NORTH CAROLINA TRIAL JUDGES' BENCH BOOK

Chapter 12
Contempt of Court

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I. Distinction Between Criminal and Civil Contempt

A. Purpose of the Action Determines Whether Contempt Is Civil or Criminal

1. Contempt of court may be civil or criminal in nature, but the line of demarcation is "hazy at best." [*O'Briant v. O'Briant*, 313 N.C. 432, 434, 329 S.E.2d 370, 372 (1985) (citation omitted); *File v. File*, 195 N.C. App. 562, 565, 673 S.E.2d 405, 408 (2009) (citing *O'Briant*).] It can be difficult to distinguish between civil and criminal contempt, in part because willful disobedience of a court order constitutes criminal contempt under G.S. 5A-11(a)(3) and willful failure to comply with a court order is grounds for civil contempt under G.S. 5A-21(a).
2. "A major factor in determining whether contempt is civil or criminal is the *purpose* for which the power is exercised." [*Bishop v. Bishop*, 90 N.C. App. 499, 503, 369 S.E.2d 106, 108 (1988) (quoting *O'Briant v. O'Briant*, 313 N.C. 432, 434, 329 S.E.2d 370, 372 (1985)).]
3. If a contempt action is brought to:
    a. Force present and future compliance with a court order, the action is for civil contempt, and G.S. 5A-21 through -25 apply.
        i. Civil contempt is a civil remedy used exclusively to enforce compliance with court orders. [Official Commentary, G.S. 5A-21; *Jolly v. Wright*, 300 N.C. 83, 265 S.E.2d 135 (1980), *overruled on other grounds by McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993); *Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (citing *Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003)) (purpose of civil contempt is not to punish but, rather, to coerce defendant to comply with an order of the court); *Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1969) (citation omitted) (civil contempt proceedings look only to the future).]
    b. Punish conduct that has already occurred that violated a court order or showed disrespect to a court or otherwise challenged its authority, the action is for criminal contempt, and G.S. 5A-11 through -17 apply.
        i. Criminal contempt is administered as punishment for acts, already committed, that have impeded the administration of justice in some way. [*Brower v. Brower*, 70 N.C. App. 131, 318 S.E.2d 542 (1984).] Criminal contempt punishes an act "already accomplished, tending to interfere with the administration of justice." [*File v. File*, 195 N.C. App. 562, 565, 673 S.E.2d 405, 408 (2009) (citing *O'Briant v. O'Briant*, 313 N.C. 432, 329 S.E.2d 370 (1985)).]
        ii. "Where the punishment is to preserve the court's authority and to punish disobedience of its orders, it is criminal contempt." [*O'Briant v. O'Briant*, 313 N.C. 432, 434, 329 S.E.2d 370, 372 (1985) (citing *Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1969)).]

iii. "[A] defendant may be held in criminal contempt as punishment for an act committed *in the past*, when he had the ability to comply, even if he no longer has the ability, but *not* in civil contempt." [*County of Durham ex rel. Wilson v. Burnette*, 262 N.C. App. 17, 30, 821 S.E.2d 840, 851 (2018), *aff'd per curiam*, 372 N.C. 64, 824 S.E.2d 397 (2019).]

4. Distinguishing civil contempt orders from criminal contempt orders.
   a. Civil contempt.
      i. If the relief imposed is imprisonment for an indefinite period of time, which the contemnor may avoid or terminate by performing an act or acts required by the court, such as complying with a previous court order, the contempt is civil in nature. [G.S. 5A-22.]
   b. Criminal contempt.
      i. If the relief imposed is imprisonment for a definite period of time, which the contemnor has no possibility of avoiding or terminating by performing some act required by the court, the contempt is criminal in nature. [*County of Durham ex rel. Wilson v. Burnette*, 262 N.C. App. 17, 31 n.8, 821 S.E.2d 840, 851 n.8 (2018) (order imposing a fixed term of imprisonment is criminal contempt rather than civil contempt because G.S. 5A-22(a) requires that a "person imprisoned for civil contempt must be released when his civil contempt no longer continues"), *aff'd per curiam*, 372 N.C. 64, 824 S.E.2d 397 (2019).]
      ii. If the relief imposed is imprisonment for a definite period of time and imprisonment is suspended and one of the conditions of the suspended sentence is compliance with a prior court order during the suspended sentence, the contempt is criminal in nature.
      iii. An order sentencing defendant to 30 days in jail, suspended on the condition that he make future child support payments in compliance with an earlier court order, post a cash bond in the amount of $75,000, and pay $10,000 attorney fees to plaintiff was an order for criminal contempt not civil contempt. [*Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting); *Hancock v. Hancock*, 122 N.C. App. 518, 471 S.E.2d 415 (1996) (where an order allows contemnor to avoid or terminate imprisonment by performing an act required by the court, then the contempt is civil in nature).]
      iv. Where mother failed to inform father of certain events as required by their custody order; failed, in the past, to give father right of first refusal when she needed child care as required by the order; and allowed her husband to have contact with children in violation of the order, the court of appeals stated that it was "not apparent . . . how an appropriate civil contempt purge condition could 'coerce the defendant to comply with a court order' as opposed to punishing her for a past violation" and noted that these violations were more appropriately addressed through criminal contempt. [*Kolczak v. Johnson*, 260 N.C. App. 208, 219, 817 S.E.2d 861, 868 (2018) (quoting *Wellons v. White*, 229 N.C. 164, 181, 748 S.E.2d 709, 722 (2013)).]

B. Importance of the Distinction Between Civil and Criminal Contempt

1. Distinguishing between civil and criminal contempt is important because the nature of the proceeding determines, in large part:
   a. The procedures that must be followed by the court,
   b. The legal rights accorded to the alleged contemnor,
   c. The elements that must be proved to establish contempt,
   d. The burden of proof,
   e. The available sanctions and remedies, and
   f. The procedure applicable to an appeal. [John L. Saxon, *Using Contempt to Enforce Child Support Orders*, Special Series No. 17 (UNC School of Government, Jan. 2004); *Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting).]
2. Examples of the different procedures and rights associated with criminal versus civil contempt include the following:
   a. Criminal contempt is quasi criminal in nature, and constitutional safeguards are triggered accordingly. A civil contempt proceeding does not demand the procedural and evidentiary safeguards that are required in criminal contempt proceedings. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (citations omitted) (discussing the difference in protections), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008).]
   b. Under G.S. 5A-15(e), a person charged with criminal contempt may not be called to be a witness against himself or herself at the contempt hearing. [G.S. 5A-15(e).] In civil contempt proceedings, an alleged contemnor may assert the privilege against self-incrimination and refuse to testify, but the court may draw an adverse inference of fact from the failure to testify. [*McKillop v. Onslow County*, 139 N.C. App. 53, 532 S.E.2d 594 (2000).] For more on this, see the discussions in Sections III.H.8 and II.F.6, below.
   c. The appeals process is significantly different for civil contempt and criminal contempt proceedings. [*Hardy v. Hardy*, 270 N.C. App. 687, 842 S.E.2d 148 (2020).] A person found in criminal contempt in district court may appeal to superior court for a trial de novo. [G.S. 5A-17(a); 15A-1431.] A person found in civil contempt may appeal a district court's order to the court of appeals. [*See* G.S. 5A-24.] For further discussion of appeals of contempt orders, see the discussion in Sections III.L and II.K, below.]
   d. The burden of proof in a criminal contempt proceeding is beyond a reasonable doubt, and this burden does not shift to the defendant after the entry of a show cause order. [G.S. 5A-14(b); -15(f); *State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008) (noting that in a criminal contempt proceeding, the burden does not shift to the defendant as it does in a proceeding for civil contempt under G.S. 5A-23(a)).] In a civil contempt proceeding initiated under G.S. 5A-23(a), a judicial official's finding of probable cause shifts the burden of proof to the defendant. [G.S. 5A-23(a).] For further discussion, see Sections III.H.12 and II.F.4, below.
   e. A conviction for criminal contempt may be subject to expunction, but a civil contempt order is probably not since it is not a criminal conviction. [John Rubin,

Frequently Asked Questions About Expunctions and Other Relief, Relief from a Criminal Conviction (2025 Edition) (UNC School of Government microsite), https://www.sog.unc.edu/resources/faq-collections/frequently-asked-questions-about-expunctions-and-other-relief.]

3. Practical reasons that may help decide which type of contempt to use.
   a. Criminal contempt should be used when:
      i. An order for arrest is necessary to ensure a defendant's appearance; [G.S. 5A-16(b) (an order for arrest is authorized in the criminal contempt statute when there is probable cause to believe that the defendant will not appear at a show cause hearing).]
      ii. A person cannot be held in civil contempt because that person does not have the ability, at the time of the contempt hearing, to comply with the order violated; [G.S. 5A-21(a)(3) (stating the requirement that, to be found in civil contempt, a person must be able to comply or take reasonable steps to comply).]
      iii. The court wants to suspend a contemnor's incarceration and impose conditions of probation; [*Bishop v. Bishop*, 90 N.C. App. 499, 506, 369 S.E.2d 106, 110 (1998) ("the imposition of probationary or suspended sentences is deemed criminal relief so long as the court does not order the sanctions avoided or purged by specified acts of the contemnor").] Section III.J.1, below, discusses this scenario.
      iv. There are no acts that the court wants the contemnor to take, i.e., there are no purge conditions to include in the order; [*Kolczak v. Johnson*, 260 N.C. App. 208, 219, 817 S.E.2d 861, 868 (2018) (stating that it was "not apparent . . . how an appropriate civil contempt purge condition could 'coerce the defendant to comply with a court order' as opposed to punishing her for a past violation" and noting that the violations in the case were more appropriately addressed through criminal contempt).]
      v. The person subject to contempt is not a party to a court order, i.e., is a witness, a spectator, a lawyer, etc.; (Note, however, that in *Marshall v. Marshall*, 233 N.C. App. 238, 757 S.E.2d 319 (2014) (**unpublished**), a defendant was found in civil contempt of a marital dissolution agreement for his harassment of two individuals not parties to the agreement or to related court orders based on the trial court's finding that the individuals were third-party beneficiaries of the agreement.)
      vi. The alleged contemnor has not violated a court order or the order that is the subject of the contempt proceeding does not address the specific conduct of the contemnor. [*Atassi v. Atassi*, 122 N.C. App. 356, 470 S.E.2d 59 (1996) (while defendant father could not be in civil contempt of an order that was not directed at him, the court noted that father's conduct could be the basis for criminal contempt); *Scott v. Scott,* 157 N.C. App. 382, 579 S.E.2d 382 (2003) (where a custody order did not prohibit father from taking any particular action or place upon him any affirmative obligation to act, the trial court erred in finding him in civil contempt for yelling at mother in front of the children and blocking mother's attempt to drive away); *Williams v. Chaney,* 250 N.C. App. 476, 792 S.E.2d 207 (2016) (error for trial court to find mother in civil contempt for posting

comments on Facebook where custody order did not address or prohibit her use of social media).]

b. Civil contempt should be used in the following circumstances:

i. There are acts that the court wants to encourage the contemnor to take, e.g., purge conditions, such as the payment of money. [*Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1967) (citation omitted) (civil contempt proceedings look only to the future).]

ii. The alleged contemnor testifies and asserts the privilege against self-incrimination. [G.S. 5A-15(e) (prohibiting a person charged with criminal contempt from being called as a witness against the person's interest); *McKillop v. Onslow County*, 139 N.C. App. 53, 532 S.E.2d 594 (2000) (an alleged civil contemnor may assert the privilege against self-incrimination and refuse to testify, but the court may draw an adverse inference of fact from the failure to testify.]

4. For a table distinguishing criminal and civil contempt, see Appendix A.

C. Simultaneous Action for Civil and Criminal Contempt

1. Although a person may be cited for both civil and criminal contempt for the same conduct, they may not be held in both civil and criminal contempt for the same conduct. [G.S. 5A-12(d); 5A-21(c); 5A-23(g).]

a. A person may be held in both civil and criminal contempt when each finding of contempt is based on a different act. [*Adams Creek Assocs. v. Davis*, 186 N.C. App. 512, 652 S.E.2d 677 (2007) (the act supporting civil contempt was defendants' violation of a court order requiring them to stay off certain real property, while the act supporting criminal contempt was defendants' testimony that they would continue to violate court orders requiring them to stay off the land), *review denied*, *appeal dismissed*, *stay dissolved*, 362 N.C. 354, 662 S.E.2d 900 (2008).]

b. "[A] trial court does not err by finding a person in criminal contempt for certain conduct while also finding him in civil contempt for other separate and discrete conduct." [*State v. Revels*, 250 N.C. App. 754, 758, 793 S.E.2d 744, 748 (2016) (imposing imprisonment until contemnor complied with a temporary restraining order and then following that sentence with a fixed term of imprisonment for refusing to return company assets in the past does not violate G.S. 5A-12(d) or 5A-21(c).]

2. G.S. 5A-23(g) "permits, in essence, consolidated hearings for civil and criminal contempt." Thus, a judge who has begun a civil contempt hearing is permitted to find a person in criminal contempt for failing to comply with a court order even though the person is beyond the reach of civil contempt because of inability at that time to comply with the order. [Official Commentary, G.S. 5A-23.]

3. The statutes do not indicate whether the procedural requirements for criminal contempt are to be applied in a consolidated hearing when the defendant could be found in criminal contempt. Case law has established only that when a defendant was found in civil, not criminal, contempt, the defendant was not entitled to the constitutional protections and notice required in a criminal contempt proceeding. [*Blanchard v. Blanchard*, 279 N.C. App. 280, 865 S.E.2d 693 (2021) (father's due process argument was dismissed because in this case father was informed of the allegations forming the basis of mother's contempt allegations prior to the hearing on the matter and the court

only proceeded on civil contempt), *review denied, review dismissed as moot*, 880 S.E.2d 691 (N.C. 2022); *Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (where the notice of hearing did not clearly state whether the proceedings were criminal or civil but defendant admitted she was found in civil contempt, she was not entitled to all the protections and safeguards of a criminal contempt proceeding), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990) (since the relief granted was wholly civil in nature and defendant was not, in fact, subject to criminal penalties, the trial court was not required to afford defendant all procedural and evidentiary safeguards required for criminal contempt proceedings, nor was the court of appeals required to examine whether, in this case, defendant's Fifth Amendment right against self-incrimination was adequately protected during the contempt proceeding), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991).]

4. To protect a defendant's rights, the extra due process requirements of a plenary hearing for indirect criminal contempt should be applied in contempt proceedings that might result in a finding of criminal contempt. See the discussion in Section III.H, below, on plenary hearings, setting out the privilege against self-incrimination and the reasonable doubt standard of proof and noting that the burden of proof remains with the State, and the parameters for the right to appointed counsel. [*But cf. Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 582–83, 273 S.E.2d 247, 259 (1981) (arising under a prior version of the contempt statutes that allowed both civil and criminal contempt for the same conduct, and stating that "[s]ince the contempt proceeding in this case can rest on either the criminal or civil foundations, we conclude that compliance with either the procedural requirements of civil contempt or criminal contempt will validate the proceedings").]

5. The U.S. Supreme Court has recognized several procedural protections required in criminal contempt proceedings, including the requirement of proof beyond a reasonable doubt, protection from double jeopardy, and a jury trial where the result is more than 6 months' imprisonment. [*Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507 (2011).] As to double jeopardy:
   a. The double jeopardy clause constitutes a bar to a subsequent criminal prosecution if the elements of the offense at issue in a previous contempt proceeding match the elements of the subsequently charged criminal offense. [*See State v. Freeland*, 316 N.C. 13, 340 S.E.2d 35 (1986) (defendant could not be punished for both first-degree kidnapping and an underlying sexual assault, which is an element of first-degree kidnapping).]
   b. When wife was held in criminal contempt for violating a provision in a civil consent order that prevented her from "coming to" the residence of her ex-husband, double jeopardy precluded her subsequent prosecution for domestic criminal trespass, as the elements of the offenses in both proceedings were the same. [*State v. Dye*, 139 N.C. App. 148, 532 S.E.2d 574 (2000).]
   c. Double jeopardy precluded the subsequent conviction of a defendant for assault on a female in light of the defendant's prior adjudication of criminal contempt based upon the violation of a domestic violence protective order that prohibited defendant from assaulting his wife. [*State v. Gilley*, 135 N.C. App. 519, 522 S.E.2d 111 (1999), *cert. denied*, 549 S.E.2d 860 (2001).]

