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RECOGNITION AND ENFORCEMENT OF DUE PROCESS RIGHTS IN FAMILY COURT CRIMINAL CONTEMPT PROCEEDINGS

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The use of contempt powers to enforce court orders is a critical component of the legal system.[i] It is even more so in family law matters where the Court's ability to compel compliance[ii] can directly impact the fundamental Constitutional rights of the other litigant, such as the ability to exercise custody of his or her children.[iii] The Nevada Supreme Court has made it clear in a number of recent decisions, however, that the Constitutional right to due process in contempt proceedings of a "criminal" nature is just as important and must not be discounted or abridged in family law cases.[iv]

Despite this mandate, the protection of due process rights poses a challenge for family practitioners due primarily to confusion regarding the character of the contempt itself.[v] While usually called civil or criminal, said proceedings are, strictly speaking, neither. They may best be characterized as sui generis[vi] in the law in that they may partake of the characteristics of both.[vii] For example, both types of proceedings can arise in civil and criminal matters, be related to violations of the same order, result in jail time and fines and be punitive and coercive at the same time.[viii] Because of this, practitioners may be dealing with contempt proceedings that, while appearing to be civil in form, are actually "criminal" in effect, without fully recognizing the Constitutional consequences on their clients' rights or properly preparing their defenses.[ix]

Therefore, attorneys must recognize when contempt proceedings give rise to criminal due process rights and be sufficiently versed in relevant criminal law and procedures in order to be proficient in their representation of clients and avoid malpractice concerns. Judges must also understand their obligations in regards to safeguarding litigants' rights when contempt charges are criminal in nature and adjudicate the proceedings accordingly. To that end, this article will focus on the legal analysis dealing with this issue in the most recent Nevada cases, identification of Constitutional rights and provide practice tips regarding the effective adjudication of said rights.

I. Lewis, Peterson and Bohannon

All three of the recent relevant cases dealt with a family district court holding a litigant in criminal contempt of court without due process rights being provided. The first of which, *Lewis v. Lewis*, involved a father who was held in contempt for failing to pay child support and to take his child to tutoring classes.[x] On appeal, the Nevada Supreme Court held that the family court's finding of contempt was criminal in nature, meaning the father should have been provided Constitutional rights.[xi]

The Supreme Court started by going through the already established analysis for determining the character of a contempt proceeding: Contempt is civil in nature if the court's sanction attempts to coerce compliance with an order or the sanction ordered can be characterized as "indeterminate or conditional."[xii] By contrast, contempt is criminal in nature if it serves to punish the accused for non-compliance in a determinate or unconditional manner as to the punishment and duration.[xiii]

However, the Nevada Supreme Court in *Lewis* identified an additional factor for consideration, based

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on the U.S. Supreme Court's decision in *Hicks v. Feiock*, 485 U.S. 624, 108 S. Ct. 1423 (1988) – i.e. whether the contempt order included a "purge clause."[xiv] The goal of a purge clause is to give a contemnor the ability to purge him or herself of the contempt, and related sanctions, by complying with the provisions in the order.[xv] In other words, a purge clause allows a contemnor to "carry the keys of their prison in their pockets."[xvi] Without such a right, a contempt sanction is "criminal" as it is definitive in nature and not contingent on any conduct on the part of the contemnor.

The second case, *Peterson v. Eighth Judicial District Court of the State of Nevada*, dealt with a divorce in which the husband (obligor) stipulated to a 25-day stayed jail sentence related to his prior contempt arising from a failure to make payment of an ordered obligation.[xvii] This stipulation was conditioned on husband providing a loan payment to a court-appointed receiver in the future.[xviii] Husband failed to initially pay the entire amount owed, but did so eventually.[xix] The receiver nevertheless notified the court. The Court, without providing notice of its intention to hold husband in contempt or setting a hearing, issued a minute order holding husband in contempt and imposing the stayed 25-day jail sentence.[xx]

The Supreme Court reversed the trial court's order, finding that the contempt sanction was criminal in nature as husband could do nothing to cure his contempt for husband had already provided the remainder of the loan payment to the receiver. The Supreme Court considered the courts orders as new sanctions, meaning husband should have been "afforded full criminal process."[xxi] These rights included at least notice and a hearing.[xxii]

