In re Collins*, 329 Mich at 196.

What constitutes a reasonable opportunity to prepare a defense “must be viewed in the context of the entire situation.” *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 212-213 (1966) (considering the seriousness of the charges and the amount of time allowed for trial preparation, including adjournments). See also *Fraternal Order of Police, Lodge No 98 v Kalamazoo Co*, 82 Mich App 312, 316-317 (1978) (finding that the defendant was not given a reasonable opportunity to prepare a defense where he was notified the evening before the date of the contempt hearing of the contempt charges, and noting that the fact that the defendant may have anticipated the legal proceedings was not a sufficient reason to deny him adequate time to prepare especially where he did not believe he was in violation of the court’s order and that there was no evidence that the matter needed to be resolved immediately in order to protect the public interest).

There is no due process violation where the contemnor had sufficient notice and time in which to prepare a defense, but was unprepared at the hearing. *DeGeorge*, 276 Mich App at 593-594 (the contemnor failed to secure any witnesses to testify). In *DeGeorge*, the contempt hearing was held more than two months after the contemnor received notice of the contempt motion, and more than one month after the contemnor filed his memorandum in opposition to the motion. *Id.* at 593. The Court concluded that the contemnor’s failure to ready himself for the hearing, despite having an adequate amount of time to do so, did not offend the contemnor’s due process rights. *Id.* at 594. See also *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 674-675 (2022) (“the fact that [the contemnor] was not *actually* prepared to present a defense does not establish a due process violation,” and “[d]ue process guarantees only an opportunity,” and a contemnor’s intentional failure to avail themselves of that opportunity does not establish a due process violation).

D. Other Due Process Concerns

A contemnor’s ability to obtain an accurate transcript is a matter of due process. *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 666 (2022).

“The correct application of the correct standard of evidentiary proof is also a due-process concern.” *Id.*

3.4 Prosecution of Contempt Actions

In direct contempt cases, the judge who witnessed the contumacious conduct initiates the proceedings.¹ See [MCL 600.1701\(a\)](#); [MCL 600.1711\(1\)](#). In cases of indirect contempt, the person who initiates the proceedings differs depending on the circumstances of the contempt.

“[A] private party’s attorney may act as the prosecutor in a criminal-contempt proceeding.” *Ferranti v Electrical Resources Co*, 330 Mich App 439, 451 (2019).

A. Specific Indirect Contempt Proceedings

In the following circumstances, initiation and prosecution of contempt proceedings are governed by statute or court rule:

- **Action to abate a nuisance.** A prosecuting attorney, the attorney general, any resident of the county in which a nuisance is located, or a city, village, or township attorney for the city, village, or township in which a nuisance is located may bring an action to abate a nuisance. [MCL 600.3805](#).
- **Domestic relations cases.** Depending on the type of order allegedly violated, the Friend of the Court or an aggrieved party may institute actions to enforce orders and judgments in domestic relations cases. [MCL 552.613\(1\)](#); [MCL 552.626\(4\)](#); [MCL 552.631\(1\)](#); [MCL 552.641\(1\)](#); [MCL 552.644](#); [MCR 3.208\(B\)](#).
- **Personal protection orders.** In criminal contempt proceedings for violations of personal protection orders, a prosecuting attorney must prosecute the proceedings unless the petitioner retains her or his own attorney. [MCL 764.15b\(7\)](#); [MCR 3.708\(G\)](#). “The absence of a proper prosecutor constitute[s] a jurisdictional defect rendering [a] conviction void.” *In re LT*, 342 Mich App 126, 139 (2022).

B. Unspecified Indirect Contempt Proceedings

Initiation of indirect contempt is governed by [MCR 3.606\(A\)](#), which provides that the court can either order the accused contemnor to show cause or issue a bench warrant if there is “a proper showing

¹ See [Section 2.4](#) for a discussion of summary contempt proceedings.

on ex parte motion supported by affidavits[.]” [MCR 3.606](#) permits private parties to initiate a contempt proceeding by ex parte motion. *DeGeorge v Warheit*, 276 Mich App 587, 600 (2007) (holding that “it is manifest that the Michigan Court Rules contemplate that a private party . . . may initiate and prosecute a motion to hold an opposing party in criminal contempt”). See also *In re Contempt of Henry*, 282 Mich App 656, 667 (2009) (noting that “a prosecutor need not initiate proceedings or prosecute a claim for indirect criminal contempt”).

3.5 Right to Counsel for Alleged Contemnor

The Sixth Amendment and the Fourteenth Amendment’s Due Process clause grant indigent defendants the right to state-appointed counsel in indirect *criminal* contempt proceedings. *Turner v Rogers*, 564 US 431, 441 (2011). See also *In re LT*, 342 Mich App 126, 133-134 (2022) (noting “[t]he right to counsel also encompasses the right to the effective assistance of counsel” where respondent was accused of criminal contempt for violation of a nondomestic PPO) (quotation marks and citation omitted). However, “the Sixth Amendment does not govern civil cases,” and “where civil contempt is at issue, the Fourteenth Amendment’s Due Process Clause allows a State to provide fewer procedural protections than in a criminal case.” *Turner*, 564 US at 441-442.

Although Michigan courts have extended the right to appointed counsel to some civil contempt cases, see, e.g., *Mead v Batchlor*, 435 Mich 480, 505-506 (1990) (indigent defendant cited for civil contempt for nonpayment of child support entitled to appointed counsel), abrogated by *Turner*, 564 US 431; *People v Johnson (David)*, 407 Mich 134, 142-143, 148 (1979) (indigent witness cited for civil contempt of a grand jury entitled to appointed counsel), the United States Supreme Court has held that “the Due Process Clause does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to a year).” *Turner*, 564 US at 448.² Specifically, the United States Supreme Court concluded that in cases involving child support enforcement, “where . . . the custodial parent (entitled to receive the support) is unrepresented by counsel, the State need not provide counsel to the noncustodial parent (required to provide support) [even if that person may be subject to incarceration up to one year].” *Id.* at 435. However, to meet due process requirements, “the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the

² The Court specifically stated that this holding does not address cases where the past due child support is owed to the state or unusually complex cases where the noncustodial parent “can fairly be represented only by a trained advocate.” *Turner*, 564 US at 449, quoting *Gagnon v Scarpelli*, 411 US 778, 788 (1973).

supporting parent is able to comply with the support order.” *Id.* Alternative procedures include sufficient notice regarding the importance of the ability to pay, a fair opportunity to present and dispute relevant financial information, and court findings on the noncustodial parent’s ability to pay. *Id.* at 448.

Note that the court must determine a person’s ability to pay in contempt cases where incarceration or probation revocation is possible. [MCR 3.606\(F\)](#); [MCR 3.928\(D\)](#). See the Michigan Judicial Institute’s *Ability to Pay Benchcard* addressing the ability to pay requirements.

3.6 Initiation of Proceedings by Affidavit or Other Method

In cases of indirect contempt, or in direct contempt cases where the court has deferred a hearing on the alleged contempt, the court may punish the contemnor only “after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend.” [MCL 600.1711\(2\)](#); see also *In re Scharg*, 207 Mich App 438, 439-440 (1994) (concluding that the defendant, who committed direct contempt, “should have been afforded a full hearing before a different judge” where the trial court elected to defer the contempt proceedings until after the trial).

A. Initiation by Affidavit

[MCR 3.606\(A\)](#) contains the required procedures for adjudicating indirect contempts and states in relevant part:

“(A) Initiation of Proceeding. For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either

(1) order the accused person to show cause,^[3] at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or

(2) issue a bench warrant^[4] for the arrest of the person.”⁵

³ See [SCAO Form MC 230](#), *Motion and/or Order to Show Cause*.

⁴ See [SCAO Form MC 229](#), *Motion, Affidavit, and Bench Warrant*.

⁵ Note that the Michigan Supreme Court held that violation of the affidavit requirements of [MCR 3.606\(A\)](#) does not require suppression of evidence. *People v Hawkins*, 468 Mich 488, 512-513 (2003).

“Before a show cause order may issue, there must be a sufficient foundation of competent evidence, and legitimate inferences therefrom.” *In re Contempt of Steingold*, 244 Mich App 153, 158 (2000) (quotation marks and citation omitted). An affidavit “did not sufficiently state facts that, along with legitimate inferences from the facts, constitute contempt as a matter of law” where “the affidavit did not identify any specific orders that were violated, identify any contemptuous actions, or even identify the individual or individuals responsible for the alleged conduct.” *Ferranti v Electrical Resources Co*, 330 Mich App 439, 445 (2019) (further holding the affidavit failed to meet the requirements under [MCR 2.119\(B\)\(1\)](#)).⁶

The alleged contemnor “is entitled to be informed not only whether the contempt proceedings filed against him [or her] are civil or criminal, . . . but also the specific offenses with which he [or she] is charged.” *In re Contempt of Rochlin*, 186 Mich App 639, 649 (1990).

B. Taking Judicial Notice to Initiate Proceedings

A court can take judicial notice of its own records to satisfy the requirement of [MCL 600.1711\(2\)](#) that proceedings must be initiated “by affidavit or other method.” *In re Albert*, 383 Mich 722, 724 (1970). In *Albert*, the Court held that where the contempt consisted of the failure to timely file pleadings in the Court of Appeals, a show cause order based upon affidavit was not required. *Id.* “A court’s judicial notice of its own records is a wholly satisfactory ‘other method’ of establishing the failure or the fact of filing in a particular period[.]” *Id.*

See also *In re Contempt of Calcutt*, 184 Mich App 749, 757 (1990) (noting that a show cause order can be properly issued on a court’s own motion, supported by judicial notice of the court’s own records); *In re Hudnut*, 57 Mich App 351, 353 (1975) (where an attorney failed to appear on a hearing date, the court could take judicial notice of its own records rather than file an affidavit to initiate contempt proceedings).

C. Initiating Contempt Proceedings in Domestic Relations Cases

Although [MCR 3.606\(A\)](#) (initiation by affidavit) is the default court rule governing the initiation of proceedings involving indirect contempt, [MCR 3.208](#) governs contempt proceedings under the Support and Parenting Time Enforcement Act. [MCR 3.208\(B\)](#) permits the Friend of the Court to move for an order to show cause

⁶See [Section 3.7](#) for a discussion of [MCR 2.119\(B\)](#).

why the party should not be held in contempt if a party fails to comply with an order or judgment. [MCR 3.208\(B\)\(1\)](#). Alternatively, the rule allows the Friend of the Court to schedule a hearing before a judge or referee for the party to show cause why the party should not be held in contempt in nonpayment of support cases. *Id.*

For a detailed discussion of contempt in domestic relations cases, see [Part II](#) of Chapter 5.

D. Waiver of Notice

Any irregularities in the initiation of a contempt action are waived when the alleged contemnor voluntarily appears in court and presents a defense to the contempt charge. See *In re Huff*, 352 Mich 402, 412-413 (1958); *In re McHugh*, 152 Mich 505, 510-511 (1908).

However, where the alleged contemnor does not appear voluntarily, there is no waiver of the right to have the charges presented by affidavit. *In re Contempt of Nathan*, 99 Mich App 492, 494-495 (1980) (no waiver occurred where the alleged contemnor was involuntarily returned to the courtroom by a police officer who overheard her allegedly contemptuous remarks). Further, where the alleged contemnor appears and challenges the court's jurisdiction, there is no waiver of any irregularities in the initiation of the proceedings. *In re Contempt of Barnett*, 233 Mich App 188, 193 (1998).

3.7 Requirements for Affidavits

"If an affidavit is filed in support of or in opposition to a motion, it must:

- (a) be made on personal knowledge;
- (b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and
- (c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit." [MCR 2.119\(B\)\(1\)](#).

"Sworn or certified copies of all documents or parts of documents referred to in an affidavit must be attached to the affidavit unless the documents:

- (a) have already been filed in the action;
- (b) are matters of public record in the county in which the action is pending;

(c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or

(d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.” [MCR 2.119\(B\)\(2\)](#).

The following subsections discuss how the formal requirements for affidavits in [MCR 2.119\(B\)](#) have been applied in the context of contempt proceedings.

A. Affidavits Must Be Based on Personal Knowledge

The affidavit attached to the ex parte motion “must be made on personal knowledge . . . and show affirmatively that the affiant, if sworn as a witness, can testify about the facts stated in the affidavit.” *In re Contempt of Steingold*, 244 Mich App 153, 158 (2000). “Although an affidavit must be verified by a person with personal knowledge of the facts, the court may rely on reasonable inferences drawn from the facts stated.” *Id.*

The affidavit requirements were not satisfied where the ex parte motion was supported with an unsworn, unsigned written statement of the conduct that allegedly constituted contempt. *In re Contempt of Steingold*, 244 Mich App at 156-157. Additionally, the statement contained hearsay statements made by unidentified individuals outside the presence of the plaintiff; accordingly, the hearsay statements were not based on the personal knowledge of the plaintiff. *Id.* at 159. The Court further found that the sworn portion of the form motion and order to show cause did not satisfy the requirements for affidavits because the statement that the alleged contemnor “wilfully created an obstruction of the performance of the court’s judicial duties” was not specific enough to support a finding of contempt. *Id.* at 159 (quotation marks omitted). Further, the alleged contemnor was served by facsimile instead of the required personal service. *Id.* at 158 (noting that the alleged contemnor did not challenge the validity of the manner of service).

An affidavit “was not necessarily premised on personal knowledge” where the affiant relied on other people from his company to get the data for the content of his affidavit, “was not aware” if the alleged contemnor was the person associated with the activity that potentially violated a discovery order, and could not establish contemptuous acts because he “could not detail what changes were made or whether the contents of the documents were modified” in violation of the discovery order. *Ferranti v Electrical Resources Co*, 330 Mich App 439, 446 (2019) (holding “the trial court erred by ordering a show-cause hearing on the basis of the submitted affidavit”).

B. Notice Requirements

The affidavit attached to the ex parte motion “must . . . state with specificity admissible facts establishing the grounds stated in the motion . . .” *In re Contempt of Steingold*, 244 Mich App at 158. However, the affidavit need not be as detailed as a criminal information. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 215 (1966). The court can only consider charges that the alleged contemnor has been notified of and allowed an opportunity to defend against. See *In re Gilliland*, 284 Mich 604, 613 (1938) (setting aside a conviction for indirect contempt because the charges were not filed against the accused, and he had no opportunity to answer them and prepare a defense).

The affidavits were not specific enough in regard to a defendant who was mentioned in two affidavits as being with a group of men, some of which were throwing stones, and as being in an authorized picket line. *Cross Co*, 377 Mich at 214. The Court held that these statements were not sufficient to support a charge of contempt against the defendant where the allegations of contempt were engagement in illegal threats, specific acts of violence, mass picketing, or being in such close association with those activities as to have been a part of what took place. *Id.* at 213-215.

The defendant’s conviction of criminal contempt was reversed where the charge stated in the show cause order was that the defendant failed to disclose, through perjury, his ownership interest in two automobiles, but he was convicted for criminal contempt based on making a false statement to conceal a bank account. *In re Contempt of Rochlin*, 186 Mich App 639, 649 (1990). “Due process required that [the] defendant receive more specific notice of the charge of which he was found guilty in order to give him the opportunity to prepare a defense against that particular charge.” *Id.* (holding that being informed of the charge during the plaintiff’s opening statement on the first day of the trial did not provide sufficient notice).

C. Service of Motion and Affidavit on Alleged Contemnor

“When proceedings for contempt for disobeying any order of the court are initiated, the notice or order shall be personally delivered to such party, unless otherwise specially ordered by the court.” [MCL 600.1968\(4\)](#). See also [MCR 2.107\(B\)\(1\)\(b\)](#). See also *In re Smilay*, 235 Mich 151, 156 (1926) (service of affidavit alleging violation of injunction on attorney for contemnor was insufficient); *In re Contempt of Steingold*, 244 Mich App at 158 (noting that personal service on the alleged contemnor is required where contempt proceedings for violating a court order are initiated).

3.8 Requirements for Orders to Show Cause

An order to show cause why the alleged contemnor should not be held in contempt of court must contain the time within which service must be made, and a date, within a reasonable time, for a hearing on the order. [MCR 2.108\(D\)](#); [MCR 3.606\(A\)\(1\)](#).⁷ The order to show cause may also set the time for answer to the complaint or response to the motion on which the order is based. [MCR 2.108\(D\)](#). Unless the court orders otherwise, the order to show cause must be personally served on the contemnor. [MCL 600.1968\(4\)](#); [MCR 2.107\(B\)\(1\)\(b\)](#).

Because the contemnor was personally served with the court's injunctive order and the order to show cause why she should not be held in contempt for violating the order, the proceedings were not void where the contemnor was not personally present when testimony establishing contempt was taken. *People ex rel Attorney General v Yarowsky*, 236 Mich 169, 171-173 (1926) (noting that her attorney was present).

A. Proceedings Initiated by the Friend of the Court

In Friend of the Court-initiated proceedings to enforce an order or judgment for support, parenting time, or custody, the order to show cause or the notice of the show cause hearing must be served personally, by ordinary mail at the person's last known address, or in another manner permitted by [MCR 3.203](#). [MCR 3.208\(B\)\(2\)](#).

The notice of the show cause hearing must comply with requirements for the form of a subpoena under [MCR 2.506\(D\)](#). [MCR 3.208\(B\)\(3\)](#). For purposes of [MCR 3.208\(B\)\(3\)](#), an authorized signature is one that comports with [MCR 1.109\(E\)](#). [MCR 3.208\(B\)\(3\)\(a\)](#). Notices under [MCR 3.208\(B\)\(3\)](#) "must state the amount past due and the source of information regarding the past due amount and act or failure to act that constitutes a violation of the court order." [MCR 3.208\(B\)\(3\)\(b\)](#). "A person must comply with the notice unless relieved by order of the court or written direction of the person who executed the notice." [MCR 3.208\(B\)\(3\)\(c\)](#).

The show cause hearing may be held no sooner than seven days after the order or notice is personally served, or no sooner than nine days after the order or notice is served by ordinary mail. [MCR 3.208\(B\)\(4\)](#).

"The court may hold the show cause hearing without the friend of the court unless a party presents evidence that requires the court to receive further information from the friend of the court's records

⁷ [SCAO Form MC 230](#), *Motion and/or Order to Show Cause*, meets these requirements.

before making a decision.” [MCR 3.208\(B\)\(5\)](#). “If the party fails to appear at the show cause hearing, the court may issue an order for arrest.” *Id.*

For a detailed discussion of contempt in domestic relations cases, see [Part II](#) of Chapter 5.

B. Violation of a Personal Protection Order

In cases involving the alleged violation of a personal protection order, the petitioner must have the motion and order to show cause personally served on the respondent at least seven days before the hearing. [MCR 3.708\(B\)\(2\)](#).

3.9 Requirements for Bench Warrants⁸

Civil arrest and imprisonment for alleged contempt of court are authorized by [MCL 600.6075\(1\)](#). Warrants for civil arrest may be issued in contempt proceedings. See [MCL 600.6076](#).

An alleged contemnor taken into custody on a bench warrant must be kept in actual custody until ordered released by the court or discharged on bond. [MCL 600.1735](#); [MCL 600.6083\(1\)](#). Alleged contemnors must be kept separate from prisoners accused of crimes, except prisoners detained on a misdemeanor charge. [MCL 600.6082\(1\)](#); [MCL 801.103](#).

A. Bail

“Any person arrested on civil process is entitled to bail during the time within which he [or she] may appeal the proceeding on which the arrest was made, or until a final determination of his [or her] appeal has been made.” [MCL 600.6080\(1\)](#). But see [MCL 600.3820\(2\)](#) (providing that the court “may, in its discretion” grant bail where the contempt stemmed from a violation of an order or injunction granted under Chapter 38, Public Nuisances, of the Revised Judicature Act); *In re Colacasides*, 6 Mich App 298, 302-303 (1967) (holding that [MCL 600.6080](#) does not modify “the provisions concerning contempts arising from refusals to answer questions during the course of a one-man grand jury proceeding”⁹ or the inherent power of the court to enforce its orders through contempt and concluding that the trial court was not required to “allow bail to all civil contemnors without regard to the circumstances[,]” and

⁸For discussion of issuance of a bench warrant for failure to appear in the case of an individual accused of a crime, see [Section 5.13](#).

⁹Citing [MCL 767.5](#).

finding that in the appellant's case bail was not appropriate because his release would "pose a risk of harm to the community[]"; *Spalter v Wayne Circuit Judge*, 35 Mich App 156, 168-169 (1971) (granting bail in a contempt case for refusal to answer questions posed by a grand jury based on considerations regarding the length of the sentence and the likelihood the plaintiff would appear if required and not discussing or acknowledging the requirement to grant bail under [MCL 600.6080](#)).

"In a contempt proceeding, the amount of bail shall be set by the judge or officer presiding over such proceeding." [MCL 600.6080\(2\)](#).

B. Statutes and Court Rules Permitting the Issuance of a Bench Warrant

In most cases, the decision to issue a bench warrant rests with the discretion of the court; some statutes and court rules specifically permit or require the procedure. For example:

- [MCL 552.631\(1\)\(c\)](#) allows for issuance of a bench warrant for a person who has not paid court-ordered support and who has failed to appear in response to initiated contempt proceedings for failure to obey the order.
- [MCL 552.644\(5\)](#) allows for issuance of a bench warrant for a parent who is unable to resolve a parenting time dispute using the methods set out in [MCL 552.641](#) and who fails to appear at a hearing in response to initiated contempt proceedings for failure to resolve the dispute.
- [MCL 600.3820\(2\)](#) requires the court to issue a bench warrant to initiate contempt proceedings to abate a public nuisance if the court is satisfied that the motion and affidavit charging a violation of an order or injunction are sufficient.
- [MCR 3.208\(B\)\(7\)](#) allows the Friend of the Court to petition for a bench warrant at any time "if immediate action is necessary."
- [MCR 3.606\(A\)\(2\)](#) allows the trial court to issue a bench warrant for the arrest of a person upon a proper showing on ex parte motion supported by affidavits.

3.10 Writs of Habeas Corpus for Prisoners Charged With Contempt

"A writ of habeas corpus to bring up a prisoner to testify may be used to bring before the court a person charged with misconduct under [[MCR](#)

3.606, addressing indirect contempt]. The court may enter an appropriate order for the disposition of the person.” [MCR 3.606\(B\)](#).

For the formal and procedural requirements for writs of habeas corpus, see [MCR 3.304](#).

3.11 Bond in Lieu of Arrest

“The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.” [MCR 3.606\(C\)\(1\)](#).

A. Discharge From Arrest

“The defendant is discharged from arrest on executing and delivering to the arresting officer a bond

(a) in the penalty endorsed on the bench warrant to the officer and the officer’s successors,

(b) with two sufficient sureties,^[10] and

(c) with a condition that the defendant appear on the return day and await the order and judgment of the court.” [MCR 3.606\(C\)\(2\)](#).

B. Return of Bond

“On returning a bench warrant, the officer executing it must return the bond of the defendant, if one was taken. The bond must be filed with the bench warrant.” [MCR 3.606\(C\)\(3\)](#).

C. Limitations on Attorneys

Attorneys may not become sureties or post bonds for their clients in contempt proceedings. [MCL 600.2665](#).

D. Bond Assignment

If the defendant who has executed a bond under [MCR 3.606\(C\)](#) fails to appear on the return date set in the bench warrant, the court may assign the bond to the aggrieved party for an action to recover that party’s damages and costs. [MCR 3.606\(D\)](#). The aggrieved party may recover on the bond by the summary procedure outlined in [MCR](#)

¹⁰ A single corporate surety licensed to do business in the state is sufficient. [MCL 600.2621](#); [MCR 3.604\(G\)](#).

[3.604\(H\)](#) and [MCR 3.604\(I\)](#). If the defendant fails to appear and the court does not assign the bond to the aggrieved party, the court must assign the bond to the prosecuting attorney or attorney general with an order to prosecute the bond under [MCR 3.604](#). [MCR 3.606\(E\)](#).

3.12 Incarceration for Nonpayment (Ability to Pay)

“The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#).” [MCR 3.606\(F\)](#). “Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

[MCR 6.425\(D\)\(3\)](#) addresses incarceration for nonpayment and provides that “[t]he court shall not sentence a defendant to a term of incarceration . . . for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order.” [MCR 6.425\(D\)\(3\)\(a\)](#). The rule also provides for payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. See also the Michigan Judicial Institute’s *Ability to Pay Benchcard*.

3.13 Applicability of Rules of Evidence

Generally, the Michigan Rules of Evidence apply during contempt proceedings. [MRE 1101\(a\)](#). See also *In re Contempt of Henry*, 282 Mich App 656, 670 n 1 (2009). However, the Michigan Rules of Evidence do not apply during summary contempt proceedings. [MRE 1101\(b\)\(4\)](#).

3.14 Right to Jury Trial Restricted to “Serious Criminal Contempt”

“[T]he United States Supreme Court has ruled that there is a federal constitutional right to a jury trial for serious criminal contempt.” *People v Antkoviak*, 242 Mich App 424, 464 (2000), citing *Bloom v Illinois*, 391 US 194, 201-211 (1968) (holding that the constitutional right to a jury trial applies only to “serious” criminal contempt cases). See also *Ann Arbor v Danish News Co*, 139 Mich App 218, 233 (1984) (recognizing the *Bloom* decision and noting that it “indicates that the guarantee of a jury trial applies neither to criminal contempts which are merely petty offenses

nor to civil contempts[.]”); [MCR 3.708\(H\)\(1\)](#) (no right to a jury trial in contempt proceedings for violation of personal protection orders).

Criminal contempt is a “petty” offense when the penalty does not exceed six months imprisonment. *Danish News Co*, 139 Mich App at 233, citing *People v Goodman*, 17 Mich App 175, 178-179 (1969). See also *Codispoti v Pennsylvania*, 418 US 506, 511-515 (1974) (a jury trial was required under [US Const, Am VI](#), for contempt of court where the sentences imposed on each contemnor aggregated more than six months).

In *United Mine Workers v Bagwell*, 512 US 821, 837-838 n 5 (1994), the United States Supreme Court declined to establish a line between “petty” and “serious” fines for contempt. The Court did conclude, however, that a fine of \$52 million was a “serious” contempt sanction. *Id.* at 838 n 5.

3.15 Requirements for the Court’s Opinion and Order¹¹

As in all bench trials, the court is required in contempt proceedings to “find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” [MCR 2.517\(A\)\(1\)](#). See also *In re Contempt of Calcutt*, 184 Mich App 749, 758 (1990); [MCR 2.602](#) (procedure for entry of civil judgment); [MCR 6.427](#) (procedure for entry of criminal judgment). “Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.” [MCR 2.517\(A\)\(2\)](#). “The court may state the findings and conclusions on the record or include them in a written opinion.” [MCR 2.517\(A\)\(3\)](#).

In civil contempt cases, the court’s order of commitment must specify that “the imprisonment shall be terminated when the person performs the act or duty or no longer has the power to perform the act or duty . . . and pays the fine, costs, and expenses of the proceedings” [MCL 600.1715\(2\)](#).

“When contemptuous behavior occurs in open court but off the record, it is imperative that the judge make an adequate record before holding the person in contempt[.]” *In re Murphy Contempt*, ___ Mich App ___, ___ (2023) (agreeing with the circuit court that the district court failed to make an adequate record for the circuit court to find that the district court had sufficient evidence to hold the person in direct contempt where the district court did not specify what happened and the contempt was committed in direct view of the judge but off the record).

¹¹ See the Michigan Judicial Institute’s *Appeals & Opinions Benchbook*, Chapter 3, for more information on written and oral opinions.

If a member of the state bar is held in contempt of court, the clerk of the court must submit a certified copy of the order to the clerk of the Michigan Supreme Court and the State Bar of Michigan. [MCL 600.913](#).