D. Consent Judgments

1. Generally.
   a. Except in domestic relations matters discussed in Section I.D.2, below, a consent judgment or order that merely recites the parties' settlement agreement and does not adjudicate the parties' respective rights is treated as a contract between the parties. As such, it is enforceable by an action for breach of contract and not through the contempt powers of the court. [*Ibele v. Tate*, 163 N.C. App. 779, 594 S.E.2d 793 (2004); *Crane v. Green*, 114 N.C. App. 105, 441 S.E.2d 144 (1994) (viewed from its four corners, a consent agreement and order was merely a recital of the parties' agreement and not an adjudication of rights and thus was not enforceable by contempt).]
   b. This rule applies even if the consent order provides that it is enforceable by contempt. [*Ibele v. Tate*, 163 N.C. App. 779, 594 S.E.2d 793 (2004) (contempt is an inherent power of the court that the parties cannot grant or accept).]
   c. If, however, a trial court makes findings of fact and conclusions of law, thereby adjudicating the parties' rights, the contempt power may be used to enforce a consent judgment. [*Ibele v. Tate*, 163 N.C. App. 779, 781 n.2, 594 S.E.2d 793, 795 n.2 (2004).]
   d. The contempt power has been used to enforce a consent judgment that did not contain findings and conclusions when either:
      i. The parties waived those provisions [*Gen. Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 573 S.E.2d 226 (2002) (in light of the parties' express waiver of findings and conclusions in the consent order, and in the absence of any evidence rebutting the presumption of adoption, the consent judgment here was adopted by the court and was enforceable through contempt proceedings)] or
      ii. The trial court actually determined and adjudicated the parties' rights. [*See PCI Energy Servs., Inc. v. Wachs Tech. Servs., Inc.*, 122 N.C. App. 436, 470 S.E.2d 565 (1996) (the procedural history and language of the consent judgment in this case, which adopted and incorporated the parties' agreement, even without findings, made it clear that the trial court had not merely "rubber-stamped" the parties' private agreement but had transformed the parties' agreement into the court's own determination of the parties' respective rights and obligations).]
2. Consent judgments in domestic relations matters.
   a. In a domestic relations action, any consent judgment entered by a court is enforceable by civil contempt. [*Walters v. Walters*, 307 N.C. 381, 298 S.E.2d 338 (1983) (under the rule announced in the case, every court-approved separation agreement is to be considered a court-ordered consent judgment enforceable by civil contempt in the same manner as any other judgment in a domestic relations case); *Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (enforcing a consent judgment by civil contempt), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990) (finding defendant in contempt for violating a consent judgment providing for property distribution), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991); *Barker v. Barker*, 228 N.C. App. 362, 745 S.E.2d 910 (2013) (father was held in civil contempt for violating a consent order requiring payment of a child's college expenses); *Ross v. Voiers*, 127 N.C. App. 415, 490 S.E.2d 244, (same), *review denied*, 347 N.C. 402, 496 S.E.2d 387 (1997); *Fucito v. Francis*, 175 N.C. App. 144, 622 S.E.2d 660 (2005) (for practical purposes, in *Walters*, the court fashioned a

"one-size-fits-all" rule applicable to incorporated settlement agreements in the area of domestic law, holding that when parties present their separation agreement to a court for approval, the agreement will no longer be considered a contract between the parties but, rather, a court-ordered judgment); *Gen. Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 573 S.E.2d 226 (2002) (consent judgment that required wife to specifically perform her obligation under an unincorporated separation agreement to satisfy certain indebtedness, which was akin to an equitable distribution provision, was enforceable by contempt).]

II. Civil Contempt

A. When Used

1. The purpose of civil contempt is not to punish but, rather, to coerce a defendant to comply with an order of the court. [*Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (citing *Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003)).] Unlike criminal contempt, civil contempt is not a form of punishment. [Official Commentary, G.S. 5A-21.]
   a. Where the trial court itself described the civil contempt action it took as "punishment," the order for civil contempt was reversed. Civil contempt is not proper as a means of punishment. [*Atassi v. Atassi*, 122 N.C. App. 356, 470 S.E.2d 59 (1996) (noting that criminal contempt would have been appropriate on the facts presented).]
2. Civil contempt may be used in civil or criminal proceedings. [Official Commentary, G.S. 5A-21 ("[t]he only issue in determining whether imprisonment for civil contempt is proper is whether or not there is a court order which may be complied with.")]
3. The nature of the proceeding does not determine whether contempt is civil or criminal. Both civil and criminal contempt are available in both civil and criminal proceedings.
   a. A defendant may be charged criminally but be in civil contempt. [*See State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 (1992) (defendant charged with criminal nonsupport found in civil contempt for failing to comply with an order for blood testing).]
   b. A person may be held in criminal contempt for willfully failing to comply with an order entered in a civil proceeding. [G.S. 50-13.4(f)(9) (child support); 50-13.3(a) (custody); 50-16.7(j) (alimony).]
4. A court "may hold a creditor in civil contempt for violating a [bankruptcy] discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." [*Taggart v. Lorenzen*, 587 U.S. 554, 557, 139 S. Ct. 1795, 1799 (2019).]
5. When an out-of-state order is registered in North Carolina pursuant to G.S. Chapter 52C, the Uniform Interstate Family Support Act (UIFSA), a trial court has the authority to use contempt to enforce all provisions in the order, not only the support provisions. [*Marshall v. Marshall*, 233 N.C. App. 238, 757 S.E.2d 319 (2014) (**unpublished**) (rejecting

defendant's argument that the trial court lacked jurisdiction to enforce certain paragraphs and provisions of a properly registered foreign support order).]

B. Grounds for Civil Contempt

1. A person may be found in civil contempt for failure to comply with a court order if the following elements are met:
   a. The order remains in force;
   b. The purpose of the order may still be served by compliance with the order;
   c. The noncompliance by the person to whom the order is directed is willful; and
   d. The person to whom the order is directed is able to comply, or able to take reasonable measures that would enable the person to comply, with the order. [G.S. 5A-21(a).]
2. Willfulness.
   a. Effective December 1, 1999, willfulness was added as a necessary element of contempt. [G.S. 5A-21(a)(2a), *added by* S.L. 1999-361, § 1, effective Dec. 1, 1999, and applicable to all proceedings for civil contempt held on or after that date.]
   b. Prior to the statutory amendment cited immediately above, case law had interpreted the statutes to require an element of willfulness. [*See McKillop v. Onslow County*, 139 N.C. App. 53, 532 S.E.2d 594 (2000).]
   c. Willfulness is, in the context of civil contempt:
      i. An ability to comply with a court order and
      ii. A deliberate and intentional failure to do so. [*Clark v. Gragg*, 171 N.C. App. 120, 614 S.E.2d 356 (2005); *Lamm v. Lamm*, 229 N.C. 248, 49 S.E.2d 403 (1948) (an alleged contemnor does not act willfully in failing to comply with a judgment if it has not been within their power to do so since the judgment was rendered); *Teachey v. Teachey*, 46 N.C. App. 332, 264 S.E.2d 786 (1980) (citing *Lamm*) (to find willfulness, there must be evidence to establish as an affirmative fact that a defendant possessed the means to comply with a court order at some time after its entry).]
   d. Thus, in a civil contempt proceeding, a person's ability to comply with an order often is subsumed within the issue of willfulness. [John L. Saxon, *Using Contempt to Enforce Child Support Orders*, Special Series No. 17 (UNC School of Government, Feb. 2004) (noting this in the context of child support).]
   e. A finding of willful failure to pay court-ordered child support must be based on evidence that the obligor is purposefully, deliberately, stubbornly, or in bad faith disobeying a child support order or disregarding a court-ordered obligation to pay child support despite the present ability to do so. [*See* G.S. 5A-21(a)(3); *Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (citing *Forte v. Forte*, 65 N.C. App. 615, 309 S.E.2d 729 (1983)) (willfulness involves more than deliberation or conscious choice; it imports a bad faith disregard for authority and the law); *Barker v. Barker*, 228 N.C. App. 362, 745 S.E.2d 910 (2013) (willfulness imports knowledge and a stubborn resistance); *Meehan v. Lawrance*, 166 N.C. App. 369, 602 S.E.2d 21 (2004) (same); *Mauney v. Mauney*, 268 N.C. 254, 150 S.E.2d 391 (1966) (same).] See *Enforcement of Child Support Orders*, Bench Book, Chapter 3, Part 4 for further discussion.
      i. A trial court's finding of a willful violation of a child support order was proper when father unilaterally reduced his monthly payments to $0.01 after

inadvertently paying more support in the past than required by a court order, without seeking modification of the order with the court. [*Barham v. Barham*, 286 N.C. App. 764, 881 S.E.2d 911 (2022).]

ii. When a defendant did not attend a contempt hearing held in response to a show cause order, the trial court erred in finding him in civil contempt when no evidence of his ability to comply with the court order was introduced into evidence. [*Tigani v. Tigani*, 256 N.C. App 154, 805 S.E.2d 546 (2017) (where bank account records from several months prior to the hearing were reviewed but not introduced into evidence, the record was devoid of evidence that defendant had the present ability to pay).] For further discussion, see Cheryl Howell, *No Contempt for the Nonpayment of Money Without Actual Evidence of Ability to Pay*, On the Civil Side: A UNC Sch. of Gov't Blog (Dec. 5, 2018), https://civil.sog.unc.edu/no-contempt-for-the-nonpayment-of-money-without-actual-evidence-of-ability-to-pay/.

f. Willfulness based on refusal to work when capable of doing so.

i. Father, who admitted that he was physically and mentally able to be employed and was in fact employed full-time when a child support order was entered, voluntarily quit his job after entry of the support order to become a member of a religious community that prohibited its members from earning outside income. Father testified that he would not take outside employment under any circumstances. Father's failure to pay support was willful and he was properly held in civil contempt. [*Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (that father's religious beliefs were sincerely held was irrelevant).]

ii. However, evidence that an obligor is able-bodied, not incapacitated, presently employed, or able to work is generally insufficient, standing alone, to support a finding that the obligor has willfully failed to pay court-ordered child support despite the present ability to do so. [*Mauney v. Mauney*, 268 N.C. 254, 150 S.E.2d 391 (1966) (findings that defendant had the ability to earn good wages, had been continuously employed as of a certain date, and had not made a motion to modify a court order requiring him to pay support were not sufficient to support a conclusion that defendant's failure to pay was willful); *Clark v. Gragg*, 171 N.C. App. 120, 614 S.E.2d 356 (2005) (findings that defendant was an able-bodied, 32-year-old with a tenth grade education and work experience in the furniture industry were insufficient for willfulness finding); *Hodges v. Hodges*, 64 N.C. App. 550, 553, 307 S.E.2d 575, 577 (1983) (finding that defendant was able-bodied at least part of the time and "was capable of and had the means or should have had the means" to make support payments was not sufficient evidence of willfulness); *Self v. Self*, 55 N.C. App. 651, 286 S.E.2d 579 (1982) (while the evidence established that defendant was physically able to work, it did not establish that work was available to him, so his conduct was not properly found to be willful).]

iii. A finding of an ability to work must be based on evidence in the record, and a trial court cannot find an alleged contemnor able to maintain a wage-paying job based solely on a lack of evidence of inability to work. [*County of Durham ex rel. Wilson v. Burnette*, 262 N.C. App. 17, 23, 821 S.E.2d 840, 846 (2018), *aff'd per curiam*, 372 N.C. 64, 824 S.E.2d 397 (2019) ("the trial court is the sole judge

of credibility and weight of the evidence, and although the trial court could find defendant's evidence not to be credible, this does not create evidence for plaintiff").]

iv. Where the only evidence in the record was introduced by defendant and suggested that he did not have the ability to pay support (defendant had no income, lived rent-free with his parents, and offered testimony from a doctor that he was physically incapable of gainful employment), and because no contrary evidence was introduced—nor was defendant's evidence refuted at all—there was no evidence to support a finding that defendant had the present ability to comply with the court's support order and purge condition or to take reasonable measures to do so. [*County of Durham ex rel. Alston v. Hodges*, 257 N.C. App. 288, 809 S.E.2d 317 (2018).]

g. Willfulness based on a party voluntarily taking on additional financial obligations or divesting assets or income after entry of an order requiring support or other payments.

i. A party who has the ability to pay court-ordered support when a support order is entered but later becomes unable to pay after voluntarily taking on additional financial obligations or divesting assets or reducing income engages in willful conduct and may be held in civil contempt. [*Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (citing *Faught v. Faught*, 67 N.C. App. 37, 312 S.E.2d 504 (1984)) (*Faught* reviewed a well-established line of cases so providing).]

ii. A contempt order was affirmed when defendant's income situation at the time of his contempt hearing was found to be "of his own making" since he had voluntarily changed jobs twice since entry of the support order, the first change resulting in a lower salary and the second resulting in "undisclosed compensation." [*Williford v. Williford*, 56 N.C. App. 610, 612, 289 S.E.2d 907, 908 (1982) (defendant had also remarried and had a child with his second wife and applied his income to matters other than the support called for in the parties' agreement, including making payments on a home owned by his second wife).]

iii. Mother's argument that her failure to pay child support pursuant to a temporary child support order was not willful because she was unemployed at the time was rejected based on findings that mother had (1) not applied for a teaching position in Mecklenburg County in the past three years, despite stating in a verified motion to modify support that she had; (2) resigned from a teaching position in Union County without having found another job; and (3) told father that mothers should not have to pay child support. [*Lueallen v. Lueallen*, 249 N.C. App. 292, 790 S.E.2d 690 (2016).]

iv. A party's noncompliance may not be willful when the party shows valid reasons for the noncompliance. [*See Spencer v. Spencer*, 133 N.C. App. 38, 514 S.E.2d 283 (1999) (obligor's unilateral reduction in court-ordered child support payments when obligor obtained physical custody of one of the parties' two children did not constitute willful failure to comply with the child support order); *see also Meehan v. Lawrance*, 166 N.C. App. 369, 602 S.E.2d 21 (2004) (where parties orally agreed to modify defendant's child support obligation, trial court's finding

that defendant did not act willfully was affirmed). *Cf. Barham v. Barham,* 286 N.C. App. 764, 881 S.E.2d 911 (2022) (father's unilateral decision that he had paid too much child support did not justify his noncompliance with a support order, and the trial court did not err in finding him in contempt).]

h. Father's noncompliance was not willful when he "was under the mistaken apprehension that he could simply stop paying" after 17-year-old son left the custodial parent's home and did not return. [*Morris v. Powell*, 269 N.C. App. 496, 501, 840 S.E.2d 223, 227 (2020) (the court of appeals also resolved a matter of first impression and held that to terminate a parent's obligation to pay child support based on a claim that the child is emancipated, the child must be married or judicially emancipated, which occurs only as provided in G.S. Chapter 7B, Article 35).]

3. Present ability to comply.

a. The present ability to comply with an order includes not only the present means to comply, but also an ability to take reasonable measures to comply. [G.S. 5A-21(a)(3); *Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991).]

b. A court must determine a party's ability to comply with a court order during two periods of time. The trial court must find that the party:

i. Possessed the means to comply with the court's order during the period the party was in default [*Mauney v. Mauney*, 268 N.C. 254, 150 S.E.2d 391 (1966) (requiring a finding that defendant possessed the means to comply with alimony and child support orders during the period when he was in default); *Clark v. Gragg*, 171 N.C. App. 120, 614 S.E.2d 356 (2005) (to address the requirement of willfulness, a trial court must make findings as to the ability of the party to comply with the order at issue during the period of default); *Sowers v. Toliver*, 150 N.C. App. 114, 562 S.E.2d 593 (2002) (a contempt order was vacated in part when it lacked findings as to plaintiff's ability to comply with the order during the period when plaintiff was in default).] and

ii. Has the present means to comply with the purge conditions set out in the order. [*Shippen v. Shippen*, 204 N.C. App. 188, 191, 693 S.E.2d 240, 244 (2010) (quoting *McMiller v. McMiller*, 77 N.C. App. 808, 809, 336 S.E.2d 134, 135 (1985)) ("[t]o justify conditioning defendant's release from jail for civil contempt upon payment of a large lump sum of arrearages, the district court must find as fact that defendant has the present ability to pay those arrearages"); *Tucker v. Tucker*, 197 N.C. App. 592, 679 S.E.2d 141 (2009) (G.S. 5A-21 and 5A-22, construed together, require that a person have the present ability to comply with purge conditions before that person may be imprisoned for civil contempt); *Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014) (citing *Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974)) (findings taken as a whole showed that the court considered husband's ability to comply at the time of the hearing with an order requiring him to pay $20,000 of unpaid alimony within sixty days of entry of the order); *Bishop v. Bishop*, 90 N.C. App. 499, 369 S.E.2d 106 (1988) (contempt adjudication was reversed when the court made no findings as to defendant's ability to pay at date of hearing); *Hodges v. Hodges*, 64 N.C. App. 550,

553, 307 S.E.2d 575, 577 (1983) (contempt order vacated when the court did not determine that the defendant had the ability to pay as of date of hearing); *Groseclose v. Groseclose*, 291 N.C. App. 409, 896 S.E.2d 155 (2024) (trial court's findings on a defendant's ability to pay were adequate to show he had willfully failed to comply with an order to pay support, but the findings were not sufficient to support the purge condition that he pay all outstanding arrears).]

iii. Because a trial court must find that an alleged contemnor has the present ability to comply with a court order, a party cannot bring a civil contempt action to enforce an order against a person who is deceased when the contempt action is initiated. [*MacMillan v. Thompson*, 231 N.C. App. 170, 753 S.E.2d 741 (2013) (**unpublished**) (a motion in the cause was interpreted to initiate a civil contempt action to enforce an incorporated separation agreement).]

c. General finding of present ability to comply is sufficient in certain circumstances.

i. A general finding of present ability to comply with a support order is sufficient when there is evidence in the record regarding defendant's assets. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (citing *Adkins v. Adkins*, 82 N.C. App. 289, 346 S.E.2d 220) (1986)), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Shippen v. Shippen*, 204 N.C. App. 188, 191, 693 S.E.2d 240, 244 (2010) (court found that "[d]efendant has the ability to comply or take reasonable efforts to do so" but made no finding that defendant had the present ability to pay an arrearage and purge himself of contempt; while court's finding was not as specific or detailed as might be preferred, it was minimally sufficient to support a finding of present ability to comply with a court order); *Hartsell v. Hartsell*, 99 N.C. App. 380, 385, 393 S.E.2d 570, 573 (1990) (although specific findings as to the contemnor's present means are preferable, findings that "[d]efendant ha[d] at all times been fully capable and able of complying with all provisions of the Court's decree" and that "[d]efendant ha[d] the present ability and continuing capability to comply with all remaining provisions of the Court's decree with which he ha[d] not heretofore complied" were sufficient to support a finding of present ability to comply with the decree when supported by competent evidence of assets that could be sold), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991); *Lee v. Lee*, 37 N.C. App. 371, 246 S.E.2d 49 (1978) (citing *Moore v. Moore*, 35 N.C. App. 748, 242 S.E.2d 642 (1978)) (failure to include a finding as to contemnor's present ability to comply with a court order was not fatal when there was plenary evidence introduced that would justify such a finding); *Groseclose v. Groseclose*, 291 N.C. App. 409, 896 S.E.2d 155 (2024) (trial court's findings on a defendant's ability to comply with a support order were adequate where (1) the defendant's financial affidavit revealed voluntary deductions; (2) despite fluctuating income, the defendant's standard of living had not changed; and (3) the defendant's spending evinced a "cavalier and entitled attitude toward money").]

