

1974 WL 27446 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
June 15, 1974

***1 Re: Contempt Powers of the Circuit Court.**

The Honorable David W. Harwell
Judge
12th. Judicial Circuit
Florence City County Complex
Florence, South Carolina

Dear Judge Harwell:

I have enclosed an outline and Citations of Authorities, which I trust will answer the question you posed as to the contempt powers of the Circuit Court.

If we may be of any further assistance, please do not hesitate to call or write.
Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

ATTACHMENT

The Honorable David W. Harwell

RE: Contempt Powers of a Circuit Court Judge.

You have requested that you be advised as to the powers of a circuit court judge to cite for contempt.

The statutory basis for the contempt power is found in § 15-231.1 Code of Laws of South Carolina, 1962, which states: 'The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same.'

This power of courts of general jurisdiction (sic) Circuit Courts, to cite for contempt is also established by the common law. See [State vs. Goff](#), 228 S. C. 17, 88 S.E.2d 788, 52 A.L.R.2d 1292; [Ex Parte Terry](#), 128 U.S. 289, 9 S. ct. 77, 32 L.Ed. 405. Contemptuous actions are generally found in two forms, (1) within the presence of the court, direct contempt, and (2) not in the actual presence of the court, constructive contempt.

Direct contempt is defined in 17 m. Jur. 2d [Contempt](#) § 6 as:

' . . . words spoken or acts committed in the presence of the court or during its intermissions which tend to subvert, embarrass, or prevent justice. Under this classification come acts such as attempting to influence a judge in his decision pending the time of submission of a case, fighting in court . . . , threatening, assaulting, or intimidating jurors, witnesses, or the court's officers while attendant on the court, and addressing language to the court intimating that the judge is ignorant and unfair.' See also: [Long vs. McMillan](#), 226 S. C. 598, 86 S.E.2d 477, 482; [State vs. Goff](#), *supra*; 52 A.L.R.2d, 1292.

The adjudications of direct contempts or contempts committed in the presence of the court, are provided for in Section 15-12, Code of Laws of South Carolina, 1962:

'In case any person shall commit any misbehavior or contempt in any court of judicature in this State, by word or gesture, the judges of such court may set a fine on such offender in any sum not exceeding fifty dollars, for the use of this State, and may commit the offender till payment. But if any person shall in the presence and during the sitting of the court strike or use any violence therein, such person shall be fined at the discretion of the court and shall be committed till payment; provided, that no citizen of this State shall be sent to jail for any contempt of court or supposed contempt of court, committed during the sitting of the court and in disturbance of the court, until he be brought before the court and there be heard by himself or counsel or shall stand mute.'

*2 This punishment provided therein is specifically for direct contempts and not for constructive contempts. [Greenwood County vs. Shay](#) 202 S.C. 16, 23 S.E.2d 825.

The propriety of summary adjudication in the case of direct contempts was answered in the [Goff](#) case to the effect that: 'Where the contempt is committed directly under the eye or within the view of the Court, it may proceed 'upon its own knowledge of the facts, and punish the offender without further proof and without issue or trial in any form,' . . .' quoting: [Ex Parte Terry](#), *Supra*; [Ex Parte Savin](#), 131 U.S. 267, 9 S. Ct. 699, 33 L.Ed. 150.

The questions as to whether notice, hearing, and other procedural safeguards should be afforded the party charged with direct contempt has not been clearly answered by the court. In [Long vs. McMillam](#) 226 S.C. 598, 86 S.E.2d 477, 482, it was said:

'There are two kinds of contempts of Court: That which is committed in open Court and that which is committed out of view and hearing of the Court. In the latter case, the offender must be allowed to offer evidence and argument in his defense, otherwise any judgment which the Court may pronounce will be absolutely void. Contempt of Court is a specific criminal offense; and a party charged therewith, though the proceeding is more or less summary in character, has the same inalienable right to be heard in his defense as he would against a charge of murder or any other crime.'
[State vs. Weinberg](#) 229 S. C. 286, 92 S.E.2d 842.

The general rule as to the due process requirements to be afforded one cited for contempt in the presence of the Court is stated in [Re Oliver](#), 333 U.S. 257, 68 S. Ct. 499, 92LL.Ed. 682.

'Except for a narrowly limited category of contempts, due process of law as explained in the [Cooke Case](#) ([Cooke v. U.S.](#), 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767), requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court in the presence of the judge, which disturbs the court's business, where all the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the [Cooke Case](#), that the accused be accorded notice and a fair hearing as above set out.' See also: 17 C.J.S. [Contempt](#) § 85(1); 17 m. Jur. 2d [Contempt](#) §§ 86, 88, 92, 100.

*3 Constructive Contempt has been defined in the case of [State vs. Weinberg](#), *Supra*, as:

‘ . . . contempt committed not in the actual presence of or so near the Court as to interrupt its proceedings, but which nevertheless tends to impede or prevent the due administration of justice, . . . and anything done or said in or out of the presence of the Court, which impedes or obstructs it in the decision of a pending cause, or in the execution, by authorized means, or its judgments, may be punished as a contempt.’

In the case of constructive contempt the accused must be given reasonable notice of the proceedings. The generally used method by which constructive contempt proceedings are brought is by affidavit presented to the Court. [State vs. Nathans](#), 49 S.C. 199, 27 S.E. 52. ?? verified petition of the party applying for a rule to show cause has been held sufficient, [Hornsby vs. Hornsby](#), 187 S.C. 463, 198 S.E. 29, and the Court will look only for substantial compliance with the affidavit rule, [State vs. Johnson](#), 249 S.C. 1, 152 S.E.2d 669. The Court may proceed upon its own accusation as long as the person charged is given ample opportunity to prove his innocence. 17 C.J.S. [Contempt](#) §§ 63, 71(b).

There the contempt is committed outside the presence of the Court the defendant must be given a hearing and an opportunity to defend himself. [State vs. Heinberg](#), (Supra); [Long vs. McMillam](#), (Supra); [Re Oliver](#), (Supra); 17 C.J.S. [Contempt](#) § 85(1); 17 Am. Jur. 2d, [Contempt](#) § 88. Judgment rendered without any opportunity to defend is void. 17 C.J.S., [supra](#).

The accused has the definite right to counsel and to call witnesses in his own behalf in a contempt proceeding. [Re: Petition For Green](#), 369 U.S. 689, 82 S. Ct. 1114, 8 L.Ed.2d 198; [Re Oliver](#), (Supra); 17 Am. Jur.2d [Contempt](#) § 92; 17 C.J.S. (Supra); 52 A.K.R.3rd 1002.

The question of whether the alleged contemnor is entitled to a jury trial was answered in [Bloom vs. Illinois](#), 391 U.S. 194, 88 S. Ct. 1477, 20 L.Ed.2d 522:

‘ . . . in our judgment, when serious punishment for contempt is contemplated, rejecting a demand for jury trial cannot be squared with the Constitution or justified by considerations of efficiency or the desirability of vindicating the authority of the Court.’ (P. 208 of 391 U.S., P. 532 of 20 L.Ed.2d.)

For further holdings examining the effect of the seriousness of the contemplated punishment and the right to trial by jury, See 50 C.J.S. [Juries](#) § 70; 47 Am. Jur.2d [Jury](#) § 54; [Frank vs. U.S.](#) 395 U.S. 147, 89 S.Ct. 1503, 23 L. Ed.2d 162.

BY: Timothy G. Cuinn
Senior Assistant Attorney General

1974 WL 27446 (S.C.A.G.)