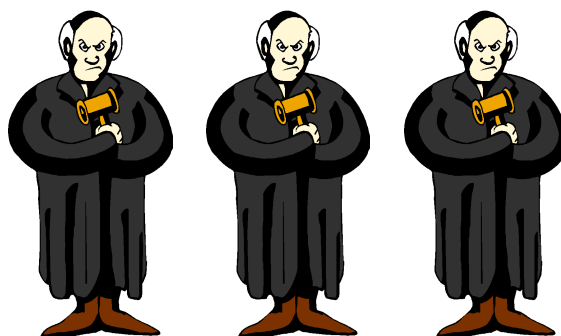


**New Jersey Continuing Legal Education
Services**

Presents:

A Continuing Legal Education Seminar



“It Could Happen to You!”

**A Comprehensive Review of New Jersey’s Laws
on**

CONTEMPT OF COURT

Lesson Plan Index

1. Introduction

2. Statutory Authority – N.J.S.A. 2A:10-1

3. Rules of Court

a. Direct Contempt (Contempt *facie curiae*) (See Directive #8-99)

1. As applied to Attorneys: In General

2. Attorney Failure to Appear

3. As applied to Abuse of Court Staff Directive 8-99

b. Indirect Contempt - Rule 1:10-2

1. Procedural Characteristics of Indirect Contempt

c. Alternatives to Contempt – Civil Sanctions under Rule 1:2-4

4. Appeal

5. Sanctions for Failure to Appear

6. Failure to Pay Monetary Sanctions

a. In General – State v. De Bonis, 58 N.J. 182, 199-200 (1971)

b. Criminal Monetary Sanctions – N.J.S.A. 2C:46-2(a)

c. Motor Vehicle Monetary Sanctions – N.J.S.A. 39:5-36

d. Ordinance Violations – N.J.S.A. 40:49-5

e. Other Alternatives

7. Probation Violations

8. Attorney and Judicial Discipline

9. Civil Rights and Judicial Immunity

1. Introduction

The law of contempt is derived from statutes, rules of court, and judicial decisions. In general, contempt includes disobedience of a court order or misbehavior in the presence of the court by any person or misbehavior by an officer of the court in his official transactions. The essence of the offense is defiance of public authority.

A defendant is entitled to certain safeguards accorded criminal defendants. Those safeguards include the presumption of innocence, the privilege against self-incrimination, the right of cross-examination, proof of guilt beyond a reasonable doubt, and the admissibility of evidence in accordance with the rules of evidence. However, there is no constitutional right to indictment or trial by jury in every summary criminal contempt proceeding.

The power of our courts to punish for contempt is long established. [Citation omitted] We have described it as an extraordinary power, to be exercised sparingly against those whose conduct “has the capacity to undermine the court’s authority and to interfere with or obstruct the orderly administration of justice.[Citation omitted] As Justice Handler succinctly stated, “there are occasions when this inherent authority must be exercised both swiftly and summarily in order to ensure obedience to court orders and respect for court procedures.”

[Amoresano v. Laufgas, 171 N.J. 532, 549-500 \(2002\).](#)

2. Statutory Authority

N.J.S.A. 2A:10-1 What constitutes contempt in general

The power of any court of this state to punish for contempt shall not be construed to extend to any case except the:

- a. Misbehavior of any person in the actual presence of the court;
- b. Misbehavior of any officer of the court in his official transactions; and
- c. Disobedience or resistance by any court officer, or by any party, juror, witness or any person whatsoever to any lawful writ, process, judgment, order, or command of the court.

Nothing contained in this section shall be deemed to affect the inherent jurisdiction of the superior court to punish for contempt.

[Note – Sanction limitations for jail and fines are the same as for a Disorderly Persons Offense – [In re Buehrer, 50 N.J. 501, 236 A.2d 592 \(1967\)](#). Probation is also permitted - [Essex County Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195, 336 A.2d 16 \(App. Div. 1975\)](#).]

N.J.S.A. 2A:10-7. Contempt in municipal courts

2A:10-7. The municipal courts in this State shall have full power to punish for contempt in any case provided by N.J.S.2A:10-1.

