

COURT SANCTIONS, CONTEMPTS, AND DEFAULTS



TABLE OF CONTENTS

1	Introduction	5
2	Contempt of court	5
2.1	Civil Contempts	7
2.2	Criminal Contempts	8
3	Sanctions upon counsel	9
4	Sanctions upon Parties	10
5	Discovery sanctions	10
6	Judgments by Default	11
7	Resources for Further Study and Rebuttal	12

LIST OF TABLES

Table 1: Resources for further study and rebuttal	12
---	----

TABLE OF AUTHORITIES

Constitutional Provisions

Fifth Amendment	11
-----------------------	----

Statutes

18 U.S.C. §§19, 3571	7
18 U.S.C. §17	10
18 U.S.C. §2518(8)	5
18 U.S.C. §3148	5
18 U.S.C. §3333(c)	5
18 U.S.C. §3571(b)(6)	7
18 U.S.C. §3691	8
18 U.S.C. §401	5, 9
18 U.S.C. §402	5
18 U.S.C. §922(x)(6)	5
28 U.S.C. §1292(a)(1)	8
Freedom of Access to Clinic Entrances Act	7

Rules

Fed.Rul.Civ.Proc. 45(e)	5
Fed.Rul.Civ.Proc. 56(g)	5
Fed.Rul.Crim.Proc. 17(g)	5
Fed.Rul.Crim.Proc. 42	8
Fed.Rul.Crim.Proc. 6	5
Fed.Rul.Crim.Proc. 6(e)(7)	5
Fed.Rul.Crim.Proc. 7(a)(1)	9
Fed.Rule.Civ.Proc. 11(c)	10
Fed.Rule.Civ.Proc. 37(b)	10

Fed.Rule.Civ.Proc. 4.1(b).....	7
Federal Rule of Civil Procedure 11(c).....	9
Federal Rule of Civil Procedure 37(b).....	10
Federal Rule of Civil Procedure 37(b)(2)(c).....	11
Federal Rule of Criminal Procedure 42.....	5
Federal Rule of Criminal Procedure 42(b).....	6
Federal Rule of Evidence 501.....	11