Committee Tip:

The court's findings and conclusions should include:

- *factual findings;*
- *burden of proof employed;*
- *type of contempt committed;*
- *a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court;*
- *the sanctions imposed; and*
- *the reasons for imposing sanctions.*

3.16 Disqualification of Judge

Judicial disqualification is governed by [MCR 2.003](#). For detailed information about judicial disqualification generally, see the Michigan Judicial Institute's *Judicial Disqualification Benchbook*. In the context of contempt proceedings, there are additional rules regarding whether a particular judge should preside over a particular proceeding.

A. Direct Contempt Proceedings

The judge who witnesses the contumacious conduct in direct contempt cases should preside over the summary proceedings. See [MCL 600.1711\(1\)](#); *People v Ahumada*, 222 Mich App 612, 617-618 (1997) (trial court did not abuse its discretion by holding defendant in contempt).

However, “[w]hen a court defers consideration of [direct] contempt until the conclusion of the trial, another judge must consider the charges.” *In re Contempt of Henry*, 282 Mich App at 676, citing *In re Contempt of Scharg*, 207 Mich App 438, 440 (1994). See [Section 2.4\(F\)](#) for additional discussion of deferred consideration of direct contempt.

Additionally, a hearing before a different judge may be necessary where the direct contempt consists of personal attacks against the judge presiding over the case. *Mayberry v Pennsylvania*, 400 US 455, 465-466 (1971) (noting that not every attack on a judge will require a different judge to proceed over a contempt case). In *Mayberry*, the trial judge was subjected to several personal insults by the defendant, who represented himself in a criminal trial. *Id.* at 455-462, 466. The United States Supreme Court concluded that a judge who is personally attacked in such a manner “necessarily becomes embroiled in a running, bitter controversy.” *Id.* at 465. Accordingly, the Due Process Clause of the Fourteenth Amendment requires that the criminal contempt charges be heard by a different judge. *Id.* at 466.

B. Indirect Contempt Proceedings

“The judge who presided over the proceedings in the context of which the indirect contumacious conduct occurred should preside over the contempt proceedings.” *In re Contempt of Henry*, 282 Mich App 656, 675 (2009). See also *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 212 (1966) (finding no error where the judge who presided over the proceedings in which the indirect conduct occurred also presided over the contempt proceedings).

In *Cross Co*, 377 Mich at 212, the Court noted that in some cases transfer to another judge might be appropriate, but that the decision to transfer “is one for the sound discretion of the judge handling the original proceeding.” The Court noted that several questions must be weighed and considered when determining whether transfer to a different judge is appropriate, including:

- “Can the charge of contempt be readily separated from that proceeding?” *Id.*
- “To what extent is there danger the judge may find himself [or herself] acting as an inquisitor rather than as an impartial judge?” *Id.*
- “Will the contempt proceeding be unduly delayed by transfer?” *Id.*
- “Is another judge readily available?” *Id.*

C. Cases Involving Publication of Comments Concerning Court or Judge

“In proceedings for contempt arising out of the publication of any news, information, or comment concerning a court of record, except the supreme court, or any judge of that court the defendant has the

right to have the proceedings heard by the judge of another court of record.” [MCL 600.1731](#).¹²

3.17 Appeals of Contempt Orders

A. Appeals to Circuit Court and Court of Appeals

Final judgments and orders of the district court are appealable as of right to the circuit court, except that “final orders and judgments based upon pleas of guilty or nolo contendere shall be by application.” [MCL 600.8342\(2\)](#); [MCL 600.8342\(4\)](#). Judgments entered by the circuit court on appeals from lower courts are appealable by application for leave to appeal to the Court of Appeals. [MCL 600.8342\(3\)](#).

Final judgments and **final orders** of the circuit court, Court of Claims, and probate court not expressly listed in [MCL 600.308\(2\)](#)¹³ and [MCL 600.308\(3\)](#)¹⁴ are appealable as of right to the Court of Appeals. [MCL 600.308\(1\)](#). See also [MCR 7.203](#).

B. What Constitutes a Final Order

1. Criminal Contempt

“Criminal contempt is a crime and, therefore, an order finding a party in criminal contempt of court and sanctioning the party is a final order from which a contemnor may appeal as of right.” *In re Moroun*, 295 Mich App 312, 329 (2012) (citations omitted). See also [MCL 600.308\(1\)](#); [MCR 7.203\(A\)](#); [MCR 7.202\(6\)\(b\)](#).

2. Civil Contempt

“[A]n order finding a party in civil contempt of court is not a final order for purposes of appellate review. *In re Moroun*, 295 Mich App at 329, citing [MCL 600.308\(2\)](#); [MCR 7.202\(6\)\(a\)](#). Accordingly, in a civil contempt case a party may only appeal by application. *In re Moroun*, 295 Mich App at 330.

¹² See [Section 5.17](#) for further discussion of criticism of a court or judge as contempt.

¹³ [MCL 600.308\(2\)](#) lists the types of orders and judgments that are reviewable only on application for leave to appeal.

¹⁴ [MCL 600.308\(3\)](#) prohibits appeals of orders concerning the assignment of a case to the business court.

3. Appeals by Nonparties

Nonparties held in contempt or sanctioned for the contempt of another can appeal the contempt order by right, even if it is not a final order. *In re Moroun*, 295 Mich App at 330-331.

In *In re Moroun*, 295 Mich App at 332-333, the Court affirmed the trial court's decision to jail two individuals who had control over the defendant company after the company was found in contempt, even though they were not parties to the suit. However, because they were not parties and, therefore, would not otherwise have the ability to appeal the trial court's decision, the Court held that nonparties held in contempt or sanctioned for the contempt of another can appeal by right the trial court's order. *Id.* at 330-331.

C. Appealing the Refusal to Find a Person in Contempt

The refusal to issue an order of contempt "is not properly reviewable by general appeal." *Mason v Siegel*, 301 Mich 482, 484 (1942) (quotation marks and citation omitted). Instead, a party must file a complaint for an order of superintending control. *Barnett v Int'l Tennis Corp*, 80 Mich App 396, 415 (1978) (noting that the *Mason* Court stated that "a petition for a writ of mandamus or certiorari" was required, and explaining that those actions would now be classified as a complaint for an order of superintending control). See also *Shelby Twp v Liquid Disposal, Inc*, 71 Mich App 152, 154 (1976).

D. Standard of Review

"The issuance of an order of contempt rests in the sound discretion of the court." *Mason v Siegel*, 301 Mich 482, 484 (1942), quoting *Barnaby v Barnaby*, 290 Mich 335, 337 (1939).

A finding of contempt or a refusal to find a person in contempt may be reviewed only for an abuse of discretion. *In re Contempt of Dudzinski*, 257 Mich App 96, 99 (2003). "The abuse of discretion standard recognizes that there will be circumstances where there is no single correct outcome and which require us to defer to the trial court's judgment; reversal is warranted only when the trial court's decision is outside the range of principled outcomes." *Porter v Porter*, 285 Mich App 450, 455 (2009). See also *Brandt v Brandt*, 250 Mich App 68, 73 (2002) ("A trial court's findings in a contempt proceeding must be affirmed on appeal if there is competent evidence to support them.").

"The trial court's findings of fact in a contempt proceeding are reviewed for clear error and will be affirmed on appeal when

supported by competent evidence. Clear error occurs only when the appellate court is left with the definite and firm conviction that a mistake was made." *Coloma Charter Twp v Berrien Co*, 317 Mich App 127, 169 (2016) (citations omitted).

The appellate court will not weigh the evidence or determine the credibility of witnesses; if evidence in the record supports the lower court's findings, the lower court will be affirmed. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 217-218 (1966). "Circumstantial evidence and the reasonable inferences arising from that evidence can constitute satisfactory proof of the elements." *In re JCB*, 336 Mich App 736, 748 (2021).

Questions of law, such as whether the contempt statute permitted the sanctions imposed in a case, are reviewed de novo. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714 (2000).

"When examining the sufficiency of the evidence to support a criminal-contempt finding following a bench trial, [the Court of Appeals] views the evidence presented in a light most favorable to the prosecution to determine if the elements of the crime were proven beyond a reasonable doubt." *In re JCB*, 336 Mich App at 747.

Chapter 4: Sanctions for Contempt of Court

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4.1 Scope Note

This chapter addresses the sanctions applicable to both civil and criminal contempt. Two general provisions of the Revised Judicature Act provide sanctions for contempt of court: [MCL 600.1715](#) limits the amount of any fine imposed and addresses the proper term of imprisonment,¹ and [MCL 600.1721](#) provides for the payment of damages.² These provisions apply in all contempt cases unless another statute provides specific sanctions for a particular type of contempt.³

This chapter also addresses recovery of damages through the assignment of bond. Finally, this chapter examines the applicability of double jeopardy protections in contempt proceedings.

4.2 Jail Terms, Fines, Costs, and Expenses

[MCL 600.1715](#) caps the amount of any fine for contempt at \$7,500 and caps any jail term at 93 days, “except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform[.]” [MCL 600.1715\(1\)](#).

Sentences must run concurrently unless statutory authority specifically authorizes imposing consecutive sentences. *People v Chambers*, 430 Mich 217, 222 (1988).

A. Permissible Sanctions for Civil Contempt

Following a finding of civil contempt, the court may order any or all of the following sanctions:

- a fine of not more than \$7,500, [MCL 600.1715\(1\)](#);
- a coercive and conditional jail sentence to compel the contemnor to comply with an order of the court, [MCL 600.1715\(1\)-\(2\)](#); and
- if applicable, damages for loss or injury caused by the contumacious conduct, [MCL 600.1721](#).⁴

¹See [Section 4.2](#) for discussion of issues involving [MCL 600.1715](#).

²See [Section 4.3](#) for discussion of issues involving [MCL 600.1721](#).

³See [Section 4.4](#) for a discussion of statutory exceptions.

⁴See [Section 4.3](#) for discussion of issues involving [MCL 600.1721](#).

1. Considerations Specific to Civil Sanctions

The contemnor's incarceration must terminate when the contemnor complies with the court's order or no longer has the ability to comply with the court's order, and pays the fine, costs, and expenses of the proceeding. [MCL 600.1715\(2\)](#). Similarly, "fines for civil contempts should, unless they are intended to compensate a complainant, be avoidable by the contemnor by complying with the court's order." *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 677 (2022).

In *Pavlos-Hackney*, the court entered two judgments of civil contempt after the contemnors continued to operate their restaurant "in willful defiance of the trial court's orders to cease operation"; "[i]n turn, the orders to cease operation arose out of the decision of plaintiff, the Michigan Department of Agriculture and Rural Development (MDARD), to suspend the food-establishment license for [the restaurant], following [the owner's] willful defiance of public health and safety orders related to the COVID-19 pandemic." *Id.* at 647-648. The trial court ordered the contemnors to pay two separate fines of \$7,500. *Id.* at 676. "[G]iven the contemnors' subsequent willful and open continued defiance of the trial court's order," "the first fine of \$7,500 is clearly not refundable[.]" *Id.* at 677. However, "[t]he second \$7,500 fine is a different matter" — "because the contemnors *did* finally choose to comply, it is unclear what more they could have done to avoid the second fine." *Id.* at 677-678. "Put another way, a civil-contempt fine should generally be conditional or compensatory, but it is not clear what condition the contemnors failed to satisfy, and the trial court did not direct any portion of the fine to be paid to MDARD." *Id.* at 678. Because "the ultimate effect of the second fine is more criminal than civil in nature, even if that was not the trial court's intent," "the second fine must be remanded for the trial court to refashion it to be civil in nature, as applied under the circumstances." *Id.* (instructing the trial court to "(1) determine whether MDARD is entitled to reimbursement; (2) determine whether the contemnors sufficiently complied with the trial court's orders to be returned the second fine, in whole or in part; or (3) some combination of (1) and (2)").

See also [Section 2.2\(A\)](#) discussing civil sanctions.

2. Ability to Pay

Note that "[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#)." [MCR 3.606\(F\)](#). [MCR](#)

[6.425\(D\)\(3\)](#) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. "Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act." [MCR 3.606\(F\)](#).

The contemnors' ability to pay argument was "moot" where they did not seek any kind of hearing regarding the amount of the fine or their ability to pay, and "tendered the full amount of the fine immediately." *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 677, 677 n 14 (2022) (noting that "financial liquidity alone is not dispositive," but consideration of whether the contemnors suffered a hardship was not necessary where "the contemnors *never even tried* to obtain a hearing regarding either of the contempts, even though they were invited to do so and clearly could have done so").

B. Permissible Sanctions for Criminal Contempt

Following a finding of criminal contempt, the court may order any or all of the following sanctions:

- an unconditional and fixed jail sentence of up to 93 days;
- a fine of not more than \$7,500; and
- probation. [MCL 600.1715\(1\)](#).

1. Additional Expenses for Certain Findings of Criminal Contempt

The defendant may be ordered to pay certain expenses upon a finding of guilt for criminal contempt for violation of a PPO issued under [MCL 600.2950](#) or [MCL 600.2950a](#), for violation of a foreign protection order that satisfies the conditions for validity provided in [MCL 600.2950i](#), or for failing to appear in court as ordered by the court. [MCL 769.1f\(1\)\(i\)](#); [MCL 769.1f\(1\)\(j\)](#). Specifically, "in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a **local unit of government** for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person[.]" [MCL 769.1f\(1\)](#).

[MCL 769.1f\(2\)](#) lists all of the expenses for which reimbursement may be ordered. "If police, fire department, or

emergency medical service personnel from more than 1 unit of government incurred expenses as described in [MCL 769.1f(2)], the court may order the person convicted to reimburse each unit of government for the expenses it incurred.” MCL 769.1f(3). Reimbursement is generally due immediately, but the court has discretion to order reimbursement over a specified period or specified installments. MCL 769.1f(4). Reimbursement ordered under MCL 769.1f must be a condition of any probation or parole. MCL 769.1f(5).

2. Ability to Pay

Note that “[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(D)(3).” MCR 3.606(F). MCR 6.425(D)(3) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. See also MCL 769.1f(7) (stating “[n]otwithstanding any other provision of [MCL 769.1f], a person shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to make a reimbursement as ordered under [MCL 769.1f] unless the court determines that the person has the resources to pay the ordered reimbursement and has not made a good faith effort to do so”). For a detailed discussion of MCR 6.425(D)(3), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. See also the Michigan Judicial Institute’s *Ability to Pay Benchcard* for more information on the ability to pay determination.

“Proceedings to which the Child Support and Parenting Time Enforcement Act, MCL 552.602 *et seq.*, applies are subject to the requirements of that act.” MCR 3.606(F).

C. Only Statutorily Authorized Punishments are Permitted

MCL 600.1715 limits the amount of any fine or jail sentence that a court may impose for a single finding of contempt. *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 718-719 (2000) (holding that MCL 600.1715(1) unambiguously limits the amount a trial court may order a contemnor to pay for a single act of contempt);⁵ *Ann Arbor v Danish News Co*, 139 Mich App 218, 237 (1984) (holding that

⁵At the time *In re Contempt of Auto Club Ins Ass’n* was decided, MCL 600.1715(1) limited the fine for a single act of contempt to \$250; however, the statute was amended by 2006 PA 544 to allow a fine of not more than \$7,500.

“both penalties provided for in the statute indicate a maximum penalty”).

Accordingly, the following contempt sanctions were improperly imposed because they were not authorized by the statute:

- An order imposing a monetary fine and a jail sentence “with a proviso for an additional jail sentence for a fixed term upon failure to pay the fine[]” was improper because the alternative sentence was not authorized by the statute. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 223 (1966) (construing a predecessor to [MCL 600.1715\(1\)](#)).
- An order that the city pay the statutory maximum fine for every day it remained in contempt was improper because there was only a single finding of contempt. *Catsman v Flint*, 18 Mich App 641, 649 (1969) (noting that it was not suggesting “that a court could not make a subsequent finding of a reiterated or continuing contempt and impose the maximum statutory fine for such subsequent contempt[]”).
- The plaintiff conceded on appeal that the order providing for an alternative jail sentence of an additional six months if the fine was not paid on time was not authorized by [MCL 600.1715\(1\)](#). *Danish News Co*, 139 Mich App at 236.
- A fine of \$100 per day (totaling over the statutory limit) was improper after finding a person in contempt of court for violating an order enforcing an injunction regarding construction of property because the court found only a single finding of contempt. *In re Contempt of Johnson*, 165 Mich App 422, 424, 428-429 (1988). This daily fine was improper despite the fact that the contemnor’s conduct violated a criminal ordinance that permitted a daily fine for each day a person is in violation because the contemnor was not convicted of the criminal ordinance, but rather, was found in contempt of court; accordingly, the permissible sanctions were governed by [MCL 600.1715](#). *In re Contempt of Johnson*, 165 Mich App at 429.
- A fine of \$500 for a single act of contempt when the statutory limit was \$250 was improper because it exceeded the statutory limit. *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App at 718-719.⁶

⁶At the time *In re Contempt of Auto Club Ins Ass’n* was decided, [MCL 600.1715\(1\)](#) limited the fine for a single act of contempt to \$250; however, the statute was amended by 2006 PA 544 to allow a fine of not more than \$7,500.

D. Fines Must Generally be Paid to State Treasury

[Const 1963, art 6, § 7](#) states, in part, that “[a]ll fees and perquisites collected by the court staff shall be turned over to the state treasury and credited to the general fund.” Accordingly, the trial court erred by ordering the contemnor to pay the contempt fine to a charity. *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 720 (2000). The Court explained that contempt fines are *perquisites*⁷ because the fines are “income to the trial court above and beyond the money allocated in the annual budget.” *Id.* at n 49 720. Michigan courts lack “the discretion to designate a beneficiary” for fines imposed in contempt cases because [Const 1963, art 6, § 7](#) applies to all Michigan courts. *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App at 720. However, the Court noted that “there are circumstances in which a circuit court may spend public money to support necessary services for the judiciary,” but found that the circumstances in the case did not permit that type of spending because it involved private money being paid to a private recipient that was completely distinct from the judiciary and did not offer any services to the judiciary. *Id.* at 720-721.

Note that fines imposed as compensatory sanctions are paid to the person who suffered an actual loss or injury. See [Section 4.3](#).

4.3 Mandatory Compensatory Sanctions

Under [MCL 600.1721](#), compensatory sanctions are mandatory where the misconduct has caused an actual loss or injury to a person. [MCL 600.1721](#) states:

“If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him [or her], in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute bar to any action by the aggrieved party to recover damages for the loss or injury.”

[MCL 600.1721](#) applies to both civil and criminal contempt. *Taylor v Currie*, 277 Mich App 85, 100 (2007). “Because [MCL 600.1721](#) does not make a distinction between civil and criminal contempt, but rather requires a trial court to order a contemnor to indemnify any person who suffers an ‘actual loss or injury’ caused by the contemnor’s ‘misconduct,’ we hold that the indemnification sanction mandated by [MCL 600.1721](#)

⁷A *perquisite* is “[a] privilege or benefit given in addition to one’s salary or regular wages.” *Black’s Law Dictionary* (5th Pocket ed).

applies even when a trial court imposes a punitive (i.e., criminal) sanction on a contemnor.” *Taylor*, 277 Mich App at 100. However, because compensation is a type of civil contempt sanction, enforcement under [MCL 600.1721](#) is accomplished by way of a civil contempt proceeding. *In re Contempt of Dougherty*, 429 Mich 81, 97, 100, 102 (1987).

“[T]he elements necessary to establish entitlement to relief under [[MCL 600.1721](#)] are essentially the same elements necessary to establish a tort, i.e., a legal duty, breach of that duty, causation, and injury.” *In re Bradley Estate*, 494 Mich 367, 390 (2013). “Stated differently, the plain language of [MCL 600.1721](#) requires a showing of contemptuous misconduct that caused the person seeking indemnification to suffer a loss or injury and, if these elements are established, requires the court to order the contemnor to pay ‘a sufficient sum to indemnify’ the person for the loss.” *In re Bradley Estate*, 494 Mich at 391.

A. Determining the Amount of Loss or Injury

“Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant’s actual loss, and his [or her] right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.”⁸ *United States v United Mine Workers*, 330 US 258, 304 (1947).

The party requesting compensation bears the burden of proving that the contemptuous conduct caused actual loss or injury and the amount of the loss or injury. *In re Contempt of Rochlin*, 186 Mich App 639, 650-651 (1990) (noting that the trial court erred by failing to make findings relative to the amount of the loss suffered by the plaintiff as a result of the defendant’s criminal contempt and instead accepted the amount proposed by the plaintiff’s counsel without allowing the plaintiff’s counsel an opportunity to explain the basis for the figure; accordingly, the Court held that the compensatory damage award was erroneous, but that on remand, the plaintiff must be given an opportunity to prove the basis for the damages claimed).

The court should employ general principles of damages to determine the amount of the award. See *Birkenshaw v Detroit*, 110 Mich App 500, 510 (1981) (noting that the trial court “properly applied the legal measure of damages in tort” when reviewing the trial court’s award for damages stemming from the defendant’s contemptuous conduct). See also *In re Bradley Estate*, 494 Mich at 393

⁸ The Court uses the term “fine” here to describe what [MCL 600.1721](#) refers to as “damages.”

(holding that “a civil contempt petition seeking indemnification damages under [MCL 600.1721](#) seeks to impose ‘tort liability’”).

B. Attorney Fees

Compensatory sanctions under [MCL 600.1721](#) “may include attorney fees that occurred as a result of the other party’s contemptuous conduct.” *Taylor v Currie*, 277 Mich App 85, 100 (2007), quoting *Homestead Dev Co v Holly Twp*, 178 Mich App 239, 246 (1989). See also *In re Contempt of Henry*, 282 Mich App 656, 685 (2009).

Recoverable attorney fees include those “related to the prosecution of the contempt, the investigation of the contempt, [the] fashioning [of] a remedy for the contempt,” and those incurred in determining the amount of damages. *Taylor*, 277 Mich App at 102; *In re Contempt of Calcutt*, 184 Mich App 749, 764 (1990). “[A]ttorney fees incurred in prior litigation are recoverable as damages if proximately caused by a defendant’s wrongful conduct.” *Birkenshaw*, 110 Mich App at 510. However, attorney fees incurred in separate proceedings that were “ancillary” to the contempt proceedings were not recoverable under [MCL 600.1721](#), which authorizes only the fees “which resulted directly from the contempt.” *Plumbers and Pipefitters Local No 190 v Wolff*, 141 Mich App 815, 819 (1985). Similarly, attorney fees awarded in regard to the appointment of a receiver and monitors were not recoverable to the extent that those appointments were related to an injunction that “was primarily based on the plaintiff’s case-in-chief and was only tenuously connected to the contempt[.]” *Taylor*, 277 Mich App at 102.

When a party challenges the reasonableness of the attorney fees requested, the trial court must conduct an evidentiary hearing. *B & B Investment Group v Gitler*, 229 Mich App 1, 15-16 (1998) (citation omitted). But see *Taylor*, 277 Mich App at 101 (finding no error in the trial court’s failure to hold an evidentiary hearing where the defendants challenged the reasonableness of the plaintiff’s attorney fees but did not request a separate evidentiary hearing, and where the defendants were afforded ample opportunity to contest the reasonableness of the fees at a hearing on the plaintiff’s motion for attorney fees, the trial court accepted two separate briefings from the parties on attorney fees, and it made general findings concerning the various expenses that were caused by the contemptuous conduct). For a detailed discussion of determining the reasonableness of attorney fees, see the Michigan Judicial Institute’s *Civil Proceedings Benchbook*, Chapter 8.

C. Per Diem Damages

The court may order a per diem amount of damages for a continuing contempt. *Catsman v Flint*, 18 Mich App 641, 651 (1969).⁹ Once the contempt abates, the court may determine the exact amount of damages caused by the defendant's failure to comply with the court's order. *Id.* (affirming the trial court's award of \$150 per day to cover the cost of hiring a truck to haul away daily sewage until the city complied with the court's order to hook up the development's sewer).

D. Costs of Court Proceedings

An attorney found in contempt of court for failing to appear in court at the scheduled time may properly be ordered to reimburse the county for costs in impaneling the jury under [MCL 600.1721](#). *In re Contempt of McRipley*, 204 Mich App 298, 301-302 (1994) (authorizing the trial court to order indemnification of the county for its costs of "calling in the jury panel and paying its mileage, in addition to any other penalties that may be lawfully imposed[,]” and rejecting the argument that the costs were part of the fine authorized under [MCL 600.1715\(1\)](#)).¹⁰

E. Governmental Immunity

“[A] party that elects to pursue the statutory remedy available under [MCL 600.1721](#) will be barred from obtaining relief against governmental agencies because those entities are entitled to immunity from “tort liability” under [MCL 691.1407\(1\)](#) of the [Governmental Tort Liability Act]. The logical result of this conclusion is that courts are prohibited from exercising their contempt powers by punishing a governmental agency's contemptuous conduct through an award of indemnification damages under [MCL 600.1721](#).” *In re Bradley Estate*, 494 Mich at 394.¹¹

⁹ Per diem damages are not the same thing as fines under [MCL 600.1715\(1\)](#). *Catsman*, 18 Mich App at 651.

¹⁰In *McRipley*, the Court relied on [MCL 600.1721](#) to find that a contemnor “may properly be assessed costs to indemnify the county for calling in the jury panel and paying its mileage[.]” *McRipley*, 204 Mich App at 302 (emphasis added). However, [MCL 600.1721](#) mandates indemnification where “the alleged misconduct has caused an actual loss or injury to any person[.]” After *McRipley* was decided, [MCL 769.1f\(1\)\(j\)](#) was amended to permit, but not require, reimbursement for the costs of prosecution upon a finding of guilt for criminal contempt for failing to make a court-ordered appearance. See [Section 4.2\(B\)\(1\)](#) for more information on reimbursement under [MCL 769.1f](#).

¹¹The Court noted that this holding does not infringe on the judiciary's inherent power to punish contempt by fine, imprisonment, or both. *In re Bradley Estate*, 494 Mich at 395-396.

4.4 Statutory Exceptions to the General Penalty Provisions of the Revised Judicature Act

The general penalty provisions for contempt of court contained in [MCL 600.1715](#) apply to cases of contempt, “except as otherwise provided by law.” The following subsections summarize some of the statutory exceptions to the general penalty provisions in [MCL 600.1715](#). Note that some of the statutory exceptions use mandatory language, while others provide the court with discretion. See *Browder v Int’l Fidelity Ins Co*, 413 Mich 603, 612 (1982) (“A necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to the mandatory word “shall” and the permissive word “may” unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.”).

A. Failure of Witness to Obey Subpoena or Discovery Order¹²

“If any witness attending pursuant to a subpoena, or brought before any court, judge, officer, commissioner, or before any person before whom depositions may be taken, refuses without reasonable cause

(1) to be examined, or

(2) to answer any legal and pertinent question, or

(3) to subscribe his [or her] deposition after it has been reduced to writing, the officer issuing the subpoena shall commit him [or her], by warrant, to the common jail of the county in which he [or she] resides. He [or she] shall remain there until he [or she] submits to be examined, or to answer, or to subscribe his [or her] deposition, as the case may be, or until he [or she] is discharged according to law.” [MCL 600.1725](#).

B. Failure of Grand Jury Witness to Testify

“Any witness who neglects or refuses to appear or testify or both in response to a summons of the grand jury or to answer any questions before the grand jury concerning any matter or thing of which the witness has knowledge concerning matters before the grand jury after service of a true copy of an order granting the witness immunity as to such matters shall be guilty of a contempt[.]” [MCL 767.19c](#).

¹² See [Section 5.8](#) and [Section 5.12](#) for a more detailed discussion of these types of contempt.

“[A]fter a public hearing in open court and conviction of such contempt[, the witness] shall be fined not exceeding \$10,000.00 or imprisoned not exceeding 1 year, or both.” [MCL 767.19c](#). If the witness purges him- or herself of the contempt, the court must commute the sentence. *Id.*¹³

C. Failure of Witness to Appear or Answer Questions

“Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judge may require as material to such inquiry, shall be deemed guilty of a contempt and after a public hearing in open court and conviction of such contempt, shall be punished by a fine not exceeding \$1,000.00 or imprisonment in the county jail not exceeding 1 year or both at the discretion of the court[.]” [MCL 767.5](#). If the witness purges him- or herself of the contempt, the court “may” in its discretion commute or suspend the sentence. *Id.*¹⁴

D. Failure to Pay Child or Spousal Support¹⁵

Several sections of the Support and Parenting Time Enforcement Act, [MCL 552.601 et seq.](#), govern support arrearages and associated sanctions.