N.J.S.A. 2A:10-8. Issuance of warrant

Any court may issue a warrant for the arrest of any person subject to punishment for a contempt pursuant to the provisions of chapter 10 of Title 2A of the New Jersey Statutes, directed to any officer or person authorized by law to serve process, who shall be empowered to serve such warrant in any county of this State and to produce the person subject to punishment for contempt as herein provided before the judge of such court issuing said warrant.

N.J.S.A. 2C:29-9 Contempt.

a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

b. Except as provided below, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of this act or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this subsection.

As used in this subsection, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by a federal law or formally acknowledged by a state.

3. Rules of Court

a. Direct Contempt (Contempt *facie curiae*) (See Directive #8-99)

Rule 1:10-1 Summary Contempt in Presence of Court

A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:

- (a) the conduct has obstructed, or if continued would obstruct, the proceeding;**
- (b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;**
- (c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;**
- (d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and**
- (e) the judge has afforded the alleged contemnor an immediate opportunity to respond.**

The order of contempt shall recite the facts and contain a certification by the judge that he or she saw or heard the conduct constituting the contempt and that the contemnor was willfully contumacious. Punishment may be determined forthwith or deferred. Execution of sentence shall be stayed for five days following imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that the judge may require bail if reasonably necessary to assure the contemnor's appearance.

*** Some Practical Advice for Judges on how to handle these issues**

*** Purposeful conduct must be proved beyond a reasonable doubt**

*** Opportunity to Purge Contempt - Stay for Appeal**

*** Completion of order and certification**

4. * No right to counsel (In re Oliver, 333 U.S. 257 (1948))

1. As applied to Attorneys: **In General**

In re Daniels, 118 N.J. 51, 61-62 (1990)

This extraordinary power, then, should be exercised sparingly and only in the rarest of circumstances. When an attorney's conduct in the actual presence of the court has the capacity to undermine the court's authority and to interfere with or obstruct the orderly administration of justice, there can be no alternative but that a trial court assume responsibility to maintain order in the courtroom. This narrow exception to due-process requirements permits the imposition of sanctions only for “charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent ‘demoralization of the court's authority’ before the public

With few exceptions, every contempt calls for an explanation. Thus, even in summary contempt proceedings against an attorney, the attorney should be informed of the charge and given an opportunity either to dispel any possible misunderstanding or to present any exculpatory facts that are not known to the court. The provision for *de novo* appellate review of summary contempt convictions is a fail-safe mechanism for assuring that the contempt power is not abused.

This case resulted in 1994 amendment to rule 1:10-1.

Judge baiting and open hostility – In re DeMarco, 224 N.J. Super. 105 (App. Div. 1988)

2. Attorney Failure to Appear

In re Lynch, 369 N.J. Super. 93, 101 (App. Div. 2004)

We think it plain that because the nonappearance or tardiness cannot be adjudicated as a contempt in facie curiae without the court having first accorded the alleged contemnor an opportunity to explain the absence or lateness, the contumaciousness of the nonappearance is not adjudicable “on the spot” and in the alleged contemnor's absence. And if the conduct itself is not adjudicable “on the spot,” it would appear to us there is no basis at all justifying the exercise of the extraordinary facie curiae contempt power. That is to say, the rule only permits the facie curiae adjudication when, among other requirements, “immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner....” R. 1:10-1(d). If, by definition, the nonappearance is not immediately adjudicable as a contempt and is not so adjudicable until the alleged contemnor has a reasonable opportunity to explain the absence, there is no reason, in terms of maintaining the authority of the court and its ability to proceed, to deprive the alleged contemnor of the procedural due process attendant upon a contempt proceeding pursuant to R. 1:10-2.

We fully understand the tension resulting from the frustration of trial judges who must move their calendars and, on the other hand, the demanding schedules of overworked public defenders and prosecutors who, under present circumstances, often cannot avoid conflicting obligations. They are all under strain and pressure. We do not believe, however, that that tension can be productively resolved by peremptory ultimatata from the court and sanctions imposed on lawyers who are trying to do their jobs in difficult situations. It behooves all participants in the court system, and particularly the judges and lawyers, to understand that they are not adversaries and to cooperate in attempting to reach their mutual objective of advancing the work of the criminal justice system.

[Amendments in 1994 to Rule 1:10-1 overrule both In re Yengo, 84 N.J. 111 (1980) and In re Quintana, 270 N.J. Super. 676 (App. Div. 1994). Both cases had that non-appearance, as a facie curiae contempt, has two distinct elements, “the absence itself and the subsequent refusal to explain it or the patent inadequacy or impropriety of the explanation.]