Bohannon v. Eighth Judicial District Court of the State of Nevada dealt with facts similar to those in *Lewis*.[xxiii] *Bohannon* involved a mother who was found in contempt for having unsupervised visits with her child (when the district court ordered visitations to be supervised). The court sentenced mother to 160 days of incarceration but stayed the sentence for three years during which time the mother was ordered not to consume alcohol or use illegal drugs or willfully violate its orders.[xxiv] Mother subsequently tested positive on

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the Patch program.[xxv] The court concluded from the positive test that mother failed to remain free of illegal drugs and alcohol and ordered mother to serve 30 of the 160-day jail sentence.[xxvi] On review from a Writ filed by mother, the Supreme Court held that the district court provided "no mechanism by which [mother] could change her behavior to be released prior to the expiration of the 30-day sentence."[xxvii] Therefore, since the contempt proceeding was criminal in nature and mother was not afforded Constitutional due process rights, the contempt sanctions were vacated.[xxviii]

While these cases are insightful in helping distinguish between civil and criminal contempt, additional problems related to the similarities between the two types of contempt remain to be addressed. For example, sanctions for criminal contempt are not just limited to physical incarceration but extend to monetary fines as well.[xxix] A fine ordered by a court is civil if it is conditional, allowing a contemnor to avoid payment via compliance, or if it compensates a complainant for monetary losses suffered.[xxx] In the inverse, a fine is criminal in nature if the contemnor cannot do anything to avoid or reduce the fine or the funds are not provided to the opposing party.[xxxi] Hence, as with incarceration, the goal of the fine is determinative of the character of the contempt and the rights that arise.[xxxii]

The possibility that a civil (coercive) contempt sanction may also turn into a criminal penalty is also of concern. This can occur in cases where a person is subjected to continued "coercive" incarceration despite the reality that ongoing confinement will not coerce compliance (i.e. such as an ability to pay monies owed).[xxxiii] Such a scenario is problematic from a due process point of view since a confined litigant, who was not provided the benefit of Constitutional rights, is receiving punishment that is criminal in nature. Both counsel for the contemnor and the court should therefore strive to ensure the length of incarceration is reasonable in relation to the goal of coercion.

Courts must additionally ensure that a contemnor incarcerated on civil contempt can actually purge the sanction from behind bars. Such confinement can obviously limit a contemnor's ability to do so, thereby defeating the goal of the sanction and making it criminal in nature. Orders should be cautiously crafted to avoid such situations.

II. Constitutional Rights and Procedures

Due process in criminal matters includes the protection of numerous rights. Care must be taken to successfully invoke these rights and incorporate them into a client's defense in criminal contempt proceedings.[xxxiv]

Right to Counsel

The Sixth Amendment guarantee of the right to counsel applies in proceedings of a criminal nature, which in certain circumstances includes criminal contempt.[xxxv] The Sixth California Court of Appeals elaborated on this, finding that an accused is entitled to counsel when a litigant may lose "his or her physical liberty" – which includes incarceration for failure to pay child support or otherwise follow court orders.[xxxvi]

The right to counsel therefore places the burden on the courts to put an accused on notice of their right.[xxxvii] Failure to place a pro per litigant on notice, regardless of whether they are indigent or not, can cause a subsequent finding of contempt to be reversed.[xxxviii] This obligation stems from the principal that in order for a litigant to represent themselves in criminal matters, they must understand, "(1) the nature of the charges against him, (2) the possible penalties, and (3) the dangers and disadvantages of self-representation."[xxxix] Without such knowledge, an accused cannot "knowingly, intelligently and voluntarily" waive the right to counsel.[xl]

Notice of Rights

Fair notice of charges is an essential part of criminal jurisprudence and the right applies equally to criminal contempt in family law proceedings.[xli] The problem in family court is that there is no arraignment

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or indictment process in family law contempt proceedings. Thankfully, the issue can be addressed via an existing mechanism – the order to show cause. The Virginia Court of Appeals in *Steinberg v. Steinberg*, 21 Va. App. 42, 461 S.E.2d 421 (1995) held that where an accused in a family law case was served with a show cause order specifically setting forth the details of his alleged offense and where the record plainly established that he had knowledge prior to the hearing that the case was being tried as a **criminal contempt,** the service requirements for due **process** purposes were satisfied and the accused did not have to be indicted or arraigned.[xlii]

Beyond a Reasonable Doubt

Like almost all other criminal charges, criminal contempt must be proven beyond a reasonable doubt.[xliii] Reasonable doubt is defined in NRS 175.211, which states:

> "A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation."