Cases

American Airlines, Inc. v. Allied Pilots Ass’n, 228 F.3d 574, 581 (5th Cir. 2000).....	6
American Airlines, Inc. v. Allied Pilots Ass’n, 228 F.3d 574, 584 (5th Cir. 2000).....	6
Armstrong v. Executive Office of the President, Office of Admin., 1 F.3d 1274, 1289 (D.C. Cir. 1993).....	6
Bank One of Cleveland, N.A. v Abbe (CA6 Ohio) 916 F2d 1067.....	12
Campbell v. Keystone Aerial Surveys, Inc., 138 F.3d 996, 1005 (5th Cir. 1998).....	9
Campbell v. Keystone Aerial Surveys, Inc., 138 F.3d at 1005, fn. 11.....	8
Coleman v Smith (CA7 Ill) 814 F2d 1142, 7 FR Serv 3d 85.....	12
Crime Control, Inc. v RMH-Oxford Joint Venture (Tex App Houston (14th Dist)) 712 SW2d 550.....	12
Cromer v. Kraft Foods North America, Inc., 390 F.3d 812, 820 (4th Cir. 2004).....	9
Crowe v. Smith, 151 F.3d 217, 228, fn. 13 (5th Cir. 1998).....	7
Diamontiney v. Borg, 918 F.2d 793 (9th Cir. 1990).....	5
Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1264 (9th Cir. 2000).....	11
Doe, 1-13 ex re. Doe Sr. 1-13 v. Bush, 261 F.3d 1037, 1047 (11th Cir. 2001).....	6
Doe, 1-13 ex rel. Doe Sr. 1-13 v. Bush, 261 F.3d at 1047.....	7
Donovan v. Mazzola, 761 F.2d 1411, 1417 (9th Cir. 1985).....	8
Employers Ins. of Wausau v Halton (Tex App Dallas) 792 SW2d 462.....	12
F.J. Hanshaw Enterprises, Inc. v. Emerald River Develop., Inc., 244 F.3d 1128, 1138-1139 & fn. 9 (9th Cir. 2001).....	7
F.J. Hanshaw Enterprises, Inc. v. Emerald River Develop., Inc., 244 F.3d 1128, 1138-1139 (9th Cir. 2001).....	9
F.J. Hanshaw Enterprises, Inc. v. Emerald River Develop., Inc., 244 F.3d 1128, 1141 (9th Cir. 2001).....	6
Fahle v. Cornyn, 231 F.3d 193, 196 (5th Cir. 2000).....	6
Florida Ass’n for Retarded Citizens, Inc. v. Bush, 246 F.3d 1296, 1298 (11th Cir. 1002).....	5
FTC v. Affordable Media, 179 F.3d 1228, 1239 (9th Cir. 1999).....	6
FTC v. Kuykendall, 371 F.3d 745, 754 (10th Cir. 2004).....	7
FTC v. Kuykendall, 371 F.3d 745, 763 (10th Cir. 2004).....	8
General Signal Corp. v. Donallco, Inc., 787 F.2d. 1376, 1380 (9th Cir. 1986).....	8
Harris v. City of Philadelphia, 47 F.3d 1311, 1320 (3rd. Cir. 1995).....	5
Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624, 632, 108 S.Ct. 1423, 1429-1430 (1988).....	9
International Union, UMWA v. Bagwell, 512 U.S. 821, 833-834, 114 S.Ct. 2552, 2560 (1994).....	6
International Union, UMWA v. Bagwell, 512 U.S. at 833, 114 S.Ct. at 2560.....	5
International Union, UMWA v. Bagwell, 512 U.S. at 833-834, 114 S.Ct. at 2560.....	5
International Union, UMWA v. Bagwell, 512 U.S. at 837, 114 S.Ct. at 2562, fn 5.....	7
International Union, UMWA v. Bagwell, 512 U.S. at 837, 114 S.Ct. at 2562, fn. 5.....	7
Lee v. Department of Justice, 4132 F.3d 53, 63-64 (D.C. Cir. 2005).....	7
Lewis v. United States, 518 U.S. 322, 325-326, 116 S.Ct. 2163, 2166-2167 (1996).....	7
Lewis v. United States, 518 U.S. 326, 116 S.Ct. at 2166-2167.....	7
Lewis v. United States, 518 U.S. at 326, 116 S.Ct. at 2166-2167.....	7
Luis C. Forteza e Hijos, Inc. v Mills (CA1 Puerto Rico) 534 F2d 415, 21 FR Serv 2d 1175.....	12
M. W. Elec. Mfg. Co. v. Gatto Elec. Supply Co., 38 F.R.D. 393, 396 (M.D. Pa.1965).....	11
McDowell v. Philadelphia Housing Auth. (PHA), 423 F.3d 233, 240-241 (3rd Cir. 2005).....	8
Nixon, 418 U.S. at 709.....	11
NLRB v. A-Plus Roofing, Inc., 39 F.3d 1410, 1418 (9th Cir. 1994).....	6
O’Connor v. Midwest Pipe Fabrications, Inc., 972 F.2d 1204, 1211 (10th Cir. 1992).....	8
O’Connor v. Midwest Pipe Fabrications, Inc., 972 F.2d at 1211.....	8
Omaha Indem. Co. v. Wining, 949 F.2d 235, 238 (8th Cir. 1991).....	8
Pulawski v Pulawski (RI) 463 A2d 151.....	12
Reinsurance Co. of America, Inc. v Administratia Asigurarilor de Stat (CA7 Ill) 902 F2d 1275, 16 FR Serv 3d 1269.....	12
Rogers v. Webster, 776 F.2d at 611.....	6

