CONTEMPT

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

The Judiciary Act of 1979 permits the court to both fine and imprison a person found to be in contempt of court, but does not permit the fine to exceed $1,000 or the term of imprisonment to go beyond six months. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM R. 49, 52 (App. 1991).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Criminal contempt under the FSM Code results from intentional disregard of a court order; the fact that the defendant was not specifically informed that he would be subject to punishment for disobedience does not negate a finding of requisite intent. Alfons v. FSM, 5 FSM R. 402, 406 (App. 1992).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the sound discretion of the court. Onopwi v. Aizawa, 6 FSM R. 537, 540 (Chk. S. Ct. App. 1994).

The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. In re Contempt of Cheida, 7 FSM R. 183, 185 (App. 1995).

The tardiness of a person who appears before the court as a witness, not as an attorney, who was presented with an unexpected legitimate and confirmed conflict between the demands of two branches of government, and who made efforts to notify the court he would be late, cannot be considered intentional disobedience of the court's summons. In re Contempt of Cheida, 7 FSM R. 183, 186 (App. 1995).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply

through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452-53 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

Any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command is contempt of court, which the court has the power to punish. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

The test for compliance with court orders is that one have knowledge of the order and if such knowledge exists, it is irrelevant that the person has not been served. Nameta v. Cheipot, 9 FSM R. 510, 511 (Chk. S. Ct. Tr. 2000).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

In order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 229 (Pon. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

When a defendant who was found in contempt of court for failure to comply with an order in aid of judgment later dies, the court will vacate its order sentencing him to jail. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 2003).

A motion to vacate a contempt order will be denied when nothing stated changes the previous finding. Davis v. Kutta, 11 FSM R. 545, 548 (Pon. 2003).

A possible, but drastic, means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice it is only the party disobeying the order, not the party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

When FSM cases have not addressed a precise point (about contempt), in such an instance, the court may consider authorities from other jurisdictions in considering the question before it. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

The FSM contempt statute expressly provides that one who is in violation of a court order may be put in jail until such time as he or she conforms his or her conduct the court's lawful order. Before imposing a sentence for contempt, the court must determine that the person who is potentially liable for contempt knew of the order, and had the ability to obey it. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

When FSM cases have not addressed the precise point of a non-party's contempt, the court may consider authority from other common law jurisdictions. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

It is plain that a non-party may be in contempt of a court order. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

No motion for a show cause hearing regarding contempt shall fail in the FSM for failure formally and explicitly to assert either existence of the order or failure to comply with that order. However, inclusion of these two elements is helpful to the court. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

Since a movant is least likely to procure agreement or acquiescence for a hostile or adversarial motion, and since there are few motions more hostile or adversarial than one for an order to show cause why the opposing party should not be held in contempt, it is clear that no agreement would ever be considered by, or forthcoming from, the opposing party in such a situation. Thus, although the movant takes the risk that the absence of the certification might result in the motion's denial, the court, in its discretion, may find that lack of formal certification was not fatal to the motion. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

A person with a judgment may initiate contempt proceedings when enforcement of a favorable judgment is required to prevent irreparable injury to the winning party's interests and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 309 (Pon. 2010).

Final judgments may be enforced by contempt proceedings provided that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

The relevant subsections of Chuuk State Law No. 190-08, § 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

When the court has ordered counsel to submit a brief solely on the issue of whether the defendant's parcel is exempt from attachment and execution and counsel has chosen to ignore the court's order and proceeded to relitigate the issue of her ability to pay, normally, such intentional disobedience of the court's lawful order may be sanctionable under 4 F.S.M.C. 119(1)(b). FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

The inability to serve a show cause motion on a defendant means that a court cannot grant that motion without depriving the accused of due process rights. A wiser course of action, with respect to show cause motions, would be to serve the motion first, and then to file the motion and certificate of service within a reasonable time after service, an option expressly provided by the rules of civil procedure. In light of this alternative, and because circumstances may have changed since November 12, 2008, denial of the November 12, 2008 show cause motion is appropriate. Dateline Exports, Inc. v. George, 18 FSM R. 147, 149 (Kos. 2012).

When the court has enjoined the defendant from the activity that is the source of the bank's grievance against him, the court will hold the show cause motion in abeyance until such time as the bank either requests a show cause hearing or withdraws the motion. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

Courts generally have the power, in proper circumstances, to hold a party, or an attorney, or a witness summoned to appear before it in contempt of court for acts committed in the court's presence or for failure to appear when ordered to. The power to punish for contempt of court may be regarded as an essential element of judicial authority. It existed at common law. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

Only the court whose order was violated can punish a person for contempt – one court does not have the power to punish someone for the contempt of another court's order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person has been given adequate notice that he or she is ordered or required to appear before a court at a certain date and time and fails to do so, that court may, usually upon request, issue a bench warrant to compel that person to appear by authorizing the police to arrest that person and bring him or her before the court. The court does not need to first issue a second order for that person to appear and to explain his or her absence (show cause) and then if that order to appear is not obeyed, issue a third order to appear and explain the second absence, and then a fourth and so on without end. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

If a person's contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Contempt of court, under 4 F.S.M.C. 119(1)(a) and (b) is defined as any intentional obstruction of the administration of justice by any person, including an officer of the court acting in his official capacity, or any intentional disobedience or resistance to the court's lawful writ. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 105 (Chk. 2015).