Special attention by practitioners should be paid to the family judges' understanding of the definition of reasonable doubt. Family judges' experiences are predominantly in civil family law proceedings, not criminal procedure, and therefore the possibility of misapplication of the standard of proof is of concern. This concern is not intended to be offensive towards the honorable courts since it should be noted that even experienced criminal judges' understanding or interpretation of the law can differ from department to department, with their perception of what constitutes reasonable doubt being no exception. In *Collins v. State*, 111 Nev. 56, 888 P.2d 926 (1995), the Nevada Supreme Court overturned the Defendant's conviction where the Judge stated to the jury that reasonable doubt **is** "a little stronger than preponderance of the evidence" and "almost equal to clear and convincing."[xliv] Similarly, the conviction of the Defendant was reversed where the court incorrectly conveyed the concept of reasonable doubt to the jury by placing the reasonable doubt concept on a numerical scale.[xlv] The same applies to clarifying comments made by a court in addition to the statutory definition of reasonable doubt, comments which can constitute reversible error.[xlvi] Because of this, nothing bars counsel from providing a family court the equivalent of "jury instructions" in Pretrial Memorandums or closing arguments or asking for findings to ensure the correct standard of proof has been followed.

The Presumption of Innocence and the Right to Remain Silent

The presumption of innocence, and its ancillary doctrine – the right to remain silent – are a cornerstone of the U.S. criminal justice system and a key component to representing individuals accused with a criminal offense. What happens then to these Constitutional rights when a litigant is served an Order to Show Cause in a family law case and required to "show cause" why they should not be held in contempt of court? Should a litigant be held in contempt if they do not waive their right to remain silent?

The answer depends on whether the contemptuous conduct or violation is a crime or will be sanctioned as one.[xlvii] Therefore, it is incumbent on family law practitioners to ask the court at the time of the first hearing whether the court deems the potential violation criminal in nature / whether the potential sanction the court is being asked to impose, or plans to impose, will be of a criminal nature.[xlviii] If so, then counsel, after having previously conferred with their client, will need to inform the court that their client will plead the fifth and cannot respond to the show cause order.[xlix]

Once a client pleads the fifth, counsel representing an

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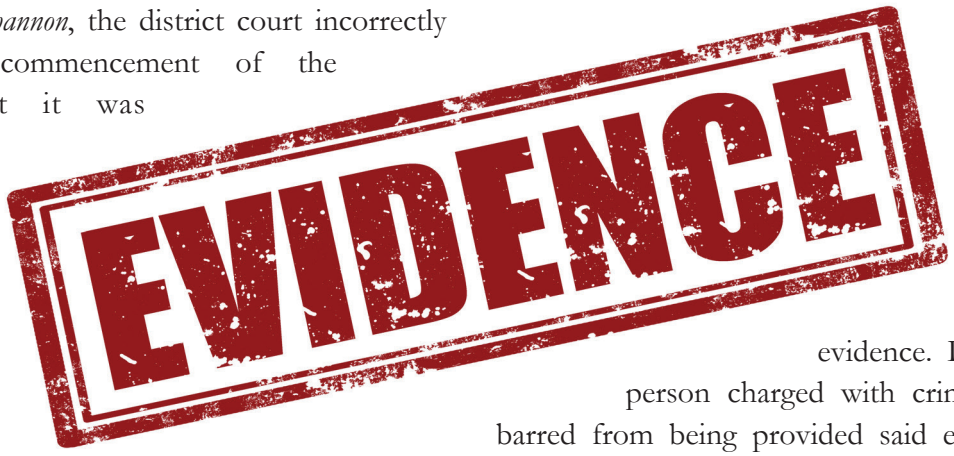
accused should request that the Court advise the accused of their rights and provide the accused counsel an opportunity to set discovery and procedures in line with the accused's Constitutional rights.[l]

Care must also be given to not waive a client's right to remain silent by making admissions in ongoing civil family proceedings. A request should be made to suspend civil proceedings until the criminal contempt is adjudicated.