ii. Although a general finding of present ability to comply with a court order can sometimes be sufficient, if there is no competent evidence to support a trial court's finding of present ability to comply, then a contempt order must be reversed. [*Cumberland County ex rel. Mitchell v. Manning*, 262 N.C. App. 383, 822 S.E.2d 305 (2018) (an obligor's affidavit of indigency dated two months before the contempt hearing was not evidence of ability to pay at the time of

the hearing); *Tigani v. Tigani*, 256 N.C. App 154, 805 S.E.2d 546 (2017) (when neither defendant nor his counsel appeared at his contempt hearing, no witnesses testified, and no exhibits were offered into evidence, the appeals court found that the record was devoid of evidence that defendant had the present ability to comply with an order to pay attorney fees).] For further discussion, see Cheryl Howell, *No Contempt for the Nonpayment of Money Without Actual Evidence of Ability to Pay*, On the Civil Side: A UNC Sch. of Gov't Blog (Dec. 5, 2018), https://civil.sog.unc.edu/no-contempt-for-the-nonpayment-of-money-without-actual-evidence-of-ability-to-pay/.

iii. A trial court's general finding of a defendant's present ability to comply with a court order was sufficient when plaintiff's testimony included evidence concerning defendant's employment and income, her testimony was not disputed by defendant, and defendant offered no rebuttal evidence, no alternative explanation for his income, and no denial of his ability to pay as required by the court order. [*Bossian v. Bossian*, 284 N.C. App. 208, 875 S.E.2d 570 (2022) (defendant bore the burden of demonstrating why he should not be held in willful contempt upon the court's entry of an order to show cause), *review denied*, 894 S.E.2d 751 (N.C. 2023).]

d. Use of findings from an earlier hearing on present ability to comply.

i. Prior findings of a present ability to pay may be res judicata as to future proceedings on that issue, at least when the proceedings are close in time. [*Abernethy v. Abernethy*, 64 N.C. App. 386, 307 S.E.2d 396 (1983) (finding of a present ability to pay at a March hearing was res judicata on that issue at a June hearing when defendant did not appeal the March judgment).]

e. A finding that a party "has had" the ability to comply with a court order, without more, is not sufficient support for a finding of present ability to comply at the time of the hearing.

i. A sole finding that a defendant "has had" the ability to comply with a support order, did not, standing alone, support the conclusion that the defendant had the present ability to purge himself or herself of contempt by paying arrearages owed. [*McMiller v. McMiller*, 77 N.C. App. 808, 336 S.E.2d 134 (1985) (since no finding was made as to defendant's present ability to pay the arrearages necessary to purge himself from contempt, judgment was vacated); *Thompson v. Thompson*, 223 N.C. App. 515, 519, 735 S.E.2d 214, 217 (2012) (citing *McMiller*) (the trial court's finding that "[d]efendant has had the ability and means to pay the [p]ost [s]eparation [s]upport previously ordered, or at least a substantial portion of that amount" was insufficient because it speaks to past ability to pay and was not a finding about defendant's present ability to pay); *cf. Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014) (citing *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990)) (findings taken as a whole showed that the trial court considered husband's present ability to comply with an order requiring him to pay alimony arrearages, even though the contempt order stated that defendant "*had* the present ability to comply" with the order; appeals court rejected husband's argument that the trial court's use of "had" was fatal to its judgment; findings addressed plaintiff's various sources of income, that his expenses and debts were paid by his closely held corporation, and that he voluntary made

mortgage and rent payments for his adult children and mother instead of paying alimony arrearages as ordered).]

f. A failure to seek modification of a support order cannot, without more, be the basis for finding a present ability to comply.

i. A present ability to pay support may not be presumed based solely on the existence of a prior support order and the absence of a motion to modify that order. [*Smithwick v. Smithwick*, 218 N.C. 503, 11 S.E.2d 455 (1940) (the right to move for modification does not sustain the conclusion that failure to comply was willful and contemptuous); *Graham v. Graham*, 77 N.C. App. 422, 335 S.E.2d 210 (1985) (noting that while a defendant who lacks means to make required payments should move for modification, failure to do so is not evidence of willful contempt).]

g. Ability to work, standing alone, is generally not sufficient to show willfulness or present ability to comply with a court order.

i. Evidence that an obligor is able-bodied, not incapacitated, presently employed, or able to work is generally insufficient, standing alone, to support a finding that the obligor has willfully failed to pay court-ordered child support despite the present ability to do so. [*Clark v. Gragg*, 171 N.C. App. 120, 614 S.E.2d 356 (2005) (findings that defendant was an able-bodied, 32-year-old with a tenth grade education and work experience in the furniture industry were insufficient for willfulness finding); *Hodges v. Hodges*, 64 N.C. App. 550, 553, 307 S.E.2d 575, 578 (1983) (finding that defendant was able-bodied at least part of the time and "was capable of and had the means or should have had the means" to make support payments was not sufficient evidence of willfulness); *Self v. Self*, 55 N.C. App. 651, 286 S.E.2d 579 (1982) (while the evidence established that defendant was physically able to work, it did not establish that work was available to him, so his conduct was not properly found to be willful).]

h. Inability to comply must be genuine.

i. A person's inability to comply with a court order at the time of a contempt hearing must be genuine and not deliberately effected. [*Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974) (affirming finding of contempt of a child support order and noting that a defendant may not deliberately divest himself or herself of property and in effect pauperize himself or herself for an appearance at a contempt hearing).]

i. Ability to pay part of arrearage.

i. An ability to pay part of an arrearage is insufficient to support incarceration until the entire amount is paid. [*Green v. Green*, 130 N.C. 578, 41 S.E. 784 (1902) (where court found that husband could pay at least a portion of alimony owed, it was error to imprison him until he paid whole amount); *see also Brower v. Brower*, 70 N.C. App. 131, 318 S.E.2d 542 (1984) (order that required defendant's imprisonment until he paid entire arrearage was vacated when court only found that defendant had present ability to pay portion of arrearage).] Note, however, that an ability to pay part of an arrearage is sufficient to support incarceration until that part is paid. [*But see Clark v. Gragg*, 171 N.C. App. 120, 614 S.E.2d 356 (2005) (emphasis in original) (trial court's finding that "[p]laintiff has the

present ability to comply *with at least a portion* of the [o]rders of this Court" was insufficient to support finding of willfulness; case remanded for specific findings addressing plaintiff's willful noncompliance, including findings regarding his ability to pay during the period that he was in default).]

ii. Civil contempt cannot be based on an obligor's failure to pay the full amount of support ordered when the obligor is only able to pay a portion. [*Spears v. Spears*, 245 N.C. App. 260, 284, 784 S.E.2d 485, 500 (2016) (trial court erred in finding defendant in civil contempt for failure to pay a total monthly obligation of $5,880 for child support, alimony, equitable distribution, and attorney fees when court's findings established that defendant had the present ability to pay only a portion of the amount ordered; trial court erred further when it required defendant to pay an additional $900 per month indefinitely as a purge condition when defendant was unable to pay the total monthly obligation, "much less $900.00 in addition to that amount").]

j. Courts have found that a contemnor had the present ability to comply with an order or purge condition requiring the payment of money in the following circumstances:

i. Sixty days from the entry of a contempt order to pay $20,000 of unpaid alimony, the contemnor had (1) $15,000 in monthly income, a portion of which could be used to pay the amount ordered; (2) personal debts and expenses paid by his business, a closely held corporation; and (3) the ability to take reasonable measures to comply with the order by accessing cash from lines of credit associated with credit cards and by ceasing to voluntarily make monthly mortgage and rent payments for his adult children and mother. [*Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014).]

ii. The contemnor had the ability to pay some of the costs associated with the numerous lawsuits he filed, there was no evidence showing that he could not have been gainfully employed, and he actually satisfied the judgment at issue by making a payment of $2,000 after serving only one day in jail. [*Ward v. Jett Properties, LLC*, 206 N.C. App. 598, 698 S.E.2d 768 (2010) (**unpublished**).]

iii. At the time of the contempt hearing, the contemnor possessed a $2,000 cashier's check, a boat and a car that could readily be converted to cash, and at least $6,200 from his 401K plan. [*Tucker v. Tucker*, 197 N.C. App. 592, 679 S.E.2d 141 (2009) (payment of $10,000 in alimony arrears required for defendant to purge himself of contempt).]

iv. The contemnor had equity in real property that exceeded $500,000. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (defendant given ninety days to sell real property to pay plaintiff's attorney fees and to pay credit card debt she was ordered to pay in equitable distribution), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008).]

v. $60,000 in equity and several items of personal property of value were available to the contemnor. [*Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991) (payment of approximately $36,000, representing sums owed under a consent decree for taxes and for attorney fees, was required for defendant to purge himself of contempt).]

vi. The contemnor owned several assets (automobiles and real estate) at the time of the contempt hearing that could have been sold or liquidated, as well as consistent and recurring deposits and monies from a "friend" and present income from service on a city council. [*Onslow County ex rel. Eggleston v. Willingham*, 199 N.C. App. 755, 687 S.E.2d 541 (2009) (**unpublished**).]

vii. The contemnor husband owned stock valued in excess of $30,000, which, had he sold it, could have been used to pay a required installment payment of $7,000 for wife's attorney fees, as well as the entire amount owed on that debt. [*Hudson v. Hudson*, 193 N.C. App. 454, 667 S.E.2d 340 (2008) (**unpublished**).]

viii. Despite a drop in income, the contemnor had accumulated wealth in the form of stocks and bonds worth more than $140,000, five rental properties, and retirement accounts worth in excess of $900,000. [*Smith v. Smith*, 247 N.C. App. 166, 785 S.E.2d 434 (2016).]

k. A trial court must "consider the basic subsistence needs of an alleged contemnor before determining [whether they have] the ability to pay child support as ordered and the ability to pay purge payments. Although the exact details of basic subsistence needs will vary in different cases and the trial court has wide discretion in determining these needs, basic subsistence needs normally will include food, water, shelter, and clothing at the very least." [*County of Durham ex rel. Wilson v. Burnette*, 262 N.C. App. 17, 17, 821 S.E.2d 840, 843 (2018), *aff'd per curiam*, 372 S.E.2d 397 (2019).]

l. A trial court properly considered a business owner's jointly held bank accounts and individually held investment retirement accounts as relevant to the question of his present ability to comply with a court order. [*Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 800 S.E.2d 812 (2017) (distinguishing *Spears v. Spears*, 245 N.C. App. 260, 784, S.E.2d 260 (2016), which recognized that property held as tenants by the entirety should not be considered in such determinations), *review denied*, *cert. denied*, 371 N.C. 116, 813 S.E.2d 245 (2018).]

m. For a discussion of contempt and the ability to pay, see Cheryl Howell, *Contempt: Establishing Ability to Pay*, On the Civil Side: A UNC Sch. of Gov't Blog (May 8, 2015), https://civil.sog.unc.edu/contempt-establishing-ability-to-pay/.

4. Ability to take reasonable measures that would enable a person to comply with a court order.

a. "Reasonable measures" that would enable a person to comply with an order for support or to pay arrearages may include:

i. Liquidating equity in encumbered assets [*Adkins v. Adkins*, 82 N.C. App. 289, 346 S.E.2d 220 (1986) (rejecting father's argument that he could not be imprisoned for civil contempt unless court found that he had unencumbered property that could be used to purge himself of contempt).] and

ii. Borrowing money, selling property, or liquidating other assets. [*Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014) (citing *Teachey v. Teachey*, 46 N.C. App. 332, 264 S.E.2d 786 (1980)).]

b. Courts have found that a party had the ability to take reasonable measures to enable the party to comply with a court order in the following circumstances:

i. When requested documents were readily available from third-party sources, such as banks, brokerage houses, and accountants, the party had the ability to comply

with a discovery order. [*Mills v. Mills*, 198 N.C. App. 703, 681 S.E.2d 865 (2009) (**unpublished**) (requiring defendant to obtain the discovery materials from third-party sources was not unreasonable).]

ii. When the defendant could have sold or encumbered other real property he owned, could have enlisted the financial support of his partner, and could have been more diligent in efforts to procure financing through an institutional lender, the defendant had the ability to comply with an order requiring him to purchase certain residential properties. [*Banana Wind Properties, LLC v. K&T Real Estate Invs.*, 191 N.C. App. 399, 663 S.E.2d 12 (2008) (**unpublished**).]

c. It is not reasonable to require or expect a defendant to liquidate an encumbered asset to pay a support obligation to a former spouse if the encumbered asset is real property owned as tenants by the entirety with a subsequent spouse. [*Spears v. Spears*, 245 N.C. App. 260, 784 S.E.2d 485 (2016) (error for the trial court to "fault" defendant for not making an effort to sell a beach house owned as tenants by the entirety with his second wife; appellate court further noted that even if a sale had occurred, it would have only eliminated defendant's monthly mortgage payments and would not have generated cash to pay arrears).]

C. When Civil Contempt Is Not Available

1. Civil contempt is not available when

a. The required action has been performed; in other words, when an alleged contemnor is in compliance on the date of the contempt hearing.

i. A court may not find a party in civil contempt after the required action has been performed. [*Ruth v. Ruth*, 158 N.C. App. 123, 579 S.E.2d 909 (2003) (error for trial court to find mother in civil contempt for failing to return children after visitation when she had returned children to father before the contempt hearing); *Vaughn v. Vaughn*, 176 N.C. App. 409, 626 S.E.2d 876 (2006) (**unpublished**) (husband's marriage before the contempt hearing meant that he was in compliance with a custody order that prohibited opposite-sex overnight guests).] Note, however, that criminal contempt may be available in such circumstances. See the discussion immediately below and in Section III.E, below.

ii. An obligor ordered to show cause for failing to pay court-ordered child support may not be held in civil contempt if the full amount of the arrearage is paid before the contempt hearing is held. [*See Reynolds v. Reynolds*, 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (father's payment of arrearages after contempt motion was filed eliminated option of civil, but not criminal, contempt), *rev'd on other grounds per curiam for reasons stated in dissenting opinion*, 356 N.C. 287, 569 S.E.2d 645 (2002); *Hudson v. Hudson*, 31 N.C. App. 547, 230 S.E.2d 188 (1976) (obligor may not be held in civil contempt if payments are brought up to date between motion and contempt hearing).]

iii. Courts have rejected the argument that a contemnor is in compliance at the time of a contempt hearing when the underlying order is one that required that person to refrain from certain behavior, for example, unsupervised visitation, as opposed to an order requiring an affirmative act, for example, bringing support up to date. [*See Helms v. Landry*, 198 N.C. App. 405, 681 S.E.2d 566 (**unpublished**)

(rejecting mother's argument that since she had not attempted to visit her minor child after the contempt motion in the cause was filed, she was in compliance at the time of the hearing with the court's prior orders requiring supervised visitation), *review denied*, 363 N.C. 744, 688 S.E.2d 454 (2009).]

b. No underlying order has been entered pursuant to G.S. 1A-1, Rule 58; in other words, no order was "in force" when a contempt order was entered.

i. Contempt finding was reversed when the trial court rendered an oral judgment for plaintiffs but never reduced the judgment to writing or entered it. Since an order is not enforceable by contempt until the order is entered pursuant to G.S. 1A-1, Rule 58, defendants could not be in contempt of it. [*Carter v. Hill*, 186 N.C. App. 464, 650 S.E.2d 843 (2007); *see also Carland v. Branch*, 164 N.C. App. 403, 595 S.E.2d 742 (2004) (custody arrangement announced in open court on November 19, 2001, was not an enforceable order until it was entered on May 13, 2002); *Hassell v. Hassell*, 149 N.C. App. 972, 563 S.E.2d 100 (2002) (**unpublished**) (defendant could not be found in contempt of an August 2000 decision before it was entered as an order in January 2001); *Spears v. Spears*, 245 N.C. App. 260, 784 S.E.2d 485 (2016) (trial court erred when it found that defendant had not complied with purge conditions in a civil contempt order when the contempt order had not been entered at the time of the hearing to review defendant's compliance).]

ii. Contempt finding was reversed when it was based on conduct by defendant occurring prior to entry of the underlying order. [*McKinney v. McKinney*, 253 N.C. App. 473, 799 S.E.2d 280 (2017) (father complied with the court's purge condition by delivering child to mother before a civil contempt order was entered pursuant to G.S. 1A-1, Rule 58; oral order finding father in contempt was not effective); *Onslow County v. Moore*, 129 N.C. App. 376, 499 S.E.2d 780, (order was not "in force" until it was entered in March; conduct occurring in January and February could not be the basis for contempt), *review denied*, 349 N.C. 361, 525 S.E.2d 543 (1998).]