[MCL 552.633\(1\)](#) permits the court to find a payer in contempt if the payer is in arrears and one or more specified conditions are met.¹⁶

Statutorily mandated sanctions for contempt under [MCL 552.633\(1\)](#) are listed in [MCL 552.633\(2\)](#).

“Upon finding a payer in contempt of court under [[MCL 552.633](#)], the court may immediately enter an order that does 1 or more of the following:^[17]

- (a) Commits the payer to the county jail or an alternative to jail.

¹³ See [Section 5.12\(C\)](#) for a more detailed discussion of this type of contempt.

¹⁴ See [Section 5.12\(B\)](#) for more discussion of this type of contempt.

¹⁵ See the Michigan Judicial Institute’s [support checklists](#) for additional information.

¹⁶ See [Section 5.22\(C\)](#) for a more detailed discussion of contempt for support arrearages.

¹⁷ Note that “[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#).” [MCR 3.606\(F\)](#). [MCR 6.425\(D\)\(3\)](#) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute’s *Criminal Proceedings Benchbook Vol. 2*, Chapter 8. “Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

(b) Commits the payer to the county jail or an alternative to jail with the privilege of leaving the jail or other place of detention during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to satisfy the terms and conditions imposed under [MCL 552.637] if the payer's release is necessary for the payer to comply with those terms and conditions.

(c) Commits the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

(d) Apply any other enforcement remedy authorized under this act or the friend of the court act for the nonpayment of support if the payer's arrearage qualifies and the evidence supports applying that remedy.

(e) Orders the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under [MCL 552.633] concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

(f) If available within the court's jurisdiction, orders the payer to participate in a community corrections program established as provided in . . . MCL 791.401 to [MCL] 791.414.

(g) Except as provided by federal law and regulations, orders the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in . . . MCL 600.2530.

(h) Places the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including, but not limited to, 1 or more of the following:

(i) Participating in a parenting program.

(ii) Participating in drug or alcohol counseling.

(iii) Participating in a work program.

(iv) Seeking employment.

(v) Participating in other counseling.

(vi) Continuing compliance with a current support or parenting time order.

(vii) Entering into and compliance with an arrearage payment plan.” [MCL 552.633\(2\)](#).

“In addition to any remedy or sanction provided in [[MCL 552.631](#) or [MCL 552.633](#)], the court may assess the payer the actual reasonable expense of the friend of the court in bringing any enforcement action for noncompliance with a spousal support order that is not eligible for funding under title IV-D.” [MCL 552.636](#).

An order of commitment under [MCL 552.633](#) must be entered “only if other remedies appear unlikely to correct the payer’s failure or refusal to pay support.” [MCL 552.637\(1\)](#).

The order of commitment must continue until the “payer performs the conditions set forth in the order of commitment” but no longer than 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt. [MCL 552.637\(4\)](#).¹⁸

The Support and Parenting Time Enforcement Act also provides for an **alternative contempt track** docket, which subjects the payer to probation for up to one year and punishes noncompliance with specified jail time. [MCL 552.635a](#).

E. Failure to Comply With Parenting Time Order in Divorce Judgment¹⁹

The Friend of the Court is authorized to commence a civil contempt proceeding as provided by the court rules if it determines that a parenting time dispute cannot be resolved by other means. [MCL 552.644\(1\)](#).²⁰

[MCL 552.644\(2\)](#) and [MCL 552.644\(4\)](#) provide a variety of possible sanctions for a party’s failure to obey a parenting time order in a divorce judgment. Sanctions include, but are not limited to:

- a fine of not more than \$100, [MCL 552.644\(2\)\(d\)](#);
- jail for up to 45 days (for a first violation) or 90 days (for each subsequent violation), with mandatory release if the court has reasonable cause to believe that the parent will

¹⁸See [Section 5.19\(C\)\(2\)](#) for a more detailed discussion of [MCL 552.637](#).

¹⁹ See the Michigan Judicial Institute’s [parenting time checklists](#) for additional information.

²⁰ See [Section 5.24](#) for a more detailed discussion of this type of contempt.

comply with the parenting time order, [MCL 552.644\(2\)\(e\)](#); [MCL 552.644\(4\)](#); and/or

- condition the suspension of any [occupational license](#), [driver's license](#), or [sporting license](#) upon noncompliance with an order for makeup and ongoing parenting time, and if the parent fails to comply with the order, the court may suspend the license, [MCL 552.644\(2\)\(g\)](#); [MCL 552.645\(1\)](#).

F. Failure to Abate Public Nuisance

A person who violates an order or injunction to abate a public nuisance is subject to punishment of:

- a fine of note more than \$5,000;
- imprisonment for not more than 6 months; or
- both, in the discretion of the court.²¹ [MCL 600.3820\(1\)](#).

4.5 Assignment of Bond for Recovery of Damages

In cases of indirect contempt, [MCR 3.606\(C\)](#) allows an alleged contemnor to give bond in lieu of being arrested.²² [MCR 3.606\(D\)](#) provides for recovery of damages from the bond:

“The court may order assignment of the bond to an aggrieved party who is authorized by the court to prosecute the bond under [MCR 3.604\(H\)](#). The measure of the damages to be assessed in an action on the bond is the extent of the loss or injury sustained by the aggrieved party because of the misconduct for which the order for arrest was issued, and that party's costs and expenses in securing the order. The remainder of the penalty of the bond is paid into the treasury of the county in which the bond was taken, to the credit of the general fund.”

4.6 Double Jeopardy

The guarantee against double jeopardy “prohibits merely punishing twice, or *attempting a second time to punish criminally*, for the same offense.” *Witte v United States*, 515 US 389, 396 (1995), quoting *Helvering v Mitchell*, 303 US 391, 399 (1938) (emphasis added by *Witte* opinion). Because criminal contempt sanctions clearly have a punitive purpose,

²¹ See [Section 5.10](#) for a more detailed discussion of this type of contempt.

²² See [Section 3.11](#).

double jeopardy protections attach in nonsummary criminal contempt proceedings. *United States v Dixon*, 509 US 688, 696 (1993). See also *In re Murphy Contempt*, ___ Mich App ___, ___ (2023) (noting that in a nonsummary proceeding “more traditional due process protections can be observed,” and it is more similar to a typical criminal bench trial). However, “summary criminal contempt proceedings are not subject to the constitutional protections against double jeopardy” because when “compared to regular criminal trials and nonsummary proceedings, summary proceedings serve different purposes and, more importantly, are subject to materially different procedures.” *Id.* at ___ (noting that in a summary proceeding, “[t]he judge takes the matter up immediately, no evidence is taken or jury impaneled, and sentencing is swift”). Accordingly, “if a criminal conviction for contempt of court from a summary proceeding is reversed on appeal, double jeopardy will not bar the matter from being taken up in a nonsummary proceeding on remand.” *Id.* at ___.

Civil contempt sanctions are remedial or coercive and are not typically subject to double jeopardy protections against multiple punishments; accordingly, a person may be subjected to both criminal and civil sanctions for the same act, as long as the civil sanctions serve a purpose distinct from punishment. *Yates v United States*, 355 US 66, 74-75 (1957). In *Yates*, the United States Supreme Court upheld the imposition of both civil and criminal contempt sanctions for a single continuing act of contempt, reasoning that “[t]he civil and criminal sentences served distinct purposes, the one coercive, the other punitive and deterrent[.]” *Id.* at 74.

“The multiple punishments strand of double jeopardy is designed to ensure that courts confine their sentences to the limits established by the Legislature and therefore acts as a restraint on the prosecutor and the Courts.” *People v Miller*, 498 Mich 13, 17-18 (2015) (quotation marks and citation omitted). “The multiple punishments strand is not violated where a legislature specifically authorizes cumulative punishment under two statutes.” *Id.* at 18 (cleaned up). Many statutes explicitly allow for punishment of both a criminal offense and contempt of court, for example:

- [MCL 750.394\(3\)](#), throwing, propelling, or dropping a dangerous object at a train or motor vehicle;
- [MCL 750.411h\(5\)](#) and [MCL 750.411i\(6\)](#), stalking and aggravated stalking;²³
- [MCL 600.1348](#) discharging or disciplining employee summoned for jury duty; and

- [MCL 780.762](#) and [MCL 780.822](#), discharging or disciplining an employee who is a crime victim or a victim representative for attending court.

[MCL 600.1745](#) specifically addresses indictment for contemptuous conduct. [MCL 600.1745](#) states:

“Persons proceeded against according to the provisions of [Chapter 17 of the Revised Judicature Act, which addresses contempts], shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction shall be had on such indictment shall take into consideration the punishment before inflicted, in imposing sentence.”

The Michigan Supreme Court held that [MCL 600.1745](#) clearly indicates the Legislature’s intent to allow separate punishment of a person found in criminal contempt of court for contemptuous conduct that also violates a criminal statute. *People v McCartney (On Remand)*, 141 Mich App 591, 596 (1985). See also *People v Szpara*, 196 Mich App 270, 272 (1992) (noting that the contempt provision for violating an injunction barring entry into the marital home in a divorce proceeding and the statute criminalizing breaking and entering “serve different purposes[;] [t]he contempt provision serves to vindicate the authority of the court, . . . while the breaking and entering statute punishes a defendant for his [or her] criminal actions[,] thus, the contempt action is a “separate and distinct offense from the criminal act which provides the basis for the contempt adjudication”).

²³ See also *People v Coones*, 216 Mich App 721, 728 (1996) (holding the language of [MCL 750.411i\(6\)](#) makes it clear “that the Legislature intended to impose multiple punishments for both of defendant’s convictions of aggravated stalking and criminal contempt for violating the temporary restraining order”). Note that the *Coones* Court cites *People v Robideau*, 419 Mich 458 (1984), in support of its conclusions, and *Robideau* was overruled by *People v Smith*, 478 Mich 292 (2007), to the extent it created a different test for determining when multiple punishments are barred on double jeopardy grounds. *Smith* explains that “[i]n interpreting ‘same offense’ in the context of multiple punishments, federal courts first look to determine whether the legislature expressed a clear intention that multiple punishments be imposed. Where the Legislature does clearly intend to impose such multiple punishments, imposition of such sentences does not violate the Constitution, regardless of whether the offenses share the ‘same elements.’ Where the Legislature has not clearly expressed its intention to authorize multiple punishments, federal courts apply the ‘same elements’ test of [*Blockburger v United States*, 284 US 299 (1932)], and not the test that *Robideau* articulated,] to determine whether multiple punishments are permitted. Accordingly, we conclude that the ‘same elements’ test set forth in *Blockburger* best gives effect to the intentions of the ratifiers of our constitution.” *Smith*, 478 Mich at 316 (quotation marks and citations omitted).

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5.1 Scope Note

This chapter contains information about common forms of contempt of court. Part I addresses the provisions in [MCL 600.1701](#) as well as some other miscellaneous statutory contempt provisions. Part II addresses contempt in domestic relations cases. Part III addresses finding [juveniles](#) in contempt of court. Each section discusses statutory authority and any relevant court rules and caselaw. See also the Michigan Judicial Institute's [table](#) detailing procedures and sanctions for common forms of contempt.

Note that this chapter does not contain an exhaustive description of conduct that is punishable using the court's contempt powers. Similarly, while this chapter discusses various statutory authority for using the contempt powers, the court does not need specific statutory authority to exercise its inherent authority. See [Section 1.3](#) for a discussion of a court's inherent authority to cite persons for contempt of court.

Part I: Statutory and Court Rule Authority for Punishing Certain Contempts

5.2 Ability to Pay

"The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act." [MCR 3.606\(F\)](#) ([MCR 3.606](#) addresses the procedure for contempts outside the immediate presence of the court). [MCR 6.425\(D\)\(3\)\(a\)](#) states that "[t]he court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." [MCR 6.425\(D\)\(3\)](#) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of [MCR 6.425\(D\)\(3\)](#), see the Michigan Judicial Institute's [Criminal Proceedings Benchbook Vol. 2](#), Chapter 8. See also the Michigan Judicial Institute's [Ability to Pay Benchcard](#) addressing the ability to pay requirements.

5.3 Contempt for Interrupting Proceedings or Disrespecting the Court's Authority

A. Statutory Authority

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

- (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due its authority.
- (b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.” [MCL 600.1701\(a\)-\(b\)](#).¹

B. Misconduct by Criminal Defendants

A criminal defendant's constitutional right to confront his or her accusers, [US Const, Am VI](#), and [Const 1963, art 1, § 20](#), encompasses the ancillary right to be present in the courtroom during trial.² *Maryland v Craig*, 497 US 836, 844 (1990). However, a defendant may waive the right to be present because of his or her conduct in the courtroom. In *Illinois v Allen*, 397 US 337, 343 (1970), the Court stated:

“[W]e explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.”

¹The conduct described in [MCL 600.1701\(a\)](#) and [MCL 600.1701\(b\)](#) often overlaps; accordingly, these two subsections are discussed together. See, e.g., *In re Bradley Estate*, 494 Mich 367, 419 n 45 (2013) (McCORMACK, J., dissenting) (citing both [MCL 600.1701\(a\)](#) and [MCL 600.1701\(b\)](#) when referencing “behavior ‘directly tending to interrupt [court] proceedings’”) (first alteration in original); *In re Contempt of Dudzinski*, 257 Mich App 96, 108 (2003) (noting that the trial court relied on [MCL 600.1701\(a\)](#) and [MCL 600.1701\(b\)](#) to support its finding of contempt where the appellant refused to obey the trial court's order to remove a shirt or leave the courtroom).

² See also [MCL 768.3](#) (statutory right to be present at trial).

See, e.g., *People v Harris*, 80 Mich App 228, 229-230 (1977) (trial court properly exercised discretion in removing defendant who, despite numerous warnings, repeatedly interrupted the trial with his willful and disorderly behavior). Cf. *People v Buie (On Remand)*, 298 Mich App 50, 59-60 (2012) (defendant's removal from courtroom not justified following a single interruption of voir dire).

The *Allen* Court discussed three constitutionally permissible approaches a trial judge may use in handling an obstreperous defendant. See *Allen*, 397 US at 344. Relevant to this benchbook is the court's authority to cite or threaten to cite the defendant for contempt. *Id.* at 344. Criminal contempt may be used to punish the conduct and may deter the defendant from similar future conduct. See *People v Ahumada*, 222 Mich App 612, 617-618 (1997). Where the sanctions for criminal contempt pale in comparison to the penalty for the offense charged, criminal contempt may be of little use, in which case civil contempt may be used and the defendant jailed until he or she acts properly. See *Allen*, 397 US at 345.

Michigan courts have relied upon *Allen* in affirming convictions where the defendant's conduct resulted in his or her absence at trial. See e.g., *People v Kammeraad*, 307 Mich App 98, 149 (2014) (holding that the trial court properly excluded the defendant from the courtroom during his trial due to the defendant's repeatedly disruptive behavior).

"[T]he test for whether [a] defendant's absence from a part of his [or her] trial requires reversal of his [or her] conviction is whether there was any reasonable possibility that [the] defendant was prejudiced by his [or her] absence." *People v Buie (On Remand)*, 298 Mich App 50, 59 (2012), quoting *People v Armstrong*, 212 Mich App 121, 129 (1995) (reversal not required where the defendant was absent for only a short period during voir dire and there was no evidence to support a finding that there was any reasonable possibility that he was prejudiced by the brief absence).

C. Right to Allocute

Finding a defendant in contempt of court at the sentencing hearing does not violate the defendant's right to allocute under [MCR 6.425\(D\)\(1\)\(c\)](#), as long as the court has provided the defendant with an opportunity to allocute as required by the court rule. See *People v Kammeraad*, 307 Mich App 98, 149 (2014) (finding the defendant in contempt did not violate his right to allocute under [MCR 6.425\(D\)\(1\)\(c\)](#) where "the circuit court gave defendant every opportunity to allocute," and rather than allocuting, the "defendant engaged in a nonsensical rant that had absolutely nothing to do with his sentencing").³

D. Right to Free Speech

“Disruptive, contemptuous behavior in a courtroom is not protected by the constitution.” *People v Warriner*, 113 Mich App 549, 555 (1982), citing *Cox v Louisiana*, 379 US 559 (1965).

A “court’s contempt ruling at the [defendant’s] sentencing hearing [did not] violate[] his constitutional right to free speech under the First Amendment” where “[the d]efendant’s conduct during sentencing was disorderly, contemptuous, and insolent, directly tending to impair the respect due the court and reflecting the culmination of disorderly, contemptuous, insolent, and disrespectful behavior, [MCL 600.1701\(a\)](#), all of which was directly witnessed by the court firsthand,” and the “defendant’s actions and remarks tended to disturb the administration of justice.” *People v Kammeraad*, 307 Mich App 98, 146, 148-149 (2014).

E. Attorney Misconduct: The Line Between Zealous Representation and Contempt

In *People v Kurz*, 35 Mich App 643, 651 (1971), the Court of Appeals distinguished between zealous representation of a client’s interests in court and contumacious conduct. The Court stated the following:

“Unless a lawyer’s conduct manifestly transgresses that which is permissible[,] it may not be the subject of charges of contempt. Any other rule would have a chilling effect on the constitutional right to effective representation and advocacy. In any case of doubt, the doubt should be resolved in the client’s favor so that there will be adequate breathing room for courageous, vigorous, zealous advocacy.”

The misconduct “must constitute an imminent, not merely a likely, threat to the administration of justice.” *In re Little*, 404 US 553, 555 (1972).

In *Kurz*, the trial court was not justified in charging defense counsel with 107 instances of contempt, almost all of which involved the allegedly improper voicing of objections to questions asked by the prosecutor. *Id.* at 661-679 (transcripts of some of the charged instances of misconduct).

³*Kammeraad*, 307 Mich App at 149 references [MCR 6.425\(E\)](#); however, effective January 1, 2021, ADM File No. 2018-33, ADM File No. 2019-20, and ADM File No. 2019-38 amended [MCR 6.425](#) to reletter former subrule (E) to subrule (D).

In *In re Contempt of O'Neil*, 154 Mich App 245, 246-247 (1986), the trial court was justified in finding a criminal defense attorney in contempt for continuing to argue an issue after the court made its ruling and warning the attorney that further argument would result in a contempt citation. The Court of Appeals found that by the time the court warned the attorney, the attorney had fully advocated his client's position. *Id.* at 248. For cases reaching similar results, see *In re Contempt of Peisner (People v Jackson)*, 78 Mich App 642, 643 (1977), and *In re Burns*, 19 Mich App 525, 526 (1969).

To be subject to sanctions, the attorney's conduct must amount to a "wilful creation of an obstruction of the performance of judicial duty[.]" *In re Meizlish*, 72 Mich App 732, 738 (1976), citing *In re McConnell*, 370 US 230, 236 (1962). In *McConnell*, after the judge told the attorney to stop a certain line of questioning, the attorney asserted a right to ask the questions and stated that he planned to continue until the bailiff stopped him. *Id.* at 235. The United States Supreme Court reversed the contempt citation against the attorney, finding that the attorney's mere statement that he planned to continue the questioning did not constitute an obstruction of justice. *Id.* at 235-236.

To avoid the appearance of partiality, the court should excuse the jury before citing an attorney for contempt of court. *People v Williams*, 162 Mich App 542, 547 (1987).

5.4 Misconduct by Attorneys, Counselors, Clerks, Registers, Sheriffs, Coroners, and Persons Elected or Appointed to Perform Judicial or Ministerial Services

A. Statutory Authority

"The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

"(c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge." [MCL 600.1701\(c\)](#).

B. Failure of Attorney to Appear in Court

Because an attorney is an officer of the court as well as an agent of his or her client, the attorney has a duty to take timely affirmative action to notify the court if the attorney will not continue the representation. *White v Sadler*, 350 Mich 511, 526 (1957); *In re Lewis (Shaw v Pimpleton)*, 24 Mich App 265, 269 (1970). Failure to appear in court at the appointed time constitutes indirect contempt. *In re Contempt of McRipley*, 204 Mich App 298, 301 (1994).

The rationale for punishing an attorney for failing to appear in court is stated in *People v Matish*, 384 Mich 568, 572 (1971), quoting *Arthur v Superior Court of Los Angeles Co*, 398 P2d 777, 782 (Cal, 1965):

“When an attorney fails to appear in court with his [or her] client, particularly in a criminal matter, the wheels of justice must temporarily grind to a halt. The client cannot be penalized, nor can the court proceed in the absence of counsel. Having allocated time for this case, the court is seldom able to substitute other matters. Thus the entire administration of justice falters. Without judicious use of contempt power, courts will have little authority over indifferent attorneys who disrupt the judicial process through failure to appear.”

C. Caselaw

Willful intent is not required for a finding of civil contempt. *McComb v Jacksonville Paper Co*, 336 US 187, 191 (1949); *Catsman v Flint*, 18 Mich App 641, 646 (1969). If a judge feels that an attorney was merely negligent in not appearing in court, civil contempt proceedings may be instituted. If civil contempt is found, the judge must order the contemnor to pay damages for the injuries resulting from noncompliance with the court order. [MCL 600.1721](#).⁴ See *In re Jacques*, 761 F2d 302, 305-306 (CA 6, 1985), and *In re Contempt of McRipley*, 204 Mich App 298, 301-302 (1994) (attorney who failed to appear was properly ordered to reimburse county for costs of assembling jury panel). The court may also order the contemnor to pay a fine and the costs and expenses of the proceedings. [MCL 600.1715\(2\)](#).

“[W]here an attorney makes a good faith effort to obtain a substitute lawyer for his [or her] client when the original attorney cannot appear, the failure to appear cannot be deemed willful.” *In re Lumumba*, 113 Mich App 804, 813-814 (1982). The *Lumumba* Court reversed the trial court’s finding of criminal contempt because the

⁴Note that [MCL 600.1721](#) “is effectively a proxy for a tort claim.” *In re Bradley Estate*, 494 Mich 367, 393 (2013). See [Section 4.1](#) for more information.

attorney made a good faith effort to secure a substitute attorney. *Id.* at 814.

In *In re Hirsch*, 116 Mich App 233, 237-238 (1982), the Court of Appeals affirmed a finding of criminal contempt against an attorney who was ordered to be in Recorder's Court at 9:00 a.m. and in Macomb County Circuit Court at 11:00 a.m. The attorney did not obtain substitute counsel and did not appear in Recorder's Court because he felt the orders were conflicting and he would not have time to drive from Recorder's Court to Macomb County Circuit Court. *Id.* at 238-239. The Court of Appeals found that the attorney made a willful decision to violate the Recorder's Court order and upheld the finding of criminal contempt. *Id.* at 241.

5.5 Fictitious Bail, Deceit, Abuse of Process, or Filing False Pleadings and Documents

A. Statutory Authority and Court Rule

"The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,⁵ or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court." [MCL 600.1701\(d\)](#).

[MCR 1.109\(D\)-\(E\)](#) require **documents** to be signed or verified in certain cases. An **electronic signature** is also acceptable. [MCR 1.109\(E\)\(4\)](#). False declarations in documents are the subject of [MCR 1.109\(D\)\(3\)](#), which states:

"Except when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit. If a document is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or

⁵The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act." [MCR 3.606\(F\)](#).

(b) except as to an affidavit, including the following signed and dated declaration:

‘I declare under the penalties of perjury that this _____ has been examined by me and that its contents are true to the best of my information, knowledge, and belief.’ . . .

In addition to the sanctions provided by [MCR 1.109(E)], a person who knowingly makes a false declaration under this subrule may be found in contempt of court.”

B. Indirect Contempt

Filing false pleadings constitutes indirect contempt. *In re Collins*, 329 Mich 192, 196 (1950). The filing of false pleadings may not be summarily punished because it is not an act within the immediate view and presence of the court. See *id.*

C. False or Evasive Testimony or Pleading

A witness’s false or evasive testimony that conflicted with other witnesses’ testimony may be contumacious. *In re Scott*, 342 Mich 614, 617-618 (1955).

In *People v Little*, 115 Mich App 662, 664 (1982), a criminal defendant moved to withdraw his guilty plea, claiming that he had lied during the plea proceeding. The judge issued an order to show cause why the defendant should not be held in contempt. *Id.* The defendant’s attorney testified at the show-cause hearing that he advised the defendant to plead guilty because “the case was unwinnable[,]” but the court ultimately found the defendant in criminal contempt. *Id.* The Court of Appeals reversed the criminal contempt citation, finding that it was not proved beyond a reasonable doubt that the defendant’s false statements at the plea proceeding were culpable. *Id.* at 665.

5.6 Failure to Pay Money Judgment

A. Statutory Authority

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,^[6] or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.” [MCL 600.1701\(e\)](#).

B. Caselaw Examples of Using Contempt Proceedings to Enforce Money Judgments

1. Specific Fund or Article

Caselaw has permitted an order for transfer of a specific fund or article to be enforced by contempt proceedings. *Carnahan v Carnahan*, 143 Mich 390 (1906); *American Oil Co v Suhonen*, 71 Mich App 736 (1976).

In *Carnahan*, 143 Mich at 396-397, a woman was ordered to transfer a specific fund she maintained in a Canadian bank to her former husband. A finding of contempt for her refusal to do so was affirmed by the Michigan Supreme Court, which noted:

“This is not a decree for the payment of money in the ordinary sense. It is not subject to the exemption law. The decree requires delivery of the specific thing—i.e., the fund—in contradistinction to the payment of a debt, and a writ of execution is not appropriate in such a case.” *Id.* at 397.

In *Suhonen*, 71 Mich App at 740-741, the Court relied on *Carnahan* in affirming the trial court’s contempt citation, where an oil company salesman failed to pay to the company \$3,300 in an account subject to his control as directed by the trial judge.

A contempt citation against the plaintiff-husband who refused to comply with the court order that he execute a deed to his former wife of income-producing real property situated in Beirut, Lebanon was affirmed. *Schaheen v Schaheen*, 17 Mich App 147, 148, 150 (1969). The Court affirmed the order on the basis of its conclusion that transfer of the property was covered by the “specific fund principle.” *Id.* at 150.

⁶“The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

2. Duty to Pay Arising From a Fiduciary Relationship

Where the duty to pay arises from a fiduciary relationship between the parties, the use of contempt proceedings has been upheld. See *Maljak v Murphy*, 22 Mich App 380, 383-384, 386 (1970) (contempt citation affirmed where contemnor refused to refund an unearned attorney fee to the estate of his former client); [MCR 8.122](#) (claims by clients against attorneys). In affirming the contempt citation, the *Maljak* Court emphasized that the attorney was “not an ordinary debtor” but rather someone who “bears a special responsibility” and is subject to the power of the circuit court “to make any order for the payment of money or for the performance of any act by the attorney which law and justice may require.” *Maljak*, 22 Mich App at 385, quoting GCR 1963, 908 (now [MCR 8.122](#)).

3. Child or Spousal Support

[MCL 552.631](#) permits an order for child support or spousal support to be enforced by use of the contempt power.⁷ In *Schoensee v Bennett*, 228 Mich App 305, 317 (1998), the Court held that an award of attorney fees in a child custody action is not a money judgment and is therefore enforceable by contempt proceedings.

C. Limitation on the Use of Contempt Power to Enforce Certain Types of Money Judgments

Historically, money judgments, including the property settlement provisions of a divorce judgment, generally may not be enforced by contempt proceedings. *Belting v Wayne Circuit Judge*, 245 Mich 111 (1929); *Thomas v Thomas*, 337 Mich 510, 513-514 (1953); *Guynn v Guynn*, 194 Mich App 1, 2-3 (1992). This restriction on the use of contempt power is a necessary outgrowth of the constitutional prohibition against imprisonment “for debt arising out of or founded on contract, express or implied” [Const 1963, art 1, § 21](#). See also *Brownwell Corp v Ginsky*, 247 Mich 201 (1929) (prohibition applies even if the court orders the money paid to the court). “[T]he process of contempt to enforce civil remedies is one of those extreme resorts which cannot be justified if there is any other adequate remedy.” *Haines v Haines*, 35 Mich 138, 144 (1876).