Recognizing where the burden lies in criminal contempt proceedings is another area of major importance. In *Bohannon*, the district court incorrectly stated at the commencement of the proceedings that it was mother's burden to demonstrate why she should not be held in contempt, confusing the burden being on the accused in civil contempt proceedings[li] with the burden being on the state or opposing party in criminal contempt cases.[lii] Mother denied any alcohol or illegal drug use and testified that she had only taken the prescription drugs Suboxone and Klonopin, as well as NyQuil.[liii] Further, a representative from the Patch program confirmed that these drugs could have caused dirty patches.[liv] Nevertheless, the district court found mother had failed to meet her burden to show cause, regardless of the fact the court would be imposing criminal sanctions. Because of this, the Supreme Court found that the district court incorrectly placed the burden of proof on mother.[lv]



The right to remain silent, however, should not be confused with an accused's burden when wishing to present a defense. It is on the accused to present evidence that disproves guilt.[lvi] While doing so in a responsive pleading or during the initial order to show hearing may not be mandatory, it may have the benefit of resulting in a dismissal of the matter, thereby avoiding trial. In Nevada, the applicable burden in regards to **evidence that tends to mitigate or disprove guilt of a crime need only be proven** by a preponderance of the evidence.[lvii]

Exculpatory Evidence and Criminal Procedure

Persons facing criminal charges have the right to exculpatory evidence and at least some criminal procedure. In criminal court, this means an accused is entitled to have the prosecution provide any evidence that tends to establish a person's innocence or mitigates punishment.[lviii] Obviously, family court cases do not involve prosecutors and the criminal code[lix] only references prosecutors having the obligation to provide said evidence. Does this mean a person charged with criminal contempt is barred from being provided said evidence from the opposing party? The answer is likely no. The Court in *Peterson* cited the U.S. Supreme Court in *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826, 833, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994) where the High Court held that "[c]riminal contempt is a crime in the ordinary sense" and requires full criminal process.[lx] In full criminal proceedings (i.e. those falling under the criminal procedure statutes and rules), a litigant is entitled to exculpatory evidence. There is no reason why the same requirement would not apply to criminal contempt proceedings in civil cases.[lxi] Hence, counsel for the accused should at the initial court hearing request the disclosure of said information by the party alleging contempt since without this evidence, the accused will likely not be able to properly prepare their case.

Another issue that is unclear is whether only those

Endnotes:

i. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123 (1991).

ii. *See Hidahl v. Hidahl*, 95 Nev. 657, 601 P.2d 58 (1979).

iii. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

iv. *Lewis v. Lewis*, 132 Nev. Adv. Rep. 46, 373 P.3d 878 (2016); *Peterson v. Eighth Judicial Dist. Court of the State of Nevada*, 2016 Nev. Unpub. LEXIS 773, 385 P.3d 35 (2016); *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada*, 2017 Nev. Unpub. LEXIS 205 (2017).

v. *United States v. Rylander*, 714 F.2d 996, 998, 1983 U.S. App. LEXIS 24301 (9th Cir. 1983), *cert. Denied*, 467 U.S. 1209 (1984) ("Courts frequently have difficulty distinguishing between civil and criminal contempt").

vi. Latin for "unique."

vii. *Warner v. Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 1379, 1382, 906 P.2d 707 (1995)(quoting *Marcisz v. Marcisz*, 65 Ill.2d 206, 312, 357 N.E.2d 477, 479 (1976)).

viii. *See generally* NRS 22.010; NRS 22.100; NRS 199.340; and NRS 193.150; *see also United States v. United Mine Workers*, 330 U.S. 258, 67 S. Ct. 677 (1947); *United States v. Ryan*, 810 F.2d 650, 653 (7th Cir. 1987); *Hubbard v. Fleet Mortgage Co.*, 810 F.2d 778, 781-82 (8th Cir. 1987); *United States v. Rose*, 806 F.2d 931, 933 ((9th Cir. 1986). It is of note that even a fixed sentence of incarceration imposed as punishment can also coerce subsequent compliance with present and future court orders.

ix. *See generally* Nev. Const., Art. 1, Sec. 8(5).

x. *Lewis v. Lewis*, 132 Nev. Adv. Rep. 46 (2016).

xi. *Id.*

xii. *Lewis*, 373 P.3d at 881, citing *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804-05, 102 P.3d 41 (2004). *See also Lamb v. Lamb*, 83 Nev. 425, 433 P.2d 265 (1967).