S.E.C. v. Benson, 657 F.Supp. 1122,1129 (S.D. N.Y. 1987)	11
S.E.C. v. Colello, 139 F.3d 674, 677 (9th Cir.1998)	11
Santibanez v. Wier McMahon & Co., 105 F.3d 234, 243 (5th Cir. 1997)	5
Sartain v White (Miss) 588 So 2d 204	12
Seiko Epson Corp. v. NuKote Int'l, Inc., 190 F3d 1360, 1369 (Fed.Cir. 1999).....	7
Spallone v. United States, 493 U.S. 265, 280, 110 S.Ct. 625, 632 (1990)	8
Sporer v Herlik, 158 Neb 644, 64 NW2d 342	12
Taylor v. Hayes, 418 U.S. 488, 495, 94 S.Ct. 2697, 2702 (1974).....	7
Thomson v Wooster, 114 U.S. 104, 29 L Ed 105, 5 S Ct 788.....	12
Tranzact Technologies, Inc. v. 1Source Worldsite, 406 F.3d 851, 855 (7th Cir. 2005)	6
U.S. v. Nixon, 418 U.S. 683, 710 (1974)	11
United States v. Zolin, 491 U.S. 554, 562 (1989)	11
United States v. 1948 South Martin Luther King Dr., 270 F.3d 1102, 1116, fn. 13 (7th Cir. 2001).....	6
United States v. Armstrong, 781 F.2d 700, 704 (9th Cir. 1986).....	6
United States v. Ayres, 166 F.3d 991, 995 (9th Cir. 1999)	6
United States v. Dowell, 257 F.3d 694, 699 (7th Cir. 2001)	6
United States v. Hawkins, 501 F.2d 1029, 1031 (9th Cir. 1974).....	8
United States v. Linney, 134 F.3d 274, 279 (4th Cir. 1998).....	5, 6
United States v. Linney, 134 F.3d 274, 280 (4th Cir. 1998).....	7
United States v. Powers, 629 F.2d 619, 625 (9th Cir. 1980).....	6
United States v. Pozsgai, 999 F.2d 719, 736, fn 13 (3rd Cir. 1993).....	5
United States v. Prevatte, 16 F.3d 767, 774 (7th Cir. 1994).....	9
United States v. Soderna, 82 F.3d 1370, 1383 (7th Cir. 1996).....	7
United States v. Soderna, 82 F.3d at 1378-1379	7
United States v. Twentieth Century Fox Film Corp., 882 F.2d 656, 663 (2nd Cir. 1989)	7
United States v. United Mine Workers of America, 330 U.S. 258, 303-304, 67 S.Ct. 677, 701 (1947)	8
United States. v Hawkins, 76 F.3d 545, 550 (4th Cir. 1996).....	9
Wehling v. Columbia Broadcasting System, 608 F.2d 1084, 1089 (5th Cir. 1979)	11
Wilkin Insulation Co. v Holtz (1st Dist) 186 Ill App 3d 151, 134 Ill Dec 157, 542 NE2d 157	12
Wilson-Simmons v. Lake County Sherriff's Dept., 207 F.3d 818, 822 (6th Cir. 2000).....	6
Wood v Detroit Auto. Inter-Insurance Exchange, 99 Mich App 701, 299 NW2d 370, affd in part and revd in part on other grounds 413 Mich 573, 321 NW2d 653	12
Yates v. United States, 316 F.2d 718, 723 (10th Cir. 1963).....	6

Other Authorities

4 Moore, Federal Practice, para. 26.16[5] at page 1202 (26 ed.)	11
---	----

1 Introduction

Those who are fighting corruption in government face an uphill battle. In many cases courts will attempt to sanction them or hold them in contempt for conduct that in most cases is perfectly proper and lawful. Most freedom researchers are not equipped to recognize why they such sanctions and contempts are illegally imposed. This memorandum of law will therefore describe in detail the legal authority for imposing sanctions and the most frequent modes in which they are imposed illegally with the hope of giving freedom fighters standing and grounds to eliminate the sanctions.

2 Contempt of court

The power of federal courts to enforce contempt orders is found in [18 U.S.C. §401](#). Contempt findings upon parties are limited to the following circumstances:

1. Contempt of court under [18 U.S.C. §402](#).
 1. Criminal contempt under [Federal Rule of Criminal Procedure 42](#)
 2. Violation of a release condition under [18 U.S.C. §3148](#).
 3. Failure of parents of a juvenile to appear at a hearing under [18 U.S.C. §922\(x\)\(6\)](#).
 4. Publication by anyone of a sealed grand jury report of malfeasance of a public official under [18 U.S.C. §3333\(c\)](#).
 5. Violation of an order relating to secrecy or custody of wire tap evidence under [18 U.S.C. §2518\(8\)](#).
 6. Failure to obey a subpoena.
 - 6.1. [Fed.Rul.Civ.Proc. 45\(e\)](#).
 - 6.2. [Fed.Rul.Crim.Proc. 17\(g\)](#).
 7. Submitting an affidavit in bad faith or with the purpose to delay. [Fed.Rul.Civ.Proc. 56\(g\)](#)
 8. Violations of [Fed.Rul.Crim.Proc. 6](#) relating to Grand Juries. See [Fed.Rul.Crim.Proc. 6\(e\)\(7\)](#).

[18 U.S.C. §402](#) describes the punishment for indirect contempt, which is jail time or a maximum \$1,000 fine (for a natural person) or both. An indirect contempt is one that is committed not physically within the court or during a court proceeding.

A district court's decision whether to hold a party in contempt is reviewed under an abuse of discretion standard [*Diamontiney v. Borg*, 918 F.2d 793 (9th Cir. 1990); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1320 (3rd Cir. 1995)].

Special procedural protections apply where the contempt occurs outside the court's presence. [*International Union, UMWA v. Bagwell*, 512 U.S. 821, 833, 114 S.Ct. 2552, 2560 (1994)—due process requirements prohibit summary adjudication of indirect contempts].

The particular procedural safeguards required, however, differ depending on the nature of the contempt. [See *Cook v. American S.S. Co.*, 134 F.3d 771, 775 (6th Cir. 1998); *Florida Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296 (11th Cir. 2001) (outlining proper procedure for civil contempt)].

By contrast, civil procedural safeguards are sufficient when the indirect contempt involves "discrete, readily ascertainable acts" that do not require extensive, impartial factfinding (e.g., failure to comply with document discovery or make payment on a judgment). [*International Union, UMWA v. Bagwell*, 512 U.S. at 833, 114 S.Ct. at 2560; *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 243 (5th Cir. 1997)].

Contempts Involving Complex Factfinding: But civil procedural protections may be insufficient for contempts requiring "elaborate and reliable factfinding" (e.g. contempts involving out-of-court disobedience to complex injunctions). [*International Union, UMWA v. Bagwell*, 512 U.S. at 833-834, 114 S.Ct. at 2560].

Notice requirements: Where a party is charged with indirect contempt, due process requires notice containing enough information to advise the alleged contemnor "of the nature and particulars of the contempt charged." [See *United States v. Linney*, 134 F.3d 274, 279 (4th Cir. 1998)].

Order to Show Cause (OSC): Notice is generally given in the form of an order to show cause (OSC). [See *Florida Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 1002); *United States v. Pozsgai*, 999 F.2d 719, 736, fn 13 (3rd Cir. 1993)—OSC can serve notice function for Federal Rule of Criminal Procedure 42(b) (indirect criminal contempt)]

1 Personal service: The party sought to be held in contempt must be served personally with the OSC.

2 Allegations in contempt motion: The allegations in a motion for contempt may provide adequate notice to inform potential
3 contemnors of the nature of the charges and to enable them to prepare a defense. [See *American Airlines, Inc. v. Allied Pilots*
4 *Ass'n*, 228 F.3d 574, 584 (5th Cir. 2000)].

5 Compare-criminal contempt (Federal Rule of Criminal Procedure 42(b) requirements): Where a party is charged with indirect
6 criminal contempt, the notice must:

- 7 1. State the time and place of hearing.
- 8 2. Allow reasonable time to prepare a defense.
- 9 3. State “the essential facts constituting the criminal contempt charged and describe it as such.” [Federal Rule of Criminal
10 Procedure 42(b); *United States v. Linney*, 134 F.3d 274, 279 (4th Cir. 1998); *United States v. 1948 South Martin Luther*
11 *King Dr.*, 270 F.3d 1102, 1116, fn. 13 (7th Cir. 2001)].

12 Oral notice insufficient: oral notice to the party in court is insufficient. [*United States v. Powers*, 629 F.2d 619, 625 (9th Cir.
13 1980)].