However, 2005 PA 326, effective December 27, 2005, eliminated the limiting language in [MCL 600.1701\(e\)](#) to allow contempt procedures in many types of collection matters. See *DeGeorge v Warheit*, 276 Mich

⁷ See [Section 5.22](#) for a discussion of this provision.

App 587 (2007) (where the plaintiff and his attorney were ordered to reimburse the defendants for filing a frivolous lawsuit, and the attorney paid his personal debts before complying with the court order, the Court affirmed a finding of contempt because the attorney violated a court order and [MCL 600.1701\(e\)](#) permits the circuit court to punish people for failing to pay a money judgment).

5.7 Failure to Obey or Comply with an Order for Payment of Alimony or Support

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,^[8] or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.” [MCL 600.1701\(f\)](#).

Contempt in the context of domestic relations cases is discussed in detail in [Part II](#).

5.8 Violation of Court Order

A. Statute

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,^[9] or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

⁸“The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

⁹“The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court." [MCL 600.1701\(g\)](#).

Committee Tip:

While failure to follow the conditions of a probation order could theoretically be considered a contempt of court for failure to follow a court order, specific court rules and statutes address a probationer's failure to follow the dictates of probation and it is best practice to follow the probation violation process rather than hold a probationer in contempt. For a detailed discussion of the probation violation process, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 3](#), Chapter 2.

B. Misconduct by Persons Present in the Courtroom

The trial court properly exercised its power to hold the appellant in contempt where the appellant "willfully disobeyed the trial court's order to remove his shirt or leave the courtroom." *In re Contempt of Dudzinski*, 257 Mich App 96, 108, 110 (2003). The "[a]ppellant was on notice and understood what the trial court was ordering him to do, but still refused to obey the order. The trial court found [the] appellant in contempt only after having given him several chances to obey its order." *Id.* at 110.

C. Violation of a Bond Condition

Violation of a bond condition is punishable by contempt because "a court's decision in setting bond is a court order[.]" and "a bail decision is an interlocutory order." *People v Mysliwicz*, 315 Mich App 414, 417 (2016). A "bond condition prohibiting [the] defendant's use of alcohol was a court order punishable by contempt[]" under [MCL 600.1701\(g\)](#) where the trial court orally ordered that a condition of the defendant's bond was to abstain from possession or consumption of any alcohol and then "issued written mittimuses, which required [the] defendant to have no alcohol." *Mysliwicz*, 315 Mich App at 418.

D. Oral Orders

Generally, courts speak through written judgments and decrees, not through oral statements. *Arbor Farms, LLC v Geostar Corp*, 305 Mich App 374, 387 (2014). “However, there are circumstances where ‘[a]n oral ruling has the same weight and effect as a written order,’ as when, for example, an oral ruling clearly communicates the finality of the court’s pronouncement.” *Id.* at 388, quoting *McClure v HK Porter Co*, 174 Mich App 499, 503 (1988). “When assessing whether an oral ruling has equal effect to that of a written order, [the Court of Appeals] consider[s] whether the oral ruling contains indicia of formality and finality comparable to that of a written order.” *Arbor Farms, LLC*, 305 Mich App at 388.

In *Arbor Farms, LLC*, “a postjudgment collection action to enforce a foreign money judgment,” the Court concluded that the oral order issued by the trial court had the same weight and effect as a written order because it had adequate indicia of formality and finality. *Id.* at 377, 388. Specifically, the Court of Appeals observed that the trial court “unequivocally indicated that ‘this is the ruling of the Court’” and stated it was modifying a previous order. *Id.* at 388. The trial court further specified that an inventory of assets and a privilege log must be created within 30 days by the defendant. *Id.* The Michigan Court of Appeals found that “[t]hese statements reflect a formal resolution, not a tentative conclusion or merely loose impressions of the matter.” *Id.* The Court further noted that the defendant submitted a statement to the trial court discussing its oral instructions and claiming it was not possible to comply; thus, the defendant recognized the binding nature of the order. *Id.* at 388-389. The Court of Appeals held that “[g]iven the formality of the [trial] court’s oral ruling and [the] defendant’s own recognition of its applicability, [the] defendant’s contention that the order was not final [until a written order was entered] is unpersuasive and appears disingenuous.” *Id.* at 389. Accordingly, the Court of Appeals held that the trial court did not err by holding the defendant in contempt for failing to comply with its oral order to create an inventory of assets and a privilege log. *Id.*

E. Even Clearly Incorrect Orders Must Be Obeyed

An order entered by a court of proper jurisdiction must be obeyed even if the order is clearly incorrect. *Kirby v Michigan High School Athletic Ass’n*, 459 Mich 23, 40 (1998).¹⁰ See also *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 648 (2022) (“It has long been

¹⁰ See [Section 1.5](#) for caselaw holding that orders issued by a court *without jurisdiction* are invalid and need not be obeyed.

established that even if a court's order is incorrect, persons subject to the order must still comply with the order, and their remedy is to appeal the order or seek a stay"). Moreover, an "underlying challenge to the original [court] order cannot be raised for the first time in a contempt proceeding." *In re Contempt of Dorsey*, 306 Mich App 571, 590 (2014), vacated in part on other grounds 500 Mich 920 (2016).¹¹ The failure to properly challenge the court order results in a waiver of the challenge. *Id.* See also *Dep't of Agriculture v Zante, Inc*, ___ Mich App ___, ___ (2023) (upholding the validity of the trial court's finding of contempt where the contemnor argued the court order she violated was unconstitutional, but she "elected to bypass the administrative and subsequent judicial processes that would have afforded her a full hearing on her constitutional claims," and instead violated two then-lawful court orders). However, the circuit court was **not** "required to enforce the contempt orders on remand" where the appellee conceded that the underlying order was improperly entered and enforcement of the contempt orders was stayed pending appeal. *In re Contempt of Dorsey*, 500 Mich at 920.

"[P]ersons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect." *State Bar v Cramer*, 399 Mich 116, 125 (1976), abrogated on other grounds *Dressel v Ameribank*, 468 Mich 557 (2003) (citations and quotation marks omitted). The trial court continues to have jurisdiction to enforce its order until such time that an appellate court dissolves the order. *Ann Arbor v Danish News Co*, 139 Mich App 218, 229-230 (1984). Thus, after an order has been stayed or reversed on appeal, it is no longer appropriate for the trial court to seek to compel the contemnor to comply with the order. See *Davis v Detroit Fin Review Team*, 296 Mich App 568, 626 (2012). In *Davis*, 296 Mich App at 626, the defendant disregarded the trial court's order compelling the defendant to hold its meetings in accord with the Open Meetings Act. The Court of Appeals held that the Open Meetings Act did not apply to that defendant, and that although the defendant was in contempt for disregarding the order while it was in effect, the defendant could not be ordered to comply with the order after it was vacated. *Id.* The Court noted that the plaintiff could nevertheless "potentially be entitled to a civil contempt sanction in the form of a compensatory award" if a civil contempt could be proven. *Id.*

¹¹[A] prior Court of Appeals decision that has been reversed on other grounds has no precedential value. . . . [W]here the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, no rule of law remains from the Court of Appeals decision." *Dunn v Detroit Auto Inter-Ins Exch*, 254 Mich App 256, 262 (2002). See also [MCR 7.215\(J\)\(1\)](#). However, its analysis may still be persuasive. See generally *Dunn*, 254 Mich App at 263-266.

Note: An appeal does not automatically stay enforcement of a court's judgment or order, except for an automatic stay pursuant to [MCR 2.614](#), [MCL 600.867](#), or as otherwise provided in [MCR 7.209](#). [MCR 7.209\(A\)\(1\)](#).

“A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal.” *Johnson v White*, 261 Mich App 332, 346 (2004), quoting *In re Contempt of Dudzinski*, 257 Mich App 96, 111 (2003). However, the Court noted that these rules only apply when the order is issued by a court with jurisdiction over the person and over the subject matter. *Johnson*, 261 Mich App at 346. In *Johnson*, the Court of Appeals reversed a lower court's finding of contempt against a defendant for violating the court's order for grandparent visitation. On January 10, 2001, the lower court entered an order for grandparent visitation. Three months later, the defendant violated the order by moving his children to another state. *Id.* at 335. On January 25, 2002, the Court of Appeals issued its decision in *DeRose v DeRose*, 249 Mich App 388, 395 (2002), and found the grandparent visitation statute, [MCL 722.27b](#), unconstitutional. On March 28, 2002, the lower court found the defendant in *Johnson* in contempt of court for violating its order. *Johnson*, 261 Mich App at 334. The trial court subsequently denied the defendant's motion to vacate the contempt order. *Id.*

The defendant argued on appeal that the contempt order should have been vacated because the lower court lacked subject matter jurisdiction over the grandparent visitation issue as a result of the Court of Appeals decision in *DeRose*, 249 Mich App at 345. The defendant claimed that [MCR 7.215\(C\)\(2\)](#) required the lower court to give immediate precedential effect to *DeRose* even though, at the time of the show cause hearing, an appeal of the decision in *DeRose* was pending in the Supreme Court. *Johnson*, 261 Mich App at 346. [MCR 7.215\(C\)\(2\)](#) states that a published Court of Appeals opinion has precedential effect and the “filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.” *Johnson*, 261 Mich App at 346-347. The trial court disagreed and ruled that [MCR 7.215\(C\)\(2\)](#) should be read in conjunction with [MCR 7.215\(F\)\(1\)\(a\)](#), which states that a “Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court[.]” *Johnson*, 261 Mich App at 347.

The Court of Appeals found the trial court's reliance on [MCR 7.215\(F\)\(1\)\(a\)](#) misplaced and stated that [MCR 7.215\(F\)\(1\)\(a\)](#) “pertains to the timing of when our judgment becomes final in regards to the

parties to the appeal and its enforceability with respect to the trial court that presided over the case.” *Johnson*, 261 Mich App at 347. The Court also indicated that [MCR 7.215\(C\)\(2\)](#) clearly provides that filing an application for leave to appeal to the Supreme Court or an order granting leave does not change the precedential effect of the decision of the Court of Appeals. *Johnson*, 261 Mich App at 347. The Court concluded that the trial court erred in determining that it did not need to give *DeRose* precedential effect. *Johnson*, 261 Mich App at 348.

At the time the defendant was held in contempt, the opinion in *DeRose* had already been issued; therefore, *DeRose* had binding precedential effect, and the lower court was without jurisdiction over the subject matter of the contempt order. *Johnson*, 261 Mich App at 349-350. Because the lower court lacked subject matter jurisdiction when it entered the contempt order, the Court of Appeals reversed the lower court’s finding of contempt. *Id.* at 349-350. The holding in *Johnson* “does not stand for the proposition that courts lack contempt jurisdiction when an underlying law is *subsequently* declared unconstitutional,” rather, “*Johnson’s* holding applies only if a statute has been declared to be unconstitutional *before* a contempt judgment is entered.” *Zante, Inc*, ___ Mich App at ___ (rejecting the defendant’s challenge to the judgment of contempt because at the time the contempt judgment was entered it fully conformed with then-existing law).

The attorneys for a party in divorce proceedings were properly cited for contempt and ordered to pay damages after they failed to advise their client to obey a court order pending appeal. *Schoensee v Bennett*, 228 Mich App 305, 317 (1998) “While [the] plaintiff’s attorneys did not technically instruct their client to violate the order, their failure to advise their client of his obligation to comply with the order had the same effect.” *Id.*

F. Reliance on Attorney’s Advice

“The federal courts have ruled that when an individual in good faith relies upon his [or her] attorney’s advice or interpretation of a court order, he [or she] cannot be found guilty of criminal contempt since the element of an intentional violation of the court’s order has not been established.” *In re Contempt of Rapanos*, 143 Mich App 483, 495 (1985), citing *Proudfit Loose Leaf Co v Kalamazoo Loose Leaf Binder Co*, 230 F 120, 132 (CA 6, 1916). However, the federal criminal contempt rule has not been adopted in Michigan. *In re Contempt of Dorsey*, 306 Mich App 571, 592 (2014), vacated in part on other grounds 500 Mich 920 (2016)¹² (stating that “there is no indication that [the *Rapanos* Court] adopted [the federal rule].”) Further, the Michigan Supreme Court has held that where a client acted under his attorney’s advice in violating an injunction, the client was liable for the actual damages

caused by that behavior. *Chapel v Hull*, 60 Mich 167, 175 (1886). See also *Brown v Brown*, 335 Mich 511, 518-519 (1953) (“It is not a defense that one who violated an injunction did so upon the advice of counsel.”) Moreover, even assuming the federal rule regarding criminal contempt is applicable in Michigan, the *Dorsey* Court declined to apply the rule in that case because the appellant failed to cite any authority in support of the extension of the federal rule to situations where an individual refuses to comply with an order because he or she intends to seek the advice of counsel. *In re Contempt of Dorsey*, 306 Mich App at 593.

In the context of civil contempt charges, the United States Supreme Court held that “[t]he absence of wilfulness does not relieve from civil contempt.” *McComb v Jacksonville Paper Co*, 336 US 187, 191 (1949). Thus, violating an order on the advice of counsel would not be a defense to civil contempt. See *id.*

G. Injunctions

[MCR 3.310\(C\)\(4\)](#) states that an injunctive order “is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”

Actual knowledge may be inferred. See *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 216-217 (1966) (union members’ actual knowledge of the injunctive order was properly inferred, where a copy of the order was posted at the site of union picketing, and the order was issued one month prior to the charged acts of contempt); *DeKuyper v DeKuyper*, 365 Mich 487 (1962) (where a bank was served with an injunctive order but not made a party to the underlying action, the bank’s actual knowledge of the order made it effective against the bank).

Courts have punished contemnors for violating injunctive orders by subterfuge or in bad faith. See *Craig v Kelley*, 311 Mich 167, 178 (1945), *Gover v Malloska*, 242 Mich 34, 36 (1928), and *In re Contempt of Rapanos*, 143 Mich App 483, 489-490 (1985).

¹²[A] prior Court of Appeals decision that has been reversed on other grounds has no precedential value. . . . [W]here the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, no rule of law remains from the Court of Appeals decision.” *Dunn v Detroit Auto Inter-Ins Exch*, 254 Mich App 256, 262 (2002). See also [MCR 7.215\(J\)\(1\)](#). However, its analysis may still be persuasive. See generally *Dunn*, 254 Mich App at 263-266.

H. Fiduciary's Failure to Comply With Court Order

A fiduciary who fails to comply with a court order may be punished for contempt. See *People v McCartney (On Remand)*, 141 Mich App 591, 596 (1985) (holding that a defendant can be punished for both the crime of embezzlement and criminal contempt without running afoul of the double jeopardy clause).

[MCR 5.203](#) sets out the required procedures for addressing a fiduciary who is not properly administering an estate. These procedures do not preclude contempt proceedings. [MCR 5.203\(D\)](#).

I. Parties and Attorneys in Civil Cases Who Violate Discovery or Disclosure Orders

The general authority to hold a person in contempt for failure to follow a court order provided in [MCL 600.1701\(g\)](#) extends to the failure of any party or attorney who violates a discovery or disclosure¹³ order. See [MCR 2.313\(B\)](#).

[MCR 2.313\(A\)](#) outlines how a party may obtain an order compelling disclosure or discovery. [MCR 2.313\(B\)](#) provides sanctions for failure to comply with an order, including an order provide or permit discovery after a discovery order has been issued or an order compelling disclosure. That rule states, in pertinent part:

“(1) Sanctions by Court Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the county or district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party, or a person designated . . . to testify on behalf of a party, fails to obey an order to provide or permit discovery, including an order entered under subrule (A) of this rule or under [MCR 2.311](#), the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:

* * *

¹³ In certain civil cases, parties have a duty to provide initial disclosures as set out in [MCR 2.302\(A\)](#). In addition, parties must supplement their initial disclosures as set out in [MCR 2.302\(E\)](#). A court may sanction a party for failing to take either of these actions. See [MCR 2.313\(C\)\(1\)](#) (authorizing the court to impose appropriate sanctions, including contempt of court). However, discussion of this topic is outside the scope of this benchbook. See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 5, for more information on disclosures in civil cases.

(d) in lieu of or in addition to the foregoing orders, an order treating as contempt of court the failure to obey an order, except an order to submit to a physical or mental examination[.]” [MCR 2.313\(B\)](#).

The sanctions provided by the predecessor to [MCR 2.313](#)¹⁴ were discussed in *Richards v O’Boyle*, 21 Mich App 607 (1970). The Court of Appeals stated that an attorney who did not comply with the rules for expeditious handling of discovery proceedings and who did not submit answers to the defendant’s interrogatories could be held in contempt. *Id.* at 611-612.

“[T]he information provided to the trial court was insufficient to warrant the issuance of an order to show cause for criminal contempt” where the defendants in a civil case moved to hold the plaintiffs in criminal contempt for their alleged violation of a discovery order because the “affidavit submitted was unexecuted and unsworn,” and even after it was executed, the affidavit was not based on the personal knowledge of the affiant and lacked information about exactly what was done to the data that was the basis of the alleged discovery order violation. *Ferranti v Electrical Resources Co*, 330 Mich App 439, 443, 446 (2019).

J. Refusal to Submit to Paternity Test

In *Bowerman v MacDonald*, 431 Mich 1, 23 (1988), the Michigan Supreme Court held that a putative father’s refusal to submit to court-ordered blood testing or tissue typing could be punished by contempt, although a default judgment could not be entered against the putative father. In response to *Bowerman*, the Legislature amended [MCL 722.716](#) to allow for entry of a default judgment in such cases. See [MCL 722.716\(1\)\(a\)](#).

K. Violation Must Be of Lawful Order, Decree, or Process of the Court

The trial court committed legal error where it held a minor child in contempt for violation of a parenting time order that only applied to the child’s younger siblings. *In re Gorcyca*, 500 Mich 588, 618-619 (2017). While it was possible that the trial court could have held the minor child in contempt in regard to the parenting time order for his “persistent behavior of thwarting the parenting time between the younger children and their father,” that rationale was not clearly articulated at the contempt hearing. *Id.*

¹⁴ GCR 1963, 313.2.

5.9 Contempts Regarding Personal Protection Orders (PPO)¹⁵

A respondent is subject to contempt for violating a PPO, and a petitioner is subject to contempt for making a false statement in support of his or her petition for a PPO. [MCL 600.2950\(23\)-\(24\)](#); [MCL 600.2950a\(23\)-\(24\)](#).

The Family Division of Circuit Court has jurisdiction to enforce PPOs. [MCL 764.15b\(5\)-\(6\)](#). See also [MCL 712A.2\(h\)](#).¹⁶

A. Contempt for Violation of a PPO

[MCR 3.708](#) sets forth the procedures for a contempt proceeding regarding the violation of a PPO by an adult. PPOs, including some foreign protection orders issued under [MCL 600.2950](#), are enforceable under [MCL 600.2950\(23\)](#), [MCL 600.2950\(25\)](#), [MCL 600.2950a\(23\)](#), [MCL 600.2950a\(25\)](#), [MCL 764.15b](#), and [MCL 600.1701 et seq.](#) [MCR 3.708\(A\)\(1\)](#). See also [MCL 600.2950\(1\)](#).

“[A] party may be held in criminal contempt for violating the plain, written conditions delineated in [a] PPO.” *In re JCB*, 336 Mich App 736, 738 (2021) (noting that “[u]nder [MCL 600.2950a\(23\)](#), a person who fails to comply with a PPO is subject to the criminal contempt powers of the court”).

1. Motion to Show Cause

“If the respondent violates the personal protection order, the petitioner may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. There is no fee for such a motion. If the petitioner’s motion and affidavit establish a basis for a finding of contempt, the court shall either:

- (a) order the respondent to appear at a specified time to answer the contempt charge; or
- (b) issue a bench warrant for the arrest of the respondent.” [MCR 3.708\(B\)\(1\)](#). See also [MCL 764.15b\(4\)\(b\)](#) (also requiring the court to notify the prosecuting attorney of the criminal contempt proceeding).

¹⁵See the Michigan Judicial Institute’s *Domestic Violence Benchbook*, Chapter 5, for detailed information about PPOs outside the context of contempt proceedings.

¹⁶See [Section 5.26](#) for discussion of contempt of court involving minors. For information on enforcing a minor PPO, see [Section 5.26\(D\)](#).

“The petitioner shall serve the motion to show cause and the order on the respondent by personal service at least 7 days before the show cause hearing.” [MCR 3.708\(B\)\(2\)](#).

2. Arrest

“If the respondent is arrested for violation of a personal protection order as provided in [MCL 764.15b\(1\)](#), the court in the county where the arrest is made shall proceed as provided in [MCL 764.15b\(2\)-\(5\)](#), except as provided in [\[MCR 3.708\]](#).” [MCR 3.708\(C\)\(1\)](#).

“A contempt proceeding brought in a court other than the one that issued the personal protection order shall be entitled ‘In the Matter of Contempt of [Respondent].’ The clerk shall provide a copy of any documents pertaining to the contempt proceeding to the court that issued the personal protection order.” [MCR 3.708\(C\)\(2\)](#).

“If it appears that a circuit judge will not be available within 24 hours after arrest, the respondent shall be taken, within that time, before a district court, which shall set bond and order the respondent to appear for arraignment before the family division of the circuit court in that county.” [MCR 3.708\(C\)\(3\)](#).

3. First Appearance or Arraignment

“At the respondent’s first appearance before the circuit court, whether for arraignment under [MCL 764.15b](#), enforcement under [MCL 600.2950](#), [\[MCL\] 600.2950a](#), or [\[MCL\] 600.1701](#), or otherwise, the court must:

- (1) advise the respondent of the alleged violation,
- (2) advise the respondent of the right to contest the charge at a contempt hearing,
- (3) advise the respondent that he or she is entitled to a lawyer’s assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court, or the local funding unit’s appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated a personal protection order, will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

- (4) if requested and appropriate, appoint a lawyer or refer the matter to the appointing authority,
- (5) set a reasonable bond pending a hearing of the alleged violation,
- (6) take a guilty plea as provided in [MCR 3.708(E)] or schedule a hearing as provided in [MCR 3.708(F)].

As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, the court may use telephonic, voice, or videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location." MCR 3.708(D).

4. Guilty Pleas

"The respondent may plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the respondent and receiving the respondent's response, must

- (1) advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing and, if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set forth in [MCR 3.708(D)(3)],
- (2) advise the respondent of the maximum possible jail sentence for the violation,
- (3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and
- (4) establish factual support for a finding that the respondent is guilty of the alleged violation." MCR 3.708(E).

5. Scheduling the Hearing

"Following the respondent's appearance or arraignment, the court shall do the following:

- (1) Set a date for the hearing at the earliest practicable time except as required under MCL 764.15b.

(a) The hearing of a respondent being held in custody for an alleged violation of a personal protection order must be held within 72 hours after the arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. The court must set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the individuals named in the personal protection order.

(b) If a respondent is released on bond pending the hearing, the bond may include any condition specified in [MCR 6.106\(D\)](#) necessary to reasonably ensure the safety of the individuals named in the personal protection order, including continued compliance with the personal protection order. The release order shall also comply with [MCL 765.6b](#).

(c) If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution.

(2) Notify the prosecuting attorney of a criminal contempt proceeding.

(3) Notify the petitioner and his or her attorney, if any, of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt." [MCR 3.708\(F\)](#).

Charges for violation of a PPO must be dismissed if a contempt hearing is not held within 72 hours of an arrest if the time is not extended on a motion supported by good cause to support the extension as required by [MCL 764.15b\(2\)](#) and [MCR 3.708\(F\)\(1\)](#). *In re Contempt of Tanksley*, 243 Mich App 123, 128-129 (2000). The dismissal is without prejudice to the prosecution's ability to reinstate the charge against the respondent. *Id.* at 129.

6. Prosecution After Arrest

"In a criminal contempt proceeding commenced under [MCL 764.15b](#), the prosecuting attorney shall prosecute the proceeding unless the petitioner retains his or her own attorney for the

criminal contempt proceeding.” [MCR 3.708\(G\)](#). A “trial court lack[s] legal authority to try [a respondent] for criminal contempt unless the action [is] prosecuted by a prosecuting attorney or an attorney retained by [the petitioner].” *In re LT*, 342 Mich App 126, 139 (2022). “The absence of a proper prosecutor constitute[s] a jurisdictional defect rendering [a] conviction void.” *Id.* at 139 (noting that “the trial court had no power to try [the respondent] for criminal contempt when neither the prosecuting attorney nor counsel for [the respondent] appeared on the day set for trial,” and “[a]t that point, the trial court should have dismissed the case for want of jurisdiction”). Accordingly, “the trial court denied [the respondent] the right to a fair hearing before a neutral judge [where] the court allowed petitioner to prosecute the contempt proceedings unrepresented by counsel, assisted petitioner with the presentation of his case, and otherwise rendered a verdict tainted by the court’s prior involvement with the parties.” *Id.* at 138.

7. The Violation Hearing

The respondent does not have a right to a jury trial for violation of a PPO. [MCR 3.708\(H\)\(1\)](#). See also *Brandt v Brandt*, 250 Mich App 68, 72, 76 (2002) (further noting that a respondent in a contempt proceeding does not have the right to allocution because [MCR 3.708](#) governs actions regarding the violation of a PPO not [MCR 6.425\(C\)\(2\)\(c\)](#)).¹⁷

“The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party, and with the consent of the parties, the court may use telephonic, voice, or videoconferencing technology to take testimony from an expert witness or, upon a showing of good cause, any person at another location.” [MCR 3.708\(H\)\(2\)](#). However, the “respondent cannot relitigate the validity of the PPO in his challenge to the criminal contempt.” *In re JCB*, 336 Mich App 736, 750 (2021).

“The rules of evidence apply to both criminal and civil contempt proceedings.” [MCR 3.708\(H\)\(3\)](#).

Burden of Proof. “The petitioner or the prosecuting attorney has the burden of proving the respondent’s guilt of criminal

¹⁷*Brandt*, 250 Mich App at 76 refers to [MCR 6.425\(D\)\(2\)\(c\)](#); however, effective January 1, 2021, ADM File No. 2018-33, ADM File No. 2019-20, and ADM File No. 2019-38 amended [MCR 6.425](#) to reletter former subrule (D) to subrule (C).

contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence." [MCR 3.708\(H\)\(3\)](#).

Note that "one who holds a PPO is under no obligation to act in a certain way. Instead, [when determining if a PPO has been violated,] a court must look only to the behavior of the individual against whom the PPO is held." *In re Kabanuk*, 295 Mich App 252, 256-258 (2012) (holding that there was "competent evidence" to find that the PPO was violated when the respondent approached and confronted the holder of the PPO at a courthouse and "lunged toward" her while insulting her and saying she hated her; the fact that some witness testimony was contradictory did not change the Court's holding because the Court of Appeals does not weigh the evidence or the credibility of witnesses).

In order to present sufficient evidence to support criminal contempt premised on a violation of a PPO, a "petitioner [is] not required to demonstrate anew the requirements necessary to obtain a PPO." *In re JCB*, 336 Mich App at 750-751. There was sufficient evidence to support the respondent's conviction of criminal contempt where the trial court did not find respondent's testimony credible, and instead credited evidence "that petitioner was harassed and attacked by respondent" in violation of the express terms of the PPO, which also "plainly apprised respondent that if he committed a listed prohibited act, he was subject to immediate arrest and civil and criminal contempt"; accordingly, "[r]espondent's contention that petitioner had to demonstrate a pattern of action before seeking to hold respondent in criminal contempt [was] not supported by the language of the order." *Id.* at 751-753 (noting that "all relevant present and past incidents arising between the parties [was] pertinent for consideration" where the PPO was premised on the stalking statute).