The court's first duty in reviewing a contempt judgment is to determine whether the nature of the contempt proceeding was civil or criminal. That the court earlier characterized the contempt as civil or criminal is not conclusive. In re Contempt of Jack, 20 FSM R. 452, 461 & n.5 (Pon. 2016).

There are four states of culpability which establish the requisite mental element: intentional, knowing, reckless, and negligent, but only the first two subjective states of mind, intent or knowledge, can be used to support a contempt finding. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

In finding contempt, the court must first determine whether the contempt was a civil contempt or criminal contempt; second it must determine whether the contempt was direct or

indirect – whether it was committed in the court's presence or not; and third, it must determine, by a clear and convincing standard, that the defendant intentionally disobeyed a court order. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

An attorney who is again found in contempt in a case, may be subject to further payments to compensate the opposing party for any additional attorney's fees and costs. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The Chuuk Judiciary Act of 1990 defines contempt as any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the court's sound discretion. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Before imposing a sentence for contempt, a court must determine that the person who is potentially liable for contempt knew of the order, and had the ability to obey it. In re Contempt of Fujita, 21 FSM R. 634, 637 (Pon. 2018).

– Acts Constituting

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

Voluntary acts or omissions by a person, done with knowledge of facts sufficient to warn the person that such acts or omission could create a substantial risk of court delay, may constitute intentional obstruction of the administration of justice. In re Tarpley, 2 FSM R. 221, 224 (Pon. 1986).

When counsel receives notice of a hearing, yet intentionally departs without making adequate efforts to reschedule the hearing or to assure that someone will appear on the client's behalf, he knowingly creates a substantial risk of obstruction of justice. In re Tarpley, 2 FSM R.

221, 224-25 (Pon. 1986).

"Intentional Obstruction," as specified in 4 F.S.M.C. 119, requires that the consequences of the act are the purpose for which it was done, or that the consequences were substantially certain to follow the act. In re Tarpley (II), 3 FSM R. 145, 149 (App. 1987).

One who acts negligently but whose actions do not create a substantial risk of obstruction, may not be deemed to have acted with the necessary intention to be found in contempt. In re Tarpley (II), 3 FSM R. 145, 150 (App. 1987).

Where the record reflects that assets were removed from an insolvent's warehouse by its president following the issuance of a writ of execution banning removal of the insolvent's property and no evidence was presented which showed that the assets removed were not the insolvent's property, a reasonable trier of fact could infer that the assets belonged to the insolvent and could base the president's conviction for contempt of court upon such a finding. Semes v. FSM, 5 FSM R. 49, 51 (App. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed; nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

A garnishee who deliberately disobeys a court order may be held in contempt of court. Mid-Pac Constr. Co. v. Senda, 6 FSM R. 135, 136 (Pon. 1993).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

The inability of an alleged contemnor, without fault on his part to obey a court order generally absolves him from being held in contempt for violating that order, but such a defense is effective only where, after using due diligence, the person still is not able to comply with the order. The defense of inability to comply is not available where the contemnor has voluntarily created the incapacity. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

Conduct proscribed by a court order may be punished as contempt even though authorized by an executive order because such activity is illegal, and under a government of laws, illegal conduct pays a price. Johnny v. FSM, 8 FSM R. 203, 208 (App. 1997).

In the Kosrae State Code, contempt of court is defined as intentionally obstructing court proceedings or court operations directly related to the administration of justice or intentionally disobeying or resisting the court's writ, process, order, rule, decree or command. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

Any intentional disobedience or resistance to the court's lawful order is contempt of court. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 475 (Pon. 2001).