iii. A party to an action cannot be held in civil contempt of a temporary order following termination of the action by a Rule 41 voluntary dismissal. [*See Collins v. Collins*, 18 N.C. App. 45, 196 S.E.2d 282 (1973) (father could not be held in contempt of a temporary custody order after mother voluntarily dismissed the custody action under G.S. 1A-1, Rule 41(a)(1); mother's voluntary dismissal, which occurred after she was awarded temporary custody but before her claim for permanent custody was decided, was a final termination of that action, and no valid orders, including adjudications of contempt for violation of the temporary order, could be made thereafter in that cause).]

iv. A motion to modify a support obligation does not insulate a party from a finding of civil contempt while the motion to modify is pending. A prior alimony order remains in force for purposes of civil contempt while a motion to modify is pending. [*Hill v. Hill*, 261 N.C. App. 600, 821 S.E.2d 210 (2018) (rejecting party's argument that a prior alimony order was no longer "in force" on the date party was held in contempt).]

c. The alleged contemnor is not the person "to whom the order is directed" as required by G.S. 5A-21(a)(2a) and (3).

i. When an order that was the subject of a contempt proceeding allowed mother to travel out of the country with child, arose upon mother's motion, and was solely directed at the conduct of mother, it was error to find father in civil contempt of the order for filing for and obtaining custody in a foreign country during a visit there by mother and child. [*Atassi v. Atassi*, 122 N.C. App. 356, 470 S.E.2d 59 (1996) (while defendant father could not be in civil contempt of an order that was not directed at him, the court noted that father's conduct could be the basis for criminal contempt).]

ii. *Cf. Marshall v. Marshall*, 233 N.C. App. 238, 757 S.E.2d 319 (2014) (**unpublished**) (defendant was found in civil contempt of a marital dissolution agreement for his harassment of two individuals not parties to the agreement or to related court orders, based on the trial court's finding that the individuals were third-party beneficiaries of the agreement).

d. The conduct alleged to be contemptuous is not specifically prohibited by the underlying court order or a provision in the order is impermissibly vague.

i. Trial court erred when it found father in civil contempt when the conduct mother complained of was not specifically prohibited by the existing custody order. In addition, the language in the purge condition of the contempt order that directed father not to "interfere" with mother's custody was impermissibly vague because it did not specify what father could or could not do to purge himself of contempt. [*Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003); *cf. Middleton v. Middleton*, 159 N.C. App. 224, 583 S.E.2d 48 (2003) (upholding contempt even though the conduct complained of was not specifically addressed in parties' consent agreement when it was clear that the party violated the intent and spirit of the consent agreement).]

ii. Provision in a custody order prohibiting mother from "mak[ing] derogatory statements about child or child's family members" did not clearly proscribe mother's social media post complaining that father was not keeping her informed about child's sporting events and could not be the basis for contempt without clarification. [*Williams v. Chaney*, 250 N.C. App. 476, 479, 792 S.E.2d 207, 209 (2016) (when an order is ambiguous, a party's failure to comply cannot be willful).]

iii. A summer visitation provision of a custody order was ambiguous where its use of the term "at least" led to different reasonable interpretations of the permitted number of weeks of travel and could not support a finding that father willfully violated the order. [*Walter v. Walter*, 279 N.C. App. 61, 864 S.E.2d 534 (2021).]

iv. Where the language of a custody order permitted deviations from visitation exchanges in "unforeseen circumstances" with appropriate notice, defendant father could still be found in civil contempt for being habitually late for more than forty custody exchanges in two years. [*Wilson v. Guinyard*, 254 N.C. App. 229, 801 S.E.2d 700 (2017).]

v. But "[i]mplicit in every order is the understanding that its terms will be honored in good faith – that the parties bound by it will act under the dictates of common

sense and reasonableness." [*Blanchard v. Blanchard*, 279 N.C. App. 280, 292, 856 S.E.2d 693, 701 (2021) (citing *Am. Tel. & Tel. Co., v. Griffin*, 39 N.C. App. 721, 726, 251 S.E.2d 885, 888 (1979)) (where a custody order provided that each parent was to provide reasonable telephone and FaceTime contact with their children each night that they were in the other parent's custody, father was properly held in contempt for failing to inform mother when the children would be available for her telephone and FaceTime calls, even though the order did not specifically require that he inform her of the time he would make the children available), *review denied, review dismissed as moot*, 880 S.E.2d 691 (N.C. 2022)].

e. The allegedly contemptuous conduct violated a contract, not a court order.
   i. Provisions included in an unincorporated separation agreement may not be enforced through civil contempt. [*Jones v. Jones*, 144 N.C. App. 595, 601, 548 S.E.2d 565, 569 (2001) (court in alimony case stated that "[w]here a separation agreement is neither submitted, by one or both parties thereto, to the trial court for its approval, nor specifically incorporated into a court order or judgment, the separation agreement is preserved as a contract and remains enforceable and modifiable only under traditional contract principles").]
   ii. However, an order requiring a party to specifically perform the obligations set out in an unincorporated separation agreement is enforceable by contempt. [*Gen. Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 573 S.E.2d 226 (2002) (citing *McDowell v. McDowell*, 55 N.C. App. 261, 284 S.E.2d 695 (1981) (if a party to an unincorporated separation agreement does not perform the obligations under the agreement, the other party may obtain a decree of specific performance of the separation agreement, which is enforceable through contempt proceedings)).]
   iii. See *Spousal Agreements*, Bench Book, Chapter 1, discussing specific performance as a remedy for breach of an unincorporated separation agreement.

f. The person aggrieved agreed to the allegedly contemptuous conduct.
   i. Trial court's order, which found that father was not in contempt for failing to make court-ordered child support payments for nearly ten years when he reasonably relied upon mother's oral agreement to waive the payments in exchange for him foregoing his visitation rights, was affirmed. The court noted the "just rule" that disobedience to a court order that results from the advice or agreement of the complainant should not be punished at the complainant's behest. [*Forte v. Forte*, 65 N.C. App. 615, 309 S.E.2d 729 (1983).]

g. The alleged contemnor is immune from suit.
   i. Clerk of superior court, acting in a judicial capacity in a partition suit, had judicial immunity from contempt charges. [*Bare v. Atwood*, 204 N.C. App. 310, 693 S.E.2d 746 (2010).]
   ii. State of North Carolina and its administrative agencies, such as the Department of Transportation, enjoy sovereign immunity and cannot be held in contempt. [*N.C. Dep't of Transp. v. Davenport*, 334 N.C. 428, 432 S.E.2d 303 (1993) (further noting that contempt statutes refer to persons, which does not include a sovereign).]

h. Order to be enforced by contempt was made without, or in excess of, the court's jurisdiction.

i. A consent judgment requiring that a municipal election be held at a different time than the time fixed by statute was void because the court lacked jurisdiction to require that an invalid primary election be held. Defendants could not be found in contempt for refusing to surrender their offices. [*Corey v. Hardison*, 236 N.C. 147, 72 S.E.2d 416 (1952); *Wilson v. Wilson*, 124 N.C. App. 371, 477 S.E.2d 254 (1996) (when the trial court lacked jurisdiction to issue a subpoena to a nonparty to appear for a deposition out of county, the nonparty could not be held in civil contempt for his failure to appear).]

i. When children refuse to visit noncustodial parent, civil contempt may not be appropriate.

i. The court of appeals has indicated that a trial court can enter orders other than contempt orders to encourage compliance with custody orders and visitation schedules. [*Grissom v. Cohen*, 261 N.C. App. 576, 821 S.E.2d 454 (2018) (father was not in civil contempt of a custody order when 15-year-old daughter refused to comply with provisions for mother's custody; in determining that father had done all he could reasonably do to comply with the order without making daughter's situation worse, trial court properly considered the best interests of daughter, as well as the current circumstances, which included that daughter was depressed and self-harming by cutting herself; father had encouraged daughter to return to mother's house, driven daughter by mother's house almost daily and encouraged daughter to get out, and invited mother to his home to talk to daughter), *review denied*, 372 N.C. 52, 822 S.E.2d 631 (2019).] See Cheryl Howell, *Enforcing Custody Orders: Civil Contempt Is Not Always the Appropriate Remedy*, On the Civil Side: A UNC Sch. of Gov't Blog (Nov. 1, 2018), https://civil.sog.unc.edu/enforcing-custody-orders-civil-contempt-is-not-always-the-appropriate-remedy/.]

ii. For more on this topic, see *Child Custody*, Bench Book, Chapter 4.

j. The violations were failures to act in the past and the party can no longer perform the required acts.

i. Where mother failed to inform father of certain events as required by a custody order, failed to give father right of first refusal for child care, and allowed her husband to be present with children when contact was forbidden by the order, the court of appeals stated that it was "not apparent . . . how an appropriate civil contempt purge condition could 'coerce the defendant to comply with a court order' as opposed to punishing her for a past violation" and noted that these violations were more appropriately addressed through criminal contempt. [*Kolczak v. Johnson*, 260 N.C. App. 208, 219, 817 S.E.2d 861, 868 (2018) (quoting *Wellons v. White*, 229 N.C. App. 164, 181, 748 S.E.2d 709, 722 (2013)).]

k. The contempt action is time-barred by G.S. 1-47(1).

i. A motion for contempt for failure to comply with an equitable distribution judgment eleven years after it was entered is barred by G.S. 1-47(1). [*Welch v. Welch*, 278 N.C. App. 375, 859 S.E.2d 646 (2021) (**unpublished**).]

D. Circumstances Under Which a Finding of Civil Contempt Is Not Precluded

1. A party erroneously interpreted a court order. [*Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App 484, 800 S.E.2d 761 (2017) (business litigants could not choose to ignore an order requiring the payment of certain funds, whether or not they believed it was properly issued; ample evidence existed to support a finding of a willful noncompliance with the order when litigants did not comply, repeatedly asked for clarification, and refused to accept findings that the trial court had jurisdiction), *review denied, cert. denied*, 371 N.C. 116, 812 S.E.2d 849 (2018); *McVicker v. McVicker*, 234 N.C. App. 478, 762 S.E.2d 533 (2014) (**unpublished**) (defendant mistakenly believed that language in an equitable distribution consent judgment authorizing a charging order on distributions to defendant from defendant's business upon default was the sole remedy and precluded the remedy of contempt); *Rain Tree v. Bradford*, 206 N.C. App. 330, 698 S.E.2d 557 (2010) (**unpublished**) (plaintiff erroneously believed that a 2007 order prohibiting cohabitation but not overnight guests superseded a provision in a 2005 order that prohibited her from having overnight guests of the opposite sex).]
2. The conduct complained of was not specifically addressed in the underlying agreement or order but it was clear that the party violated the intent and spirit of the agreement or order. [*Middleton v. Middleton*, 159 N.C. App. 224, 226, 583 S.E.2d 48, 49 (2003) (citation omitted) (husband violated the spirit and intent of a consent judgment providing for the sale of the marital home when he took willful and deliberate action to thwart a sale by making the house unattractive and undesirable to prospective purchasers; civil contempt finding upheld because a party "must do nothing, directly or indirectly, that will render [an] order ineffectual, either wholly or partially so"); *Blanchard v. Blanchard*, 279 N.C. App. 280, 292, 856 S.E.2d 693, 701 (2021) (citing *Am. Tel. & Tel. Co., v. Griffin*, 39 N.C. App. 721, 726, 251 S.E.2d 885, 888 (1979)) (where custody order provided that each parent was to provide reasonable telephone and FaceTime contact with their children each night that they were in the other parent's custody, father was properly held in contempt for failing to inform mother of when children would be available for her telephone and FaceTime calls, even though the order did not specifically require that he inform her of the time he would make the children available; parties are required to "act under the dictates of common sense and reasonableness"), *review denied, review dismissed as moot*, 880 S.E.2d 691 (N.C. 2022).]
    a. However, if the provisions of an order are too vague, a finding of contempt will be reversed. [*Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003) (defendant could not be held in contempt of an order that was so vague that the court had to "strain" to identify the provisions pursuant to which defendant was held in contempt; language that directed father not to "interfere" with mother's custody was impermissibly vague because it did not specify what father could or could not do to purge himself of contempt).]
3. Informal modification of a custody and support order by mother and father, where one child resided with father instead of mother for two years, did not relieve father of the obligation to comply with the terms of the support order. [*Bossian v. Bossian*, 284 N.C. App. 208, 875 S.E.2d 570 (2022) (informal change of custody did not preclude a finding of willful noncompliance with parties' custody and support order, nor did it create

ambiguity concerning father's support payment; formal modification required to change support obligation), *review denied*, 894 S.E.2d 751 (N.C. 2023).]

4. Arrears owed at the time a child support obligation terminates remain payable and enforceable by civil contempt, despite the fact that a child covered by the obligation has reached majority before the date of a contempt hearing on noncompliance. [*Cumberland County ex rel. Mitchell v. Manning*, 262 N.C. App. 383, 822 S.E.2d 305 (2018) (contempt order vacated on alternative ground).]
5. When husband moved to set aside a portion of an equitable distribution order and unsuccessfully contended that federal law precluded including his military disability payments as income, the trial court did not err by holding him in civil contempt for failing to pay a distributive award. [*Lesh v. Lesh*, 257 N.C. App. 471, 809 S.E.2d 890 (2018).]
6. Father's belief that he had inadvertently overpaid his child support obligation and was therefore entitled to a credit did not preclude a trial court from holding him in civil contempt of the child support order when he unilaterally reduced his payments to $.01. A party must apply to the court for a modification and cannot unilaterally modify child support or decide not to comply with a support order. [*Barham v. Barham*, 286 N.C. App. 764, 881 S.E.2d 911 (2022).]

E. Procedure in a Civil Contempt Proceeding

1. There are three ways to initiate a civil contempt proceeding:
   a. By motion pursuant to G.S. 5A-23(a1),
   b. By an order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why they should not be held in contempt, or
   c. By a notice of a judicial official that the alleged contemnor will be held in contempt unless the person appears at a specified reasonable time and shows cause why the person should not be held in contempt. [G.S. 5A-23(a).]
2. Venue is in the county where the order was issued. [G.S. 5A-23(b).]
   a. When G.S. 50-3 entitles a party to a change in venue for an alimony action, all claims properly joined must also be removed, so an alimony order cannot be enforced by civil contempt until a trial court has reconsidered the alimony claim in the proper venue. [*Dechkovskaia v. Dechkovskaia*, 244 N.C. App. 26, 780 S.E.2d 175 (2015) (vacating contempt order).]
3. A judicial official is "the trier of facts at the show cause hearing." [G.S. 5A-23(d).]
   a. Civil contempt proceedings are held before a district court judge except when:
      i. The clerk of superior court has original subject matter jurisdiction and issued the order,
      ii. Another statute specifically provides for the exercise of contempt power by the clerk of superior court, or
      iii. A judge superior to a district court judge issued the order. [G.S. 5A-23(b), *amended by* S.L. 2017-158, § 11, effective July 21, 2017.]

b. Recusal of judicial official.
   i. In criminal contempt proceedings, if the alleged contemptuous acts so involved a judge that the judge's objectivity may reasonably be questioned, the contempt order must be returned before a different judge. [G.S. 5A-15(a).]
   ii. No statute addresses recusal in a civil contempt proceeding. However, recusal may be appropriate under Canon 3C(1) of the Code of Judicial Conduct, which provides that "[o]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned." [N.C.G.S. Annotated Rules of North Carolina, Code of Judicial Conduct Canon 3 (2023).]
   iii. A judge's recusal was not required in a termination of parental rights proceeding when respondent father had been held in contempt of court in an unrelated criminal proceeding before the same judge and jailed for calling the judge a bad name. [*In re A.R.S.*, 195 N.C. App. 459, 673 S.E.2d 168 (2009) (**unpublished**).]

c. Clerk of court as judicial official.
   i. A clerk of court cannot issue a show cause order pursuant to G.S. 5A-23(a) except when a clerk is statutorily authorized to do so. [G.S. 5A-23(b); *Moss v. Moss*, 222 N.C. App. 75, 730 S.E.2d 203 (2012) (an order to show cause signed by an assistant clerk of court in a proceeding in which the clerk lacked statutory authority to issue such an order was not an order issued by a judicial officer under a previous version of G.S. 5A-23; order was nonetheless upheld because contemnor waived the issue).]
   ii. An example of a statute authorizing a clerk to issue an order to show cause is found in G.S. 50-13.9(d) governing proceedings for income withholding and contempt for failure to pay child support.

4. Proceeding initiated by motion pursuant to G.S. 5A-23(a1).
   a. An aggrieved party must serve a motion for contempt, accompanied by a sworn statement or affidavit and notice of hearing, on the alleged contemnor at least five days in advance of the hearing on the matter unless good cause is shown. [G.S. 5A-23(a1).] When a contempt proceeding is initiated by motion and notice by an alleged party, there is no judicial finding of probable cause. [*Trivette v. Trivette*, 162 N.C. App. 55, 590 S.E. 2d 298 (2004).]
   b. A motion made pursuant to G.S. 5A-23(a1) is limited to civil contempt—the court cannot consider criminal contempt. [*See Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011) (due process requires that a proceeding for criminal contempt be initiated by a court, not by a private litigant).] For more on *Brandt*, see Michael Crowell, *Contempt*, Admin. of Just. Bull. No. 2015/03 (UNC School of Government, Dec. 2015), https://www.sog.unc.edu/sites/default/files/reports/aojb1503.pdf.
   c. Service of motion.
      i. When civil contempt proceedings are initiated by motion pursuant to G.S. 5A-23(a1), the aggrieved party must serve a copy of the motion, sworn statement or affidavit, and notice of hearing on the alleged contemnor at least five days before the scheduled hearing, absent good cause. [G.S. 5A-23(a).]

ii. Failure to provide a notice of hearing warrants reversal of a contempt order entered in a proceeding initiated pursuant to G.S. 5A-23(a1). [*Ross v. Ross*, 215 N.C. App 546, 715 S.E.2d 859 (2011).]

iii. G.S. Chapter 5A does not specify how service is to be accomplished in a civil contempt proceeding initiated by motion of the aggrieved party. G.S. 1A-1, Rule 5 applies to service in civil proceedings and provides that pleadings subsequent to the initial complaint can be "made upon the party's attorney of record" or, "if the party has no attorney of record, service shall be made upon the party." [G.S. 1A-1, Rule 5.]