xiii. *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804-05, 102 P.3d 41 (2004). *See also Alper v. Eighth Judicial Dist. Court of Nev.*, 131 Nev. Adv. Rep. 43, 352 P.3d 28 (2015); *See generally*, Gino F. Ercolino, Comment, *United Mine Workers v. Bagwell*; *Further Clarification of Civil and Criminal Contempt*, 22 New Eng. J. on Crim. & Civil. Confinement, 291, 295 (1996)("A determinative jail sentence is regarded as criminal because it serves no coercive effect.").

xiv. *Hicks v. Feiock*, 485 U.S. 624, 634 (1985).

xv. *Lewis*, 373 P.3d at 881.

xvi. *Hicks*, *supra*, at 633, *citing In re Nevitt*, 117 F. 448 (8th Cir. Ct. 1902).

xvii. *Peterson v. Eighth Judicial Dist. Court of the State of Nevada*, 385 P.3d 35 (2016).

xviii. *Id.*

xix. *Id.*

xx. *Id.*

xxi. *Peterson,* 385 P.3d at 35.

xxii. *Id.*

xxiii. *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada*, 2017 Nev. Unpub. LEXIS 205 (2017).

xxiv. *Bohannon*, 2017 Nev. Unpub. LEXIS at 3.

xxv. *Id.*

xxvi. *Id.*

xxvii. *Bohannon*, 2017 Nev. Unpub. LEXIS at 8.

xxviii. *Id.*

xxix. *Int'l Union, United Mine Workers of Am. v. Bagwell*, *512 U.S. 821, 114 S. Ct. 2552* (1994); *In re Contempt of Rochlin*, 186 Mich. App. 639, 465 N.W.2d 388 (Mich. App. 1990); *See generally Warner v. Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 1379, 906 P.2d 707 (1995).

xxx. *Int'l Union, United Mine Workers of Am.*, *512 U.S. at 829.*

xxxi. *Id.*

xxxii. *United States v. United Mine Workers*, 330 U.S. 258 (1947); *United States v. Ryan*, 810 F.2d 650 (7th Cir. 1987).

xxxiii. Doug Rendleman, *Disobedience and Coercive Contempt Confinement: The Terminally Stubborn Charged*, 48 Wash. & Lee L. Rev. 185, 200 (1991); *see generally* Linda S. Beres, *Civil Contempt and the Rational Charged*, 69 Ind. L. J. 723, 724 (1994) (describing the "no realistic possibility of compliance" standard); *See also Hughes v. Dept. of Human Resources*, 269 GA. 587, 502 S.E.2d 233 (Ga. 1998)(holding that if a delinquent parent proves they cannot financially cure the contempt, the court must terminate the incarceration); *but see Moss v. Superior Court*, 17 Cal.4th 396, 950 P.2d 59 (Cal. 1998)(finding that civil incarceration may continue when a parent's financial inability to comply with an order is due to their refusal to find employment).

xxxiv. Before doing so, however, practitioners must consider all of the factors when deciding whether to invoke due process rights in a potential criminal contempt case. Such factors include: How serious is the nature of the violation? Is the contempt charge the first against the client? Is the judge assigned to the case strict or lax regarding compliance with its orders? Is the client facing a simple fine or numerous days in jail? Further, Judges are understanding and sympathetic individuals and there are times when it may be better to explain to the court why a violation was an isolated event, excusable and/or simply seek forgiveness from the court than to make a mountain out of a mole hill. Seeking forgiveness and not drawing the ire of the court is at times the better part of wisdom – especially if a party's non-compliance is beyond question.

xxxv. *United States* v. *Dixon*, 509 U. S. 688, 113 S. Ct. 2849 (1993); *Cooke* v. *United States*, 267 U.S. 517, 45 S. Ct. 390 (1925); *Lewis*, 373 P.3d at 880. Additionally, indigent litigants have a right to have counsel assigned to them. *Lewis*, 373 P.3d at 883.

xxxvi. *County of Santa Clara v. Sup. Ct.,* 2 Cal.App.4th 1686, 1693, 5 Cal. Rptr. 2d 7, 11 (6th Cal. App. 1992).

xxxvii. *Duprey v. State*, 2017 Nev. App. Unpub. LEXIS 291 (2017).

xxxviii. *Looney v. Eighth Judicial Dist. Court of Nev.*, 2014 Unpub. 131 (2014); *Emerick v. Emerick*, 28 Conn. App. 794; 613 A.2d 1351 (1992).