When various recent financial exigencies have affected the judgment-debtor's ability to make the payments as pledged, and the judgment-debtor felt that a payment of no more than $50,000 could be made by the end of February, and that the remainder of the judgment could be paid by the end of the fiscal year, the court is satisfied that the judgment-debtor has not intentionally disobeyed the court's order. Davis v. Kutta, 10 FSM R. 505, 506 (Chk. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Contempt of court is any intentional obstruction of the administration of justice by any person or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When someone has no say over payment of judgments against the state beyond approving or disapproving vouchers that are submitted to the commission for payment he cannot be in contempt for failure to pay. Estate of Mori v. Chuuk, 11 FSM R. 535, 539 (Chk. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

When the defendants knew of two scheduled conference dates and were able to inform and/or seek leave of court to obtain a rescheduled conference date, but failed to take any action to do so prior to those conferences and when the defendants have intentionally and inexcusably delayed the litigation's progress, and since contempt of court is any intentional obstruction of the administration of justice by any person, or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command, the defendants are in civil contempt. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 170-71 (Pon. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Neither the petitioner nor his counsel will be held in contempt of court when their failure to include the decedent's adopted daughter as an heir was not intentional since the petitioner did not inform counsel of the decedent's adopted child and counsel failed to ask the petitioner, who was a lay person not expected to know the law's requirements and expected to rely on his counsel, to verify all of the decedent's heirs. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When counsel's contentions are colorable and not made in bad faith, counsel is not subject to criminal liability merely because his or her interpretation or understanding of the law is incorrect. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

By failing to move from the land as they were ordered to do, a named party and another are in contempt of the court's permanent injunction because both knew of the injunction and had the ability to comply with it. Although the other was not a named party, he nevertheless knew of the order, and is subject to punishment for violating the order himself when he also encouraged the named party to stay on the land. Carlos Etscheit Soap Co. v. Gilmete, 15 FSM R. 285, 289 (Pon. 2007).

Contempt is any intentional obstruction of the administration of justice by any person, including any clerk or officer of the court acting in his official capacity; or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. The FSM Code provides for differences between civil and criminal contempt, at least in terms of adjudication. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

The elements for establishing contempt for failure to comply with or obey a court order are well established: in order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

For a party to be held in contempt, the court must find that he knew of the order and had the ability to comply. Implicit in the charge that the party knows of the order is the requirement that the order is in existence and is valid and actionable. Damarlane v. Pohnpei Transp. Auth., 17 FSM R. 307, 310 (Pon. 2010).

Contempt of court is the intentional obstruction of administration of justice, or the intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding, as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

A contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Ultimately, most *bona fide* representations tend to excuse, but cannot justify the act. Notably, an attorney's good faith belief that they were not obligated to appear at that time may be accepted or rejected. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Although an act of negligence is not sufficient to support a finding of contempt, an act of willful neglect is. Thus, while a single act of negligence is usually not sufficient by itself to support a finding of contempt, a pattern of neglect can give rise to the inference of an intentional design to disobey. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney's off-island notice was filed several weeks after a court order set the hearing date; when the off-island notice's filing indicates that the attorney knew of the conflict over a month in advance, but failed to notify the court until the last minute; and when the attorney never notified the opposing counsel, the off-island notice cannot be used to imply that the court scheduled the hearing in error since the attorney had a professional duty to not only notify the court, but also the opposing party in a timely manner in order to reschedule the hearing. While this alone is not contemptuous, it can be used as further support the inference of intent to disobey a court order when supported by a pattern or other similar acts and omissions drawn from the surrounding circumstances. Collectively, the attorney's acts and omissions form a pattern and indicate that she knew her duty, had the ability to perform it, and willfully neglected to perform it. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

When an attorney failed to appear as required and the court held a show cause hearing to determine why she failed to appear at the scheduled hearing; when, after receiving her explanation, the court found her in contempt because she knew of the hearing and had the

ability to appear, at least telephonically; and when this was supported in the record, clearly and convincingly, this was an act of intentional disobedience of a court order within the meaning of 4 F.S.M.C. 119(1)(b), and a sanction will be imposed that is not punitive but which is made to compensate the opposing party for losses he incurred. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

A drastic means by which a party may immediately challenge an interlocutory court order is to not comply with it and thus subject themselves to a contempt proceeding and then appeal the contempt finding, if there is one. Usually in such cases, if the client chooses to follow the attorney's advice, it is only the party disobeying the order, not the party's attorney, who is then subjected to a contempt proceeding, often as part of the same proceeding in which the disobeyed order was given. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

The Chuuk State Supreme Court will apply the collateral bar rule to injunctions it issues. The collateral bar rule prevents defendants from defending themselves against a contempt charge on grounds that the court's injunction was unlawful or incorrect. The reason for implementing this doctrine in Chuuk is self-evident: there is a public interest in a peaceful and orderly resolution to disputes, and the orderly and peaceful resolution of disputes is completely frustrated when parties chose to disregard injunctions issued by a court while a case is pending – even if those parties allege that such injunctions are improper or unlawful. Micronesian society has customarily prized peaceful and orderly resolution of disputes. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434-35 (Chk. S. Ct. Tr. 2018).