3. As applied to Abuse of Court Staff

Directive 8-99

The significant changes to *Rule* 1:10-1 were the result of a report by a special Summary Contempt Subcommittee of the Civil Practice Committee. That Committee's recommendations to the Supreme Court and the Court's adoption of those recommendations make it abundantly clear that it is inappropriate for judges to use the summary contempt power when confronted by offensive comments written in letters, on checks, or on envelopes. If threatening language is used in a written communication, the court should follow the established policy contained in the 1988 A Guidelines on Threats to Members of the Judiciary,@ (copy attached) rather than resorting to the use of *Rule* 1:10-1. (For a discussion of the Supreme Court's concerns that pre-dated the Committee's Report, see *Matter of Daniels*, 118 N.J. 51, 60 (1990).) Courts and court staff are obliged to process written communications, including negotiable instruments, from litigants who gratuitously include profane and scurrilous comments. This does not mean that such submissions need always go unremarked. In an egregious case, a carefully measured written response may be made. The content of such a response cannot, however, implicate the powers provided under *Rule* 1:10-1. Please discuss this Directive with your staff to ensure that they respond appropriately to situations covered by it.

[Overrules [State v. Sax](#), 139 N.J. Super. 157, 353 A.2d 113 (App. Div. 1976) (rude letter to court administrator); and [State v. Gussman](#), 34 N.J. Super. 408, 112 A.2d 565 (App. Div. 1955). See also *Amoresano v. Laufgas*, 171 N.J. 532 (2002)]

Telephone Communications

[State v. Duncan](#), 376 N.J. Super. 253 (App. Div. 2005).

Judicial Discipline

See generally *In re Pizzi*, 130 N.J. 537 (1993) (reprimand) (note accompanying an \$11 parking ticket payment to VB saying, "You people are crazy. I hope you choke on it!")

7.

b. Indirect Contempt - Rule 1:10-2

1:10-2. Summary Contempt Proceedings on Order to Show Cause or Order for Arrest

(a) Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

(b) Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be released on his or her own recognizance pending the hearing unless the judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

(c) Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county or, where the court for good cause designates an attorney, then by the attorney so designated. The matter shall not be heard by the judge who instituted the prosecution if the appearance of objectivity requires trial by another judge. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of sentence shall apply.

1. Procedural Characteristics of Indirect Contempt

- **By definition, all acts of contempt that do not take place in the face of the court are acts of indirect contempt.**
- **Such cases of contempt may be lawfully punished pursuant to [N.J.S.A. 2A:10-1\(b\)](#) (misbehavior by an officer of the court) or [N.J.S.A. 2A:10-1\(c\)](#) (disobedience to a lawful judicial order).**
- **By contrast with the summary contempt proceedings authorized under [Rule 1:10-1](#), a contempt under [Rule 1:10-2](#) is essentially criminal in nature and is instituted for the purpose of punishing a person who willfully fails to comply with a lawful court order.**
- **It can only be instituted by the court and the hearing may be conducted solely by the judge. The Rules of Court also authorize prosecution of an indirect contempt by a public prosecutor.**
- **Although the procedure for adjudicating an indirect contempt is denominated as summary under the Rules of Court, there is no requirement for the court to conduct an immediate hearing. “The reasons are, first, that there is no need to deal so abruptly with an offense which does not constitute an obstruction within the courtroom itself, and second, that since the court does not know by its own senses all of the facts constituting the offense, there must be a trial to adduce them.” [In re Carton, 48 N.J. 9, 22, 222 A.2d 92 \(1966\)](#).**
- **Punishment for criminal contempt may include a fine of as much as \$1000, a jail term capped at six months, a period of probation or other lesser sanctions. [In re Buehrer, 50 N.J. 501, 236 A.2d 592 \(1967\)](#).**