xxxix. *Duprey*, 2017 Nev. App. Unpub. LEXIS at 291.

xl. *Hudson v. State*, 2017 Nev. App. Unpub. LEXIS 17 (2017).

xli. *In re Houston*, 92 S.W.3d 870, 2002 Tex. App. LEXIS 9125 (Tex. App. 2002); *In re Caron*, 110 Ohio Misc. 2d 58, 744 N.E.2d 787 (Ohio C.O. Apr. 27, 2000).

xlii. *See also Green v. United States*, 356 U.S. 165, 187, 78 S. Ct. 632 (1958)(wherein the U.S. Supreme Court held that criminal contempt need not be prosecuted by indictment); *In re Houston*, 92 S.W.3d at 878.

xliii. *Bohannon v. Eighth Judicial Dist. Court of Nev.*, 2017 Nev. Unpub. LEXIS 205 (2017); *Collins v. State*, 111 Nev. 56, 888 P.2d 926 (1995).

xliv. *Collins*, 111 Nev. at 57.

xlv. *McCullough v. State*, 99 Nev. 72, 657 P.2d 1157 (1983).

xlvi. *Milligan v. State*, 101 Nev. 627, 708 P.2d 289 (1986).

xlvii. *Warner*, 111 Nev. at 1382.

xlviii. However, even waiting until the first hearing may not be sufficient notice and may potentially cause additional due process issues. In the Eighth Judicial District Courts, an application for an Order to Show Cause is accompanied by a motion to hold in contempt. EDCR 5.509. An accused could answer the motion and then only later, upon learning from the court that its intention is to proceed with criminal contempt, realize he unintentionally waived his rights. To avoid such problems while simultaneously satisfying notice requirements, courts should require detailed Orders to Show Cause. Such orders would include a complete disclosure of the charges; the potential consequences, including the possible sentence or sanctions; the constitutional right to confront and cross-examine all witnesses; the right to present evidence at trial, the right to either testify or remain silent; the right to a public trial; the right to have witnesses subpoenaed to testify on one's behalf and to obtain evidence that exonerates; the right to have competent counsel at all stages of the proceedings and have appointed counsel represent the accused if the accused is unable to afford counsel.

xlix. In fact, if the matter is being presented to the court via a motion by the opposing party, then the accused's intention to plead the Fifth may need to be made clear in their response.

l. *Ikie v. State*, 107 Nev. 916, 823 P.2d 258 (1991); *Furtado v, Furtado.* 380 Mass. 137, 402 N.E.2d 1024 (1980).

li. *McCormick v. Sixth Judicial Dist. Court*, 67 Nev. 318, 218 P.2d 939 (1950).

lii. *Bohannon*, 2017 Nev. Unpub. LEXIS at 10.

liii. *Id.*

liv. *Id.*

lv. *Id.*

lvi. To the extent the prosecution, or potentially the complainant, do not have said evidence. *See* endnote "lviii."

lvii. *Jimenez v. State*, 112 Nev. 610, 918 P.2d 687 (1996).

lviii. *State of Nevada v. Huebler*, 128 Nev. 192, 200, 275 P.3d 91 (2012).

lix. NRS 174.235.

lx. *Int'l Union, United Mine Workers of Am., 512 U.S. at 829, citing Bloom v. Illinois, 391 U.S. 194, 201, 20 L. Ed. 2d 522, 88 S. Ct. 1477 (1968).*

lxi. *See also Bohannon v. Eighth Judicial Dist. Court of the State of Nevada*, 2017 Nev. Unpub. LEXIS 205 (2017); *Hicks v. Feiock*, 485 U.S. 624 (1988).

lxii. *Amezcua v. Eighth Judicial Dist. Court of Nev.*, 130 Nev. Adv. Rep. 7, 319 P.3d 602, 604 (2014). *See also Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 629, 748 P.2d 494, 497 (1987).

lxiii. Nev. Const., Article VIII, Sec. 1; U.S. Const., Amend. V; U.S. Const., Amend. XIV.

lxiv. *Gordon v. Eighth Judicial Dist. Court*, 112 Nev. 216, 220, 913 P.2d 240, 243 (1996); *citing Unites States v. Halper*, 490 U.S. 435, 440, 104 L. Ed. 2d. 487, 496, 109 S. Ct. 1892, 1897 (1989*)(overruled by*, *Hudson v. United States*, 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997) on other grounds).