When the Governor received notice of the court order enjoining him from interfering with CPUC's business; when he did nothing to ensure compliance with the court's injunction, such as revoking the executive order creating an interim CPUC board, upon clearly gaining knowledge of the injunction's content at a later time; when the Governor affirmatively created an interim board as an intentional violation of the court's injunction since the act of writing an executive order which created a new interim board clearly shows intent to impact CPUC's management; when, even if the Governor alleged a lack of notice originally, his continued entertainment of the board upon admitting to having receiving notice of the injunction, constituted an intentional violation of the injunction; since the Governor had the ability to comply with this order by merely refraining from interfering with the CPUC's business, but instead affirmatively signed an executive order which created a new "interim CPUC Board," and upon clearly having knowledge of the injunction. Thus, he did nothing to comply with that injunction, all the elements required for finding the Governor in both criminal and civil contempt have been established. Governor v. Chuuk House of Senate, 21 FSM R. 428, 436 (Chk. S. Ct. Tr. 2018).

Prior counsel is not in civil or criminal contempt when he conveyed the information from the court proceedings to his client and did not omit specifying the court's oral order; when his client knew of the order and asked his new counsel on whether it would violate the order to issue his own executive order; and when former counsel did not fail to communicate the court order to the client or avoid attempts by new counsel to contact him regarding the case's history. Governor v. Chuuk House of Senate, 21 FSM R. 428, 436-37 (Chk. S. Ct. Tr. 2018).

Current counsel is in contempt of court where he intentionally violated the court order when he drafted and advised the client to sign an executive order, which the client himself questioned whether he would violate the injunction and consulted counsel before signing the executive order, but counsel advised his client that he should go ahead without consulting the client's previous attorney and being aware that there was an injunction in place. Even if counsel lacked knowledge of the injunction, counsel's abstention from consulting with prior counsel constituted willful ignorance on a matter which he had an affirmative duty to know – he lacked good cause as to why he had not complied with the injunction, and his belief that the court injunction infringed on his client's rights lacks merit, since it is a defense that the court is precluded from considering under the collateral bar rule. Governor v. Chuuk House of Senate, 21 FSM R. 428, 437 (Chk. S. Ct. Tr. 2018).

Attorneys are held to a higher standard of conduct as compared to other parties when issues of contempt arise. Governor v. Chuuk House of Senate, 21 FSM R. 428, 437 (Chk. S. Ct. Tr. 2018).

The FSM Supreme Court has the power to punish for contempt of court based on any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. In re Contempt of Fujita, 21 FSM R. 634, 637 (Pon. 2018).

Contempt of court is any intentional obstruction of the administration of justice, including action by an officer of the court, or any intentional disobedience or resistance to the court's lawful writ. In re Contempt of Fujita, 21 FSM R. 634, 638 (Pon. 2018).

An attorney's instruction to a garnishee to disobey a lawful writ of garnishment requiring payment to the creditor and to remit the monthly rent to her clients instead constitutes contempt of court. In re Contempt of Fujita, 21 FSM R. 634, 638 (Pon. 2018).

A garnishee's payment of the monthly rent to the debtor or to his attorney does not excuse his non-compliance with the writ of garnishment, because clients are held accountable for their attorney's acts or omissions. In re Contempt of Fujita, 21 FSM R. 634, 638-39 (Pon. 2018).

A garnishee's attorney, as an officer of the court, is obligated to advise her garnishee client to comply with the writ of garnishment, and to transmit the garnishee's monthly payments to the creditor and not to her other clients, who were not entitled to receive those funds. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

Any intentional disobedience or resistance to the court's lawful order is contempt of court, and a non-party may be in contempt of a court order. Thus, a garnishee who deliberately disobeys a court order may be held in contempt of court. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A garnishee is in contempt of court for intentional disobedience of the writ of garnishment when he had assistance of counsel, had notice and knowledge of the writ of garnishment requiring payments to the creditor, and had the ability to comply with the writ because he gave the full amount of the monthly rent payments to other persons. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

When the matter concerned an order to show cause why a garnishee should not be held in

contempt and evidence was obtained during the contempt hearing that the garnishee's attorney may also have been in violation of the court's writ of garnishment, the court may set an order to show cause hearing for attorney. In re Contempt of Fujita, 21 FSM R. 634, 640 (Pon. 2018).

– Civil

Before a trial court can hold a defendant in civil contempt of a court order it must find that the alleged contemnor knew of the court order and it must find that the alleged contemnor had the ability to comply with that order. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

The court may not punish a contemnor for civil contempt where the contemnor lacks the ability, through no fault of his own, to comply with the order, or, in other words, where the contemnor lacks the ability to purge the contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

When a person no longer has the ability to purge the contempt by complying with the court's orders, he is not subject to punishment for civil contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Before a trial court can hold a defendant in civil contempt of court for violating an order in aid of judgment on a debt, it must find that the alleged contemnor both knew of the court order and had the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373 (App. 2003).