Procedural Characteristics of Indirect Contempt

- Because of this potential exposure, a person who is subject to an indirect contempt proceeding is entitled to counsel and the other safeguards associated with a criminal prosecution. These “include the presumption of innocence, the privilege against self-incrimination, the right of cross-examination, proof of guilt beyond a reasonable doubt, and the admissibility of evidence in accordance with the rules of evidence. However, there is no constitutional right to indictment or trial by jury in every summary criminal contempt proceeding.” [Amoresano v. Laufgas, 171 N.J. 532, 549, 796 A.2d 164 \(2002\)](#).
- Although there is an infinite number of ways in which an attorney, a party, a witness or other involved person in a municipal court case may manifest disobedience to the lawful order of a court, in order to be guilty of a criminal contempt, the disobedience must be willful and demonstrate an indifference to the court's lawful command. Mere carelessness or reckless disobedience is not sufficient to constitute this offense. [Department of Health v. Roselle, 34 N.J. 331, 337, 169 A.2d 153 \(1961\)](#).
- * Typically, hearing should occur before a different judge at a hearing held after the conclusion of the current matter.

c. Alternatives to Contempt – Civil Sanctions under Rule 1:2-4

1:2-4(a). Sanctions: Failure to Appear; Motions and Briefs

Failure to Appear. If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to “Treasurer, State of New Jersey,” or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

11.

4. Appeal

N.J.S.A. 2A:10-3. Review of convictions for contempt in certain inferior courts

Every summary conviction and judgment, by the Superior Court in the law division or chancery division or by any inferior court except the municipal court, for a contempt, shall be reviewable by the appellate division of the Superior Court and all convictions and judgments for contempt by the municipal courts shall be reviewable by the Superior Court. Such review shall be both upon the law and the facts and the court shall give such judgment as it shall deem to be lawful and just under all the circumstances of the case and shall enforce the same as it shall order.

5. Sanctions Defendant's for Failure to Appear

Should not be handled as a direct contempt – State v. Quintana, 270 N.J. Super. 676 (App. Div. 1994).

Could be handled as an indirect contempt under Rule 1:10-2

Could be prosecuted as a violation under N.J.S.A. 2A:10-1(c) as disobedience or resistance by any court officer, or by any party, juror, witness or any person whatsoever to any lawful writ, process, judgment, order, or command of the court.

Issue Bench Warrant at end of session – In re Bozarth, 127 N.J. 271 (1992).

May be handled as a civil sanction under rule 1:2-4

1:2-4(a). Sanctions: Failure to Appear; Motions and Briefs

Failure to Appear. If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to "Treasurer, State of New Jersey," or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

5. Sanctions for Failure to Appear

2B:12-31. Suspension of driving privileges

a. (1) If a defendant charged with a disorderly persons offense, a petty disorderly persons offense, a violation of a municipal ordinance, or a violation of any other law of this State for which a penalty may be imposed fails to appear at any scheduled court proceeding after written notice has been given to said defendant pursuant to the Rules of Court, a municipal court may order the suspension of the person's driving privileges or nonresident reciprocity privilege or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of, except by dismissal for failure of defendant to appear.

d. Any action taken by a municipal court pursuant to this section shall be in addition to any other remedies which are available to the court and in addition to any other penalties which may be imposed by the court.

(2) There shall be included in the fines and penalties imposed by a court on a defendant whose license has been suspended pursuant to subsection a. of this section, the following:

(a) A fee of \$3.00 which shall be transferred to the Division of Motor Vehicles;

(b) A penalty of \$10.00 for the issuance of the failure to appear notice; and

(c) A penalty of \$15.00 for the order of suspension of defendant's driving privileges.

6. Failure to Pay Monetary Sanctions

a. In General – State v. De Bonis, 58 N.J. 182, 199-200 (1971)

Hence we find the following course to be appropriate. If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability, be afforded an opportunity to pay the fine in reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict. The installment payments may be collected as an incident of probation, but if probation is not otherwise warranted, the payments shall be made directly to the clerk of the court. If a defendant fails to meet the installments, he shall be recalled for reconsideration of his sentence. The court may reduce the fine, or suspend it, or modify the installment plan, or, if none of those alternatives is warranted, the court may impose a jail term to achieve the needed penological objective. If a jail sentence is thus substituted for the fine, the sentencing judge shall not be obliged to equate a day in jail with a statutorily stated dollar amount. On the contrary, such statutes must be deemed to prescribe only a minimum equivalency. The sentencing judge must impose a lesser jail term if it is adequate in the light of the total circumstances of the individual case

b. Criminal Monetary Sanctions – N.J.S.A. 2C:46-2(a)