lxv. *United States v. Dixon*, 509 U.S. 688; 113 S. Ct. 2849 (1992); *People v. Gray*, 36 Ill. App. 3d 720; 344 N.E.2d 683 (1st Dist. 1976); *State v. Goodnow*, 140 N.H. 38; 662 A.2d 950 (1995).

lxvi. *People of New York v. Wood*, 260 A.D.2d 102, 698 N.Y.S.2d 122 (N.Y. App. Div. 1999) (where the family court contempt proceeding, while represented by the trial court to be civil in nature, was deemed to be criminal due to the nature of the sanction and the contemnor was subsequently prosecuted under the same fact pattern). However, double jeopardy would not apply in cases where a crime can be simultaneously punishable under the criminal statute as well as criminal contempt, such as those under NRS 193.300.

lxvii. *Hudson v. United States*, 522 U.S. 93, 104, 118 S. Ct. 488 (1997); *Yates v. United States*, 355 U.S. 66, 78 S. Ct. 128 (1957); *United States v. Ryan*, 810 F.2d 650, 653 (7th Cir. 1987); *United States v. Patrick*, 542 F.2d 381, (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977).

lxviii. *Yates, supra.* at 68-69.

lxix. *Id.*

lxx. *Id.*, at 69-70.

lxxi. *Bohannon,* 2017 Nev. Unpub. LEXIS at 205.

lxxii. *Div. of Child & Family Servs., v. Eighth Judicial Dist. Court*, 120 Nev. 445, 454-55, 92 P.3d 1239, 1245 (2004) (quoting *Cunningham v. Eighth Judicial Dist. Court*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986)).

lxxiii. *Id.* at 455, 92 P.3d at 1245.

lxxiv. *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada,* 2017 Nev. Unpub. LEXIS 205 (2017).

lxxv. *See generally Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009).

lxxvi. *Houston v. Eighth Judicial Dist. Court*, 122 Nev. 544, 135 P.3d 1269 (2006).

lxxvii. *Thompson v. Thompson*, 147 Misc. 2d 297, 556 N.Y.S.2d 217 (1921); *Ellingwood v. Ellingwood*, 25 Ill. App. 3d 587, 323 N.E.2d 571 (1st Dist. 1975). *Parkinson v. Parkinson*, 106 Nev. 481, 796 P.2d 296 (1990); *see also Juers v. Juers*, 2003 Conn. Super. LEXIS 1043 (Conn. Super. Ct. Apr. 8, 2003); *Cole v. Cole*, 147 Misc. 2d 297; 556 N.Y.S.2d 217 (Fam. Ct. 1995); *Archer v. Archer*, 907 S.W.2d 412 (Tenn. App. 1995).

lxxviii. *State of Iowa v. Lipcamon,* 438 N.W.2d 605 (Iowa 1992).

lxxix. NRS 201.051.

lxxx. *Hicks v. Feiock*, 485 U.S. 624 (1988); *Moss v. Superior Court,* 17 Cal.4th 396, 950 P.2d 59 (Cal. 1998); *State ex rel. Mikkelsen v. Hill*, 315 Or. 452, 847 P.2d 402 (Or. 1993); *Ex parte Roosth*, 881 S.W.2d 300 (Tex. 1994).

lxxxi. *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada,* 2017 Nev. Unpub. LEXIS 206 (2017).

lxxxii. *Garrett v. State*, 876 So.2d 24, 29 Fla. L. Weekly D 1198 (Fla. 1st DCA 2004); *Furtado v, Furtado*, 380 Mass. 137, 402 N.E.2d 1024 (1980); *Pugliese v. Pugliese*, 347 So.2d 422 (Fla. 1977).

lxxxiii. *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 5 P.3d 569 (2000).

lxxxiv. *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada*, 2017 Nev. Unpub. LEXIS 205 (2017).

lxxxv. *Mack-Manley v. Manley*, 122 Nev. 849, 859, 138 P.3d 525, 532 (2006); *Consolidated Generator v. Cummins Engine*, 114 Nev. 1304, 971 P.2d 1251 (1998).

lxxxvi. *Bohannon v. Eighth Judicial Dist. Court of the State of Nevada*, 2017 Nev. Unpub. LEXIS 205 (2017).