Traditionally the burden has been on the movant to show that the debtor has the ability to comply with the court order. This has been deemed reasonable because in the FSM debtors usually appear *pro se* and creditors do not. Once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 373-74 (App. 2003).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Civil contempt is not punishment for the failure to pay a debt. It is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the

contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Good cause is the inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. On the other hand, criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

Civil contempt may be employed to coerce compliance with the trial court's orders compelling discovery. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

The court will not issue an order to show cause why a defendant should not be held in contempt for his failure to appear at the start of trial on February 5, 2001 since civil contempt is inapplicable because the civil contempt is a remedial measure to coerce compliance, and the court can not now coerce the defendant to appear on time on February 5, 2001. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

One of the factors that the court must consider in making a finding of civil contempt is whether the relief requested is primarily for the benefit of the complainant. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

When the relief sought is an order requiring payment of fees owed not to the movant, but to another, the relief sought is not primarily for the movant's benefit. Accordingly, the motion for an order for parties to show cause why they should not be held in contempt will be denied. RRG (FSM) Ltd. v. Maezoto, 15 FSM R. 243, 244 (Pon. 2007).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite

intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be negated because a defendant was not specifically informed of the consequences for disobedience. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

Although civil contempt does not require a finding of specific intent, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there must also be a recital, or a finding in the record, that there was an ability to comply. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225-26 (Kos. 2010).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

When a movant fails to plead the necessary elements of civil contempt and when the movant fails to provide evidentiary support for factual contentions and because of the motion's nature, a motion to show cause why a defendant should not be held in contempt is insufficient. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 228 (Kos. 2010).

Civil contempt is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order, but criminal contempt is retrospective and is punishment for past wrongful conduct. Criminal contempt is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

For a civil contempt finding, it is not enough to find that noncompliance was willful, as

shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A person accused of committing civil contempt has a right to notice of the charges and an opportunity to present a defense and mitigation. FSM Dev. Bank v. Abello, 18 FSM R. 192, 198 (Pon. 2012).

When the parties all agreed that since the court's last order confirming that the preliminary injunction remained in place, the defendants had been complying with the injunction and that therefore, except possibly for some damages that might have accrued, there was no need to proceed on the show cause motion because it was moot. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41c (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

The relief granted in civil contempt proceedings, is compensatory or coercive. This often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The sanction of civil contempt serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued

the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

A contempt sanction is compensatory and correctly characterized as a civil contempt action when it goes directly to the aggrieved party's benefit, not to the state's; when the attorney's fee award is not a fixed fine, but is dependent on actual injuries incurred, and demonstrated in the record; and when the show cause hearing was ordered following a motion by the plaintiff, and not prosecuted separately by the government, nor brought *sua sponte* by the court itself. While it is true that the attorney did not have the ability to purge for her absence, as this is an act which has already occurred, the excuse is contemporaneous with the finding. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The movant bears the burden of establishing the elements of civil contempt by clear and convincing evidence, which is a higher standard than the preponderance of the evidence standard, common in civil cases, although not as high as beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The clear and convincing standard will be applied to the evidence in a civil contempt case. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The civil standard of volition is "knew and had the ability to comply." Thus, the court may not punish a contemnor for civil contempt when the contemnor lacks the ability, through no fault of his own, to comply with the order. It is not enough to find that noncompliance was willful, as

shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

The moving party must show that the contemnor knew and had the ability to comply. This culpable state of mind can be ascertained through the words, acts and surrounding circumstances of the case, including a previous pattern of delay and neglect. If the court so finds, a civil sanction compensating the other party for costs and attorney's fees is appropriate. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The standard for a civil contempt case is to find by the preponderance of the evidence that the party accused of contempt had notice of, could comply with, and never-the-less intentionally disobeyed a lawful court. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

One factor that the court must consider in making a finding of civil contempt is whether the relief requested is primarily for the complainant's benefit. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Anyone accused of committing a civil contempt has the right to notice, a defense, and mitigation. A person found in civil contempt may be imprisoned until such time as he complies with a court order or pays an amount necessary to compensate the injured party, or both. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The civil contempt sanction serves two remedial purposes, 1) to enforce compliance with a court order, and 2) to compensate for losses caused by noncompliance. The relief granted in civil contempt proceedings, may be compensatory or coercive. It often takes the form of a fine in the amount of the damage sustained by the plaintiff and an award of costs and attorney's fees. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. Governor v.

Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Civil contempt is a prospective remedial measure designed to coerce compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A person found in civil contempt may be imprisoned until such time as he complies with the order or pays an amount necessary to compensate the injured party or both. The FSM contempt statute expressly provides that one who violates a court order may be put in jail until such time as he or she conforms his or her conduct the court's lawful order. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A person found in contempt in a case may also be subject to payments to compensate the opposing party for any additional attorney's fees and costs. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

A contemnor may purge himself of civil contempt by paying the arrears. Upon adjudication of civil contempt, the court may order the contemnor imprisoned until such time as he complies with the orders issued to date and/or pays an amount necessary to compensate the court and plaintiff for the wasted time and expense. In re Contempt of Fujita, 21 FSM R. 634, 639 (Pon. 2018).