- a. **When a defendant sentenced to pay an assessment imposed pursuant to section 2 of P.L.1979, c. 396 ([C.2C:43-3.1](#)), a penalty imposed pursuant to section 11 of [P.L.2001, c. 81 \(C.2C:43-3.6\)](#), a penalty imposed pursuant to section 1 of [P.L.2005, c. 73 \(C.2C:14-10\)](#), monthly probation fee, fine, a penalty imposed pursuant to section 1 of [P.L.1999, c. 295 \(C.2C:43-3.5\)](#), other court imposed financial penalties or to make restitution defaults in the payment thereof or of any installment, upon the motion of the person authorized by law to collect the payment, the motion of the prosecutor, the motion of the victim entitled to payment of restitution, the motion of the Victims of Crime Compensation Board, the motion of the State or county Office of Victim and Witness Advocacy or upon its own motion, the court shall recall him, or issue a summons or a warrant of arrest for his appearance. The court shall afford the person notice and an opportunity to be heard on the issue of default. Failure to make any payment when due shall be considered a default. The standard of proof shall be by a preponderance of the evidence, and the burden of establishing good cause for a default shall be on the person who has defaulted.**

b. Criminal Monetary Sanctions – N.J.S.A. 2C:46-2(a)

(1) If the court finds that the person has defaulted without good cause, the court shall:

(a) Order the suspension of the driver's license or the nonresident reciprocity driving privilege of the person; and

(b) Prohibit the person from obtaining a driver's license or exercising reciprocity driving privileges until the person has made all past due payments; and

(c) Notify the Chief Administrator of the New Jersey Motor Vehicle Commission of the action taken; and

(d) Take such other actions as may be authorized by law.

(2) If the court finds that the person defaulted on payment of a court imposed financial obligation without good cause and finds that the default was willful, the court may, in addition to the action required by paragraph (1) of this subsection a., impose a term of imprisonment or participation in a labor assistance program or enforced community service to achieve the objective of the court imposed financial obligation. These options shall not reduce the amount owed by the person in default. The term of imprisonment or enforced community service or participation in a labor assistance program in such case shall be specified in the order of commitment.

It need not be equated with any particular dollar amount but, in the case of a fine it shall not exceed one day for each \$20.00 of the fine nor 40 days if the fine was imposed upon conviction of a disorderly persons offense nor 25 days for a petty disorderly persons offense nor one year in any other case, whichever is the shorter period. In no case shall the total period of imprisonment in the case of a disorderly persons offense for both the sentence of imprisonment and for failure to pay a fine exceed six months.

b. Criminal Monetary Sanctions – N.J.S.A. 2C:46-2(a)

(3) Except where incarceration is ordered pursuant to paragraph (2) of this subsection a., if the court finds that the person has defaulted the court shall take appropriate action to modify or establish a reasonable schedule for payment, and, in the case of a fine, if the court finds that the circumstances that warranted the fine have changed or that it would be unjust to require payment, the court may revoke or suspend the fine or the unpaid portion of the fine.

(4) When failure to pay an assessment imposed pursuant to section 2 of P.L.1979, c. 396 ([C.2C:43-3.1](#)), monthly probation fee, restitution, a penalty imposed pursuant to section 1 of [P.L.1999, c. 295 \(C.2C:43-3.5\)](#), a penalty imposed pursuant to section 11 of [P.L.2001, c. 81 \(C.2C:43-3.6\)](#), a penalty imposed pursuant to section 1 of [P.L.2005, c. 73 \(C.2C:14-10\)](#), or other financial penalties or to perform enforced community service or to participate in a labor assistance program is determined to be willful, the failure to do so shall be considered to be contumacious.

c. Motor Vehicle Monetary Sanctions – **N.J.S.A. 39:5-36**

Unless otherwise expressly provided in this subtitle, any person who shall be convicted of a violation of any of the provisions of this subtitle, and upon whom a fine shall be imposed, shall, in default of payment thereof, be imprisoned in the county jail or workhouse of the county where the offense was committed, but in no case shall such imprisonment exceed 1 day for each \$20.00 of the fine so imposed, nor shall such imprisonment exceed, in any case, a period of 3 months.