There was sufficient evidence to support the respondent's conviction of criminal contempt where there was testimony that the respondent made contact with the person who the holder of the PPO was having an affair with and gave him a dollar bill with insults written on it and told him "next time you talk to [the holder of the PPO], tell her I said this." *Brandt*, 250 Mich App at 73-74.

There was sufficient evidence to support the respondent's conviction of criminal contempt where the holder of the PPO was tagged in a Facebook comment and testified that "based on her long history with [the respondent], she was confident the posts originated from him, as the posts were consistent with his

style and the content of his past social-media use.” *ARM v KJL*, 342 Mich App 283, 296 (2022). Further, circumstantial evidence supported the conclusion that the respondent’s sister—who testified that she was the person who created and controlled the profile that tagged the holder of the PPO—posted messages requested by the respondent word-for-word despite her testimony that she did not post word-for-word messages. *Id.* at 296-297 (considering recorded phone calls made by the respondent where he directed other people to post to Facebook accounts using specific language and spacing, and noting that although these calls were made after petitioner moved to show cause they were relevant, circumstantial evidence that the respondent had a scheme, plan, or system of directing messages posted on various Facebook sites and suggested that this sort of coordination was common practice).

Required Judicial Findings. “At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.” [MCR 3.708\(H\)\(4\)](#).

The trial court complied with the requirement to make factual findings in [MCR 3.708\(H\)\(4\)](#) by adopting the proposed findings of fact submitted by the petitioner. *Brandt*, 250 Mich App at 73.

8. Sentencing

“If the respondent pleads or is found guilty of criminal contempt, the court shall impose a sentence of incarceration for no more than 93 days and may impose a fine of not more than \$500.00.” [MCR 3.708\(H\)\(5\)\(a\)](#).

“If the respondent pleads or is found guilty of civil contempt, the court shall impose a fine or imprisonment as specified in [MCL 600.1715](#) and [[MCL](#)] [600.1721](#).” [MCR 3.708\(H\)\(5\)\(b\)](#).

The defendant may be ordered to pay certain expenses upon a finding of guilt for criminal contempt for violation of a PPO issued under [MCL 600.2950](#) or [MCL 600.2950a](#), for violation of a foreign protection order that satisfies the conditions for validity provided in [MCL 600.2950i](#). [MCL 769.1f\(1\)\(i\)](#). Specifically, “in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a **local unit of government** for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person[.]” [MCL 769.1f\(1\)](#).¹⁸

“In addition to such a sentence, the court may impose other conditions to the personal protection order.” [MCR 3.708\(H\)](#).

“[A] court may not deprive a prisoner of good-time credit to which the prisoner may be entitled under statute before that prisoner has even begun serving the term of imprisonment.” *ARM v KJL*, 342 Mich App 283, 302-303 (2022) (quotation marks and citation omitted) (holding that the sentence credit statute was violated where the trial court’s sentencing orders specified that the respondent was not entitled to credit on the basis of a local sheriff’s policy that categorically prohibited certain offenders from earning good-time credit, including offenders incarcerated for contempt of court).

“A consecutive sentence may be imposed only if specifically authorized by statute.” *People v Veilleux*, 493 Mich 914, 914 (2012), quoting *People v Lee*, 233 Mich App 403, 405 (1999). See also *People v Chambers*, 430 Mich 217, 222 (1988). Note that the statutes under which PPOs are enforceable do not authorize consecutive sentences. See [MCL 600.2950](#); [MCL 600.2950a](#); [MCL 764.15b](#); [MCL 600.1701](#).

The respondent was not denied an individualized sentence where the trial court stated that it “has a policy of a 30-day jail time” for violations of PPOs because the trial court further explained that it was “not going to change it for [the respondent’s] case” and was going to apply its 30-day sentence; thus, the trial court was “simply explaining that, in a typical contempt of court case, it believed that a thirty-day sentence was appropriate[,]” and it thought the respondent’s case was typical. *Brandt*, 250 Mich App at 76-77 (noting that the 30-day sentence was less than the maximum sentence of 93 days’ jail time and that the evidence supported the inference that the respondent’s violation of the PPO was typical).

9. Videoconferencing

“The use of [videoconferencing](#) technology under [[MCR 3.708](#)] must be in accordance with the standards established by the State Court Administrative Office.^{19]} All proceedings at which videoconferencing technology is used must be recorded verbatim by the court.” [MCR 3.708\(I\)](#). See also [MCR 2.407](#), the court rule governing videoconferencing in trial court proceedings. For additional information and resources

¹⁸See [Section 4.2\(B\)\(1\)](#) for additional discussion of reimbursement under [MCL 769.1f](#).

¹⁹ See the SCAO’s [Michigan Trial Court Standards for Courtroom Technology](#), Section 2, p 25.

pertaining to remote proceedings, visit the [Virtual Courtrooms webpage](#).²⁰

10. Statutory Grounds and Sanctions

Grounds for obtaining a PPO are set forth in [MCL 600.2950](#) (“domestic relationship” PPOs) and [MCL 600.2950a](#) (non-domestic relationship “stalking” PPOs and non-domestic sexual assault PPOs). Violation of a PPO subjects the adult offender to sanctions as provided in [MCL 600.2950](#) and [MCL 600.2950a](#), which provide for criminal contempt penalties consisting of a maximum 93-day jail term and a possible fine of not more than \$500:

“An individual who is 17 years of age or more and who refuses or fails to comply with a [PPO] under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.” [MCL 600.2950\(23\)](#). See also [MCL 600.2950a\(23\)](#); [MCR 3.708\(H\)\(5\)\(a\)](#) (containing similar provisions).

Because PPO violations typically involve past violations of the court’s order and situations where the status quo cannot be restored, criminal contempt sanctions are usually imposed. In rare cases (e.g., where the respondent refuses to relinquish property), civil contempt sanctions may be appropriate; in these cases, [MCL 600.1715](#) applies. See [MCL 600.2950\(25\)](#); [MCL 600.2950a\(25\)](#). See also [MCR 3.708\(H\)\(5\)\(b\)](#). The person injured by a PPO violation may also recover damages under [MCL 600.1721](#).²¹ See also [MCR 3.708\(H\)\(5\)\(b\)](#).

11. Right to Free Speech

“[T]he domestic PPO statutory scheme specifically exempts from its reach the protected speech of those covered by an order, [MCL 600.2950\(1\)\(j\)](#); [[MCL 750.411h\(1\)\(d\)](#)].” *ARM v KJL*, 342 Mich App 283, 297 (2022). A PPO order prohibiting the respondent from stalking the petitioner did not include a prior restraint on speech on its face where the stalking statute “specifically exempts ‘constitutionally protected activity’ from the scope of harassment that can constitute stalking.” *Id.* at 299, quoting [MCL 750.411h\(1\)\(d\)](#). Further, “[w]hile a person subject to a PPO does

²⁰Accessible at: <https://www.courts.michigan.gov/covid-19-news-resources/virtual-courtrooms/>.

²¹Note that [MCL 600.1721](#) “is effectively a proxy for a tort claim.” *In re Bradley Estate*, 494 Mich 367, 393 (2013). See [Section 4.3](#) for more information.

not give up the constitutional right to free speech merely by being subject to an order, the right to speak freely is not absolute.” *ARM*, 342 Mich App at 299 (quotation marks and citation omitted). “[A] person’s right to free speech must be understood in light of another person’s interest in being left alone.” *Id.* The basis of respondent’s contempt conviction was his action of tagging the petitioner in a post, “thereby ensuring that she would receive notification of the post,” and this contact with the petitioner violated her “right to be left alone, as embodied by the PPO.” *Id.* at 300. “The violation of the PPO did not result from the content of the post—rather, the violation resulted from the tagged contact.” *Id.* “Accordingly, because the trial court found [the respondent] in contempt for electronically *contacting* [the petitioner], rather than for the *content of the speech* he used to do so, the contempt finding did not violate [the respondent’s] right to freedom of speech.” *Id.* at 300-301 (noting that “had [the respondent] made the post about [the petitioner] without applying a tag, the post likely would have been protected speech”).

B. Contempt for False Statement in Support of PPO

Providing a false statement in support of a PPO petition subjects the petitioner to sanctions as provided in [MCL 600.2950](#) (“domestic relationship” PPOs) and [MCL 600.2950a](#) (non-domestic relationship “stalking” PPOs and non-domestic sexual assault PPOs). These statutes provide that “[a]n individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a [PPO] is subject to the contempt powers of the court.” [MCL 600.2950\(24\)](#). See also [MCL 600.2950a\(24\)](#) for a substantially similar provision.

5.10 Violation of Court Order Regarding Nuisance

A. Statutory Authority

[MCL 600.3805](#) authorizes circuit courts to issue injunctive orders to abate a public nuisance. [MCL 600.3820\(2\)](#) sets forth the procedure:

“A violation of an order or injunction granted under [Chapter 38 of the Revised Judicature Act] shall be charged by a motion supported by affidavit, and the court, if satisfied that the motion and affidavit are sufficient, shall immediately issue a bench warrant for the arrest of the offender and to bring him or her before the court to answer for the misconduct. The court may, in its discretion, permit the person arrested to give bail

and fix the amount of bail pending hearing of the motion.”

Sanctions for violations of injunctive orders to abate a public nuisance are set forth in [MCL 600.3820\(1\)](#):

“If an order or injunction granted under [Chapter 38 of the Revised Judicature Act] is violated, the court may summarily try and punish the offender as for contempt, and the person so offending is subject to punishment of a fine of not more than \$5,000.00, or imprisonment in the county jail for not more than 6 months, or both, in the discretion of the court.”

B. Criminal Contempt

“Contempt proceedings under the public nuisance statutes are criminal in nature[.]” *Michigan ex rel Wayne Pros v Powers*, 97 Mich App 166, 170-171 (1980). The *Powers* Court stated that the purpose of contempt proceedings for violation of an order enjoining a public nuisance is to punish a party for past disobedience of the injunctive order. *Id.* at 171.

5.11 Misconduct Regarding Witnesses and Interference With or Resistance to Process or Proceedings

A. Statutory Authority

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,^[22] or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons that are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he or she is going to, remaining at, or returning from the court where the action is

²²The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.” [MCL 600.1701\(h\)](#).

B. Caselaw

“The intimidation of witnesses is naturally a criminal matter,—one in which the damages are to the public and the courts as well as to litigants.” *Russell v Wayne Circuit Judge*, 136 Mich 624, 625 (1904).

Threatening a complaining witness in a criminal case may be punished as contempt of court. See *In re Contempt of Nathan*, 99 Mich App 492, 493 (1980). A person may be found in contempt of court for attempting to prevent the attendance of a person not yet subpoenaed as a witness. *Montgomery v Palmer*, 100 Mich 436, 441 (1894) (citing Howell’s Annotated Statutes § 7257²³).

“To bribe or to attempt to bribe a witness in a pending case is a most serious contempt of court, and one which should be promptly dealt with.” *Nichols v Judge of Superior Court*, 130 Mich 187, 197 (1902) (noting that the court’s jurisdiction to investigate and punish the bribe as contempt was not affected by the fact that the attempt to bribe the juror involved a criminal charge).

A trial court has jurisdiction to punish contumacious misconduct even though no prejudice resulted to either party. *Langdon v Judges of Wayne Circuit Court*, 76 Mich 358, 371 (1889). Where the contemnor interfered while a suit was pending and tried to bring about disagreement among jurors by bribery, the court had jurisdiction to punish the contemnor because the act was calculated to defeat, impair, impede, or prejudice the rights or remedy of a party. *Id.* at 371-372.

5.12 Failure of Witness to Appear or Testify

Several statutes and the Michigan Court Rules address finding witnesses who either fail to appear or fail to testify in contempt of court.

²³The text of How Ann Stat § 7257 is similar to current [MCL 600.1701](#), and How Ann Stat § 7257 is a prior law related to [MCL 600.1701](#); however, it was not re-enacted and was superseded when the Judicature Act of 1915 (Act 314 of 1915) was enacted. The Revised Judicature Act, [MCL 600.101 et seq.](#) (Act 236 of 1961) repealed the Judicature Act of 1915.

A. Failure to Appear or Testify When Subpoenaed

1. Statutory Authority

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment,^[24] or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(i) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.^[25]

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.” [MCL 600.1701\(i\)](#).

2. Statutory Penalty

The penalty for a witness’s refusal to testify under the Revised Judicature Act is set forth by [MCL 600.1725](#):

“If any witness attending pursuant to a subpoena, or brought before any court, judge, officer, commissioner, or before any person before whom

²⁴The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of [MCR 6.425\(D\)\(3\)](#). Proceedings to which the Child Support and Parenting Time Enforcement Act, [MCL 552.602 et seq.](#), applies are subject to the requirements of that act.” [MCR 3.606\(F\)](#).

²⁵ See [Section 1.4](#) for a discussion of the contempt powers of quasi-judicial officers.

depositions may be taken, refuses without reasonable cause

(1) to be examined, or

(2) to answer any legal and pertinent question, or

(3) to subscribe his deposition after it has been reduced to writing, the officer issuing the subpoena shall commit him, by warrant, to the common jail of the county in which he resides. He shall remain there until he submits to be examined, or to answer, or to subscribe his deposition, as the case may be, or until he is discharged according to law.”

Note that [MCL 600.1715\(1\)](#) provides that the general penalty provisions for contempt of court contained in [MCL 600.1715](#) apply “except as otherwise provided by law.” [MCL 600.1725](#) mandates coercive civil incarceration for a witness’s refusal to testify when required to do so, whereas, the general provision in [MCL 600.1715\(1\)](#) makes incarceration discretionary for a witness’s failure to testify.

Further, the defendant may be ordered to pay certain expenses upon “[a] finding of guilt for criminal contempt for failing to appear in court as ordered by the court.” [MCL 769.1f\(1\)\(I\)](#). Specifically, “in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a **local unit of government** for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person[.]” [MCL 769.1f\(1\)](#).²⁶

3. Michigan Court Rule Authority

Certain misconduct by witnesses constitutes contempt:

“(1) If a person fails to comply with a subpoena served in accordance with this rule . . . , the failure may be considered a contempt of court by the court in which the action is pending.

(2) If a person refuses to be sworn or to testify regarding a matter not privileged after being

²⁶See [Section 4.2\(B\)\(1\)](#) for additional discussion of reimbursement under [MCL 769.1f](#).

ordered to do so by the court, the refusal may be considered a contempt of court.” [MCR 2.506\(E\)](#).

4. Excusing the Jury

To avoid the appearance of partiality, the court should excuse the jury before a witness is cited for contempt of court. *People v Williams*, 162 Mich App 542, 547 (1987).

B. Failure to Appear or Testify When Summoned by a Judge

1. Statutory Authority

“Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judge may require as material to such inquiry, shall be deemed guilty of a contempt[.]” [MCL 767.5](#).

2. Statutory Penalty

If, after a public hearing in open court, a person is convicted of contempt under [MCL 767.5](#), the person shall:

- be fined not exceeding \$1,000;
- be imprisoned not exceeding 1 year; or
- both. [MCL 767.5](#).

Purging. After sentencing, the witness can offer to appear before the judge to purge herself or himself. [MCL 767.5](#). If the witness offers to appear, “the judge shall cause such witness to be brought before him [or her] and, after examination of such witness, the judge may in his [or her] discretion commute or suspend the further execution of such sentence.” *Id.* But see *People v Joseph*, 384 Mich 24, 33 (1970), stating that “[t]he proviso in [[MCL 767.5](#)] in regard to [the] contemnor appearing before the judge to purge himself [or herself], and the discretion of the judge to commute or suspend further execution of such sentence, is, so far as criminal contempt is concerned, an unconstitutional delegation by the legislature to the judicial branch of government of a power which exists only in the executive.” The *Joseph* Court found that the unconstitutional proviso “is severable from the remainder of the statute, and the remainder is in itself a complete and enforceable act.” *Id.*

3. Caselaw

“Any witness who neglects or refuses to appear in response to a summons or to answer any questions posed by the one-person grand juror may be found in contempt of court.” *People v Farquharson*, 274 Mich App 268, 274-275 (2007), citing [MCL 767.5](#).

C. Failure to Appear or Testify Before a Grand Jury

1. Statutory Authority

“Any witness who neglects or refuses to appear or testify or both in response to a summons of the grand jury or to answer any questions before the grand jury concerning any matter or thing of which the witness has knowledge concerning matters before the grand jury after service of a true copy of an order granting the witness immunity as to such matters shall be guilty of a contempt[.]” [MCL 767.19c](#).

2. Statutory Penalty

If, after a public hearing in open court, a person is convicted of contempt under [MCL 767.19c](#), the person shall:

- be fined not exceeding \$10,000;
- be imprisoned not exceeding 1 year; or
- both. [MCL 767.19c](#).

Purging. The sentence for contempt shall be commuted “upon a finding that the witness has purged [herself or] himself.” [MCL 767.19c](#).

If the witness appears to purge herself or himself, “the court shall order the recalling of the grand jury to afford such opportunity, and after appearance of the witness before the grand jury upon a transcript of the testimony there and then given, the witness shall be brought before the court and after examination, the court shall determine whether the witness has purged [herself or] himself of the contempt[.]” [MCL 767.19c](#).

But see *People v Joseph*, 384 Mich 24, 33 (1970), stating that “[t]he proviso in [[MCL 767.5](#), the “one-man grand jury” contempt statute that contains a substantially similar “purging” provision as [MCL 767.19c](#),] in regard to [the] contemnor appearing before the judge to purge himself [or herself], and the discretion of the judge to commute or suspend further execution of such sentence, is, so far as criminal contempt is concerned, an

unconstitutional delegation by the legislature to the judicial branch of government of a power which exists only in the executive.” The *Joseph* Court found that the unconstitutional proviso “is severable from the remainder of the statute, and the remainder is in itself a complete and enforceable act.” *Id.* Note that the *Joseph* Court did not address [MCL 767.19c](#), but rather a substantially similar provision of a separate statute, and later Michigan Supreme Court cases addressed [MCL 767.19c](#) but did not address the constitutionality of the purging proviso. See, e.g., *People v Johnson*, 407 Mich 134 (1979); *People v Walker (Walker I)*, 393 Mich 333 (1975). Accordingly, it is unclear whether the *Joseph* holding applies to [MCL 767.19c](#).

3. Contempt Citations Under [MCL 767.19c](#) are Civil

All contempts under [MCL 767.19c](#) are civil. *Spalter v Wayne Circuit Judge*, 35 Mich App 156, 165 (1971).

Construing [MCL 767.7a](#)²⁷ and [MCL 767.19c](#) together, the Court explained:

“after the expiration of the term of service of the grand jurors the judge who summoned the citizens’ grand jury may, in his discretion, recall the grand jurors at any time to conclude business commenced during their term of service; however, a witness who has been convicted of contempt for neglecting or refusing to appear or testify before a grand jury who thereafter appears before the court expressing a desire to purge himself of the contempt has the absolute right at any time to have the court order the recalling of the grand jury so as to afford him an opportunity to purge himself. If, after the grand jury is recalled, the witness appears before the grand jury and testifies, he has an absolute right to have his sentence commuted upon a finding by the court that he has in fact purged himself.” *Spalter*, 35 Mich App at 163-164. But see *People v Joseph*, 384 Mich 24, 33 (1970), discussed in [Section 5.12\(C\)\(2\)](#).

Thus, all contempt citations under [MCL 767.19c](#) are civil because the witness “carries in his pocket the keys to his cell.” *Spalter*, 35 Mich App at 165 (quotation marks omitted).²⁸

²⁷[MCL 767.7a](#) provides in pertinent part that “the term of service of grand jurors shall be 6 months unless extended by specific order of the judge who summoned such jurors or his successor for an additional period not to exceed 6 months, except that the grand jurors may be recalled at any time by the judge who summoned such jurors or by his successor to conclude business commenced during their term of service.”

4. Sanctions for Repeated Refusal to Testify

A contemnor may not be imprisoned for two terms totaling a sentence of more than one year for failure to answer the same or similar questions involving the same subject matter before the same grand jury under [MCL 767.19c](#). *People v Walker (Walker I)*, 393 Mich 333, 335, 338 (1975) (noting that the refusal to answer questions occurred once before the “regular” session of the grand jury and once in a session where the same grand jury was recalled). [MCL 767.19c](#) does not reference “the chronology of the questioning or whether the questions were asked on one, two, or three different occasions; the reference in the statute is entirely to the focus of the questioning, i.e. was it about a given ‘matter or thing.’ If so, it is covered by the statutory penalties.” *Walker I*, 393 Mich at 339. Accordingly, the Court held that the penalties provided for in [MCL 767.19c](#) are maximum penalties for “contempt arising out of neglect or refusal to answer questions involving the same or similar subject matter before a grand jury lawfully sitting either in ‘regular’ or recalled session with such subject matter properly before it.” *Walker I*, 393 Mich at 340.

However, if a person refuses to testify about the same subject matter before two different grand juries, the person commits separate instances of contempt and may be punished for each instance. *People v Walker (Walker II)*, 78 Mich App 402, 406-407 (1977) (involving the same defendant as in *Walker I*, 393 Mich 333, but after a new grand jury was convened to investigate the same subject matter and the defendant was called before the new grand jury and again refused to testify). The Court of Appeals upheld the respondent’s second sentence for contempt even though when it was added to the first sentence it exceeded the statutory maximum of one year. *Walker II*, 78 Mich App at 404, 406-407. See also *Walker I*, 393 Mich at 340 n 3 (contrasting its decision with *In re Colacasides*, 379 Mich 69 (1967), “where two entirely different one-man grand juries were exploring similar subject matter[;] we express no opinion today on the applicability of today’s holding of the Court to such a situation[.]”).

²⁸The holding of *Spalter* was contrary to dictum in *People v Johns*, 384 Mich 325 (1971); however, in a later opinion the Michigan Supreme Court cited the discussion regarding civil contempt before a grand jury in *Spalter* with approval. *People v Walker (Walker I)*, 393 Mich 333, 341 n 5 (1975) (noting that *Spalter* has “an insightful discussion of civil contempt before a grand jury both prior and subsequent to passage of [[MCL 767.19c](#)]”).

D. Direct and Indirect Contempt²⁹

1. Refusal to Testify — Direct Contempt

Because a witness's refusal to testify is a contempt committed in the immediate view and presence of the court, the court may punish it summarily. See [MCL 600.1711\(1\)](#).

2. Failure to Appear — Indirect Contempt

Because the court must rely on the testimony of others to determine the reason for the witness's failure to appear, and because immediate action is not necessary to preserve the court's authority, the court may not summarily punish a witness's failure to appear. *In re Contempt of Robertson*, 209 Mich App 433, 440-441 (1995).

E. Fifth Amendment Privilege Against Self-Incrimination

"No person shall be compelled in any criminal case to be a witness against himself [or herself.]" [Const 1963, art 1, § 17](#). See also [US Const, Am V](#). "This prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *People v Steanhouse*, 313 Mich App 1, 17 (2015) (quotation marks and citations omitted). The privilege against self-incrimination extends to witnesses in addition to the accused. *Id.* The Fifth Amendment "grants a privilege to remain silent without risking contempt[.]" *United States v Wong*, 431 US 174, 178 (1977) (noting that it does not permit a person to commit perjury).

When a trial court is confronted with a potential witness who plans to assert the testimonial privilege, the prosecutor should inform the court out of the presence of the witness and jury of the possible need for the witness to be informed of his or her Fifth Amendment rights. *Steanhouse*, 313 Mich App at 18. "The 'trial court must determine whether the witness understands the privilege and must provide an adequate explanation if the witness does not.'" *Id.*, quoting *People v Paasche*, 207 Mich App 698, 709-710 (1994). The trial court "must hold an evidentiary hearing to determine the validity of the claim of privilege, and if the assertion is valid "'the inquiry ends and the witness is excused.'" *Steanhouse*, 313 Mich App at 18, quoting *Paasche*,

²⁹ See [Section 2.4](#) for discussion of summary punishment of contempt; see [Section 2.5](#) for a discussion of indirect contempt.

207 Mich App at 709. “[I]f the assertion of the [Fifth Amendment] privilege [against self-incrimination] is not legitimate in the opinion of the trial judge, the court must then consider methods to induce the witness to testify, such as contempt and other proceedings.” *Steanhouse*, 313 Mich App at 18, quoting *Paasche*, 207 Mich App at 709. See also *In re Selik*, 311 Mich 713, 716 (1945) (noting that if the witness invoked his right against self-incrimination, “it would then have been incumbent on the judge conducting the grand jury to decide whether the answer might tend to incriminate the witness, and, if so, either to grant the witness immunity from prosecution or uphold his refusal to answer[.]”); *In re Bommarito*, 270 Mich 455, 458-459 (1935) (holding that where it is apparent the answer could not injure a witness, the court should compel the witness to answer and may summarily punish the witness for a refusal to answer).

“The due administration of the law does not permit [the witness] to arbitrarily hide behind a fancied or intangible danger . . . [.]” *In re Moser*, 138 Mich 302, 306 (1904). “The tendency to incriminate must be a reasonable one; an answer may not be withheld because it might possibly under some conceivable circumstances form part of a crime.” *In re Schnitzer*, 295 Mich 736, 740 (1940).

For a general discussion of properly invoking the privilege against self-incrimination, see *People v Joseph*, 384 Mich 24, 29-32 (1970) (in the context of giving testimony before a grand jury).

F. Evasive Answers

A person called to testify may be found in contempt for answering questions evasively. *In re Slattery*, 310 Mich 458, 476, 478 (1945). Where the petitioner, who was called to testify before the court investigating a possible crime, refused to answer “yes” or “no,” and repeatedly indicated that he did not remember whether a certain conversation occurred, the trial court properly held him in contempt because the answers given by the petitioner established “beyond question the intention upon his part to refrain from testifying to facts obviously within his knowledge.” *Id.* at 469-472. The Court explained that “[t]he contempt consists in the giving of false or evasive answers and evading replies to questions propounded by the subterfuge of the answers, ‘I don’t remember,’ or ‘recall,’ or ‘it did not happen in my memory.’ Such answers might be truthful in regard to trivial events and particularly so if they happened some time in the past, but it does not seem reasonable that a man of petitioner’s position, who devoted several months of his time to lobbying in regard to a certain bill and thus trying to win over legislators to his point of view, could not possibly remember whether or not ‘A’ had approached him and stated he would change his vote for a consideration. *Id.* at 472-473. Further, the fact that the petitioner raised concerns about self-incrimination in

response to the trial court's urging him to answer "yes" or "no" after previously claiming not to remember indicated "that he did remember but he feared that the answer might incriminate him." *Id.* at 473 (noting that the type of question the petitioner was asked was not the type that would "ordinarily involve self-incrimination[]" and that "[t]he witness himself is not the sole arbiter of the incriminating nature of the testimony he is asked to give").

5.13 Failure of Defendant to Appear for Court Hearing

In many circumstances, the court may (or sometimes must) issue a summons for a person accused of committing a criminal offense to appear before a court at a stated date and time instead of issuing an arrest warrant. [MCL 764.1](#); [MCL 764.1a\(2\)-\(3\)](#).

"Notwithstanding any provision of law to the contrary and except in cases where the complaint is for an **assaultive crime** or an offense involving **domestic violence**, in the event that a defendant fails to appear for a court hearing and it is the defendant's first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant^[30] to allow the defendant to voluntarily appear." [MCL 764.3\(1\)](#). "If the defendant does not appear within 48 hours, the court shall issue a bench warrant unless the court believes there is good reason to instead schedule the case for further hearing." *Id.*

The court may "issue an immediate bench warrant for the defendant's failure to appear if the court has a specific articulable reason to suspect that any of the following apply:

- (a) The defendant has committed a new crime.
- (b) A person or property will be endangered if a bench warrant is not issued.
- (c) Prosecution witnesses have been summoned and are present for the proceeding.
- (d) The proceeding is to impose a sentence for the crime.
- (e) There are other compelling circumstances that require the immediate issuance of a bench warrant." [MCL 764.3\(3\)](#).

"If the court departs from the presumption [in favor of waiting 48 hours before issuing a bench warrant] and issues an immediate bench warrant, the court must state on the record its reasons for doing so." [MCL 764.3\(4\)](#).