For a civil contempt finding, it is not enough to find that noncompliance was willful, as shown by knowledge of the order; there still must also be a recital – a finding in the record – that there was an ability to comply. In re Contempt of Fujita, 21 FSM R. 634, 639 n.3 (Pon. 2018).

During an appeal, the respondent's pending motion for reconsideration and petitioners' pending motion for an order to show cause why the respondent should not be held in contempt, continue to be within the trial court's jurisdiction. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The court will not consider a motion to show cause why a party should be held in contempt when the movants' counsel has withdrawn it. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

– Criminal

The need to assure fairness in judicial proceedings is especially pronounced where, as in a criminal contempt proceeding, the court itself is the accuser. In re Iriarte (I), 1 FSM R. 239, 248 (Pon. 1983).

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239 250 (Pon. 1983).

To insure that order is maintained in court proceedings, courts have a limited power to make a finding of contempt summarily, where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge, and where the judge acts

immediately. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Criminal contempt is normally considered a criminal case because the charge exposes the defendant to the possibility of imprisonment. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

A criminal contempt charge defendant is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

When the necessity to restore order by immediate court action ends, the court's summary contempt power has expired. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 65 (Pon. 1991).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

A contempt motion brought, not to obtain leverage to force compliance with a existing court order, but instead to attempt to punish the party for a previous violation is criminal in nature. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be, not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM R. 633, 637-38 (Chk. 1996).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM R. 633, 640 & n.2 (Chk. 1996).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

Section 6.1104 of the Kosrae Code expressly gives criminal contempt defendants certain due process safeguards. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

In situations in which attorneys or witnesses have been held in criminal contempt of court for failure to appear at court hearings, the FSM Supreme Court trial court has given notice that it was considering holding kthe defendant in criminal contempt, has taken testimony from the defendant, and has considered whether the defendant's conduct in missing the hearing was intentional. In re Contempt of Skilling, 8 FSM R. 419, 424-25 (App. 1998).

Summary contempt proceedings are viewed with disfavor. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

Contempt of court is not a matter between opposing litigants, it is a matter between the offending person and the court. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

Criminal contempt requires a specific intent to consciously disregard an order of the court, and willfulness does not exist where a defendant pursues in good faith a plausible though mistaken alternative. Mere negligent failure to comply with an order of the court is not enough. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

There must be an identifiable, specific order in the record creating an affirmative duty to appear in order for an alleged contemnor to be guilty of contempt for non-appearance. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 411, 418 (App. 1998).

A criminal contempt proceeding is maintained to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of a court order. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM R. 183, 188 (App. 1999).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. Cheida v. FSM, 9 FSM R. 183, 189 & n.3 (App. 1999).

Criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Criminal contempt proceedings are instituted to protect the public interest of maintaining respect for the judicial system, and are not merely a stronger form of civil contempt sanctions against a defendant. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

The distinction between civil and criminal contempt is that the former is prospective, while

the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A request that someone be punished for his failure to pay a judgment during the period when he did have the ability to comply with the court's orders, is, since the contention relies on past conduct, a request that the court find him in criminal contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

An essential element of a criminal contempt is the subjective intent to defy the court's authority. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A finance director's actions in attempting to achieve payment of a judgment indicates that he lacks the subjective intent necessary for criminal contempt and a court therefore cannot hold him in contempt. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

A criminal contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Criminal contempt (available under 4 F.S.M.C. 119) is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 n.23 (App. 2003).

An attorney is not liable for criminal contempt for advising his client in good faith to assert his or her privilege against self-incrimination. For an attorney in the Federated States of Micronesia to be liable for criminal contempt for advising a client to assert his or her right to self-incrimination, the attorney must have given that advice in bad faith. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

Punishment, through criminal contempt, cannot be employed where Rule 37 sanctions may be. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

When the trial court had abandoned any further attempts at coercion and imposed Rule 37(b)(2) and 37(b)(2)(A) sanctions and, although it is uncertain whether the contempt sanction was actually ever imposed because the trial court let the Rule 37 sanctions "stand" as the contempt sanctions, if the contempt sanctions were, in fact, imposed, they were not civil in nature and must be reversed, and if none were imposed, then, in light of the Rule 37(b)(2) sanctions, the contempt finding must be vacated because no further purpose can be served by their imposition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 253 (App. 2006).

Rule 37(b)(2) sanctions are not inherently criminal in nature and criminal due process protections do not have to be followed before they can be imposed. FSM Dev. Bank v. Adams,

14 FSM R. 234, 253 (App. 2006).

When an attorney's inappropriate, intemperate, and ill-conceived remarks about the court were neither included in the contempt charge nor mentioned in the information against him and when bad faith was not pled, reliance on the attorney's unmentioned improper remarks to allege his bad faith when that element was not pled in the criminal information is a belated rationalization. FSM v. Kansou, 14 FSM R. 273, 276 (Chk. 2006).