14 Indictment or information not required: Even though criminal contempt may subject the contemnor to imprisonment
15 exceeding one year, it is not an “infamous crime” within the Fifth Amendment requiring indictment, information or
16 presentment. [*Yates v. United States*, 316 F.2d 718, 723 (10th Cir. 1963)]. Nevertheless, criminal contempt charges may be
17 initiated by indictment. [See *NLRB v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1418 (9th Cir. 1994); *United States v. Armstrong*,
18 781 F.2d 700, 704 (9th Cir. 1986)—grand jury may initiate contempt charges without prior court action].

19 Opportunity to be heard: The opportunity to be heard may be satisfied by the opportunity to respond to the OSC. [*Wilson-*
20 *Simmons v. Lake County Sherriff’s Dept.*, 207 F.3d 818, 822 (6th Cir. 2000)—OSC along with opportunity to respond,
21 provided sufficient procedural safeguards].

- 22 1. Answer or response: Generally, the respondent should file a responsive pleading either admitting or denying the
23 accusations.
- 24 2. Counter declarations: The court may also require that the respondent file counter-declarations controverting, if possible,
25 the moving party’s showing of contempt. [*Rogers v. Webster*, 776 F.2d at 611]

26 Evidentiary hearing: Due process generally requires a formal evidentiary hearing, especially in cases involving criminal
27 contempt or complex civil contempt matters (e.g. disobedience to complicated injunctions). [*International Union, UMW v.*
28 *Bagwell*, 512 U.S. 821, 833-834, 114 S.Ct. 2552, 2560 (1994)] But failure to hold an evidentiary hearing does not always
29 violate a potential contemnor’s right to due process. {See *Fahle v. Cornyn*, 231 F.3d 193, 196 (5th Cir. 2000)—opportunity
30 to explain conduct through affidavits sufficient for attorney charged with petty criminal contempt; *United States v. Ayres*,
31 166 F.3d 991, 995 (9th Cir. 1999)—hearing not required for civil contempt where affidavits revealed no material dispute}.

32 Standard of proof: The standard of proof depends on whether civil or criminal contempt is sought. In a criminal contempt
33 proceeding, proof of the contempt must be established beyond a reasonable doubt. [*F.J. Hanshaw Enterprises, Inc. v. Emerald*
34 *River Develop., Inc.*, 244 F.3d 1128, 1141 (9th Cir. 2001)]. In civil proceedings, the contempt must be established by “clear
35 and convincing evidence” (not merely preponderance of evidence). [*American Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d
36 574, 581 (5th Cir. 2000); *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999); *United States v. Dowell*, 257 F.3d
37 694, 699 (7th Cir. 2001)].

38 Elements of proof for civil contempt: In civil proceedings, there must be clear and convincing proof of the following matters:

- 39 1. The court order was violated.
- 40 2. The order allegedly violated was valid and lawful.
- 41 3. The order was “clear, definite and unambiguous”.
- 42 4. The alleged contemnor was able to comply. [See *Doe, 1-13 ex re. Doe Sr. 1-13 v. Bush*, 261 F.3d 1037, 1047 (11th Cir.
43 2001); *Armstrong v. Executive Office of the President, Office of Admin.*, 1 F.3d 1274, 1289 (D.C. Cir. 1993); *Tranzact*
44 *Technologies, Inc. v. 1Source Worldsite*, 406 F.3d 851, 855 (7th Cir. 2005)].

1 Subjective beliefs/intent irrelevant: In a civil contempt proceeding, the court does not focus on the alleged contemnor’s
2 subjective beliefs or intent. Instead, the court examines whether the conduct in question complied with the court’s order.
3 [Doe, 1-13 ex rel. Doe Sr. 1-13 v. Bush, 261 F.3d at 1047; See Lee v. Department of Justice, 4132 F.3d 53, 63-64 (D.C. Cir.
4 2005)—applying clear and convincing standard (contempt finding vacated)].