5. Proceeding initiated by order to show cause or notice to show cause pursuant to G.S. 5A-23(a) and a judicial finding of probable cause.

a. A person interested in enforcing a court order, including a judge, may file a motion accompanied by a sworn statement or affidavit alleging contempt and requesting that a judicial official issue an order or notice requiring an alleged contemnor to show cause why they should not be held in civil contempt. [G.S. 5A-23(a).]

b. The judicial official must determine, based on the motion and sworn statement or affidavit, whether there is probable cause to believe there is civil contempt. [G.S. 5A-23(a).]

i. "Probable cause [in G.S. 5A-23(a)] refers to those facts and circumstances within [the judicial official's] knowledge and of which he ha[s] reasonably trustworthy information which are sufficient to warrant a prudent man in believing that the alleged contemnor is in civil contempt." [*Young v. Mastrom, Inc.*, 149 N.C. App. 483, 484–85, 560 S.E.2d 596, 597 (2002) (contempt action brought for failure to comply with order directing payment of money).]

ii. A trial court used an incorrect standard in denying a motion for a show cause order when it decided the motion under G.S. 5A-21, which sets out the elements of civil contempt, instead of making a probable cause determination under G.S. 5A-23(a). [*Young v. Mastrom, Inc.*, 149 N.C. App. 483, 560 S.E.2d 596 (2002).]

iii. A judicial official's determination of probable cause under G.S. 5A-23(a) is generally ex parte. [*Wolf v. Wolf*, 67 N.C. App. 752, 753, 314 S.E.2d 132, 134 (1984).] The alleged contemnor is not entitled to prior notice or an opportunity to be heard before the judicial official issues an order or notice to show cause pursuant to G.S. 5A-23(a).

c. If a judicial official who hears a contempt motion finds probable cause to believe that a person is in civil contempt, the judicial official must issue either an order or notice to show cause directed to that person. [G.S. 5A-23(a); *Watkins v. Watkins*, 136 N.C. App. 844, 526 S.E.2d 485 (2000) (vacating an order finding a defendant in civil contempt of a consent order for custody based, in part, on the fact that no notice or order to show cause was ever issued to the defendant).]

i. A notice to show cause does not require the alleged contemnor's appearance but provides notice that they will be found in civil contempt unless they appear at a reasonable time and show cause why they should not be held in civil contempt. [G.S. 5A-23(a).]

(a) Notice is not optional under G.S. 5A-23(a), and a trial court's finding of contempt will be vacated when notice is not provided unless a contemnor

waives their objection. [*Carter v. Hill*, 186 N.C. App 464, 650 S.E.2d 843 (2007) (when defendants were notified at the end of trial that they would be held in contempt until their debt was paid and were taken immediately to jail, the hearing was clearly in violation of G.S. 5A-23(a)); *Garrett v. Garrett*, 121 N.C. App. 192, 464 S.E.2d 716 (1995), *disapproved of on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998) (finding of civil contempt vacated when the trial court's instantaneous determination of contempt made it obvious that the required statutory notice was not provided to plaintiff).]

(b) Service of a copy of a motion for an order to show cause that states the grounds for the alleged civil contempt, as well as a show cause order referencing the motion, is adequate notice of the nature of contempt proceedings. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (defendant had adequate notice that her failure to pay credit card debt as ordered was the basis of the contempt proceeding), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008).]

ii. An order to show cause directs the alleged contemnor to appear and show cause why they should not be held in contempt. [G.S. 5A-23(a).]

(a) This requires a defendant to personally appear at the hearing on the matter or risk being found in contempt for failure to appear. [*Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (appearance of defendant's counsel not sufficient to satisfy a show cause order that specifically ordered defendant to appear).]

(b) Form AOC-CR-219, Show Cause Order, Findings and Judgment – Failure to Pay Fine and/or Costs, to Obey Jury Summons, to Appear Pursuant to Criminal Summons, or For Contempt, may be used.

d. Service of the order or notice.

i. Absent good cause, a show cause order or notice issued pursuant to G.S. 5A-23(a) must be served on the alleged contemnor at least five days before the scheduled contempt hearing. [G.S. 5A-23(a).]

(a) A trial court may not *sua sponte* hold an alleged contemnor in civil contempt when the show cause order served on the defendant referenced only criminal contempt. [*Hirschler v. Hirschler*, 281 N.C. App. 30, 868 S.E.2d 619 (2021) (unless good cause is shown, G.S. 5A-23(a)–(a1) require five days' notice that the court is considering civil contempt; civil contempt is not a lesser form of criminal contempt; appeal in this child custody case dismissed as moot because child reached 18 years of age).]

ii. G.S. 5A-23(a) does not specify the manner in which a show cause order or notice must be served. Rule 5 of the Rules of Civil Procedure allows all orders to be served pursuant to Rule 4 or Rule 5. [G.S. 1A-1, Rule 5.] However, for income withholding or contempt for failure to pay child support, G.S. 50-13.9(d) provides that an order to appear and show cause issued pursuant to that statute should be served in accordance with G.S. 1A-1, Rule 4. [G.S. 50-13.9(d).]

iii. The court is authorized to shorten the period of notice for good cause shown. [G.S. 5A-23(a); *Smith v. Smith*, 247 N.C. App. 166, 785 S.E.2d 434 (2016) (trial

court had good cause to require father to appear at a hearing for civil contempt two days after issuance of a show cause order when the underlying order had been entered more than a month earlier and father had ample time to prepare a defense to enforcement of that order); *M.G. Newell Co. v. Wyrick*, 91 N.C. App. 98, 370 S.E.2d 431 (1988) (court had good cause to shorten notice period when alleged contemnor had known of charges against him for several months, had ample time to prepare, witnesses and parties were present, and defendant's attorney acknowledged ample time to discuss charges with defendant).]

iv. There is no requirement that notice be served on other parties of interest in the underlying case. [*Anderson v. Lackey*, 166 N.C. App. 279, 603 S.E.2d 168 (2004) (**unpublished**) (child did not have to be served with notice of contempt against his mother for her violation of an order providing for visitation by his father).]

v. For further discussion of the service of show cause orders in contempt proceedings, see Cheryl Howell, *Contempt: Does an Order to Show Cause Have to Be Served by Rule 4 Service?*, On the Civil Side: A UNC Sch. of Gov't Blog (Jan. 10, 2024), https://civil.sog.unc.edu/contempt-does-an-order-to-show-cause-have-to-be-served-by-rule-4-service/.

e. Procedural requirements may be waived.

i. When an alleged contemnor comes into court to answer charges set out in a show cause order, the contemnor waives any defect in procedural requirements. [*Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247 (1981) (contemnor waived defect of no sworn statement or affidavit as required by G.S. 5A-23); *see also Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (defendant's active participation, without objection, in a contempt hearing that included the presentation of evidence and exhibits relating to credit card debt that a court had ordered defendant to pay defeated her contention that she did not have notice that her nonpayment of the credit card debt would be at issue), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Glesner v. Dembrosky*, 73 N.C. App. 594, 327 S.E.2d 60 (1985) (contemnor waived her objection to a lack of notice by appearing at her contempt hearing and presenting substantial evidence on issues of which she claimed to have had no notice); *Whitaker v. Whitaker*, 181 N.C. App. 609, 640 S.E.2d 446 (2007) (**unpublished**) (citing *Lowder*) (procedural objection to contempt hearing held only one day after defendant filed show cause motion was waived by plaintiff's attendance and participation at the hearing without objection), *review denied*, 361 N.C. 370, 646 S.E.2d 774 (2007), *appeal dismissed, review denied*, 361 N.C. 370, 662 S.E.2d 552 (2008).]

6. "The person ordered to show cause may move to dismiss the order." [G.S. 5A-23(c).]

a. Because a trial court must take the allegations in a complaint as true when considering a motion to dismiss, dismissal generally is appropriate only where the face of the complaint discloses some insurmountable bar to recovery. [*Westlake v. Westlake*, 231 N.C. App. 704, 753 S.E.2d 197 (2014) (citing *Lea v. Grier*, 156 N.C. App. 503, 577 S.E.2d 411 (2003)); *Brown v. Brown*, 188 N.C. App. 164, 654 S.E.2d 832 (2008) (**unpublished**) (since holding a party in contempt requires a determination of willfulness by a trial court, it is rarely appropriate for such a matter to be disposed of by a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6) or a motion for summary

judgment under G.S. 1A-1, Rule 56; only where it is absolutely clear that a party has not violated a provision of a court order should a trial court consider such a disposition).]

b. Dismissal of contempt motion in error.

i. Trial court erred in dismissing father's motion for contempt for failure to state a claim when the motion stated that a custody order was still in effect and that mother had repeatedly obstructed father's visitation with his children. [*Westlake v. Westlake*, 231 N.C. App. 704, 753 S.E.2d 197 (2014) (construing father's motion liberally and treating the allegations as true).]

ii. Trial court should not have dismissed a second contempt claim after a first contempt claim was dismissed for failure to prosecute, because the second contempt claim included new allegations, a request for emergency custody, and a motion to modify. [*Hebenstreit v. Hebenstreit*, 240 N.C. App. 27, 769 S.E.2d 649 (2015).]

iii. When ruling on a motion to dismiss a party's contempt motion, a trial court does not have the authority to rule that an equitable distribution order is void. If a party seeks to have a judgment declared void, the party must file a Rule 60(b) motion to set aside or the trial court can grant such relief *sua sponte*. [*Hogue v. Hogue*, 251 N.C. App. 425, 795 S.E.2d 607 (2016).]

c. Dismissal of contempt motion upheld.

i. Six of the seven grounds cited by the trial court as support for finding defendant in civil or criminal contempt were properly dismissed because (1) defendant could not be in contempt of provisions not set out in the underlying order, (2) the conduct complained of did not violate that order, (3) plaintiff did not allege that defendant's conduct was willful, or (4) defendant had complied with the order before the contempt motion was filed or by the time of the contempt hearing. [*Brown v. Brown*, 188 N.C. App. 164, 654 S.E.2d 832 (2008) (**unpublished**).]

7. A person with an interest in enforcing an order may present the case for a finding of civil contempt for failure to comply with an order. [G.S. 5A-23(f).] A "person with an interest" includes the State, as represented by the district attorney, in a criminal case. [Official Commentary, G.S. 5A-23(a).]

8. Mediation requirement for contempt issues in child custody and visitation matters.

a. Prior to December 1, 2022, in districts with a mediation program, any case with a contested issue of custody or visitation had to be referred to mediation unless excused by order of a judge. Issues arising in motions for contempt with respect to orders for custody and visitation had to be set for mediation unless waived by the court. [G.S. 50-13.1(b); Uniform Rules Regulating North Carolina Child Custody and Visitation Mediation Program, Rule 7 (2023) (providing for mediation of, among other things, actions to enforce custody and visitation orders).]

b. Effective December 1, 2022, S.L. 2022-48 amended G.S. 50-13.1(b) to allow but not require that contempt issues arising in custody cases be sent to mandatory custody and visitation mediation. [G.S. 50-13.1(b).]

9. Contempt in the context of a mediated settlement conference.

a. A person required to attend a mediated settlement conference or other settlement procedure under G.S. 7A-38.4A who, without good cause, fails to attend or fails to

pay any or all of a mediator's or other neutral party's fee, is subject to the contempt powers of the court. [G.S. 7A-38.4A(e).]

F. Hearing

1. Proceedings for civil contempt are always plenary proceedings. There is no summary procedure for civil contempt proceedings. [*See* G.S. 5A-23(a); (a1) (requiring notice and a hearing).]
2. Because all proceedings are plenary, the distinction between direct and indirect contempt has little meaning in the civil contempt context. Notwithstanding this point, some cases refer to "indirect civil contempt." [*See State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 (1992) (trial court found defendant in "indirect civil contempt" when he failed to have blood drawn for court-ordered paternity testing); *Piedmont Equip. Co. v. Weant*, 30 N.C. App. 191, 226 S.E.2d 688 (1976) (reviewing on appeal an order dismissing a charge of "indirect civil contempt").]
3. Standard of proof.
   a. G.S. Chapter 5A does not specify the standard of proof in civil contempt proceedings.
   b. In any civil contempt proceeding, a court should not find a person in civil contempt unless there is sufficient proof of contempt. The standard of proof is probably preponderance of the evidence.
4. Burden of proof.
   a. Proceeding initiated by an order or notice issued by a judicial official pursuant to G.S. 5A-23(a) and a finding of probable cause.
      i. A show cause order in a civil contempt proceeding that is based on a sworn statement or affidavit and a finding of probable cause by a judicial official shifts the burden of proof to the alleged contemnor to show cause why there is no contempt. [G.S. 5A-23(a); *Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014) (citing *Tucker v. Tucker*, 197 N.C. App. 592, 679 S.E.2d 141 (2009)); *Tucker* (citing *State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008)); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991) (in a civil contempt proceeding initiated by a show cause order, a defendant has the burden of presenting evidence to show that he or she was not in contempt, and a defendant who refuses to present such evidence does so at his or her own peril).]
      ii. To meet the burden of proof in a contempt case involving a failure to pay money, such as child support, an alleged contemnor must establish a lack of means to pay or an absence of willfulness in failing to pay. [*Belcher v. Averette*, 136 N.C. App. 803, 526 S.E.2d 663 (2000) (burden of proof in civil contempt for failure to pay child support is assigned to the party alleged to be delinquent after a finding of probable cause pursuant to G.S. 5A-23).]
      iii. Despite the fact that the burden shifts to the alleged contemnor, case law makes it clear that a person may not be held in contempt unless a trial court has sufficient evidence upon which to base (1) findings of fact that support a conclusion that the person had the ability to pay as well as (2) all other findings required to support a contempt determination. [*Tigani v. Tigani,* 256 N.C. App. 154, 805 S.E.2d 546 (2017) (even though defendant failed to attend his

contempt hearing in response to a show cause order, it was error for the trial court to hold him in contempt when no evidence was introduced to show that he had the present ability to comply with the underlying order to pay attorney fees); *Carter v. Hill*, 186 N.C. App. 464, 650 S.E.2d 843 (2007) (where findings of fact were "conspicuously absent" from a contempt order, and where, worse, instead of finding that defendant had the ability to pay the trial court found that he was not able to pay the amount in the underlying order, the contempt order was reversed); *Frank v. Glanville*, 45 N.C. App. 313, 262 S.E.2d 677 (1980) (when it was not clear that a defendant had the present ability to comply with a contempt order, ever had the ability to comply, or would ever be able to take reasonable measures that would enable him to comply, and because no finding detailing defendant's ability to comply with the contempt order was made by the trial court, the contempt order was reversed); *State ex rel. Dunkle v. Utley*, 208 N.C. App. 568, 706 S.E.2d 841 (2010) (**unpublished**) (reversing a contempt order when the trial court "wholly failed" to make any findings of fact regarding defendant's willfulness or present ability to comply with the underlying order).]

iv. The burden of proof was properly placed on father to show that he was not in civil contempt after a show cause order was issued, and the record and findings in the resulting order established that father met that burden where he encouraged teenager to return to mother's home but teenager refused, drove teenager to mother's home almost daily but teenager refused to stay, and encouraged mother to visit teenager at his home. [*Grissom v. Cohen*, 261 N.C. App. 576, 821 S.E.2d 454 (2018), *review denied*, 372 N.C. 52, 882 S.E.2d 631 (2019).]

b. Proceeding initiated by motion, affidavit, and notice of an aggrieved party pursuant to G.S. 5A-23(a1) (no prior review by a judicial official).

i. In a proceeding initiated pursuant to G.S. 5A-23(a1), the burden of proof is on the aggrieved party. [G.S. 5A-23(a1); *Trivette v. Trivette*, 162 N.C. App. 55, 590 S.E.2d 298 (2004) (adjudication of civil contempt vacated when burden of proof was erroneously placed on alleged contemnor in proceeding initiated by motion and notice of hearing of former wife).]

ii. The burden does not shift to the alleged contemnor as it does in proceedings initiated by a notice or show cause order under G.S. 5A-23(a). [*Price v. Briggs*, 272 N.C. App. 315, 846 S.E.2d 781 (2020) (burden of proof was improperly placed on respondent when civil contempt proceeding was initiated by motion of a party); *Trivette v. Trivette*, 162 N.C. App. 55, 590 S.E.2d 298 (2004) (adjudication of civil contempt vacated when burden of proof was erroneously placed on alleged contemnor in proceeding initiated by motion and notice of hearing of former wife).]

iii. Misapplication of the burden of proof is a procedural defect that is waived if not raised at trial. [*Moss v. Moss*, 222 N.C. App. 75, 730 S.E.2d 203 (2012) (defendant waived objection to misapplication of burden of proof in civil contempt proceeding by not objecting and by acquiescing in procedure employed by trial court).]

5. There is no right to a jury trial in civil contempt proceedings. [*See* G.S. 5A-23(d) (trier of facts at a show cause hearing is the judicial official).]