³⁰See [SCAO Form MC 229](#), *Motion, Affidavit, and Bench Warrant*.

Similarly, a court may issue a summons or a warrant for failure to appear after the service of an **appearance ticket** and the filing of a complaint.³¹ [MCL 764.9e\(1\)](#). However, “in the event that a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant.” [MCL 764.9e\(2\)](#). “The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

- (a) The defendant committed a new crime.
- (b) The defendant’s failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
- (c) Another person or property will be endangered if a warrant is not issued.” [MCL 764.9e\(3\)](#).

“If the court overcomes the presumption [in favor of issuing an order to show cause] and issues a warrant, the court must state on the record its reasons for doing so.” [MCL 764.9e\(4\)](#).

5.14 Prospective Juror and Juror Misconduct

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.” [MCL 600.1701\(j\)](#).³²

Further, [MCL 600.1346](#) addresses the conduct of prospective jurors and provides that certain acts are punishable as contempts, stating in pertinent part:

³¹An officer may, or in some instances must, issue an appearance ticket in cases where a person is arrested without a warrant for a misdemeanor or ordinance violation instead of taking the person before a magistrate and promptly filing a complaint. [MCL 764.9c](#).

³² See [Section 5.11](#) for a discussion of attempting to improperly influence jurors.

“The following acts are punishable by the circuit court as contempts of court:

- (a) Failing to answer the questionnaire provided for in [\[MCL 600.1313\]](#).³³
- (b) Failing to appear before the board or a member of the board, without being excused at the time and place notified to appear.
- (c) Refusing to take an oath or affirmation.
- (d) Refusing to answer questions pertaining to his or her qualifications as a juror, when asked by a member of the board.
- (e) Failing to attend court, without being excused, at the time specified in the notice, or from day to day, when summoned as a juror.
- (f) Giving a false certificate, making a false representation, or refusing to give information that he or she can give affecting the liability or qualification of a person other than himself or herself to serve as a juror.
- (g) Offering, promising, paying, or giving money or anything of value to, or taking money or anything of value from, a person, firm, or corporation for the purpose of enabling himself or herself or another person to evade service or to be wrongfully discharged, exempted, or excused from service as a juror.
- (h) Tampering unlawfully in any manner with a jury list or the jury selection process.
- (i) Willfully doing or omitting to do an act with the design to subvert the purpose of [the Revised Judicature Act].
- (j) Willfully omitting to put on the jury list the name of a person qualified and liable for jury duty.
- (k) Willfully omitting to prepare or file a list or slip.
- (l) Doing or omitting to do an act with the design to prevent the name of a person qualified and liable to serve as a juror from being placed on a jury list or from being selected for service as a juror.

³³ All prospective jurors are required to complete a “juror personal history questionnaire” prior to jury service. See [MCR 2.510\(B\)](#).

(m) Willfully placing the name of a person upon a list who is not qualified as a juror.”

5.15 Contempt of Inferior Magistrates, Officers, and Tribunals

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.” [MCL 600.1701\(k\)](#).

5.16 Publication of False or Grossly Inaccurate Reports of Court Proceedings³⁴

A. Statutory Authority

[MCL 600.1701\(j\)](#) provides for a finding of contempt following criticism of a judge or court proceeding in certain circumstances:³⁵

“The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

“(j) The publication of a false or grossly inaccurate report of the court’s proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.”

³⁴See [Section 5.17](#) for a discussion of contempt for criticism of the court.

³⁵ An alleged contemnor has the right to have the proceedings heard by another judge in such cases. [MCL 600.1731](#).

B. Caselaw

The trial court did not err by finding the respondent guilty of contempt for a letter to the editor he wrote that was published in the Port Huron News. *In re Chadwick*, 109 Mich 588, 589, 605 (1896). The respondent was an attorney whose client, the defendant in a civil case, received an unfavorable ruling in a bench trial. *Id.* The letter to the editor argued that the defendant did not receive a fair trial, that the original judge who was presiding over the case was driven out for improper reasons in order to have another judge try the case, and that the judge who actually tried the case made an improper deal with a representative of the plaintiff. *Id.* at 589-592, 595. The letter further stated that money was what was driving the case and that the decision was not based on justice and the law. *Id.* The Court recognized that truthful criticism of the court is not contemptuous. *Id.* at 603 (“So long as critics confine their criticisms within the facts, and base them upon the decisions of the court, they commit no contempt, no matter how severe the criticism may be[.]”). However, the Court held that the content of the respondent’s letter to the editor was not truthful and “pass[ed] beyond that line,” tending “to poison the fountain of justice, and to create distrust, and destroy the confidence of the people in their courts, which are of the utmost importance to them in the protection of their rights and liberties.” *Id.* at 604.

The Court held that the statute permitting the punishment of “the publication of a false or grossly inaccurate report of [the court’s] proceedings,”³⁶ did not limit punishment for contempt to the publication of reports regarding pending cases. *Id.* at 602-603 (rejecting the respondent’s argument that his letter did not refer to a pending case and holding that the ability to punish contempt is not affected by whether a case is pending, but rather, whether the publication referred to official judicial conduct). The Court further held that “[t]he charges in the letter of [the alleged contemnor] had direct reference to the official conduct of the judge, and not to his private character and acts.” *Id.* at 603.

Finally, the Court noted that a respondent may avoid a finding of contempt if the respondent demonstrates that he or she did not intend to publish false or grossly inaccurate reports of the court’s proceedings, explaining that “[w]here the language is susceptible of

³⁶*In re Chadwick*, 109 Mich 588 (1896) interprets 2 How Ann St § 7234, which is a prior version of current [MCL 600.1701](#); however, 2 How Ann St § 7234 was not re-enacted and was superseded when the Judicature Act of 1915 (Act 314 of 1915) was enacted. The Revised Judicature Act, [MCL 600.101 et seq.](#) (Act 236 of 1961) repealed the Judicature Act of 1915. The relevant portion of 2 How Ann St § 7234 read: “Every court of record shall have power to punish as for a criminal contempt, persons guilty of either of the following acts, and no others: . . . the publication of a false or grossly inaccurate report of its proceedings, but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court.”

two interpretations or constructions, and the party charged asserts under oath that he [or she] did not intend the article to be construed as alleged in the innuendoes, he is purged of the contempt[.]” *Id.* at 604. However, “if the publication is fairly susceptible of but one construction, and its purport is to defame and degrade the court in the eyes of litigants and the public, his [or her] denial of any intended wrong does not operate to purge him of the contempt.” *Id.*

The trial court held a proprietor, editor, and publisher of a weekly newspaper in contempt for publication of an article regarding recent grand jury proceedings that stated the circuit court judge used the grand jury “as a club with which to get even with some of our citizens whom he does not like.” *In re Dingley*, 182 Mich 44, 46 (1914). The article further accused the circuit court judge of making false allegations about the prosecuting attorney. *Id.* The Court held that it had “no hesitancy in saying that the publication of the article, unless it is true, is in contempt of court and deserves punishment.” *Id.* at 51. However, the Court set aside the trial court’s finding of contempt and dismissed the case without prejudice because due process was not afforded to the alleged contemnor. *Id.* at 51-52 (noting that punishment is appropriate if the alleged contemnor “cannot purge himself of contempt by showing the truth of the publication”).

5.17 Contempt for Criticism of the Court and First Amendment Protections

Criticisms of courts have resulted in contempt proceedings against the speaker or writer. *Pennekamp v Florida*, 328 US 331, 347 (1946); *In re Contempt of Dudzinski*, 257 Mich App 96 (2003). While criticism of the court can be contemptuous; courts must consider the person’s First Amendment right to freedom of expression. See [US Const Am I](#); [Const 1963, art 1, § 5](#).³⁷ “Courts must have power to protect the interests of prisoners and litigants before them from unseemly efforts to pervert judicial action. In the borderline instances where it is difficult to say upon which side the alleged offense falls, we think the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases. Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.” *Pennekamp*, 328 US at 347.

³⁷Note that the “right of free speech under the Michigan and federal constitutions are conterminous.” *In re Contempt of Dudzinski*, 257 Mich App 96, 100 (2003). Accordingly, federal authority construing the First Amendment can be applied when interpreting Michigan’s guarantee of free speech. *Id.*

A. Freedom of Speech

“The United States Supreme Court has explained that ‘the right of free speech is not absolute at all times and under all circumstances,’ and that certain well-defined and narrowly limited classes of speech are preventable and punishable.” *Dudzinski*, 257 Mich App at 100, quoting *Chaplinsky v New Hampshire*, 315 US.568, 571-572 (1942). “Every citizen lawfully present in a public place has the right to engage in expressive activity and such activity may generally not be restricted on the basis of its content, but may be restricted if the manner of expression is basically incompatible with the normal activity of the particular place at the particular time.” *Dudzinski*, 257 Mich App at 100. “Speech or expression that is restricted because of the content of the message it conveys is subject to the most exacting scrutiny.” *Id.* at 100-101. “In order to restrict speech on the basis of its content, the state must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *Id.* at 101.

Michigan courts have recognized that it is a proper exercise of the rights of free speech and press to criticize the courts. *In re Gilliland*, 284 Mich 604, 610-612 (1938). “Criticism of the courts within limits should not be discouraged and it is a proper exercise of the rights of free speech and press.” *Id.* at 610. “Such criticism should not subject the critic to contempt proceedings unless it tends to impede or disturb the administration of justice.” *Id.* at 610-611. “The 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 men [and women] of fortitude, able to thrive on a hardy climate.” *Dudzinski*, 257 Mich App at 101.

However, the state does have a compelling interest in protecting a criminal defendant’s right to a fair trial under the Sixth Amendment of the United States Constitution, and “[w]here fair trial rights are at a significant risk, the First Amendment rights of trial spectators must be curtailed.” *Dudzinski*, 257 Mich App at 101. Further, “[i]t is the right and duty of a conscientious court to protect its good name, when the offending statements may impede or disturb the proper functioning of the court, and the fact that judges are apt to overlook transgressions of this character does not excuse or justify contemptuous utterances.” *In re Gilliland*, 284 Mich at 611.

B. Determining Whether Criticism Is Contumacious

The critic should not be subject to contempt proceedings unless the criticism “tends to impede or disturb the administration of justice.” *Dudzinski*, 257 Mich App at 101-102. See also *Pennekamp*, 328 US at 336 (discussing the balancing test for reviewing courts to apply when

determining whether speech constitutes an imminent threat to the administration of justice). Factors to consider when determining whether speech impedes or disturbs the administration of justice include whether a jury has been exposed to the criticism, whether the speaker is actively disrupting the proceedings, and the size of the group of speakers. *Dudzinski*, 257 Mich App at 106.

Comments about the court that are inaccurate, false, or “even vicious” should not be punished with the contempt power if the comments do not affect pending litigation. *In re Turner*, 21 Mich App 40 (1969), quoting *Pennekamp*, 328 US at 346. Note, however, that false comments about court proceedings may be contumacious. See [MCL 600.1701\(j\)](#).³⁸ There must be “an immediate peril of undue influence or coercion upon pending litigation” before the contempt power may be used to punish public criticism of the court. *Turner*, 21 Mich App at 56.

C. Caselaw

The trial court did not err by finding the respondent in contempt of court for his repeated remarks characterizing ongoing court proceedings and the court as “crooked.” *In re Gilliland*, 284 Mich at 611-612. The respondent made remarks about the proceedings and the court being “crooked” two days in a row while the proceedings were pending. *Id.* The Court held that “[t]he only reasonable inference that can be drawn from the remarks and the entire context is that respondent stated that the judge was one of those who were ‘crooked all the way through.’” *Id.* (noting “[i]t is the right and duty of a conscientious court to protect its good name, when the offending statements may impede or disturb the proper functioning of the court, and the fact that judges are apt to overlook transgressions of this character does not excuse or justify contemptuous utterances”).

The trial court did not err by holding the defendant in contempt for his speech where the defendant, who was an observer in the courtroom, “raised his fist in the air and began shouting[]” in front of the judge while the subjects of the court proceeding were being led out of the courtroom. *In re Contempt of Warriner*, 113 Mich App 549, 550-551, 555 (1982), remanded 417 Mich 1100.26 (1983).³⁹ The Court concluded that the defendant’s conduct was not constitutionally protected speech because “[d]isruptive contemptuous behavior in a courtroom is not protected by the Constitution.” *Id.* at 555.

³⁸ See Section XX for more information on false comments about court proceedings.

³⁹The remand order reduced the length of the confinement ordered to punish the contempt; it denied leave to appeal in all other respects. *In re Contempt of Warriner*, 417 Mich 1100.26 (1983).

The trial court erred in ordering the defendant to remove his shirt or leave the courtroom where the defendant was wearing a shirt that read “Kourts Kops Krooks” because the statement on the defendant’s shirt “was constitutionally protected political speech that did not constitute an imminent threat to the administration of justice[.]” *Dudzinski*, 257 Mich App at 100, 107 (noting that “[a] trial court may not impinge on the First Amendment rights of a courtroom observer on the basis of a mere offense to its sensibilities or those of one of the parties”). After reviewing similar cases from other jurisdictions, the Court concluded that the defendant’s behavior did not present a serious and imminent threat to the fair administration of justice because the defendant was “sitting in the courtroom quietly and was not disturbing the proceedings,” was not in a large group (there were only two other people wearing the same or similar shirts), and, “[m]ost importantly,” he was “a spectator at a pretrial hearing when the jury was not present.” *Id.* at 106-107. The Court noted that the statement on the defendant’s shirt related to the issues in the underlying case,⁴⁰ and the trial court ordered the defendant “to leave the courtroom because of the specific content of the shirt rather than the fact that the shirt contained a political message.” *Id.* at 106. “Because the trial court restricted the content of [the defendant’s] expression, it needed a substantial or compelling governmental interest for doing so.” *Id.* (finding no substantial or compelling government interest in this case).

The trial court’s contempt ruling did not violate the defendant’s right to free speech under the First Amendment where his “actions and remarks tended to disturb the administration of justice.” *People v Kammeraad*, 307 Mich App 98, 149 (2014). In *Kammeraad*, the defendant appeared at his sentencing hearing “undressed from the hip area up[.]” interrupted defense counsel when counsel answered a question posed by the court, and used his time to make a statement to argue that he was “not the defendant” and to state that the court engaged in criminal actions. *Id.* at 148. The defendant’s behavior at the sentencing hearing was a continuation of similar behavior throughout his trial. *Id.* In upholding the trial court’s decision to find the defendant in contempt of court and determining no First Amendment violation occurred, the Court stated:

“Defendant’s conduct during sentencing was disorderly, contemptuous, and insolent, directly tending to impair the respect due the court and reflecting the culmination of disorderly, contemptuous,

⁴⁰“The statement on [the defendant’s] shirt, ‘Kourts Kops Krooks,’ appears to compare courts and police officers to the Ku Klux Klan and imply that they are corrupt ‘crooks.’ Because the underlying case involved allegations of police brutality, the message on [the defendant’s] shirt related to the issues in the underlying case.” *Dudzinski*, 257 Mich App at 106.

insolent, and disrespectful behavior, [MCL 600.1701\(a\)](#), all of which was directly witnessed by the court firsthand. The circuit court had been remarkably patient with defendant throughout the course of the judicial proceedings, and defendant's continued defiant conduct compelled the court's contempt response in order to restore some order to the courtroom and to ensure some level of respect for the proceedings." *Kammeraad*, 307 Mich App at 148-149.

5.18 Contempt for Noncompliance with Sentence

"If the court finds that the sentenced person has not complied with his or her sentence, including a nonjail or nonprobation sentence, the court may issue an order for the person to show cause why he or she should not be held in contempt of court for not complying with the sentence. If the court finds the person in contempt, it may impose an additional sentence, including jail or probation if appropriate." [MCL 769.5\(5\)](#).

"If the finding of contempt of court under [[MCL 769.5\(5\)](#)] is for nonpayment of fines, costs, or other legal financial obligations, the court must find on the record that the person is able to comply with the payments without manifest hardship, and that the person has not made a good-faith effort to do so, before imposing an additional sentence." [MCL 769.5\(6\)](#).

See [Section 5.2](#) for a discussion of ability to pay analysis.

5.19 Catchall Provision

A. Statutory Authority

"The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

* * *

(m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party." [MCL 600.1701\(m\)](#).

B. Caselaw

The trial court's finding of criminal contempt was affirmed where the defendant, who appeared before a grand jury pursuant to a subpoena, violated the secrecy requirement. *People v MacLean*, 168 Mich App 577, 578 (1988). The defendant was presented with notice of the secrecy requirement and she read and signed the agreement. *Id.* The defendant was reminded a second time before lunch not to speak to anyone about the proceedings. *Id.* Following the lunch recess, several jurors informed the prosecutor that they overheard the defendant discussing the proceedings on the telephone, and the defendant admitted that she talked to a friend who was the employer of the subject of the defendant's testimony. *Id.* at 578-579. The Court found sufficient evidence to sustain the defendant's conviction where three different grand jurors testified that they overheard the defendant's conversation and the prosecutor testified that the subjects discussed by the defendant on the phone that were overheard were all subjects of her testimony before the grand jury. *Id.* at 579-580.

5.20 Contempt for Failure to Appear at Child Protection Mediation

[MCR 3.970](#) governs mediation of child protective proceedings.⁴¹ The court may order mediation at any stage in the proceedings after consulting with the parties. [MCR 3.970\(C\)\(1\)](#). [MCR 3.970\(E\)](#) permits the court to require the attendance of counsel and the presence of the parties at mediation proceedings. "The failure of a party to appear in accordance with [[MCR 3.970](#)] may be considered a contempt of court." [MCR 3.970\(E\)\(4\)](#).

Part II: Contempt in Domestic Relations Cases

5.21 Overview

Several provisions of the Support and Parenting Time Enforcement Act (SPTEA), [MCL 552.601 et seq.](#), provide for the use of contempt powers. [MCL 552.613](#) allows the court to find a **source of income** in contempt. [MCL 552.626\(4\)\(a\)](#) permits the Friend of the Court to petition for an order "to show cause why the parent should not be held in contempt for failure to obtain or maintain dependent health care coverage that is available at

⁴¹For more information about mediation of child protective proceedings, see the Michigan Judicial Institute's [Child Protective Proceedings Benchbook](#).

a reasonable cost.” [MCL 552.631](#) permits the use of the contempt power to enforce child or spousal [support orders](#). [MCL 552.633](#) permits the court to find a [payer](#) in contempt for being in arrears. [MCL 552.635a](#) addresses the [alternative contempt track](#) docket, discussed in [Section 5.23](#). [MCL 552.644](#) authorizes contempt proceedings for parenting time disputes, and [MCL 552.645](#) requires a finding of contempt for failure to comply with makeup and ongoing parenting time schedules.

Further, [MCL 552.627](#) permits the court to “take other enforcement action” under other applicable laws, including under [MCL 600.1701](#).⁴² Accordingly, courts may proceed under the SPTEA or the RJA. [MCR 3.208](#) governs contempt proceedings under the SPTEA; [MCR 3.606](#) governs contempt proceedings under the RJA. [MCR 3.208\(B\)](#). For a comparison of proceedings under both acts, see the Friend of the Court Bureau’s [chart](#).

Under [MCR 3.208](#), “[t]he friend of the court may inactivate its case and is not required to perform activities under the Friend of the Court Act, [MCL 552.501 et seq.](#), and the Support and Parenting Time Enforcement Act, [MCL 552.601 et seq.](#), when the case is no longer eligible for federal funding because a party fails or refuses to take action to allow the friend of the court’s activities to receive federal funding or because the federal child support case is closed pursuant to Title IV, Part D of the Social Security Act, [42 USC 651 et seq.](#)” [MCR 3.208\(D\)](#).

Contempt in domestic relations cases can be civil or criminal; while proceedings are generally civil in nature, criminal contempt proceedings may be initiated where the only purpose is to punish the wrongdoer. See *Porter v Porter*, 285 Mich App 450, 458, 458 n 3 (2009). See [Section 2.2](#) for a detailed discussion of civil and criminal contempt.

Statute of limitations. [MCL 600.5809\(4\)](#) provides for a “ten-year statutory period of limitations to enforce a support order in a civil proceeding [that] runs ‘from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.’” *Parks v Niemiec*, 325 Mich App 717, 720-721 (2018) (finding that “although the trial court erred when it determined that no statute of limitations applied to civil proceedings to enforce a child support order, it nevertheless reached the correct result because the trial court’s continuing jurisdiction in this proceeding tolled the limitations period”).

⁴²[MCL 600.1701](#) provides courts authority to punish neglect or violation of duty or misconduct. This statute is discussed in [Part I](#). Specifically, contempt for failure to pay support under the RJA is discussed in [Section 5.7](#).

5.22 Failure to Pay Child or Spousal Support: Traditional Contempt Proceedings

A. Contempt for Failure or Refusal to Obey a Support Order

“If a **person** is ordered to pay **support** under a **support order** and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the office of the friend of the court may commence a civil contempt proceeding as provided by supreme court rule.^[43] If the **payer** fails to appear at the hearing, the court shall do 1 or more of the following as the court considers appropriate given the information available at the hearing:

- (a) Find the payer in contempt for failure to appear.
- (b) Find the payer in contempt under [[MCL 552.633](#)⁴⁴].
- (c) Issue a bench warrant for the payer’s arrest requiring that the payer be brought before the court without unnecessary delay for further proceedings in connection with the contempt proceedings.
- (d) Adjourn the contempt proceeding.
- (e) Dismiss the contempt proceeding if the court determines that the payer is not in contempt.” [MCL 552.631\(1\)](#).

“If the court stays a commitment order under [[MCL 552.637](#)], the payer fails to satisfy the conditions of the order, and that fact is brought to the court’s attention by the friend of the court, the court may issue a bench warrant for the payer’s arrest requiring the payer to be brought before the court without unnecessary delay for further proceedings in connection with the payer’s contempt.” [MCL 552.631\(2\)](#).⁴⁵

“In addition to any remedy or sanction provided in [[MCL 552.631](#) or [MCL 552.633](#)], the court may assess the payer the actual reasonable expense of the friend of the court in bringing any enforcement action

⁴³[MCR 3.606](#) governs contempts outside the immediate presence of the court. See [Chapter 3](#) for discussion of the procedures for commencing a contempt proceeding.

⁴⁴[MCL 552.633](#) addresses finding a payer in contempt for being in arrears and having the ability to pay or exercising a lack of diligence, see [Section 5.22\(C\)](#).

⁴⁵The trial court must generally determine whether a person has an ability to pay before finding a person in contempt of court for nonpayment of a support order. *Sword v Sword*, 399 Mich 367, 379 (1976), rev’d on other grounds by *Mead v Batchlor*, 435 Mich 480 (1990).

for noncompliance with a spousal support order that is not eligible for funding under [title IV-D](#)" [MCL 552.636](#).

Note that [MCL 552.625](#) provides the court with additional remedies for the enforcement of support orders, including executing the judgment and appointing a receiver.

B. Michigan Court Rule

[MCR 3.208](#) governs proceedings involving the Friend of the Court. [MCR 3.208\(B\)](#) provides that "[t]he friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody."

"If a party has failed to comply with an order or judgment, the friend of the court may move for an order to show cause why the party should not be held in contempt." [MCR 3.208\(B\)\(1\)](#). "Alternatively, in nonpayment of support cases and as allowed by the court, the friend of the court may schedule a hearing before a judge or referee for the party to show cause why the party should not be held in contempt." *Id.*

"The order to show cause or the notice of the show cause hearing must be served personally, by ordinary mail at the party's last known address, or in another manner permitted by [MCR 3.203](#)." [MCR 3.208\(B\)\(2\)](#).

The notice of the show cause hearing must comply with requirements for the form of a subpoena under [MCR 2.506\(D\)](#). [MCR 3.208\(B\)\(3\)](#). For purposes of [MCR 3.208\(B\)\(3\)](#), an authorized signature is one that comports with [MCR 1.109\(E\)](#). [MCR 3.208\(B\)\(3\)\(a\)](#). Notices under [MCR 3.208\(B\)\(3\)](#) "must state the amount past due and the source of information regarding the past due amount and act or failure to act that constitutes a violation of the court order." [MCR 3.208\(B\)\(3\)\(b\)](#). "A person must comply with the notice unless relieved by order of the court or written direction of the person who executed the notice." [MCR 3.208\(B\)\(3\)\(c\)](#).

"The show cause hearing may be held no sooner than seven days after the order or notice is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order or notice is mailed." [MCR 3.208\(B\)\(4\)](#).

"The court may hold the show cause hearing without the friend of the court unless a party presents evidence that requires the court to receive further information from the friend of the court's records before making a decision." [MCR 3.208\(B\)\(5\)](#). "If the party fails to appear at the show cause hearing, the court may issue an order for arrest." [MCR 3.208\(B\)\(5\)](#).

“The relief available under this rule is in addition to any other relief available by statute.” [MCR 3.208\(B\)\(6\)](#).

“The friend of the court may petition for an order of arrest at any time, if immediate action is necessary.” [MCR 3.208\(B\)\(7\)](#).

C. Contempt for Support Arrearage

“The court may find a **payer** in contempt if the court finds that the payer is in arrears and 1 or more of the following apply:

- (a) The court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the **support order**.
- (b) The court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or some portion of the amount due under the support order and that the payer fails or refuses to do so.
- (c) The payer has failed to obtain a **source of income** and has failed to participate in a work activity after referral by the friend of the court.” [MCL 552.633\(1\)](#).

1. Authorized Sanctions

“Upon finding a **payer** in contempt of court under [[MCL 552.633\(1\)](#)], the court may immediately enter an order that does 1 or more of the following^[46]:

- “(a) Commits the payer to the county jail or an alternative to jail.
- (b) Commits the payer to the county jail or an alternative to jail with the privilege of leaving the jail or other place of detention during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to satisfy the terms and conditions imposed under [[MCL 552.637](#)] if the payer’s release is necessary for the payer to comply with those terms and conditions.

⁴⁶The trial court must generally determine whether a person has an ability to pay before finding a person in contempt of court for nonpayment of a support order. *Sword v Sword*, 399 Mich 367, 379 (1976), rev’d on other grounds by *Mead v Batchlor*, 435 Mich 480 (1990).

(c) Commits the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

(d) Apply any other enforcement remedy authorized under this act or the friend of the court act for the nonpayment of support if the payer's arrearage qualifies and the evidence supports applying that remedy.

(e) Orders the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under this section concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

(f) If available within the court's jurisdiction, orders the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, [MCL 791.401](#) to [\[MCL\] 791.414](#).

(g) Except as provided by federal law and regulations, orders the parent to pay a fine of not more than \$100.00. A fine ordered under this subdivision shall be deposited in the friend of the court fund created in . . . [MCL 600.2530](#).

(h) Places the payer under the supervision of the office for a term fixed by the court with reasonable conditions, including, but not limited to, 1 or more of the following:

(i) Participating in a parenting program.

(ii) Participating in drug or alcohol counseling.

(iii) Participating in a work program.

(iv) Seeking employment.

(v) Participating in other counseling.

(vi) Continuing compliance with a current [support or parenting time order](#).

(vii) Entering into and compliance with an arrearage payment plan." [MCL 552.633\(2\)](#).

“In addition to any remedy or sanction provided in [MCL 552.631 or MCL 552.633], the court may assess the payer the actual reasonable expense of the friend of the court in bringing any enforcement action for noncompliance with a spousal support order that is not eligible for funding under [title IV-D](#).” MCL 552.636.

2. Order of Commitment⁴⁷

“An order of commitment under [MCL 552.633] shall be entered only if other remedies appear unlikely to correct the payer’s failure or refusal to pay [support](#).” MCL 552.637(1).

“A commitment shall continue until the payer performs the conditions set forth in the order of commitment but shall not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt.” MCL 552.637(4).

“The court may further direct that a portion or all of the earnings of the payer in the facility or institution shall be paid to and applied for support until the payer complies with the order of the court, until the payer is released according to this section from an order of commitment, or until the further order of the court.” MCL 552.637(5).