Whenever a person is imprisoned by reason of default in the payment of a fine or fines and costs imposed and assessed upon conviction of any violation of this subtitle wherein the committing court, as a part of the sentence, ordered that such person stand committed to the county jail or workhouse until such fine and costs are paid, he shall be given credit against the amount of such fines and costs at the rate of \$20.00 for each day of such confinement. When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such fines and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.

Requirement for Notice & Hearing - [Bearden v. Georgia, 461 U.S. 660 \(1983\)](#).

Need for waiver or appointment of counsel – [Argersinger v. Hamlin, 407 U.S. 25 \(1972\)](#)

d. Ordinance Violations – N.J.S.A. 40:49-5

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

e. Other Alternatives

2B:12-23. Default in payment of fine; community service

a. A person, sentenced by a municipal court to pay a fine, who defaults in payment may be ordered to perform community service in lieu of incarceration or other modification of the sentence with the person's consent.

b. The county or municipal official in charge of the community service program shall report to the municipal court any failure of a person subject to a court work order to report for work or to perform the assigned work. Upon receipt of the report, the court may revoke its community service order and impose any sentence consistent with the original sentence.

7. Probation Violations

A failure to comply with a term or condition of probation does not constitute a violation of a lawful judicial order in the sense of a contempt of court. Indeed, generally, probation violations are not deemed to be contempt. [State v. Williams, 234 N.J. Super. 84, 560 A.2d 100 \(App. Div. 1989\).](#)

The judicial remedy for a probation violation is a re-sentencing proceeding wherein the defendant may receive any sentence he could have originally received prior to the imposition of the original probationary term.

There may be one exception to this general rule of law. A required, standard condition of every probationary term is payment of restitution and certain assessments, such as the one due the Victims of Crime compensation Board (VCCB). A willful failure by a defendant to pay restitution or a VCCB assessment can constitute a violation of a condition of probation and, by statute, may also be punished as contempt. [State v. S.R., 175 N.J. 23, 811 A.2d 439 \(2002\).](#)

8. Attorney and Judicial Discipline

Judges

Canon 3(A)(2) – Maintaining order and decorum

Canon 3(A)(3) – Patient, dignified & courteous – and not permit discourtesy by others or actions that detract from the dignity of the court.

Canon 2(A) – Promote public confidence in integrity & impartiality of the judiciary

Rule 2:15-8(a)(6) – prejudicial to the administration of justice that brings judicial office into disrepute.

In re Bozarth, 127 N.J. 271 (1992) (Reprimand)

**In re Rzemieniewski, 185 N.J. 598 (2005)
(Censure)**

In re Yengo, 84 N.J. 111 (1980) (Removal)

8. Attorney and Judicial Discipline

Attorneys

RPC 3.5(c) A lawyer shall not engage in conduct intended to disrupt a tribunal.

**In re Mezzacca, 67 N.J. 387 (1975)
(Reprimand) – Tribunal Defined**

**In re Stanley, 102 N.J. 244, 249-250 (1986)
(Reprimand):**

- 1. Constant interruption of the court when court was speaking;**
- 2. Displayed flippant, insulting attitude by asking court if the court was finished speaking;**
- 3. Displayed arrogance toward the court by stopping oral presentation, glaring at court with a rude grimace. This was done repeatedly in spite of court admonitions to cease;**
- 4. Displayed a constant failure to respond to court's directions by frequently making discourses rather than asking questions of witnesses;**
- 5. Displayed an insulting and rude manner in addressing the court by either laughing out loud or making such remarks as “Oh, Boy,” under his breath while expressing displeasure with court's ruling;**
- 6. Although instructed by the court not to present an affidavit as evidence of his financial circumstances, but to question the client, Respondent defied the court's instruction;**
- 7. Instructed his client on how to respond while being examined by defense counsel after the court directed Respondent not to do so.**

Candor before the tribunal:

**In re D'Arienzo, 46 NJ PRAC s 38:3
(DRB 1998) Three-month suspension, In
re D'Arienzo, 157 N.J. 32 (1999)**

Outrageous Conduct

**In re Vincenti, 92 N.J. 591 (1983) (one-
year suspension)**

**In re Vincenti, 114 N.J. 275 (1989) (three-
month suspension)**

**In re Vicenti, 152 N.J. 253 (1998)
(Disbarment)**

9. Civil Rights and Judicial Immunity

**Figueroa v. Blackburn, 208 F. 3d 435
(3rd Cir.2000)**