6. Privilege against self-incrimination.
   a. The civil contempt statutes do not address a contemnor's right to not be compelled to be a witness against himself or herself at a contempt hearing. [*See* G.S. 5A-15(e) (so providing in criminal contempt proceedings).]
   b. The North Carolina Supreme Court has noted that the Fifth Amendment privilege against compulsory testimonial self-incrimination extends to civil proceedings where a party may be subjected to imprisonment. [*Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247 (1981) (considering whether a defendant's refusal to comply with an order to produce tax returns was protected, the North Carolina Supreme Court determined that, under the facts of the case, neither the contents of the tax returns nor the testimonial aspect involved in their production invoked the protection of the Fifth Amendment); *see also In re Jones*, 116 N.C. App. 695, 698, 449 S.E.2d 221, 223 (1994) (stating that the privilege against self-incrimination, guaranteed by the Fifth and Fourteenth Amendments, applies to both civil and criminal proceedings "wherever the answer might tend to subject to criminal responsibility [the person] who gives it").]
   c. An alleged civil contemnor may assert the privilege against self-incrimination and refuse to testify, but the court may draw an adverse inference of fact from the failure to testify. [*McKillop v. Onslow County*, 139 N.C. App. 53, 532 S.E.2d 594 (2000) (stating that the finder of fact in a civil contempt case may use a witness's invocation of his or her Fifth Amendment privilege against self-incrimination to infer that truthful testimony would have been unfavorable; holding that plaintiff, by her refusal to present testimony, chose to abandon her claim that she was not in contempt of the trial court's order).]
   d. With respect to the scope of review on appeal, an appellate court has found that where the relief granted is wholly civil in nature and a defendant was not subject to criminal penalties, an appellate court is not required to examine whether a contemnor's right to not be a witness against himself or herself was adequately protected during a contempt proceeding. [*Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991).]
7. Right to confront witnesses.
   a. In a civil contempt proceeding, the court is not obligated to provide the alleged contemnor with confrontation rights. [*Smith v. Barbour*, 170 N.C. App. 436, 613 S.E.2d 753 (**unpublished**) (mother's rights were not violated when father was not present at the proceeding where she was held in civil contempt for violation of a custody and visitation order), *review denied*, *appeal dismissed*, 359 N.C. 853, 619 S.E.2d 512 (2005).]
8. Right to and appointment of counsel.
   a. The North Carolina Supreme Court has held that an alleged contemnor is entitled to court-appointed counsel in a civil contempt proceeding arising out of the nonpayment of child support if (1) the alleged contemnor is indigent and (2) there is a significant likelihood that incarceration will actually result from the hearing. [*McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993) (defendant's right to appointed counsel based on Fourteenth Amendment Due Process Clause); *King v. King*, 144 N.C. App. 391, 547 S.E.2d 846 (2001) (for appointment of counsel, a

defendant must show indigency and that a liberty interest is at stake); *Young v. Young*, 224 N.C. App. 388, 736 S.E.2d 538 (2012) (citing *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507 (2011), and *King*) (father who failed to meet his burden of proving indigence not entitled to counsel at civil contempt hearing for failure to pay child support); *cf. Turner*, 564 U.S. at 466, 448, 131 S. Ct. at 2518, 2520 (the Fourteenth Amendment Due Process Clause does not automatically require the state to appoint counsel at civil contempt proceedings for an indigent individual who is subject to a child support order if the state provides "alternative" or "additional or substitute" procedural safeguards).]

b. In *D'Alessandro v. D'Alessandro*, 235 N.C. App. 458, 464, 762 S.E.2d 329, 334 (2014), the court of appeals extended the right to court-appointed counsel to an indigent defendant subject to civil contempt for failure to comply with a child custody order. In separate proceedings, later consolidated on appeal, the trial court found a self-represented father in civil contempt of custody and child support orders. After finding an "obvious likelihood" that father might be incarcerated if found in contempt, that father had not been advised of his right to counsel and had not waived that right, and that it appeared from the record that father was indigent, both orders were reversed "to the extent that they h[e]ld defendant in contempt of the custody order and the child support order."

c. However, in *Wilson v. Guinyard*, 254 N.C. App. 229, 234, 801 S.E.2d 700, 704 (2017), the court of appeals held that the right to counsel for indigent persons who may be incarcerated for civil contempt applied "specifically to civil contempt proceedings for nonsupport" and did not necessarily extend to violations of custody orders. The court said that appointment of counsel for an indigent person is required "only where assistance of counsel is necessary for an adequate presentation of the merits, or to otherwise insure fundamental fairness." 254 N.C. App. at 233, 801 S.E.2d at 704 (citation omitted). For more discussion on this issue, see Cheryl Howell, *Right to Counsel in Civil Contempt Proceeding for Violation of Custody Order*, On the Civil Side: A UNC Sch. of Gov't Blog (Aug. 25, 2017), https://civil.sog.unc.edu/right-to-counsel-in-civil-contempt-proceeding-for-violation-of-custody-order/.

d. Process for appointment of counsel.

   i. In contempt proceedings, the court should advise each alleged contemnor, in writing in the notice or order to show cause and orally before the contempt hearing begins, that they may be incarcerated if found in civil contempt, that they have the right to be represented by retained counsel, and that they may be entitled to court-appointed counsel if unable to afford an attorney. [*McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993) (at the outset of a contempt proceeding for nonsupport, a trial court should (1) assess how likely it is that the defendant will be incarcerated, (2) inquire into the defendant's desire for counsel and determine their ability to pay for representation if incarceration is likely, and (3) appoint counsel if the defendant desires counsel but is indigent).]

   ii. An alleged contemnor may waive the right to legal representation. [G.S. 7A-457(a).]

      (a) Any waiver must be knowing, informed, voluntary, and written. If an alleged contemnor waives the right to legal representation, the court must make

a written finding that, at the time of waiver, the alleged contemnor "acted with full awareness of his rights and of the consequences of the waiver." [G.S. 7A-457.]

(b) Even though G.S. 7A-457 speaks to waiver by an indigent defendant, any waiver must be executed in accordance with G.S. 7A-457, whether or not a defendant is indigent. [*State v. Williams*, 65 N.C. App. 498, 309 S.E.2d 721 (1983).]

iii. If an alleged contemnor does not waive the right to legal representation, the court must determine, before it hears the civil contempt proceeding, whether the alleged contemnor is entitled to court-appointed counsel. [*McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993) (contempt proceeding for nonsupport).]

iv. Determinations of indigency, entitlement to counsel, and appointment of counsel may be made by a district court or superior court judge or by the clerk of superior court. [*See* G.S. 7A-452(c).] If an entitlement-to-counsel determination is made by the clerk, a judge with authority to make the determination may direct the clerk in that case, may change or modify the clerk's determination, or may set aside a clerk's finding of waiver of counsel. [G.S. 7A-452(c)(2).]

(a) An alleged contemnor is considered indigent if they have insufficient income and resources, based on guidelines approved by the Office of Indigent Defense Services, to retain an attorney to represent them in a contempt hearing. [*See* G.S. 7A-452; *see* G.S. 7A-450(a) for the definition of "indigent person."]

(b) A finding that a person is entitled to court-appointed counsel based on indigency may indicate that the person lacks the present financial ability to pay a court-ordered sum and, therefore, may preclude a finding of civil contempt against the person for willfully failing to pay the amount ordered.

v. Counsel for indigent persons in civil contempt proceedings are appointed pursuant to procedures approved by the Office of Indigent Defense Services. [*See* G.S. 7A-452(a).]

9. Failure to appear at an initial hearing for civil contempt.

a. There is no statute or case law authorizing a court to order the arrest of an alleged contemnor for failing to appear at an initial hearing for civil contempt. [*But see* G.S. 15A-305(b)(8) (allowing arrest when defendant fails to appear as required by a show cause order issued in a criminal proceeding) and 5A-16(b) (allowing an order for arrest pursuant to G.S. 15A-305 based on a finding of probable cause that the person ordered to appear for a hearing to determine criminal contempt will not appear).] For more on this point, see Michael Crowell, *Contempt*, Admin of Just. Bull. No. 2015/03 (UNC School of Government, Dec. 2015), https://www.sog.unc.edu/sites/default/files/reports/aojb1503.pdf.

10. Consideration of contempt orders in related proceedings.

a. A trial court did not err when it considered prior contempt orders entered in the same case in determining child custody. [*Raynor v. Odom*, 124 N.C. App 724, 478 S.E.2d 655 (1996).]

G. Orders for Civil Contempt

1. Fundamentals of an order finding a person in civil contempt.
   a. A civil contempt order should indicate that the contemnor is being held in civil contempt rather than criminal contempt. [*Watkins v. Watkins*, 136 N.C. App. 844, 526 S.E.2d 485 (2000) (urging trial courts to identify whether contempt proceedings are in the nature of criminal or civil contempt).]
   b. A civil contempt order should state how a party may purge the contempt. [G.S. 5A-23(e); -22(a); *Bethea v. McDonald*, 70 N.C. App. 566, 320 S.E.2d 690 (1984) (a purge provision is essential to an order for civil contempt).] See the discussion in Section II.G.2, below, for more on purge provisions.
   c. A civil contempt order should make findings:
      i. On each of the elements in G.S. 5A-21(a), [G.S. 5A-23(e).]
      ii. As to the facts constituting contempt, [G.S. 5A-23(e).]
      iii. That the party had the ability to comply during the period when the party was in default, [*Mauney v. Mauney*, 268 N.C. 254, 150 S.E.2d 391 (1966)] and
      iv. That the party has the present means to comply with the purge conditions set out in the order. [*Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010).] See Section II.G.2, below, for more on purge provisions.
   d. A civil contempt order may not be entered by default. A court cannot assume that a respondent has the ability to comply simply because the respondent fails to prove that they cannot comply. The contempt order must contain the conclusion of law that the respondent willfully violated the underlying court order. That conclusion must be supported by findings of fact showing that the respondent actually has or had the ability to comply with the order or to take responsible steps to comply and deliberately failed to do so. Those findings of fact must be based on competent evidence. For a detailed discussion, see Cheryl Howell, *No Default Judgment in Contempt*, On the Civil Side: A UNC Sch. of Gov't Blog (May 1, 2015), https://civil.sog.unc.edu/no-default-judgment-in-contempt/.
   e. A trial court has no authority to amend the terms of the underlying order in a contempt proceeding to enforce the order. [*Gandhi v. Gandhi*, 244 N.C. App. 208, 779 S.E.2d 185 (2015) (while G.S. 1A-1, Rule 6 allows a court to extend time limits imposed by the Rules of Civil Procedure, that rule does not apply to allow a court in a contempt order to extend the time for payment of a distributive award set out in an equitable distribution judgment); *Parker v. McCoy*, 291 N.C. App. 693, 895 S.E.2d 481 (2023) (**unpublished**) (improper to suspend, in a contempt order, visitation provisions in an underlying custody order before party's motion to modify that order had been heard).]
2. Purge conditions.
   a. A court's order must clearly specify the action the contemnor must take to purge the contempt. [G.S. 5A-23(e); -22(a).]
      i. If an order for civil contempt does not contain a purge provision, a court may find criminal contempt but may not find civil contempt. [*See In re S.J.R.*, 184 N.C. App. 188, 645 S.E.2d 900 (2007) (**unpublished**) (where the judge failed to state a purge condition that would allow the defendant to avoid incarceration, the order

finding civil contempt had to be reversed); *Parker v. McCoy*, 291 N.C. App. 693, 895 S.E.2d 481 (2023) (**unpublished**) (where no purge condition is included in a contempt order, or where a purge condition is so vague that the court could not recognize it as a purge condition, vacation of the order is required).]

ii. If a contempt order does not clearly specify what a person can do to purge the contempt, the order will be reversed. [*Kolczak v. Johnson*, 260 N.C. App 208, 817 S.E.2d 861 (2018) (even where findings of fact and evidence supported the trial court's conclusion that mother had willfully violated the terms of the underlying custody order, a civil contempt order was reversed because it did not contain a clear purge condition indicating how mother could take herself out of contempt); *Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003) (purge conditions that ordered father not to interfere with mother's custody were impermissibly vague for not specifying what father could or could not do to purge himself of contempt); *Cox v. Cox*, 133 N.C. App. 221, 515 S.E.2d 61 (1999) (conditions that mother shall not place children in a stressful situation or a situation detrimental to their welfare and not punish children in a manner that is stressful, abusive, or detrimental did not set out what mother could do to purge herself of contempt and thus were impermissibly vague); *Nohejl v. First Homes of Craven Cnty., Inc.*, 120 N.C. App. 188, 461 S.E.2d 10 (1995) (contempt order that failed to specify purge conditions remanded for entry of same).]

iii. A provision in a contempt order that allowed a defendant to purge his contempt by "fully complying" with prior orders did not clearly specify what the defendant could or could not do to purge himself of contempt and did not establish a date after which contempt would be purged and therefore required reversal of the contempt order. [*Wellons v. White*, 229 N.C. App. 164, 748 S.E.2d 709 (2013) (citing *Scott v. Scott*, 157 N.C. App. 382, 579 S.E.2d 431 (2003)).]

iv. A contempt order must include a definite date by which a defendant may purge the contempt. [*Spears v. Spears*, 245 N.C. App. 260, 784 S.E.2d 485 (2016) (contempt order vacated as impermissibly vague when it did not set an ending date for defendant's alimony purge payments); *Lueallen v. Lueallen*, 249 N.C. App. 292, 790 S.E.2d 690 (2016) (contempt order requiring purge payments to be applied to child support arrears was impermissibly vague when the ending date for the payments was uncertain).]

v. A purge condition in a contempt order requiring defendant father to pick up and drop off his child at mother's home for the following three visitation exchanges instead of meeting mother at a pre-determined halfway point was not an impermissible modification of the parties' underlying custody order because "[p]ermanent joint legal custody and secondary physical custody remained with [the d]efendant both before and after the contempt order," and the purge provisions identified what defendant could do regarding visitation to purge himself of civil contempt. [*Wilson v. Guinyard*, 254 N.C. App. 229, 238, 801 S.E.2d 700, 706 (2017).]

vi. A purge condition in a contempt order requiring father to communicate with mother via cell phone and set up children's iPad for contact with mother was not an improper modification of the parties' underlying custody order but was, rather, a means of enforcing the telephone visitation provision of that

order by specifying the manner by which father was to comply with its terms. [*Blanchard v. Blanchard*, 279 N.C. App 280, 865 S.E.2d 693 (2021), *review denied, appeal dismissed as moot*, 880 S.E.2d 692 (N.C. 2022).]

vii. Trial court's purge conditions requiring father to unblock mother on his cell phone and ensure that children had proper access to technology to receive calls from mother were clear and specific and set out exactly what father would need to do to purge contempt. [*Blanchard v. Blanchard*, 279 N.C. App. 280, 865 S.E.2d 693 (2021), *review denied*, *appeal dismissed as moot*, 880 S.E.2d 692 (N.C. 2022).]

b. The conditions under which a contemnor may purge contempt must be conditions that they have the present ability to meet, so a contemnor holds the keys to their own jail by virtue of the ability to comply with the court order. [*See Jolly v. Wright*, 300 N.C. 83, 265 S.E.2d 135 (1980), *overruled on other grounds by McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993); Official Commentary, G.S. 5A-21.]

i. Because a contemnor must be able to presently comply with a purge condition, a trial court is not bound by purge conditions established at an earlier contempt hearing. [*McKenzie v. McKenzie*, 275 N.C. App. 126, 853 S.E.2d 278 (2020) (trial court was conducting a de novo hearing on continuing civil contempt and was required to determine the appropriate purge conditions de novo), *review dismissed*, *review denied*, 377 N.C. 564, 858 S.E.2d 118 (2021).]

c. Upon a contemnor's "purging" of contempt, a contempt judgment is "lifted" or terminated. [*Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting).]