“Notwithstanding the length of commitment imposed under this section, the court may release a payer who is unemployed if committed to a county jail under this section and who finds employment if either of the following applies:

- (a) The payer is self-employed, completes 2 consecutive weeks at his or her employment, and makes a support payment as required by the court.
- (b) The payer is employed and completes 2 consecutive weeks at his or her employment and an order of income withholding is effective.” MCL 552.637(6)

a. Orders Under MCL 552.633(1)(a)

Orders “shall state the amount to be paid by the payer in order to be released from the order of commitment, which amount may not be greater than the payer’s currently

⁴⁷The trial court must generally determine whether a person has an ability to pay before finding a person in contempt of court for nonpayment of a support order. *Sword v Sword*, 399 Mich 367, 379 (1976), rev’d on other grounds by *Mead v Batchlor*, 435 Mich 480 (1990).

available resources as found by the court.” [MCL 552.637\(2\)](#).

b. Orders Under [MCL 552.633\(1\)\(b\)](#) or [MCL 552.633\(1\)\(c\)](#)

Orders “shall state the conditions that constitute diligence in order to be released from the order of commitment, which conditions must be within the payer’s ability to perform.” [MCL 552.637\(3\)](#).

“If the court enters a commitment order under [[MCL 552.633\(1\)\(b\)](#) or [MCL 552.633\(1\)\(c\)](#)], and the court finds that the payer by performing the conditions set forth in the order of commitment will have the ability to pay specific amounts, the court may establish a specific amount for the payer to pay and do any of the following:

(a) Stay the order of commitment conditioned upon the payer’s making the specified payments.

(b) Stay the order of commitment and order that upon default of the payer in making a specified payment, the payer shall be brought before the court for further proceedings in connection with the contempt proceedings that may include committing the payer for the number of days that the payer would have been committed had the court not stayed the order.

(c) Give credit toward the payer’s potential maximum commitment for each specified payment made in compliance with the order of commitment.” [MCL 552.637\(7\)](#)

“If the court enters a commitment order under [[MCL 552.633\(1\)\(b\)](#) or [MCL 552.633\(1\)\(c\)](#)], the court may do any of the following:

(a) Stay the order of commitment conditioned upon the payer’s complying with the conditions set forth in the order of commitment.

(b) Stay the order of commitment and order that upon default of the payer to satisfy a condition of the order, the payer shall be brought before the court for further

proceedings in connection with the contempt proceedings that may include committing the payer for the number of days the payer would have been committed had the order not been stayed.

(c) Give credit toward the payer's potential maximum commitment for complying with conditions in the order.

(d) Incarcerate the payer with the privilege of leaving jail to comply with conditions in the order of commitment." [MCL 552.637\(8\)](#)

For further discussion of delayed conditional commitment orders, see the Friend of the Court Bureau's [memorandum](#), page 2.

3. Ability to Pay

a. Statutory Presumption

"In the absence of proof to the contrary introduced by the payer, the court shall presume that the payer has currently available resources equal to 1 month of payments under the support order. The court shall not find that the payer has currently available resources of more than 1 month of payments without proof of those resources by the office of the friend of the court or the recipient of support." [MCL 552.633\(3\)](#).

b. Constitutionality of Statutory Presumption

Statutory presumptions of ability to pay do not violate procedural due process requirements in civil contempt proceedings; however, procedural due process requirements do not allow presumptions of ability to pay in criminal contempt proceedings. *Hicks v Feiock*, 485 US 624, 637-638, 641 (1988).

D. Civil or Criminal Contempt Proceedings

Contempt proceedings for nonsupport are usually civil in character. See [MCL 552.631\(1\)](#) (providing that civil contempt proceedings may be instituted following a failure to pay). However, criminal contempt proceedings can be initiated under appropriate circumstances. See [MCL 552.627\(1\)\(d\)](#) (authorizing the trial court to take other enforcement action under applicable laws, including [MCL 600.1701](#)).

Committee Tip:

While civil contempt is the norm, there may be circumstances where the court wishes to charge the defendant with criminal contempt. This could occur where a defendant has willfully violated a support order in the past and has no present ability to comply. For example, a defendant may have received a substantial sum of money after settlement of a tort claim and may have been required by prior order to use a substantial portion of that settlement to pay past due child support. If the defendant failed to do so and now has no funds with which to pay support, the court might choose to proceed on the basis of criminal contempt. In such a situation, it would be wise for the court to refer the case to the prosecutor for possible initiation of criminal contempt proceedings.

The court may not sentence a defendant to a fixed jail term without complying with all of the procedural protections required for a criminal contempt case. *Borden v Borden*, 67 Mich App 45, 49-50 n 1 (1976).⁴⁸ See [Chapter 3](#) for a discussion of the procedural requirements in criminal contempt cases.

E. Determining Ability to Pay

Unless the trial court is presuming an ability to pay under [MCL 552.633\(3\)](#),⁴⁹ the trial court must determine whether a person has an ability to pay before finding a person in contempt of court for nonpayment of a support order. *Sword v Sword*, 399 Mich 367, 379 (1976), rev'd on other grounds by *Mead v Batchlor*, 435 Mich 480 (1990).⁵⁰ The Supreme Court stated:

“If the judge concludes from the testimony of defendant and others that defendant has ‘sufficient ability to comply with’ the order or ‘by the exercise of due

⁴⁸The trial court must generally determine whether a person has an ability to pay before finding a person in contempt of court for nonpayment of a support order. *Sword v Sword*, 399 Mich 367, 379 (1976), rev'd on other grounds by *Mead v Batchlor*, 435 Mich 480 (1990).

⁴⁹For a discussion of [MCL 552.633\(3\)](#) see [Section 5.19\(C\)\(3\)\(a\)](#).

⁵⁰*Sword* interpreted the requirements of [MCL 552.201](#), which was repealed by 1982 PA 295, but contained language similar to current [MCL 552.633](#). Courts have relied on *Sword's* interpretation in regard to the requirements for finding ability to pay under [MCL 552.633](#). See, e.g., *Wells v Wells*, 144 Mich App 722, 732 (1985).

diligence could be of sufficient ability, and has neglected or refused' to comply, defendant may be found in contempt of court." *Sword*, 399 Mich at 379.

In determining whether a payer has or should have the ability to pay, the court should consider:

- employment skills, including the reasons for any termination;
- education and skills;
- work opportunities;
- effort in seeking work;
- personal history, including present marital status and means of support;
- assets and any transfer of assets;
- efforts to modify the support order claimed to be excessive;
- health and physical ability;
- availability for work (periods of hospitalization and imprisonment); and
- the location of the payer since the decree and reasons for moves. *Sword*, 399 Mich at 378-379.

This list of considerations is not comprehensive. *Id.* at 379 (noting that "[d]ifferent circumstances will suggest other questions[]"). See also *Wells v Wells*, 144 Mich App 722, 732 (1985) ("The circumstances of every case will require different inquiries.").

The [Michigan Child Support Formula Manual](#) includes additional factors for consideration, including prior employment experience and history, reasons for termination or changes in prior employment, mental disabilities that may affect the payer's ability to work, evidence that the payer could earn the imputed income, and the prevailing wage rates and the available work hours in the geographical area. MCSF 2.01(G)(2).

1. Federal Requirements

Federal law requires [Title IV-D agencies](#), such as the Friend of the Court, to maintain and use an effective system for carrying out several specified actions, including establishing guidelines

for use in civil contempt proceedings. [45 CFR 303.6](#) (2016). The guidelines must include a requirement that the agency:

“(i) Screen the case for information regarding the noncustodial parent’s ability to pay or otherwise comply with the order;

(ii) Provide the court with such information regarding the noncustodial parent’s ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent’s ability to pay the purge amount or comply with the purge conditions; and

(iii) Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action[.]” [45 CFR 303.6\(c\)\(4\)](#).

2. Ability to Pay Caselaw

Where the trial court “only asked what the defendant had been earning the past few years[.]” and “did not inquire about nor consider other factors which might have affected [the] defendant’s ability to comply with the order[.]” its order committing the defendant to jail for contempt was reversed. *Borden v Borden*, 67 Mich App 45, 51 (1976) (holding that “[t]here was no finding that the defendant had sufficient present ability to obey the court’s order[.]”) (quotation marks and citation omitted).

The trial court did not err by holding the plaintiff in contempt for failure to pay where although the plaintiff suffered from arthritis, that condition did not “obviate all potential employment opportunities[.]” and the sentencing for the contempt was delayed for a month in order for the plaintiff to find employment. *Butler v Butler*, 80 Mich App 696, 701 (1978). At the sentencing hearing the plaintiff failed to provide any testimony regarding “what measures had been taken to find suitable employment.” *Id.* Accordingly, the Court held that “the judgment is supported by a record sufficient to sustain the trial court’s finding that plaintiff is physically able to work *and* has neglected or refused to exercise due diligence to place himself in a position of sufficient ability to comply with the support order. The coerciveness of civil contempt may provide the plaintiff with the necessary incentive to rectify this unfortunate situation.” *Id.*

Where the record demonstrated that the defendant had no means of support other than ADC (Aid to Dependent Children) benefits, an order to pay a portion of an arrearage or go to jail for 90 days was beyond the power of the court. *Gonzalez v Gonzalez*, 121 Mich App 289, 291 (1982).

The trial court did not abuse its discretion by holding the defendant in contempt for failing to pay child support where the evidence showed the defendant last worked as a landscaper earning \$100 per week and prior to that worked as a contractor earning \$130 per week and did not pay any child support during that time. *Smith v Smith*, 155 Mich App 752, 756 (1986). Accordingly, the testimony supported the “trial court’s finding that [the] defendant was able to make some payments on his support obligation but failed to do so.” *Id.* at 756-757 (modifying the contempt order to permit the defendant’s release from jail for the purpose of obtaining employment).

The trial court did not abuse its discretion in entering a contempt order where the defendant paid the \$1,000 to avoid confinement, and the defendant’s counsel admitted the defendant’s ability to pay and represented that the defendant was making regular support payments. *Deal v Deal*, 197 Mich App 739, 743-744 (1993) (finding the fact that the amount ordered exceeded four weeks of payments under the support order irrelevant in light of the defendant’s admission of ability to pay).

F. Waiver of Contempt and Hearing on Modification of Support Order

[MCL 552.17a\(2\)](#) allows the court to waive the contempt in certain circumstances:

“Upon an application for modification of a judgment or order when applicant is in contempt, for cause shown, the court may waive the contempt and proceed to a hearing without prejudice to applicant’s rights and render a determination on the merits.”

G. Caselaw

1. Contempt Proceedings Against Payer’s Employer

An employer may be held in civil contempt of court for negligently failing to comply with a court order appointing a Friend of the Court receiver of any worker’s compensation settlement to defray a child support arrearage. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499-501 (2000). In

this case, a support payer's employer was served with a copy of the receivership order but paid settlement funds directly to the support payer. *Id.* at 498. Service of a copy of the receivership order by certified mail, return receipt requested, is sufficient. *Id.* at 501-503. In such cases, a court may order the employer to pay the support recipient (i.e., the custodial parent) damages in the amount of the arrearage to be paid from the settlement, attorney fees, costs, and judgment interest. *Id.* at 498-499.

2. Right to Counsel

In *Mead v Batchlor*, 435 Mich 480, 498 (1990), the Michigan Supreme Court, relying on *Lassiter v Dep't of Social Services*, 452 US 18, 25-27 (1981),⁵¹ concluded that the civil or criminal nature of a proceeding is not the determining factor in deciding whether procedural due process requires the appointment of counsel. Rather, the right to appointed counsel is triggered by a person's fundamental interest in physical liberty. *Mead*, 435 Mich at 498. But see *Turner*, 564 US at 435,⁵² where the United States Supreme Court concluded that in cases involving child support enforcement, "where . . . the custodial parent (entitled to receive the support) is unrepresented by counsel, the State need not provide counsel to the noncustodial parent (required to provide support) [even if that person may be subject to incarceration up to one year]." However, to meet due process requirements, "the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order." *Turner*, 564 US at 435. Alternative procedures include sufficient notice regarding the importance of the ability to pay, a fair opportunity to present and dispute relevant financial information, and court findings on the noncustodial parent's ability to pay. *Id.* at 448.

For a discussion of right to counsel in contempt cases and how to comply with *Turner's* requirements, see the Friend of the Court Bureau's [memorandum](#), pages 4-5.

⁵¹ The United States Supreme Court clarified that the *Lassiter* Court declared its holding while *denying* the litigant's right to counsel. *Turner v Rogers*, 564 US 431, 443 (2011). Based on a reading of several cases, the *Turner* Court found that a right to counsel does not exist in all cases involving incarceration. *Id.* However, the Court does suggest that the possibility of incarceration is required to trigger the right to counsel. *Id.* at 442-443.

⁵² The Court specifically stated that this holding does not address cases where the past due child support is owed to the state or unusually complex cases where the noncustodial parent "can fairly be represented only by a trained advocate." *Turner*, 564 US at 449, quoting *Gagnon v Scarpelli*, 411 US 778, 788 (1973).

3. A Lien is Not A Permissible Contempt Sanction

The trial court may not impose a lien as punishment for contempt. *Wells v Wells*, 144 Mich App 722, 733 (1985). “A lien under appropriate circumstances is a separate enforcement method which may be used when contempt proceedings have failed.” *Id.* (noting procedures for a lien are set forth by [MCL 552.27](#)).

5.23 Failure to Pay Child or Spousal Support: Alternative Contempt Track Docket

A qualifying payer “may, with the consent of the court, agree to have his or her case placed on an **alternative contempt track** docket.” [MCL 552.635a\(1\)](#).

A. Qualifying Payers

“The **alternative contempt track** is available for a payer who is determined by the court to have difficulty making support payments due to any of the following:

- (a) A documented medical condition.
- (b) A documented psychological disorder.
- (c) Substance use disorder.
- (d) Illiteracy.
- (e) Homelessness.
- (f) A temporary curable condition that the payer has difficulty controlling without assistance.
- (g) Unemployment lasting longer than 27 weeks.” [MCL 552.635a\(2\)](#).

B. Alternative Contempt Track Requirements

“The **alternative contempt track** shall provide for all of the following:

- (a) A payer who is in the alternative contempt track is subject to probation for a period of up to 1 year.
- (b) The court shall approve a plan to address the conditions in [[MCL 552.635a\(2\)](#)].

(c) The court may direct the sheriff to take into custody a payer who fails to comply with the plan described in [MCL 552.635a(3)(b)] under the conditions and for the time that the court directs to bring the payer into compliance with the plan described under [MCL 552.635a(3)(b)]. A payer shall not be ordered to remain in the sheriff's custody longer than 45 days for any single plan violation.

(d) If a payer willfully fails to comply with the terms of the plan described in [MCL 552.635a(3)(b)], the court may punish that payer by ordering his or her commitment to jail for a period not to exceed 10 days.

(e) The payer is required to appear for review hearings as scheduled by the court and is subject to arrest according to [MCL 552.631⁵³].

(f) The plan described in [MCL 552.635a(3)(b)] may provide notice of modification to the payer and recipient of support. The court may enter a temporary support order or stay the current order based on the person's ability during the period a payer is under an alternative contempt track plan. Subject to [MCL 552.603(2)], the court shall enter a final support order upon completion or termination of the plan described in [MCL 552.635a(3)(b)]. Either party may object to a proposed final support order resulting from a plan described in [MCL 552.635a(3)(b)]. If an objection is made, the court must hold a separate hearing on the matter of entry of a final support order.

(g) The court may discharge arrears owed to the state with the state's approval and may also discharge arrears owed to a payee with the payee's consent upon successful completion of the alternative contempt track." MCL 552.635a(3).

C. Prerequisite to a Court's Participation in the Alternative Contempt Track

"Each court that uses an **alternative contempt track** must submit a plan for the alternative contempt track and obtain approval of the plan by the [S]tate [C]ourt [A]dministrative [O]ffice under the supervision of the [S]upreme [C]ourt." MCL 552.635a(4).

⁵³MCL 552.631 addresses the failure or refusal to obey and perform a support order.

5.24 Contempt for Violation of Parenting Time Order

A. Statutory Authority and Court Rule

The Support and Parenting Time Enforcement Act, [MCL 552.641\(1\)](#), requires the Friend of the Court, for a [friend of the court case](#), to take one or more of several statutorily specified actions on an alleged [custody or parenting time order violation](#). One of the options is to commence civil contempt proceedings under [MCL 552.644](#). [MCL 552.641\(1\)\(b\)](#).

[MCL 552.644\(1\)](#) provides that “[i]f the office of the friend of the court determines that a procedure for resolving a parenting time dispute authorized under [[MCL 552.641](#)] other than a civil contempt proceeding is unsuccessful in resolving the parenting time dispute, the office of the friend of the court shall commence a civil contempt proceeding to resolve the dispute as provided by the supreme court rule.”

[MCR 3.208](#) governs proceedings involving the friend of the court. [MCR 3.208\(B\)](#) provides that “[t]he friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody.”

“If a party has failed to comply with an order or judgment, the friend of the court may move for an order to show cause why the party should not be held in contempt.” [MCR 3.208\(B\)\(1\)](#). “Alternatively, in nonpayment of support cases and as allowed by the court, the friend of the court may schedule a hearing before a judge or referee for the party to show cause why the party should not be held in contempt.” *Id.*

“The order to show cause or the notice of the show cause hearing must be served personally, by ordinary mail at the party’s last known address, or in another manner permitted by [MCR 3.203](#).” [MCR 3.208\(B\)\(2\)](#).

The notice of the show cause hearing must comply with requirements for the form of a subpoena under [MCR 2.506\(D\)](#). [MCR 3.208\(B\)\(3\)](#). For purposes of [MCR 3.208\(B\)\(3\)](#), an authorized signature is one that comports with [MCR 1.109\(E\)](#). [MCR 3.208\(B\)\(3\)\(a\)](#). Notices under [MCR 3.208\(B\)\(3\)](#) “must state the amount past due and the source of information regarding the past due amount and act or failure to act that constitutes a violation of the court order.” [MCR 3.208\(B\)\(3\)\(b\)](#). “A person must comply with the notice unless relieved by order of the court or written direction of the person who executed the notice.” [MCR 3.208\(B\)\(3\)\(c\)](#).

“The show cause hearing may be held no sooner than seven days after the order or notice is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order or notice is mailed.” [MCR 3.208\(B\)\(4\)](#).

“The court may hold the show cause hearing without the friend of the court unless a party presents evidence that requires the court to receive further information from the friend of the court’s records before making a decision.” [MCR 3.208\(B\)\(5\)](#). “If the party fails to appear at the show cause hearing, the court may issue an order for arrest.” [MCR 3.208\(B\)\(5\)](#).

“The relief available under this rule is in addition to any other relief available by statute.” [MCR 3.208\(B\)\(6\)](#).

“The friend of the court may petition for an order of arrest at any time, if immediate action is necessary.” [MCR 3.208\(B\)\(7\)](#).

B. Required Notice

“The contempt proceeding notice shall include, either in the notice or by reference to another document attached to the notice, a statement of the allegations upon which the dispute is based and at least all of the following:

- (a) A list of each possible sanction if the parent is found in contempt.
- (b) The right of the parent to a hearing on a proposed modification of parenting time if requested within 21 days after the date of the notice, as provided in [[MCL 552.645](#)].” [MCL 552.644\(1\)](#).

See also [MCR 3.208\(B\)\(2\)](#) (“The order to show cause must be served personally, by ordinary mail at the party’s last known address, or in another manner permitted by [MCR 3.203](#).”)

C. Finding a Parent in Contempt

If the court finds that a parent has violated a custody or parenting time order without good cause,⁵⁴ the court must find that parent in contempt. [MCL 552.644\(2\)](#). [MCL 552.644\(2\)](#) provides that once the court finds a parent in contempt, it may do one or more of the following:

⁵⁴ “[G]ood cause’ includes, but is not limited to, consideration of the safety of a child or a party who is governed by the parenting time order.” [MCL 552.644\(3\)](#).

“(a) Require additional terms and conditions consistent with the court’s parenting time order.

(b) After notice to both parties and a hearing, if requested by a party, on a proposed modification of parenting time, modify the parenting time order to meet the best interests of the child.

(c) Order that makeup parenting time be provided for the wrongfully denied parent to take the place of wrongfully denied parenting time.

(d) Order the parent to pay a fine of not more than \$100.00.

(e) Commit the parent to the county jail^[55] or an alternative to jail.

(f) Commit the parent to the county jail or an alternative to jail with the privilege of leaving the jail or other place of detention during the hours the court determines necessary, and under the supervision the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.^[56]

(g) If the parent holds an **occupational license, driver’s license, or recreational or sporting license**, condition the suspension of the license, or any combination of the licenses, upon noncompliance with an order for makeup and ongoing parenting time.^[57]

(h) If available within the court’s jurisdiction, order the parent to participate in a community corrections program established as provided in the community corrections act, . . . [[MCL 791.401–MCL 791.414](#)].

(i) Place the parent under the supervision of the office for a term fixed by the court with reasonable conditions, including 1 or more of the following:

⁵⁵The commitment order must not exceed 45 days for the first finding of contempt or 90 days for each subsequent finding of contempt. A parent must be released if “the court has reasonable cause to believe that the parent will comply with the parenting time order.” [MCL 552.644\(4\)](#).

⁵⁶The commitment order must not exceed 45 days for the first finding of contempt or 90 days for each subsequent finding of contempt. A parent must be released if “the court has reasonable cause to believe that the parent will comply with the parenting time order.” [MCL 552.644\(4\)](#).

⁵⁷“If the court enters an order under [[MCL 552.644\(2\)\(g\)](#)] and the parent fails to comply with the makeup and ongoing parenting time schedule, the court shall find the parent in contempt and, after notice and an opportunity for a hearing, may suspend the parent’s license or licenses with respect to which the order under [[MCL 552.644\(2\)\(g\)](#)] was entered and proceed under [[MCL 552.630](#)].” [MCL 552.645\(1\)](#).

- (i) Participating in a parenting program.
- (ii) Participating in drug or alcohol counseling.
- (iii) Participating in a work program.
- (iv) Seeking employment.
- (v) Participating in other counseling.
- (vi) Continuing compliance with a current support or parenting time order.
- (vii) Entering into and compliance with an arrearage payment plan.
- (viii) Facilitating makeup parenting time.”

If no sanctions are imposed, the court must state on the record the reason it is not ordering a sanction listed in [MCL 552.644\(2\)](#). [MCL 552.644\(3\)](#).

The court may not order a change of custody as punishment for contempt of court resulting from violation of a parenting time order. *Kaiser v Kaiser*, 352 Mich 601, 604 (1958); *Adams v Adams*, 100 Mich App 1, 13 (1980).

A fine ordered under [MCL 552.644\(2\)](#) is a judgment at the time the order is entered. [MCL 552.644\(7\)](#).

D. Failure to Appear in Response to Contempt Proceeding

“If a parent fails to appear in response to a contempt proceeding, the court may issue a bench warrant⁵⁸ requiring that the parent be brought before the court without unnecessary delay to show cause why the parent should not be held in contempt. Except for good cause shown on the record, the court shall further order the parent to pay the costs of the hearing, the issuance of the warrant, the arrest, and any later hearings, which costs shall be transmitted to the county treasurer for distribution as provided in [[MCL 552.631](#)]. If the hearing cannot be held immediately after the parent’s arrest, the parent may be released if a bond in the amount of the fines, costs, and sanctions imposed under [[MCL 552.644](#)] and any additional amount the court determines is necessary to secure the parent’s appearance is deposited with the court.” [MCL 552.644\(5\)](#).

⁵⁸If the court issues a bench warrant under [[MCL 552.644](#)], the court may enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable, by booting or another similar method, subject to release on deposit of an appropriate bond.” [MCL 552.644\(9\)](#).

An order for costs under [MCL 552.644\(5\)](#) is a judgment at the time the order is entered. [MCL 552.644\(7\)](#).

E. Additional Sanctions for Acting in Bad Faith

“If the court finds that a party to a parenting time dispute has acted in bad faith, the court shall order the party to pay a sanction of not more than \$250.00 for the first time the party is found to have acted in bad faith, not more than \$500.00 for the second time, and not more than \$1,000.00 for the third or a subsequent time.” [MCL 552.644\(6\)](#).

A sanction ordered under [MCL 552.644\(6\)](#) is a judgment at the time the order is entered. [MCL 552.644\(7\)](#).

“If the court finds that a party to a parenting time dispute has acted in bad faith, the court shall order the party to pay the other party’s costs.” [MCL 552.644\(8\)](#).

See [MCR 3.208\(C\)](#) for procedures regarding the allocation and distribution of payments.

F. Civil or Criminal Contempt Proceedings

“[G]enerally, a trial court’s invocation of its contempt authority to enforce a parenting time order is a civil proceeding.” *Porter v Porter*, 285 Mich App 450, 458 (2009). However, “where the only purpose is to punish the wrongdoer,” criminal contempt proceedings may be initiated in a domestic relations case. *Id.* at 458 n 3.⁵⁹

In a civil contempt proceeding, the defendant must be given an opportunity to purge the contempt by complying with conditions set forth by the trial court to remedy the violation. *Casbergue v Casbergue*, 124 Mich App 491, 495-496 (1983).

Part III: Contempt of Court Involving Extreme Risk Protection Orders

⁵⁹Note that the Friend of the Court can only initiate civil contempt proceedings. See [MCL 552.511b](#); [MCL 552.641](#); [MCL 552.644](#).

5.25 Contempt of Court—Extreme Risk Protection Orders (ERPOs)

A. Statutory Authority to Hold ERPO Violators in Contempt

[MCR 3.721\(A\)](#) provides that an ERPO is enforceable under the following:

- [MCL 691.1810\(4\)](#)-[MCL 691.1810\(5\)](#) (failure to comply with [MCL 691.1810\(1\)\(a\)](#) or [MCL 691.1810\(1\)\(b\)](#) or failure to appear at compliance hearing; court finds probable cause exists to believe the restrained individual has a firearm or concealed pistol license in their possession or control)
- [MCL 691.1815\(4\)](#) (failure to comply with an ERPO)
- [MCL 691.1819](#) (court may enforce ERPO by charging restrained individual with contempt of court under [MCL 600.1701](#)-[MCL 600.1745](#)).

Additionally, [MCL 691.1809\(1\)\(i\)](#) provides that if the court determines under [MCL 691.1807](#) that an ERPO should be issued, the court must include a statement in the ERPO that violation of the order will subject the restrained individual to the contempt powers of the court.

B. Motion to Show Cause

1. Filing

If a respondent violates an ERPO, the prosecuting attorney for the county in which the order was issued or a law enforcement officer may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. [MCR 3.721\(B\)\(1\)](#). There is no fee for such a motion. *Id.*

If the motion and affidavit establish probable cause for a finding of contempt, the court must either:

- (1) order the respondent to appear at a specified time to answer the contempt charge; or
- (2) issue a bench warrant for the arrest of respondent. [MCR 3.721\(B\)\(1\)](#).

2. Service

If issuing an order to show cause, the hearing must be held within five days. [MCR 3.721\(B\)\(2\)](#). The prosecuting attorney or

law enforcement officer must serve the motion to show cause and the order on the respondent and the petitioner as provided in [MCR 2.107](#). [MCR 3.721\(B\)\(2\)](#).

C. Search Warrant

If the violation alleges that the respondent has a firearm or concealed pistol license in their possession or control, a law enforcement officer or prosecuting attorney may also file an affidavit requesting that the court issue a search warrant to search the location(s) where the firearm(s) or concealed pistol license is believed to be and to seize any firearm(s) or concealed pistol license discovered during the search. [MCR 3.721\(C\)](#). The law enforcement officer's affidavit may include affirmative allegations contained in the complaint, and if the affidavit establishes probable cause to believe the location(s) to be searched are places where the firearm(s) or concealed pistol license is believed to be, the court must issue the search warrant. *Id.*

D. Arraignment and Advice to Respondent

At the respondent's first appearance before the court for arraignment on contempt of court, the court must do the following:

- Advise respondent of the alleged violation;
- Advise respondent of the right to contest the charge at a contempt hearing;
- Advise respondent that they are entitled to a lawyer's assistance at the hearing, and if the court determines it might sentence the respondent to jail, that the court⁶⁰ will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one. [MCR 3.721\(D\)](#).
- Appoint a lawyer⁶¹ if requested and appropriate.
- Set a reasonable bond pending a hearing of the alleged violation; and
- Take a guilty plea as provided in [MCR 3.721\(E\)](#) or schedule a hearing as provided in [MCR 3.721\(F\)](#). [MCR 3.721\(D\)](#).