5 Jury trial?: Whether there is a right to jury trial in an indirect contempt proceeding turns on whether the potential fine or
6 sentence is “serious.” [International Union, UMWA v. Bagwell, 512 U.S. at 837, 114 S.Ct. at 2562, fn 5; F.J. Hanshaw
7 Enterprises, Inc. v. Emerald River Develop., Inc., 244 F.3d 1128, 1138-1139 & fn. 9 (9th Cir. 2001); but see FTC v.
8 Kuykendall, 371 F.3d 745, 754 (10th Cir. 2004) –compensatory contempt action resulting in \$39 million sanction (subject to
9 offset on remand) was “appropriately held before. . judge”].

10 Contempt is “serious” if the potential penalty (or the penalty actually imposed) exceeds the level authorized for a “petty
11 offense.” [See Lewis v. United States, 518 U.S. 322, 325-326, 116 S.Ct. 2163, 2166-2167 (1996); United States v. Linney,
12 134 F.3d 274, 280 (4th Cir. 1998)—court may decide before trial that “serious” penalties will not be imposed so as to preclude
13 jury trial].

14 Imprisonment exceeding six months: an offense carrying a maximum prison term of six months or less is presumed “petty”
15 unless additional statutory penalties (e.g., fines or probation) serve as an indication that the offense should be considered
16 “serious.” [Lewis v. United States, 518 U.S. 326, 116 S.Ct. at 2166-2167]. Hence contempt is “serious” where the potential
17 prison sentence (or, if not defined, the sentence actually imposed) exceeds six months. [Lewis v. United States, 518 U.S. at
18 326, 116 S.Ct. at 2166-2167; Taylor v. Hayes, 418 U.S. 488, 495, 94 S.Ct. 2697, 2702 (1974)].

19 Amount of “serious” fine?: By statute, an offense carrying a maximum fine no greater than \$5,000 for an individual or
20 \$10,000 for an organization is considered “petty.” [See 18 U.S.C. §§19, 3571; and United States v. Soderma, 82 F.3d 1370,
21 1383 (7th Cir. 1996)].

22 However, courts consider the potential for incarceration as the “most powerful indicator” as to whether an offense is “serious”
23 or “petty” and, as a result, generally minimize the significance of a fine. [See United States v. Soderma, 82 F.3d at 1378-
24 1379—offense punishable by 6 month prison term plus fine exceeding “petty offense” limit not “serious” (construing
25 penalties under Freedom of Access to Clinic Entrances Act)].

26 As a result, the line between “petty” and “serious” fines is uncertain:

- 27 1. A \$10,000 fine imposed on a union has been held insufficient to trigger a jury trial.
- 28 2. However, a \$52 million fine imposed upon a union is “unquestionably” a serious penalty. [International Union, UMWA
29 v. Bagwell, 512 U.S. at 837, 114 S.Ct. at 2562, fn. 5]
- 30 3. So too is a \$100,000 criminal contempt fine against a corporation. [United States v. Twentieth Century Fox Film Corp.,
31 882 F.2d 656, 663 (2nd Cir. 1989)]
- 32 4. A \$5,0900 fine assessed against an individual is within the limit set for “petty offenses” (18 U.S.C. §3571(b)(6)) and
33 therefore not “serious.” [United States v. Time, 21 F.3d 635, 642 (5th Cir. 1994)].
- 34 5. But a \$75,000 fine imposed on an individual is “serious.” [Crowe v. Smith, 151 F.3d 217, 228, fn. 13 (5th Cir. 1998)].

35 **2.1 Civil Contempts**

36 Fed.Rule.Civ.Proc. 4.1(b) authorizes commencement of civil contempts “in any district”. The implication is that those who
37 do not reside within any district may not be the subject of such a contempt.

38 II. COMMENCEMENT OF ACTION > Rule 4.1.

39 *(b) Enforcement of Orders: Commitment for Civil Contempt.*

40 *An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the*
41 *laws of the United States **may be served and enforced in any district.** Other orders in civil contempt proceedings*
42 *shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the*
43 *United States if not more than 100 miles from the place at which the order to be enforced was issued.*

44 Civil contempt orders are final and appealable when the opportunity to purge the contempt has passed and sanctions have
45 actually been imposed. [Seiko Epson Corp. v. NuKote Int’l, Inc., 190 F3d 1360, 1369 (Fed.Cir. 1999); Donovan v. Mazzola,

1 761 F.2d 1411, 1417 (9th Cir. 1985)—contempt order imposing daily fines if indemnity bond not paid by certain date
2 appealable once deadline passed and sanctions actually imposed].