3. Findings.

a. At the conclusion of the contempt hearing, the judicial official must enter a finding for or against the alleged contemnor on each of the elements set out in G.S. 5A-21(a). [G.S. 5A-23(e).]

b. A party's failure to participate in a contempt hearing does not relieve the court of the need to make findings of fact, supported by competent evidence, regarding the contemnor's present ability to comply with an underlying order before holding the contemnor in contempt. [*Tigani v. Tigani*, 256 N.C. App 154, 805 S.E.2d 546 (2017) (where bank records from several months before the contempt hearing in this case were reviewed but not introduced into evidence, the record was devoid of evidence that defendant had the present ability to pay as required by the court order)].

i. Where obligor presented no evidence, his failure to meet the burden of proof to show cause why he should not be held in civil contempt for not making court-ordered child support payments did not relieve the aggrieved agency of its burden to present sufficient evidence to support a finding of obligor's ability to pay, in addition to evidence as to all other findings required for contempt. [*Cumberland County ex rel. Lee v. Lee*, 265 N.C. App. 149, 828 S.E.2d 548 (citing *Cumberland County ex rel. Mitchell v. Manning*, 262 N.C. App. 383, 822 S.E.2d 305 (2018)), *review denied*, 372 N.C. 708, 830 S.E.2d 836 (2019).]

ii. For further discussion, see Cheryl Howell, *No Contempt for the Nonpayment of Money Without Actual Evidence of Ability to Pay*, On the Civil Side: A UNC

Sch. of Gov't Blog (Dec. 5, 2018), https://civil.sog.unc.edu/no-contempt-for-the-nonpayment-of-money-without-actual-evidence-of-ability-to-pay/.

c. If civil contempt is found by a judicial official, the official must enter an order finding the facts constituting contempt and specifying the actions the contemnor must take to purge himself or herself of the contempt. [G.S. 5A-23(e).]

i. Failure to make the required findings is sufficient by itself to reverse an order for contempt. [*Groseclose v. Groseclose*, 291 N.C. App. 409, 896 S.E.2d 155 (2023) (failure to include a conclusion of law that the contemnor had the present ability to satisfy the purge conditions in a civil contempt order required remand of the order for further findings of fact and conclusions of law); *Servatius v. Ryals*, 263 N.C. App 213, 823 S.E.2d 129 (2018) (order declining to hold father in contempt was vacated and remanded for failure to make findings as to whether father was in compliance with a modified support order and the required statutory findings under G.S. 5A-21(a)); *Carter v. Hill*, 186 N.C. App. 464, 650 S.E.2d 843 (2007) (where findings of fact were "conspicuously absent" from the trial court's contempt order, and where, worse, instead of finding that defendant had the ability to pay the trial court found that he was not able to pay the amount in the underlying order, the contempt order was reversed); *Frank v. Glanville*, 45 N.C. App. 313, 262 S.E.2d 677 (1980) (when it was not clear that a defendant had the present ability to comply with a contempt order, ever had the ability to comply, or would ever be able to take reasonable measures that would enable him to comply, and because no finding detailing defendant's ability to comply with the contempt order was made by the trial court, the contempt order was reversed); *Vaughn v. Vaughn*, 176 N.C. App. 409, 626 S.E.2d 876 (2006) (**unpublished**) (contempt order was vacated when a preprinted "fill-in-the-blank" form used by the trial court did not state how the purpose of its underlying custody order could be served by defendant husband's compliance, did not contain a finding as to the alleged act of noncompliance by husband or that his action was willful, and made no findings as to husband's ability to comply with the custody order or what action he could take to purge himself of the contempt).]

ii. A trial court lost jurisdiction to enter a more formal contempt order containing findings of fact when defendant appealed the court's form contempt order, which was signed by the judge at the end of the contempt hearing with no boxes on the form checked and no findings of fact listed other than one stating that "the party has sufficient means and ability to comply or take reasonable measures to comply." Because of the trial court's failure to set out the facts that constituted contempt and to specify the actions defendant had to take to purge himself of the contempt, its second, more detailed contempt order was void. [*County of Durham ex rel. Alston v. Hodges*, 257 N.C. App. 288, 295, 809 S.E.2d 317, 323 (2018) (quoting from contempt order).]

d. A court must make findings as to a party's willfulness and ability to comply during two periods of time: the period when the party was in default and at the time of the hearing. [*Mauney v. Mauney*, 268 N.C. 254, 150 S.E.2d 391 (1966) (requiring a finding that defendant possessed the means to comply during the period defendant was in default); *Shippen v. Shippen*, 204 N.C. App. 188, 191, 693 S.E.2d 240, 244 (1985) (citation omitted) ("[t]o justify conditioning defendant's release from jail for

civil contempt upon payment of a lump sum of arrearages, the district court must find as fact that defendant has the present ability to pay those arrearages").] See Section II.B.3, above, for a discussion of the present ability to comply.

H. Sanctions for Civil Contempt

1. Incarceration.
   a. Imprisonment is the only authorized sanction for civil contempt. A person found in civil contempt may not be ordered to pay a fine. [G.S. 5A-21(d), *added by* S.L. 2015-210, § 1, effective Oct. 1, 2015, and applicable to civil contempt orders entered on or after that date, enacted to overrule the decision to the contrary in *Tyll v. Berry*, 234 N.C. App. 96, 758 S.E.2d 411, *review denied*, *appeal dismissed*, 367 N.C. 532, 762 S.E.2d 207 (2014).] For a detailed discussion, see Michael Crowell, *No Fines for Civil Contempt*, On the Civil Side: A UNC Sch. of Gov't Blog (Aug. 21, 2015), https://civil.sog.unc.edu/no-fines-for-civil-contempt/.
   b. A person who is incarcerated for civil contempt may be imprisoned as long as the civil contempt continues, subject to the limitations in G.S. 5A-21(b1) and (b2). [G.S. 5A-21(b).] Form AOC-CR-110, Commitment Order for Civil Contempt, may be used.
   c. Limitations on term of imprisonment.
      i. When a person is found in civil contempt for failing to pay court-ordered child support or for failing to comply with a court order that does not involve the payment of money, there is no limitation on the term of imprisonment that may be imposed. [G.S. 5A-21(b).]
      ii. A person found in civil contempt for failure to pay money other than child support may not be imprisoned for more than 90 days for the same act of disobedience or for refusal to comply with a court order but may be recommitted for successive 90-day periods, with the total period of imprisonment not to exceed 12 months. [G.S. 5A-21(b2).]
      iii. When contempt is not purged within ninety days by a person imprisoned for civil contempt for the failure to pay money other than child support, the court must conduct a de novo hearing before recommitting the person for a successive 90-day term. [G.S. 5A-21(b2).]
         (a) To qualify for a hearing de novo, a defendant must show that he or she was being recommitted to an additional term of imprisonment and not merely serving the time remaining on an original sentence that had been suspended. [*Liberatore v. Liberatore*, 230 N.C. App. 410, 753 S.E.2d 397 (2013) (**unpublished**) (defendant's indefinite sentence for civil contempt was temporarily suspended after defendant served 30 days; court did not strike the civil contempt charge and conditioned temporary suspension on defendant's compliance with original court order by a date certain, a condition defendant did not meet; defendant was imprisoned to serve 60 days; on these facts, defendant was not entitled to a de novo hearing as defendant was sentenced to serve the time remaining from the first sentence and was not recommitted to a new sentence).]

(b) Because the court hears the matter de novo, the trial court has the authority to consider the purge condition anew. [*McKenzie v. McKenzie,* 275 N.C. App. 126, 130, 853 S.E.2d 278, 281 (2020) ("whenever a party appears before a judge and is subject to initial or additional imprisonment for a continuing civil contempt, the judge considering the show cause motion hears the matter *de novo*, irrespective of any prior civil contempt orders"), *review denied*, 377 N.C. 564, 858 S.E.2d 118 (2021).]

iv. The 12-month maximum period of imprisonment in cases of civil contempt for failure to pay money other than child support includes the initial period of imprisonment and any additional period of imprisonment. [G.S. 5A-21(b2).]

v. Before a person can be recommitted, the court must:

(a) Conduct a hearing de novo,

(b) Enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a),

(c) Find that all the elements of G.S. 5A-21(a) continue to exist, [G.S. 5A-21(b2).] and

(d) Order a purge condition according to the evidence. [*See McKenzie v. McKenzie,* 275 N.C. App. 126, 853 S.E.2d 278 (2020) (a trial court should consider a purge condition anew), *review denied*, 377 N.C. 564, 858 S.E.2d 118 (2021).]

vi. A person's failure or refusal to purge contempt shall not be deemed a separate or additional act of disobedience, failure, or refusal to comply with an order of the court. [G.S. 5A-21(b2).]

vii. G.S. 5A-21(b1) governs incarceration for failure to comply with a nontestimonial identification order and is discussed further in Section V, below.

2. Release from incarceration.

a. A person imprisoned for civil contempt must be released when the civil contempt no longer continues, in other words, when the contemnor has satisfied all purge conditions. [G.S. 5A-22(a).]

b. Release by judge upon motion of contemnor.

i. Upon a contemnor's motion to the judge who found civil contempt, unless that judge is not available, the judge must order the contemnor's release if the judge affirmatively determines that the contemnor is subject to release. [G.S. 5A-22(b).]

ii. If the judge who found civil contempt is not available, the motion is made to a judge of the same division in the same judicial district. [G.S. 5A-22(b).]

iii. In ruling on a motion for custodial release by a contemnor serving an indefinite, conditional prison sentence for civil contempt, a trial court must make findings of fact concerning the contemnor's ability to comply with the purge conditions of the contempt order. [*Adams Creek Assocs. v. Davis*, 371 N.C. 464, 818 S.E.2d 100, *vacating per curiam* 257 N.C. App. 391, 810 S.E.2d 6 (2018).]

c. Release by sheriff or other officer having custody without further order of the court.

i. Upon finding that a contemnor has complied with the purge conditions specified in a contempt order, a sheriff or other officer having custody may release the contemnor without a further order of the court. [G.S. 5A-22(a).]

ii. This is intended to apply mainly to situations in which compliance with a contempt order calls for payment of money to the court. [Official Commentary, G.S. 5A-22.]

d. A contemnor may seek release under other procedures available under state law. [G.S. 5A-22(b).]

3. Stay of enforcement.

a. A trial court may enter a contempt order and stay its enforcement to give a contemnor an opportunity to purge themself of the contempt. [*Bossian v. Bossian*, 284 N.C. App. 208, 875 S.E.2d 570 (2022) (citing *Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002)), *review denied*, 894 S.E.2d 751 (N.C. 2023).]

b. A trial court had the discretion to stay enforcement of its contempt order to give the contemnor father an opportunity to purge the contempt. The court's act of ordering father incarcerated at the close of a subsequent hearing was not a new contempt order but, rather, a means of effectuating the existing contempt order. [*Bossian v. Bossian*, 284 N.C. App. 208, 875 S.E.2d 570 (2022), *review denied*, 894 S.E.2d 751 (N.C. 2023).]

c. The court of appeals has upheld orders that postponed imprisonment in civil contempt cases for a short amount of time when there was evidence showing that the obligor would be able to take reasonable steps to enable himself or herself to comply with an order's purge condition in that time period. [*See Gordon v. Gordon*, 233 N.C. App. 477, 757 S.E.2d 351 (2014) (60-day stay of incarceration was upheld where evidence established that the obligor would receive funds to pay the purge condition in sixty days); *Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (affirming an order of civil contempt allowing defendant ninety days to take reasonable measures to pay the order's purge amount), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Abernethy v. Abernethy*, 64 N.C. App. 386, 307 S.E.2d 396 (1983) (order of commitment activated when defendant failed to comply with purge condition requiring payment of arrearages and attorney fees over four-month period); *Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002) (commitment stayed to give defendant an opportunity to purge himself of contempt by compliance with the underlying order and judgment); *Ruth v. Ruth*, 158 N.C. App. 123, 579 S.E.2d 909 (2003) (commitment delayed on condition that wife purge herself of contempt by paying certain attorney fees into trust account of former husband's attorney).]

d. However, the court of appeals also has held that due process requires that a court conduct a hearing before incarcerating a contemnor due to the failure to comply with a contempt order's purge condition to determine that the failure to comply was willful. [*Unger v. Unger,* 268 N.C. App. 142, 834 S.E.2d 649 (2019), *appeal dismissed*, 837 S.E.2d 721, *cert denied*, 851 S.E.2d 610 (N.C. 2020).

I. Damages and Costs

1. Compensatory damages are not available in a contempt proceeding. [*Moss Creek Homeowners Ass'n v. Bissette*, 202 N.C. App. 222, 233, 689 S.E.2d 180, 188 (2010) (citing *Glesner v. Dembrosky*, 73 N.C. App. 594, 327 S.E.2d 60 (1985) (recognizing the general rule in North Carolina that a court has no authority to award damages to a private party in a contempt proceeding because "[c]ontempt is a wrong against the state, and moneys collected . . . go to the state alone"), *review denied, appeal dismissed*, 364 N.C. 242, 698

S.E.2d 402 (2010); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991) (error for trial court to award sums in a contempt proceeding for repairs and cleanup of home and wife's moving costs; appellate court recognized that while North Carolina's general rule against compensatory damages in contempt proceedings is contrary to the stance in a majority of states and to the federal position, strong precedent supports the rule); *Glesner v. Dembrosky*, 73 N.C. App. 594, 327 S.E.2d 60 (1985) (trial court erred in requiring a contemnor to pay defendants' out-of-state travel expenses incurred in attending contempt hearing, which was initiated on defendants' motion to compel contemnor's compliance with an order allowing them visitation).]

2. Requiring a husband to transfer the present value of certain property, including stock, after spending nearly a year incarcerated for failing to deliver that property in contempt of an equitable distribution order was not an award of compensatory damages. [*Conrad v. Conrad*, 82 N.C. App. 758, 348 S.E.2d 349 (1986) (ordering husband to transfer the present value of the stocks recognized that wife would have been compensated for stock splits and dividends had husband made the stock transfer in a timely fashion).]

3. A court has no authority to award costs to a private party in a civil contempt proceeding. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (trial court was not authorized to assess husband's expert witness fee against wife), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Green v. Crane*, 96 N.C. App. 654, 386 S.E.2d 757 (1990) (trial court did not err in refusing to tax defendants with costs).] See the discussion in Section II.J, below, regarding the awarding of attorney fees.

J. Attorney Fees in Civil Contempt Proceedings

1. General rule.
   a. Subject to certain exceptions in the area of family law, a court may award attorney fees in contempt matters only when specifically authorized by statute or pursuant to an express provision in an agreement between the parties.
      i. Outside of the family law field, statutory authority is required to award attorney fees in a contempt action. [*Moss Creek Homeowners Ass'n v. Bissette*, 202 N.C. App. 222, 689 S.E.2d 180, *review denied*, *appeal dismissed*, 364 N.C. 242, 698 S.E.2d 402 (2010); *see also Sea Ranch II Owner's Ass'n v. Sea Ranch II, Inc.*, 180 N.C. App. 230, 636 S.E.2d 307 (2006) (neither G.S. 6-18 nor 6-20, allowing costs as a matter of course or as a matter of discretion, applies to a contempt proceeding as a basis for awarding attorney fees), *review denied*, 361 N.C. 357, 644 S.E.2d 233 (2007); *Baxley v. Jackson*, 179 N.C. App. 635, 634 S.E.2d 905 (rejecting plaintiff's argument that a trial court's inherent authority to sanction a party for willful failure to obey its orders includes authority to award attorney fees), *review denied*, 360 N.C. 644, 638 S.E.2d 462 (2006); *United Artists Recs., Inc. v. E. Tape Corp.*, 18 N.C. App. 183, 196 S.E.2d 598 (without express statutory authorization, trial court lacked authority to award attorney fees to plaintiff after finding defendant in civil contempt of a temporary restraining order), *review denied*, 283 N.C. 666, 197 S.E.2d 880 (1973).]
      ii. However, an award of attorney fees in a contempt action has been upheld when based on an express provision in a consent judgment. [*PCI Energy Servs.,*

Inc. v. Wachs Tech. Servs., 122 N.C. App. 436, 470 S.E.2d 565 (1996) (an award of attorney fees was upheld in a contempt proceeding to enforce a consent judgment when the judgment contained an express provision allowing for the recovery of "all costs and expenses" associated with enforcing the consent judgment); *but cf. Stillwell Enters., Inc. v. Interstate Equip. Co.*, 300 N.C. 286, 289, 266 S.E.2d 812, 814–15 (1980) (requiring statutory authority for an award of attorney fees in addition to an express provision; stating in the context of a lease for personal property that "[e]ven in the face of a carefully drafted contractual provision indemnifying a party for such attorneys' fees as may be necessitated by a successful action on the contract itself, our courts have consistently refused to sustain such an award absent statutory authority therefor").]

iii. When there is no express contractual provision or statutory authority permitting a party to recover attorney fees, awards of such fees have not been allowed. [*Moss Creek Homeowners Ass'n v. Bissette*, 202 N.C. App. 222, 689 S.E.2d 180 (reversing an award of attorney fees in a contempt proceeding for failure to pay fees and costs in prior orders when there was no statutory authorization for such fees), *review denied, review dismissed*, 364 N.C. 242, 698 S.E.2d 402 (2010); *Baxley v. Jackson*, 179 N.C. App. 635, 634 S.E.2d 905 (when there was no statutory authority allowing attorney fees as a sanction for defendants' failure to comply with an order of specific performance, the trial court was without authority to award attorney fees), *review denied*, 360 N.C. 644, 638 S.E.2d 462 (2006); *Nohejl v. First Homes of Craven Cnty., Inc.*, 120 N.C. App. 188, 461 S.E.2d 10 (1995) (trial court's award of attorney fees to a party seeking to enforce a consent judgment was vacated because there was no express contractual provision or statutory authority permitting plaintiffs to recover such fees).]