⁶⁰Or the local funding unit's appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated an ERPO. [MCR 3.721\(D\)\(1\)\(c\)](#).

⁶¹Or refer the matter to the appointing authority. [MCR 3.721\(D\)\(2\)](#).

E. Guilty Pleas

The respondent may plead guilty to the ERPO violation. [MCR 3.721\(E\)](#). Before accepting a guilty plea, the court, speaking directly to respondent and receiving the respondent's response, must do the following:

- Advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing, and if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set out in [MCR 3.721\(D\)\(1\)\(c\)](#);
- Advise the respondent of the maximum possible jail sentence for the violation;
- Advise the respondent that if they plead guilty to violating the ERPO, the court will automatically extend the duration of the ERPO for one year after the expiration of the preceding order;
- Ascertain that the plea is understandingly, voluntarily, and knowingly made; and
- Establish factual support for a finding that the respondent is guilty of the alleged violation. [MCR 3.721\(E\)](#).

F. Scheduling or Postponing Hearing

1. Scheduling Hearing

Following the respondent's appearance or arraignment, the court must do the following:

- Set a date for the hearing at the earliest practicable time;
- Notify the prosecuting attorney of the contempt proceeding; and
- Notify the petitioner and the petitioner's attorney (if any) and the law enforcement officer that filed the motion (if applicable) of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt. [MCR 3.721\(F\)](#).

2. Timing of Hearing

The hearing of a respondent being held in custody for an alleged violation of an ERPO must be held within 72 hours after the arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. [MCR 3.721\(F\)\(1\)\(a\)](#). The court must set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the respondent or any other individual(s). *Id.*

3. Bond

If a respondent is released on bond pending the hearing, the bond may include any condition specified in [MCR 6.106\(D\)](#) necessary to reasonably ensure the safety of the respondent and other individuals, including continued compliance with the ERPO. [MCR 3.721\(F\)\(1\)\(b\)](#). The release order must comply with [MCL 765.6b](#). [MCR 3.721\(F\)\(1\)\(b\)](#).

4. Postponing Hearing

If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution. [MCR 3.721\(F\)\(1\)\(c\)](#).

G. Prosecution After Arrest

If the court holds a contempt proceeding, the prosecuting attorney must prosecute the proceeding. [MCR 3.721\(G\)](#).

H. Violation Hearing

1. Jury

At a violation hearing, there is no right to a jury trial. [MCR 3.721\(H\)\(1\)](#).

2. Conduct of the Hearing

The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. [MCR 3.721\(H\)\(2\)](#).

3. Evidence

The rules of evidence apply to both criminal and civil contempt proceedings. [MCR 3.721\(H\)\(3\)](#).

4. Burden of Proof

The prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence. [MCR 3.721\(H\)\(3\)](#).

5. Judicial Findings

At the conclusion of the hearing, the court must find the facts specifically, state separately its conclusion of law, and direct entry of the appropriate judgment. [MCR 3.721\(H\)\(4\)](#). The court must state its findings and conclusion on the record or in a written opinion made a part of the record. *Id.*

6. Sentencing

If the respondent is found in contempt, the court may impose sanctions as provided by [MCL 600.1701 et seq.](#) [MCR 3.721\(H\)\(5\)](#).

Part IV: Contempt of Court Involving Juveniles

5.26 Contempt of Court — Juveniles

A. Statutory Authority to Hold Juveniles in Contempt

[MCL 712A.26](#), provides:

“The court shall have the power to punish for contempt of court under . . . [[MCL 600.1701–MCL 600.1745](#)], any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce [Chapter XIA of the Probate Code, which covers jurisdiction, procedure, and disposition involving minors].”

B. Court Rule Governing Procedures and Penalties for Contempt in Proceedings Involving Juveniles

[MCR 3.922\(A\)](#) governs discovery in delinquency and child protection proceedings, and [MCR 3.922\(B\)](#) provides additional guidance on discovery and disclosure in delinquency matters. Failure to comply with [MCR 3.922\(A\)\(1\)](#), [MCR 3.922\(A\)\(2\)](#), [MCR 3.922\(B\)\(1\)](#), and [MCR 3.922\(B\)\(4\)](#) may result in sanctions “in keeping with those assessable under [MCR 2.313](#).”⁶² [MCR 3.922\(A\)\(4\)](#); [MCR 3.922\(B\)\(5\)](#).

[MCR 3.928](#) provides a description of the applicable procedures and penalties for contempt of court:

“(A) Power. The court has the authority to hold persons in contempt of court as provided by [MCL 600.1701](#) and [[MCL](#)] [712A.26](#). A parent, guardian, or legal custodian of a juvenile who is within the court’s jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in [MCL 712A.6a](#).

(B) Procedure. Contempt of court proceedings are governed by [MCL 600.1711](#), [[MCL](#)] [600.1715](#), and [MCR 3.606](#). [MCR 3.982](#)–[[MCR](#)] [3.989](#) govern proceedings against a minor for contempt of a minor personal protection order.

(C) Contempt by Juvenile. A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 18 years of age when the contempt was committed, may be sentenced to up to 93 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separately and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.

(D) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.”

⁶²[MCR 2.313\(B\)\(2\)\(d\)](#) permits the court to hold a party in contempt for failing to obey a court order. See [Section 5.8\(l\)](#) for more information on contempt sanctions for violating a court order.

C. Jurisdiction Over Adults

A juvenile **court** has jurisdiction of contempt proceedings involving contempt of its orders even where the contemnor is over age 19 (when jurisdiction over the child must terminate in most delinquency cases) at the time of the hearing. *In re Summerville*, 148 Mich App 334, 341 (1986). Thus, the court may punish as contempt of court the failure to reimburse costs after it has terminated jurisdiction over the juvenile. *In re Reiswitz*, 236 Mich App 158, 163-174 (1999) (holding that the probate court could enforce its reimbursement order after the subject of the order turned 19 before fully complying with the order).

A juvenile court “acquires jurisdiction over adults pursuant to [MCL 712A.6](#),” which “entitle[s] [the court] to render orders affecting adults which [are] necessary for the physical, mental, or moral well-being of [the juvenile].” *In re Contempt of Dorsey*, 306 Mich App 571, 582-583 (2014), vacated in part on other grounds 500 Mich 920 (2016).⁶³ Where a “court conclude[s] that [a parent] interfered with the court’s function, [he or she] could be punished for contempt.” *Id.* at 583.

1. Nonparent Adults

In child protective proceedings, the **court** has statutory authority to permanently restrain a **nonparent adult** from coming into contact with the child. [MCL 712A.6b\(1\)](#). The court may also order the nonparent adult to comply with and participate in the **case service plan**. *Id.* In addition to criminal penalties for violations of such orders, the court may exercise its criminal or civil contempt powers for violation of the order. See [MCL 712A.6b\(5\)](#).

2. Allegations of Abuse

[MCL 712A.13a\(4\)-\(5\)](#) give the **court** authority to order a parent, nonparent adult, or other person out of the child’s home before trial if the petition contains allegations of abuse. If a person who violates a court order issued under [MCL 712A.13a](#) is found guilty of criminal contempt, the court must order the person to jail for not more than 90 days and may fine the person not more than \$500. [MCL 764.15f\(1\)\(e\)](#).

⁶³[A] prior Court of Appeals decision that has been reversed on other grounds has no precedential value. . . . [W]here the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, no rule of law remains from the Court of Appeals decision.” *Dunn v Detroit Auto Inter-Ins Exch*, 254 Mich App 256, 262 (2002). See also [MCR 7.215\(J\)\(1\)](#). However, its analysis may still be persuasive. See generally *Dunn*, 254 Mich App at 263-266.

3. Contempt of Failure to Appear

The **court** may cite a parent for contempt in delinquency cases for failure to attend a hearing without good cause. [MCL 712A.6a](#) and [MCR 3.928\(A\)](#).

A court may also punish persons who fail to appear in court in response to a summons. [MCL 712A.13](#).

4. Enforcement of Orders

The **court** may enforce its reimbursement orders through use of the contempt power. See [MCL 712A.18b](#). If a parent or other adult legally responsible for the child's care fails or refuses to obey a reimbursement order, the court that entered the order may order a wage or salary assignment to recover the amount of unpaid support. [MCL 712A.18b](#).

The court may also enforce an order assessing attorney costs through its contempt powers. See [MCL 712A.17c\(8\)](#), [MCL 712A.18\(5\)](#), and [MCR 3.915\(E\)](#). See, generally, *In re Reiswitz*, 236 Mich App 158, 172 (1999) (discussing the court's authority to use the contempt power to enforce its orders).

D. Enforcement of Minor Personal Protection Orders (PPOs)

The Family Division of Circuit Court has jurisdiction over proceedings involving a PPO issued under [MCL 600.2950](#) or [MCL 600.2950a](#), in which the respondent is a juvenile less than 18 years of age. [MCL 712A.2\(h\)](#). Court rules governing procedure for **juvenile** violations of PPOs are found in [MCR 3.982–MCR 3.989](#). Violations of personal protection orders may be punished by contempt sanctions. See [MCR 3.983](#) (setting forth the procedures for contempt proceedings where a respondent allegedly violates a minor PPO).

E. Authority to Punish Juvenile for Contempt Committed in Proceedings Not Under the Juvenile Code

A court may hold a **juvenile** in contempt of court when he or she commits contumacious acts while appearing in proceedings not governed by the Juvenile Code.⁶⁴ See e.g. *In re Gorcyca*, 500 Mich 588 (2017); *People v Joseph*, 384 Mich 24, 34-35 (1970); [MCL 600.1701](#) (giving all courts of record the authority to punish *persons* who are found in contempt of court).

⁶⁴The Juvenile Code is the popular name for the Probate Code of 1939, [MCL 712A.1](#) *et seq.*

The Michigan Supreme Court found that a trial court presiding over a divorce and custody case has the authority under [MCL 600.1701\(g\)](#)⁶⁵ to impose contempt sanctions on juveniles for failing to comply with its parenting time orders. *Gorcyca*, 500 Mich at 621.

In *Gorcyca*, the Court reviewed the recommendation from the Judicial Tenure Commission regarding sanctions for a judge's behavior during a contempt hearing in the context of a protracted divorce and custody case. *Id.* at 595. The trial court held three minor children in contempt for failing to comply with its order for parenting time with the father. *Id.* at 602-608. The Court did not specifically address whether the trial court had the authority to hold the juveniles in contempt for violation of its order issued during proceedings that did not take place under the Juvenile Code; however, it did not question the trial court's authority to hold the children in contempt. See *id.* at 618, 621, citing [MCL 600.1701\(g\)](#) (noting that the trial court "had the statutory authority to hold any contemptuous person in contempt of court, and it certainly appears that at least [two of the minor children] blatantly defied the court's order[']").

In *Joseph*, the defendant was convicted of criminal contempt in Wayne County Circuit Court for having refused to answer questions put to him by a one-man grand jury convened by that court. *Joseph*, 384 Mich at 27-28. On appeal, the defendant challenged the jurisdiction of the Recorder's Court to hear all prosecutions and proceedings for crimes committed within the corporate limits of the city of Detroit. *Id.* at 34. In rejecting that challenge, the Supreme Court stated:

"While contempt, like other crimes, is an affront to society as a whole, it is more directly an affront to the justice, authority and dignity of the particular court involved. Accordingly, the court with jurisdiction over the proceedings wherein the alleged contempt occurred has jurisdiction over contempt proceedings." *Joseph*, 384 Mich at 35.

Thus, in *Joseph*, the Supreme Court concluded that the exclusive statutory grant of authority in criminal cases to Recorder's Court did not divest Wayne County Circuit Court of the authority to utilize contempt sanctions to enforce its orders. See *id.* Accordingly, there is an argument based on the logic of *Joseph* that in the case of contumacious conduct by a juvenile not already under the court's jurisdiction, the grant of exclusive jurisdiction over children under 17 subject to proceedings under the Juvenile Code may not divest the other court of its authority to utilize appropriate contempt sanctions, including committing the juvenile.

⁶⁵ See [Section 5.8](#) for more information on contempts under [MCL 600.1701\(g\)](#).

F. Committing Juvenile to Confinement Under Juvenile Code

If a **juvenile** subject to the Juvenile Code is committed to a detention facility, he or she must be confined in the **least restrictive environment** that will meet the needs of the juvenile and the public, and that will conform to the requirements of the Juvenile Code. [MCR 3.935\(D\)\(4\)](#). [MCL 712A.16\(1\)](#) establishes the general rule that a juvenile may not be jailed unless he or she is over age 15 and the juvenile's habits or conduct are considered a menace to other juveniles, or unless the juvenile might not otherwise be safely detained. See also [MCL 764.27a\(2\)](#). The juvenile must be placed in a room or ward out of sight and sound of adult prisoners, and for a period not to exceed 30 days, unless longer detention is necessary for service of process. [MCL 712A.16\(1\)](#); [MCL 764.27a\(2\)](#).

Glossary

A

Alternative contempt track

- For purposes of the Support and Parenting Time Enforcement Act, *alternative contempt track* “means the alternative contempt track docket established under [MCL 552.635a].” MCL 552.602(c).

Appearance ticket

- For purposes of MCL 764.9c to MCL 764.9g, *appearance ticket* means “a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance.” MCL 764.9f(1).

Assaultive crime

- As used in MCL 764.3, *assaultive crime* “includes any of the following:
 - (i) A violation described in [MCL 770.9a].
 - (ii) A violation of [MCL 750.81 to MCL 750.90g], not otherwise included in subparagraph (i).
 - (iii) A violation of [MCL 750.110a, MCL 750.136b, MCL 750.234a, MCL 750.234b, MCL 750.234c, MCL 750.349b, and MCL 750.411h], or any other **violent felony**.
 - (iv) A violation of a law of another state or of a political subdivision of this state or of another state that

substantially corresponds to a violation described in subparagraph (i), (ii), or (iii)." [MCL 764.3\(5\)\(a\)](#).

C

Case service plan

- For purposes of [MCL 712A.6b](#), *case service plan* "means the plan developed by an agency and prepared under [[MCL 712A.18f](#)] that includes services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. The case service plan may be referred to using different names than case service plan including, but not limited to, a parent/agency agreement or a parent/agency treatment plan and service agreement." [MCL 712A.13a\(1\)\(d\)](#).

Commercial quadricycle

- For purposes of the Michigan Vehicle Code, *commercial quadricycle* means "a **vehicle** that satisfies all of the following:
 - (a) The vehicle has fully operative pedals for propulsion entirely by human power.
 - (b) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.
 - (c) The vehicle has at least 6 seats for passengers.
 - (d) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.
 - (e) The vehicle is used for commercial purposes.
 - (f) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle." [MCL 257.7b](#).

Court

- For purposes of Chapter XIIA of the Probate Code, *court* "means the family division of circuit court." [MCL 712A.1\(1\)\(e\)](#).

Custody or parenting time order violation

- For purposes of the Support and Parenting Time Enforcement Act, *custody or parenting time order violation* “means an individual’s act or failure to act that interferes with a parent’s right to interact with his or her child in the time, place, and manner established in the order that governs custody or parenting time between the parent and the child and to which the individual accused of interfering is subject.” [MCL 552.602\(e\)](#).

D

Document

- For purposes of [MCR 1.109](#), *document* “means a record produced on paper or a digital image of a record originally produced on paper or originally created by an approved electronic means, the output of which is readable by sight and can be printed to 8 1/2 x 11 inch paper without manipulation.” [MCR 1.109\(B\)](#).

Domestic violence

- As used in [MCL 764.3](#), *domestic violence* “means that term as defined in . . . [MCL 400.1501](#).” [MCL 764.3\(5\)\(b\)](#). [MCL 400.1501\(d\)](#) defines *domestic violence* as “the occurrence of any of the following acts by an individual that is not an act of self-defense: (i) [c]ausing or attempting to cause physical or mental harm to a family or household member[;] (ii) [p]lacing a family or household member in fear of physical or mental harm[;] (iii) [c]ausing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress[;] [and/or] (iv) [e]ngaging in activity toward a family or household member that would cause a reasonable individual to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

Driver’s license

- For purposes of the Support and Parenting Time Enforcement Act, *driver’s license* “means license as that term is defined in [[MCL 257.25](#)].” [MCL 552.602\(h\)](#). [MCL 257.25](#) provides that *license* “means any driving privileges, license, temporary instruction permit, commercial learner’s permit, or temporary

license issued under the laws of [Michigan] pertaining to the licensing of persons to operate **motor vehicles**.”

E

Electric bicycle

- For purposes of the Michigan Vehicle Code (MVC), *electric bicycle* “means a device upon which an individual may ride that satisfies all of the following:
 - (a) The device is equipped with all of the following:
 - (i) A seat or saddle for use by the rider.
 - (ii) Fully operable pedals for human propulsion.
 - (iii) An electric motor of not greater than 750 watts.
 - (b) The device falls within 1 of the following categories:
 - (i) Class 1 electric bicycle. As used in this subparagraph, ‘class 1 electric bicycle’ means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.
 - (ii) Class 2 electric bicycle. As used in this subparagraph, ‘class 2 electric bicycle’ means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.
 - (iii) Class 3 electric bicycle. As used in this subparagraph, ‘class 3 electric bicycle’ means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour.” [MCL 257.13e](#).

Electric skateboard

- For purposes of the Michigan Vehicle Code (MVC), *electric skateboard* “means a wheeled device that has a floorboard

designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.” [MCL 257.13f](#).

Electronic signature

- For purposes of [MCR 1.109](#), *electronic signature* “means an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The following form is acceptable: /s/ *John L. Smith*.” [MCR 1.109\(E\)\(4\)\(a\)](#).

F

Final judgment or final order

- For purposes of Subchapter 7.200 of the Michigan Court Rules, *final judgment* or *final order* means:
 - “(a) In a civil case,
 - (i) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;
 - (ii) an order designated as final under [MCR 2.604\(B\)](#);
 - (iii) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile;
 - (iv) a postjudgment order awarding or denying attorney fees and costs under court rule or other law;
 - (v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under [MCR 2.116\(C\)\(7\)](#) or an order denying a motion for summary disposition under [MCR 2.116\(C\)\(10\)](#) based on a claim of governmental immunity; or

(vi) in a foreclosure action involving a claim for remaining proceeds under [MCL 211.78t](#), a postjudgment order deciding the claim.

(b) In a criminal case,

(i) an order dismissing the case;

(ii) the original sentence imposed following conviction;

(iii) a sentence imposed following the granting of a motion for resentencing;

(iv) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; or

(v) a sentence imposed following revocation of probation." [MCR 7.202\(6\)](#).

Friend of the court case

- For purposes of the Support and Parenting Time Enforcement Act, *friend of the court case* "means that term as defined in . . . [MCL 552.502](#). [MCL 552.602\(m\)](#). [MCL 552.502](#) defines *friend of the court case* as "a domestic relations matter that an office establishes as a friend of the court case as required under [[MCL 552.505a](#)]." [MCL 552.502\(o\)](#).

J

Jail

- For purposes of the Code of Criminal Procedure, *jail, prison*, "or a similar word includes a **juvenile facility** in which a **juvenile** has been placed pending trial under [[MCL 764.27a](#)]." [MCL 761.1\(h\)](#).

Judicial district

- For purposes of the Code of Criminal Procedure, *judicial district* means "(i) [w]ith regard to the circuit court, the county[;] (ii) [w]ith regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under . . . [MCL 600.9928](#)[;] (iii) [w]ith regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions." [MCL 761.1\(i\)](#).

Juvenile

- For purposes of the Code of Criminal Procedure, *juvenile* means “a person within the jurisdiction of the circuit court under . . . MCL 600.606.” MCL 761.1(j).
- For purposes of the Crime Victim’s Rights Act, Article 2, *juvenile* means “an individual alleged or found to be within the court’s jurisdiction under . . . [MCL 712A.2(a)(1)], for an offense, including, but not limited to, an individual in a designated case.” MCL 780.781(1)(e).
- For purposes of Chapter XIA of the Probate Code, until September 30, 2021, *juvenile* “means a person who is less than 17 years of age who is the subject of a delinquency petition,” and beginning on October 1, 2021, *juvenile* “means a person who is less than 18 years of age who is the subject of a delinquency petition.” MCL 712A.1(1)(i).

Juvenile facility

- For purposes of the Code of Criminal Procedure, *juvenile facility* means “a county facility, an institution operated as an agency of the county or family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to [MCL] 803.309, to which a juvenile has been committed under [MCL 768.27a].” MCL 761.1(k).

L

Least restrictive environment

- For purposes of Chapter XIA of the Probate Code, *least restrictive environment* “means a supervised community placement, preferably a placement with the juvenile’s parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.” MCL 712A.1(1)(j).

Local unit of government

- For purposes of MCL 769.1f, *local unit of government* means a city, village, township, county, local or intermediate school

district, public school academy, and/or a community college.
[MCL 769.1f\(10\)\(b\)](#).

M

Magistrate

- For purposes of the Code of Criminal Procedure, *magistrate* means “a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act . . . [MCL 600.101](#) to [[MCL](#)] [600.9947](#), or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate.” [MCL 761.1\(j\)](#).
- For purposes of the Public Health Code, *magistrate* means “a judge authorized to issue warrants by the laws of this state.” [MCL 333.1105\(4\)](#).

Motor vehicle

- For purposes of the Michigan Vehicle Code (MVC), a *motor vehicle* means “every vehicle that is self-propelled, but for purposes of [[MCL 257.401 et seq.](#)] motor vehicle does not include industrial equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under [the MVC]. Motor vehicle does not include a **power-driven mobility device** when that power-driven mobility device is being used by an individual with a mobility disability. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act, 1997 PA 55, [MCL 257.1571](#) to [[MCL](#)] [257.1577](#). Motor vehicle does not include an electric personal assistive mobility device. Motor vehicle does not include an electric carriage. Motor vehicle does not include a **commercial quadricycle**. Motor vehicle does not include an **electric bicycle**.

Motor vehicle does not include an [electric skateboard](#).” [MCL 257.33](#).

N

Nonparent adult

- For purposes of [MCL 712A.6b](#), *nonparent adult* “means a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under [Chapter XIA of the Probate Code]:
 - (i) Has substantial and regular contact with the child.
 - (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare.
 - (iii) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.” [MCL 712A.13a\(1\)\(h\)](#).

O

Occupational license

- For purposes of the Support and Parenting Time Enforcement Act, *occupational license* “means a certificate, registration, or license issued by a state department, bureau, or agency that has regulatory authority over an individual that allows an individual to legally engage in a regulated occupation or that allows the individual to use a specific title in the practice of an occupation, profession, or vocation.” [MCL 552.602\(s\)](#).

P

Participant

- For purposes of a hearing held by videoconferencing under subchapter 4.100 of the Michigan Court Rules, *participant* is defined in [MCR 2.407\(A\)\(1\)](#). See [MCR 4.101\(F\)\(4\)](#). [MCR 2.407\(A\)\(1\)](#) states that *participants* “include, but are not limited

to, parties, counsel, and subpoenaed witnesses, but do not include the general public.”

Payer

- For purposes of the Support and Parenting Time Enforcement Act, *payer* “means an individual who is ordered by the circuit court to pay **support**.” [MCL 552.602\(w\)](#).

Person

- For purposes of the Support and Parenting Time Enforcement Act, *person* “means an individual, partnership, corporation, association, governmental entity, or other legal entity.” [MCL 552.602\(x\)](#).

Power-driven mobility device

- For purposes of the Michigan Vehicle Code (MVC), *power-driven mobility device* “means a mobility device powered by a battery, fuel, or other engine and used by an individual with a mobility disability for the purpose of locomotion. Notwithstanding any other provision of [the MVC], the requirements of [the MVC] apply to a power-driven mobility device while that device is being operated on a street, road, or highway in [Michigan].” [MCL 257.43c](#).

R

Recreational or sporting license

- For purposes of the Support and Parenting Time Enforcement Act, *recreational or sporting license* “means a hunting, fishing, or fur harvester’s license issued under the natural resources and environmental protection act, 1994 PA 451, [MCL 324.101](#) to [\[MCL\] 324.90106](#), but does not include a commercial fishing license or permit issued under part 473 of the natural resources

and environmental protection act, 1994 PA 451, [MCL 324.47301](#) to [\[MCL\] 324.47362.](#)" [MCL 552.602\(dd\).](#)

S

Source of income

- For purposes of the Support and Parenting Time Enforcement Act, *source of income* "means an employer or successor employer, a labor organization, or another individual or entity that owes or will owe income to the payer." [MCL 552.602\(ff\).](#)

Support

- For purposes of the Support and Parenting Time Enforcement Act, *support* "means all of the following:
 - (i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.
 - (ii) The payment of money ordered by the circuit court under . . . [MCL 722.711](#) to [\[MCL\] 722.730](#), for the necessary expenses connected to the mother's pregnancy or the birth of the child, or for the repayment of genetic testing expenses.
 - (iii) A surcharge under [\[MCL 552.603a\].](#)" [MCL 552.602\(ii\).](#)

Support order

- For purposes of the Support and Parenting Time Enforcement Act, *support order* "means an order entered by the circuit court for the payment of support, whether or not a sum certain." [MCL 552.602\(jj\).](#)

T

Title IV-D

- For purposes of the Support and Parenting Time Enforcement Act, *title IV-D* "means part D of title IV of the social security act, [42 USC 651](#) to [\[42 USC\] 669b.](#)" [MCL 552.602\(kk\).](#)

Title IV-D agency

- For purposes of the Support and Parenting Time Enforcement Act, *title IV-D agency* “means the agency in this state performing the functions under title IV-D and includes a **person** performing those functions under contract, including an office of the friend of the court or a prosecuting attorney.” [MCL 552.602\(II\)](#). See also [45 CFR 301.1](#) (2016).

V

Vehicle

- For purposes of the Michigan Vehicle Code (MVC), *vehicle* means “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except, only for the purpose of titling and registration under [the MVC], a mobile home as defined in [[MCL 125.2302](#)].” [MCL 257.79](#).

Videoconferencing

- For purposes of Subchapter 2.400 of the Michigan Court Rules, *videoconferencing* “means the use of an interactive technology, including a remote digital platform, that sends video, voice, and/or data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers. It includes use of a remote video platform through an audio-only option.” [MCR 2.407\(A\)\(2\)](#).

Violent felony

- For purposes of [MCL 764.3](#), *violent felony* “means that term as defined in . . . [MCL 791.236](#).” [MCL 764.3\(5\)\(c\)](#). [MCL 791.236](#) defines *violent felony* as “an offense against a person in violation of . . . [MCL 750.82](#), [[MCL](#)] [750.83](#), [[MCL](#)] [750.84](#), [[MCL](#)] [750.86](#), [[MCL](#)] [750.87](#), [[MCL](#)] [750.88](#), [[MCL](#)] [750.89](#), [[MCL](#)] [750.316](#), [[MCL](#)] [750.317](#), [[MCL](#)] [750.321](#), [[MCL](#)] [750.349](#), [[MCL](#)] [750.349a](#), [[MCL](#)] [750.350](#), [[MCL](#)] [750.397](#), [[MCL](#)] [750.520b](#), [[MCL](#)] [750.520c](#), [[MCL](#)] [750.520d](#), [[MCL](#)] [750.520e](#), [[MCL](#)] [750.520g](#), [[MCL](#)] [750.529](#), [[MCL](#)] [750.529a](#), and [[MCL](#)] [750.530](#).” [MCL 791.236\(20\)](#).

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