3 A civil contempt order against a party may be appealable under 28 U.S.C. §1292(a)(1) if it amounts to an “independent
4 preliminary injunction”—i.e., if it “alters the legal relationship between the various parties.” [Omaha Indem. Co. v. Wining,
5 949 F.2d 235, 238 (8th Cir. 1991)].

6 **Sanctions:** In contrast, a court may punish civil contempt by both a fine and imprisonment. [Campbell v. Keystone Aerial
7 Surveys, Inc., 138 F.3d at 1005, fn. 11]

- 8 1. **Factors considered in imposing sanctions:** The factors to be considered by the court in imposing a civil contempt sanction
9 include:
 - 10 1.1. Harm from noncompliance.
 - 11 1.2. Probable effectiveness of sanction.
 - 12 1.3. Contemnor’s financial resources and the burden the sanctions may impose.
 - 13 1.4. Contemnor’s willfulness in disregarding the court’s order. [See United States v. United Mine Workers of America,
14 330 U.S. 258, 303-304, 67 S.Ct. 677, 701 (1947)]
- 15 2. **Findings required:** The record of the contempt hearing must reflect the trial court’s consideration of these factors in
16 imposing a civil contempt sanction. [General Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1380 (9th Cir. 1986); see
17 FTC v. Kuykendall, 371 F.3d 745, 763 (10th Cir. 2004)]
- 18 3. **Limitation re choice of sanctions:** Since the purpose of sanctioning civil contempt is to coerce compliance with the
19 court’s order rather than punish disobedience, “in selecting contempt sanctions, a court is obliged to use the ‘least possible
20 power adequate to the end proposed.’” [Spallone v. United States, 493 U.S. 265, 280, 110 S.Ct. 625, 632 (1990)—abuse
21 of discretion to fine individual members of city council who refused to implement remedial legislation ordered by court].
- 22 4. **Order must justify sanction imposed:** An order imposing sanctions for civil contempt must contain clear justification for
23 both the purpose and amount of sanction imposed. [See O’Connor v. Midwest Pipe Fabrications, Inc., 972 F.2d 1204,
24 1211 (10th Cir. 1992)]. If the sanction is imposed to coerce compliance with the court’s order, it must provide for
25 “purging” (terminating the sanction) upon compliance. (Otherwise, the sanction would be criminal in nature.). If a fine
26 is imposed for compensatory purposes, the amount must be based on the complainant’s actual losses suffered as a result
27 of the contempt. [O’Connor v. Midwest Pipe Fabrications, Inc., 972 F.2d at 1211; McDowell v. Philadelphia Housing
28 Auth. (PHA), 423 F.3d 233, 240-241 (3rd Cir. 2005)—sanction for past conduct cannot exceed actual damages caused
29 by violation of court order].
- 30 5. **Separate acts punishable separately:** Separate successive contempts are punishable as separate offenses. Thus a
31 defendant’s criminal contempt for a first refusal to comply with a court order is wholly separable from a civil contempt
32 citation for a second refusal. Such a scenario does not place the contemnor in double jeopardy. [United States v.
33 Hawkins, 501 F.2d 1029, 1031 (9th Cir. 1974)].

34 **2.2 Criminal Contempts**

35 Criminal contempts are commenced pursuant to [Fed.Rul.Crim.Proc. 42](#). Paragraph (a)(3) of that rule provides that the
36 accused enjoys a right of trial by jury as follows:

37 *VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS > Rule 42.*
38 *Rule 42. Criminal Contempt*

39 *(a) Disposition After Notice.*

40 *Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.*

41 *(3) Trial and Disposition.*

42 *A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so*
43 *provides and must be released or detained as [Rule 46](#) provides. **If the criminal contempt involves disrespect***
44 ***toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless***
45 ***the defendant consents.** Upon a finding or verdict of guilty, the court must impose the punishment.*

46 [18 U.S.C. §3691](#) provides that all indirect criminal contempts enjoy a right of trial by jury. An indirect criminal contempt is
47 one done not in the physical presence of the court.