Any request in 2005 for an order to show cause why a defendant should not be held in criminal contempt for failure to appear at the start of the February 5, 2001 trial as required by the witness subpoena served on him, comes much too late since anyone charged with criminal contempt must be charged within three months of the contempt. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

One difference between civil and criminal contempt revolves around intent. An essential element of a criminal contempt is the subjective intent to defy the court's authority. The requisite intent is specific intent, such that mere negligent failure to comply is not enough, but a finding of the requisite intent will not be negated because a defendant was not specifically informed of the consequences for disobedience. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 225 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, § 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

A trial court show cause order and hearing were all part of a criminal contempt proceeding when the proceeding's purpose was not to coerce a party's compliance with its order to file a pretrial statement and to mark her exhibits with the clerk since she had already done that in time for trial and the trial had been held on time. Instead, its sole purpose was to punish her for past wrongful conduct – her alleged failure to file a pretrial statement and to mark her exhibits by the dates ordered. Thus, even though it was not labeled as such and was silent on whether the trial

court considered it civil or criminal, the trial court order was a criminal contempt finding of guilt and the $200 "sanction" was a criminal sentence – a fine. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 (App. 2011).

A Criminal Rule 33 motion for a new trial is not timely when it is made over seven days after the guilty finding and it thus cannot toll the time for a criminal appeal or nullify any notice of appeal filed before the motion was decided, which a timely-filed Rule 33 motion would do since if a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion, but not before. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353-54 & n.8 (App. 2011).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

An element of criminal contempt is the subjective intent to defy the court's authority, and the requisite intent is specific intent. There is thus more to prove to show criminal contempt. There is also a higher burden of proof, beyond a reasonable doubt than the civil contempt burden of clear and convincing evidence of the predicate misconduct. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

Since a finding or "recital" that there was an ability to comply is required for civil contempt, it must also be a necessary element of the more difficult to prove criminal contempt. Thus, when nowhere in its contempt order did the trial court make a finding or a "recital" that the contemnor had the ability to comply with its deadlines for filing a pretrial statement and for marking her exhibits with the clerk, the trial court's failure to find a necessary factual element is generally enough to reverse a contempt finding whether civil or criminal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

A criminal contempt conviction would have to be vacated when neither the trial court's contempt finding nor its sentencing were done in open court because a criminal defendant's constitutional right to a public trial requires that the finding of guilt or innocence be made in open court and that, if there is a guilty finding, then the sentence must also be imposed in open court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Since the criminal contempt statute provides that no punishment of a fine of more than $100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a

$200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Notice that the convicted person has a right to appeal must be given orally when a criminal contempt sentence is imposed. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

In a criminal contempt proceeding, an order to show cause (the notice) why someone should not be held in contempt must describe the contempt charged as criminal contempt as required by Criminal Procedure Rule 42(b), which requires that the notice shall state the essential facts constituting the criminal contempt charged, describing it as such. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Section 119, in Title 4, undisputedly by its terms provides for criminal as well as civil contempt. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. The FSM Department of Justice is the office that files an information accusing a defendant of criminal contempt of a national court. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The court rejects the notion that contempt of court is not a criminal offense and that the FSM Department of Justice cannot criminally prosecute alleged contemnors. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. The purpose of a civil contempt is remedial or compensatory, while the purpose of a criminal contempt is punitive. In re Contempt of Jack, 20 FSM R. 452, 461 (Pon. 2016).

In contempt cases, both civil and criminal relief have aspects that can be seen as either

remedial or punitive or both: when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority but also seeking to give effect to the law's purpose of modifying the contemnor's behavior. The confusion between civil and criminal contempt arises as a result of civil contempt often having the incidental effect of vindicating the court's authority, while, conversely, criminal contempt may permit the movant to derive the incidental benefit of preventing future noncompliance. In re Contempt of Jack, 20 FSM R. 452, 461 n.7 (Pon. 2016).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. In re Contempt of Jack, 20 FSM R. 452, 461-62 (Pon. 2016).

Criminal contempt is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. In re Contempt of Jack, 20 FSM R. 452, 462 (Pon. 2016).

The distinction between civil and criminal contempt is somewhat elusive and has plagued the courts. Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither civil nor criminal but are instead *sui generis*. They partake of the characteristics of both but are procedurally different from other actions. Despite the verbiage used to designate them, they are neither wholly civil or criminal. Thus, criminal contempt is often said not to be a crime at all. In re Contempt of Jack, 20 FSM R. 452, 462-63 (Pon. 2016).

Generally, civil contempt invokes the rules of civil procedure, and criminal contempt invokes the rules of criminal procedure. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. In re Contempt of Jack, 20 FSM R. 452, 463 n.8 (Pon. 2016).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

The court has the power to punish any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command and may do so either criminally or civilly, but the standard is not the same. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Civil intent can be demonstrated by general intent, or by knowledge defined in 11 F.S.M.C. 104(5) as being aware of the nature of the conduct or omission which brings the conduct or omission within the provision of the code. This standard is expressly distinguished from mere negligence, a negligent act is one born of inattention or carelessness – the opposite of an intended act. An act, not willfully intending the result, creating a substantial risk of the unlawful

result, is not an act done purposefully or intentionally. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

An attorney's representation that she forgot about the hearing, will not be accepted and the attorney will be found in contempt when she filed a motion to continue the hearing only a few days before the scheduled hearing and when, in her motion for relief, she represents that she assumed the court would grant her motion to continue and if she had known that the court would not approve her motion she would have called in telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

In order to find criminal contempt, the trier of fact must find beyond a reasonable doubt that the party accused of contempt had notice and intentionally disobeyed a lawful court order. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Criminal contempt under the FSM Code results from intentional disregard of a court order. The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. Governor v. Chuuk House of Senate, 21 FSM R. 428, 433 (Chk. S. Ct. Tr. 2018).

Even though the court chooses to sanction an attorney with a civil contempt, that does not prohibit the court from also sanctioning the attorney with a criminal contempt. The choice is not mutually exclusive and a single contumacious act may in fact necessitate both. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

Any person accused of criminal contempt has the right to notice of the charges and an opportunity to present a defense and mitigation; to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, to have the assistance of counsel, and to be released on bail pending adjudication of the charges. He has the right to be charged within three months of the contempt and a right not to be charged twice for the same contempt. Governor v. Chuuk House of Senate, 21 FSM R. 428, 434 (Chk. S. Ct. Tr. 2018).

No one can be held in criminal contempt by the Pohnpei Supreme Court when the time is long past since the Pohnpei statute requires that a criminal contempt be charged within three months of the contempt. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

– Direct

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

The Kosrae Code and Rules of Criminal Procedure provide that a court may summarily punish a contempt committed in its presence if the justice directly saw or heard the conduct constituting the contempt and so certifies. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Under Kosrae state law, summary contempt is only appropriate when the contempt is committed in the court's presence, and when the presiding justice directly saw or heard the conduct constituting the contempt. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

A direct contempt is used by the court to protect itself against gross violations of decorum. All of the essential elements of the misconduct are under the eye of the court. Direct contempt includes words, acts, or omissions that present an imminent threat to the administration of justice; it must immediately imperil the judge in the performance of his judicial duty. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

An attorney's absence alone does not constitute contempt, but if the attorney offers an insulting, frivolous, or clearly inadequate explanation, a direct contempt has been committed in the presence of the judge. Patently false, flippant, inconsistent, contradictory, and evasive replies support a contempt finding, as does an attorney's refusal to give any explanation for his or her absence or lateness in arriving for a trial or hearing since that is the equivalent of the lack of a valid excuse. In re Contempt of Jack, 20 FSM R. 452, 464 n.10 (Pon. 2016).

– Indirect

Under Kosrae law, summary contempt is not appropriate for someone's failure to appear on time. Since the alleged contempt is an indirect contempt – a contempt not in the presence of the judge – the court should schedule a show cause hearing to enable the accused to present his own defense. In re Contempt of Skilling, 8 FSM R. 419, 425 (App. 1998).

The court's second duty in reviewing a contempt action is to determine if the contempt was direct or indirect. Each class of contempt has two subcategories, direct and indirect. Thus there are four possible classifications of contempt: direct-criminal, indirect-criminal, direct-civil, and indirect-civil. In re Contempt of Jack, 20 FSM R. 452, 463 (Pon. 2016).

Generally, the failure to obey a court's order is considered civil contempt, and when the refusal takes place outside of the court's presence, it is an indirect civil contempt. Because the court has no personal knowledge of the indirect contempt, the acts must be proven through the testimony of third parties or the contemnor. Thus minimal due process requirements apply to indirect contempts. In re Contempt of Jack, 20 FSM R. 452, 463-64 (Pon. 2016).

Contemptuous behavior includes not only intentionally avoiding a hearing, but also intentionally arriving late for a hearing. Thus, failure to appear or even tardiness may be treated as an indirect civil contempt pursuant to 4 F.S.M.C. 119(2)(a), or as an indirect criminal contempt pursuant to 4 F.S.M.C. 119(2)(b), or both. But in either case, it cannot be treated summarily. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

If the court elects to pursue an attorney's absence as a civil contempt under 4 F.S.M.C. 119(2)(a), the accused has a right to notice of the charges and an opportunity to present a defense and mitigation. In a civil contempt proceeding, this due process requirement is usually met through a show cause hearing where the defendant is given the opportunity to explain or justify the failure to appear. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).