2. Family law exceptions.
   a. Generally.
      i. Case law allows attorney fees incurred in contempt actions enforcing some family law obligations to be awarded when the underlying family law statutes authorize attorney fees in the underlying action. See discussions regarding child support, child custody, and alimony, below.
      ii. However, case law also allows for an award of attorney fees to a party seeking to enforce an equitable distribution order by contempt, even though the equitable distribution statute does not authorize the award of attorney fees. See discussion below.
   b. Child support.
      i. A court may award reasonable attorney fees to an obligee pursuant to G.S. 50-13.6 in connection with civil contempt proceedings to enforce a child support order when the court finds (1) that the person seeking the fees is an interested party acting in good faith who has insufficient means to defray the cost of litigation and (2) that the party ordered to furnish support has refused to provide adequate support. [G.S. 50-13.6; *Barham v. Barham*, 286 N.C. App. 764, 881 S.E.2d 911 (2022) (award of attorney fees upheld where the trial court's findings met the statutory requirements for such awards and was not an abuse of discretion); *Ugochukwu v. Ugochukwu*, 176 N.C. App. 741, 627 S.E.2d 625

(2006) (citing *Blair v. Blair*, 8 N.C. App. 61, 173 S.E.2d 513 (1970)) (award of attorney fees to wife based on husband's willful contempt for failure to pay child support was upheld); *Belcher v. Averette*, 152 N.C. App. 452, 568 S.E.2d 630 (2002) (defendant in contempt of child support provisions in a consent decree was ordered to pay plaintiff's attorney fees pursuant to G.S. 50-13.6); *Smith v. Smith*, 121 N.C. App. 334, 465 S.E.2d 52 (1996) (father's agreement to pay college expenses was in the nature of child support, thus the trial court was authorized to award attorney fees when father failed to pay those expenses); *but cf. Powers v. Powers*, 103 N.C. App. 697, 407 S.E.2d 269 (1991) (court of appeals reversed an award of attorney fees to wife after finding husband in contempt of consent judgment requiring him to pay child's college expenses; court held that the underlying order was not for "child support").]

ii. "The contempt power of the trial court includes the authority to require payment of reasonable attorney fees to opposing counsel as a condition of being purged of contempt for failure to comply with a child support order." [*Eakes v. Eakes*, 194 N.C. App. 303, 312, 669 S.E.2d 891, 897 (2008) (citing *Blair v. Blair*, 8 N.C. App. 61, 173 S.E.2d 513 (1970)). *See also Shippen v. Shippen*, 204 N.C. App. 188, 693 S.E.2d 240 (2010) (citing *Eakes*) (court issued an order requiring the payment of attorney fees by husband as a condition of his being purged of contempt for failure to comply with an order for child support and postseparation support; the order was vacated when it did not include the findings required for the awarding of attorney fees).]

iii. For more on attorney fees in child support actions, both generally and in the context of contempt, see *Liability and Amount* and *Enforcement of Child Support Orders*, Bench Book, Chapter 3, Parts 1 and 4.

c. Equitable distribution.

i. A court may award reasonable attorney fees to a party seeking to enforce an equitable distribution order by contempt proceedings, even though generally there can be no award for fees incurred in obtaining the equitable distribution order in the first instance. [*Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991).]

ii. A contemnor can be required to pay an award of attorney fees as a condition of purging contempt arising from enforcement of an equitable distribution consent order. [*Watson v. Watson*, 187 N.C. App. 55, 652 S.E.2d 310 (2007) (wife ordered to pay a portion of husband's attorney fees as a condition of purging civil contempt for noncompliance with an equitable distribution order), *review denied*, 362 N.C. 373, 662 S.E.2d 551 (2008); *Middleton v. Middleton*, 159 N.C. App. 224, 583 S.E.2d 48 (2003) (district court authorized to award attorney fees as a condition of purging contempt for failure to comply with an equitable distribution order); *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990), *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991) (upholding award of attorney fees as a condition of purging husband's contempt for failure to comply with an equitable distribution order).]

iii. A contemnor has been required to pay an award of attorney fees as a condition of purging contempt arising from enforcement of a provision in a separation

agreement that was analogous to an equitable distribution award. [*Gen. Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 573 S.E.2d 226 (2002) (an award of attorney fees arising from an assignment of a car and related debt to wife, made in an unincorporated separation agreement that was later adopted in a consent judgment that ordered wife to specifically perform a payment obligation to plaintiff, was akin to a court awarding attorney fees through contempt proceedings for a spouse's failure to pay a marital debt arising out of an equitable distribution award, a situation where an award of attorney fees through the court's contempt power would be permitted); *see also Cox v. Cox*, 185 N.C. App. 158, *6 (2007) (**unpublished**) (defendant ordered to pay attorney fees to wife who successfully brought contempt action for violation of a provision in a consent judgment that was "akin to one of equitable distribution").]

iv. For more on attorney fees in equitable distribution actions, both generally and in the context of contempt, see *Equitable Distribution Overview and Procedure*, Bench Book, Chapter 6, Part 1.

d. Child custody.

i. A trial court's award of attorney fees to mother incurred in defending a frivolous proceeding for contempt of a custody order was upheld by the court of appeals. [*Wiggins v. Bright*, 198 N.C. App. 692, 679 S.E.2d 874 (2009) (attorney fee award was based on G.S. 50-13.6, which authorizes fees upon a finding that the supporting party had initiated a frivolous action or proceeding; the court noted that the fees were also authorized under G.S. 50-13.6 based on findings that mother responded in good faith to the motion for contempt and did not have sufficient means to defray the costs and expenses of the matter); *Williams v. Chaney*, 250 N.C. App. 476, 792 S.E.2d 207 (2016) (if the findings required by G.S. 50-13.6 are not made, a trial court's award of attorney fees must be vacated).]

ii. The court of appeals has upheld the award of attorney fees to a father in a contempt proceeding involving the mother's violation of visitation provisions contained in an underlying order, even though the mother had complied with the order by the time of the contempt hearing and therefore was not found to be in civil contempt. [*Ruth v. Ruth*, 158 N.C. App. 123, 579 S.E.2d 909 (2003) (attorney fees recovered were those incurred by father in filing the motion to show cause and in the hearings related thereto); *see also McKinney v. McKinney,* 253 N.C. App. 473, 799 S.E.2d 280 (2017) (attorney fees can be awarded to a moving party when a respondent is found to not be in civil contempt because the respondent complied with an underlying court order after the motion to show cause and before the contempt hearing).]

iii. For more on attorney fees in custody actions, both generally and in the context of contempt, see *Child Custody*, Bench Book, Chapter 4.

e. Alimony.

i. In the following cases, attorney fees were awarded in contempt proceedings involving alimony: *Shumaker v. Shumaker*, 137 N.C. App. 72, 527 S.E.2d 55 (2000) (upholding an award of attorney fees in a contempt proceeding for failure to comply with a temporary alimony order); *Martin v. Martin*, 202 N.C. App. 372, 690 S.E.2d 767 (2010) (**unpublished**) (upholding an order finding the

defendant in civil contempt for failure to pay alimony as ordered and requiring the defendant to pay the plaintiff's attorney fees incident to the contempt proceeding); *Hudson v. Hudson*, 193 N.C. App. 454, 667 S.E.2d 340 (2008) (**unpublished**) (the defendant was properly found in civil contempt for failure to comply with an alimony order that required the payment of attorney fees). But see *Blackburn v. Bugg*, 723 S.E.2d 585 (N.C. Ct. App. 2012) (**unpublished**) (reversing a trial court's award of attorney fees against a defendant found in civil contempt for failure to pay alimony on the ground that there was no express statutory authority to support the court's award; further, the case did not arise from a recognized exception to the state's general rule on attorney fees in contempt cases, namely, orders for child support or equitable distribution).

ii. For more on attorney fees in alimony actions, both generally and in the context of contempt, see *Postseparation Support and Alimony*, Bench Book, Chapter 2.

f. Separation agreements.

i. An unincorporated separation agreement is enforceable and modifiable only under traditional contract principles. [*Long v. Long*, 160 N.C. App. 664, 588 S.E.2d 1 (2003) (citing *Jones v. Jones*, 144 N.C. 595, 580 S.E.2d 565 (2001)); *but see Gen. Motors Acceptance Corp. v. Wright*, 154 N.C. App. 672, 573 S.E.2d 226 (2002) (if a party to an unincorporated separation agreement does not perform the obligations required under the agreement, the other party may obtain a decree of specific performance of the separation agreement, which is enforceable through contempt proceedings).]

ii. Attorney fees have been allowed in a contempt proceeding involving an incorporated separation agreement. [*Michael v. Michael*, 198 N.C. App. 703, 681 S.E.2d 866 (2009) (**unpublished**) (upholding an order entered to enforce property settlement provisions in the parties' incorporated separation agreement and awarding attorney fees).]

iii. For more on attorney fees in spousal agreements, including unincorporated separation agreements that address attorney fees if enforcement of the agreement is required, see *Spousal Agreements*, Bench Book, Chapter 1.

3. Whether a party must prevail in a contempt action to be awarded attorney fees.

a. As a general rule, attorney fees are not available in a civil contempt proceeding unless the moving party prevails, except where the alleged contemnor complied with the order after the civil contempt proceeding was initiated. [*Walter v. Walter*, 279 N.C. App. 61, 864 S.E.2d 534 (2021) (citing *Ruth v. Ruth*, 158 N.C. App. 123, 579 S.E.2d 909 (2003)); *McKinney v. McKinney*, 253 N.C. App. 473, 799 S.E.2d 280 (2017) (the evidence was insufficient to support a finding that father was in civil contempt, and therefore an award of attorney fees to mother was remanded; on remand, the trial court awarded mother attorney fees pursuant to G.S. 50-13.6, which was upheld on appeal in *McKinney v. McKinney*, 263 N.C. App. 190, 821 S.E.2d 902 (2018)) (**unpublished**).]

b. Contrary to the general rule, however, the court of appeals has held that G.S. 50-13.6 authorizes attorney fees in a custody action upon a finding that the moving party is an interested party acting in good faith who has insufficient means to defray the expense of the suit, without consideration of which party prevailed. [*Blanchard v.*

Blanchard, 279 N.C. App. 269, 865 S.E.2d 686 (2021) (nothing in the plain language of G.S. 50-13.6 indicates that the requirements for awarding attorney fees are contingent on the ultimate outcome of the underlying judgment).]

c. For a detailed discussion of the cases discussed in this section, see Cheryl Howell, *Attorney Fees for Contempt in Family Law Cases: Only for a Prevailing Party?*, On the Civil Side: A UNC Sch. of Gov't Blog (Nov. 1, 2021), https://civil.sog.unc.edu/attorney-fees-for-contempt-in-family-law-cases-only-for-a-prevailing-party/.

K. Appeal of a Civil Contempt Order

1. Appeal of a civil contempt order generally.
   a. A person found in civil contempt may appeal a district court's order to the court of appeals by filing a notice of appeal within thirty days after the order is entered. [G.S. 5A-24; 7A-27(b)(2); N.C. R. App. P. 3(c).]
   b. A contempt order is not entered until it is reduced to writing, signed by a judge, and filed with the clerk of court as required by G.S. 1A-1, Rule 58. Therefore, if any of those actions have not been completed, an appeal of such an order must be dismissed for lack of jurisdiction. [*McKinney v. Duncan*, 256 N.C. App. 717, 808 S.E.2d 509 (2017).]
   c. Under G.S. 5A-24, a civil contempt order may only be appealed by a person found in civil contempt. The statute makes no provision for appeal when contempt is not found. However, at least one case has allowed an appeal when a trial court found an appellant not in contempt. [*See Piedmont Equip. Co. v. Weant*, 30 N.C. App. 191, 226 S.E.2d 688 (1976) (decided under prior contempt statute) (court held that appellant was entitled to appeal the trial court's denial of civil contempt pursuant to G.S. 1-277 when the decision affected a substantial right of appellant and there was no proceeding other than the contempt proceeding by which appellant could enforce its rights under the underlying consent judgment); *see also Hardy v. Hardy*, 270 N.C. App. 687, 842 S.E.2d 148 (2020) (noting that a right to appeal an order dismissing a civil contempt charge has only been recognized where the order affects a substantial right claimed by the appellant).]
   d. Without discussing the propriety of the appeal, other cases have allowed a person who unsuccessfully sought a civil contempt order to appeal the dismissal of the contempt charge. [*See Campen (Featherstone) v. Featherstone*, 150 N.C. App. 692, 564 S.E.2d 616 (father appealed an order that denied his motion to find mother in contempt of a custody order), *review denied*, *appeal dismissed*, 356 N.C. 297, 570 S.E.2d 504 (2002); *Forte v. Forte*, 65 N.C. App. 615, 309 S.E.2d 729 (1983) (mother appealed an order declining to hold father in contempt for failure to make court-ordered child support payments).]
2. Standard of review.
   a. In reviewing contempt proceedings, an appellate court is limited to determining whether there is competent evidence to support the trial court's findings of fact and whether those findings support the lower court's conclusions of law or judgment. [*Wellons v. White*, 229 N.C. App. 164, 748 S.E.2d 709 (2013) (citing *Shumaker v. Shumaker*, 137 N.C. App. 72, 527 S.E.2d 55 (2000) (civil contempt)); *Ugochukwu v. Ugochukwu*, 176 N.C. App. 741, 627 S.E.2d 625 (2006); *Campen (Featherstone) v.*

Featherstone, 150 N.C. App. 692, 564 S.E.2d 616, *review denied*, *appeal dismissed*, 356 N.C. 297, 570 S.E.2d 504 (2002).]

b. Findings of fact made by a trial court in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment. [*File v. File*, 195 N.C. App. 562, 673 S.E.2d 405 (2009) (citing *State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853 (2007) (in reviewing a nonjury proceeding such as contempt, findings of fact are binding on appeal if there is competent evidence to support them, even if there is evidence to the contrary); *Eakes v. Eakes*, 194 N.C. App. 303, 669 S.E.2d 891 (2008) (citing *Hartsell v. Hartsell*, 99 N.C. App. 380, 393 S.E.2d 570 (1990)).]

c. In an appeal of an order of civil contempt, conclusions of law are reviewed de novo. [*Wellons v. White*, 229 N.C. App. 164, 748 S.E.2d 709 (2013) (citing *Tucker v. Tucker*, 197 N.C. App. 592, 679 S.E.2d 141 (2009)).]

3. Motion or application to stay a contempt order during an appeal of that contempt order.

a. The general rule of appellate procedure is that a motion to stay any civil order is directed initially to a district court. [*See* N.C. R. App. P. 8(a).]

b. If a stay of a contempt order is denied by a trial court, a party may apply to an appellate court for a writ of supersedeas staying enforcement of the order. [N.C. R. App. P. 8(a).]

4. Contempt order affects a substantial right.

a. Ordinarily, an appeal lies only from a final judgment. [*See* G.S. 7A-27(b)(2) (allowing appeal of a final judgment in district court to the court of appeals).] Appeal of a nonfinal, or interlocutory, order that affects a substantial right is allowed. [G.S. 7A-27(b)(3)a.]

b. Even though a contempt order may be interlocutory, an immediate appeal is permitted because the order affects a substantial right. [*Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002); *Thompson v. Thompson*, 223 N.C. App. 515, 735 S.E.2d 214 (2012) (citing *Guerrier*) (appeal of a support order finding defendant in civil contempt for failing to pay postseparation support was allowed even though the order itself was interlocutory and not appealable); *Hamilton v. Johnson*, 228 N.C. App. 372, 747 S.E.2d 158 (2013) (citing *Willis v. Duke Power*, 291 N.C. 19, 229 S.E.2d 191 (1976)) (appeal of a contempt order for failure to comply with a temporary child support order affected a substantial right); *Ross v. Ross*, 215 N.C. App. 546, 715 S.E.2d 859 (2011) (citing *Guerrier*); *see also Whitaker v. Whitaker*, 181 N.C. App. 609, 640 S.E.2d 446 (**unpublished**) (finding that the court of appeals could consider plaintiff's appeal of a contempt order, regardless of the fact that it provided for further proceedings, based on the court's statement in *Guerrier* that "any contempt order" is immediately appealable), *review denied*, 361 N.C. 370, 646 S.E.2d 774 (2007), *appeal dismissed*, *review denied*, 361 N.C. 370, 662 S.E.2d 552 (2008); *but see Anderson v. Lackey*, 166 N.C. App. 279, 603 S.E.2d 168 (2004) (**unpublished**) (court stated that a contempt order does not affect a substantial right when the party subject to it (here, mother) is not at imminent risk of punishment; court took under advisement the sanctions to be imposed for mother's contempt before it dismissed her appeal, and in so doing distinguished the case from *Guerrier*).]

c. The court of appeals has found that a defendant's appeal from a civil contempt order entered in a criminal nonsupport action and based on a refusal to undergo a

court-ordered blood test in a paternity action was immediately appealable because, if defendant refused to comply, he risked a fine or imprisonment, and if he complied, his challenge to the blood test may have been moot. [*State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 1992).]

d. An order finding that a respondent is not in civil contempt can be appealed only if the order affects a substantial right of the appellant. [*Hardy v. Hardy*, 270 N.C. App. 687, 842 S.E.2d 148 (2020) (appeal of an order denying civil contempt was dismissed when plaintiff made no argument that the order affected a substantial right); *Moore v. Moore*, 226 N.C. App. 583, 741 S.E.2d 513 (2013) (**unpublished**) (appeal of a trial court's order dismissing defendant's motion for civil contempt did not affect a substantial right when defendant failed to show the possibility of inconsistent verdicts absent the appellate court's consideration of the appeal).]

e. G.S. 50-19.1, *added by* S.L. 2013-411, § 2, effective Aug. 23, 2013, provides for the immediate appeal of certain actions when other claims are pending in the same action and does not appear to apply to contempt orders. Thus, the appealability of a contempt order is not affected by G.S. 50-19.1.

5. An appeal of a contempt order generally precludes further action by a trial court in the contempt matter.

a. Generally, an appeal of a contempt order precludes further action in the contempt matter. [G.S. 1-294, *amended by* S.L. 2015-25, § 2, effective May 21, 2015, to add "unless otherwise provided by the Rules of Appellate Procedure"; *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247 (1981) (when a defendant gave notice of appeal in open court of an order finding him in contempt for failing to produce income tax returns and a list of assets, the trial court lost jurisdiction to take further action on the contempt matter, and a subsequent order imposing sanctions and imprisonment for failure to satisfy the contempt order's purge condition was void); *Guerrier v. Guerrier*, 155 N.C. App. 154, 159 n.4, 574 S.E.2d 69, 72 n.4 (2002) (appeal of an order finding father in contempt of an equitable distribution judgment for removing funds from children's investment accounts precluded the trial court from entering further orders on the matter, such as entering judgment for the amount of the funds removed or removing father from acting as custodian of the accounts; an enforcement order was vacated on other grounds, but the court noted that, unlike in child support, child custody, and alimony matters, there is no statute that provides that an equitable distribution order remains enforceable pending appeal).]

b. A trial court lacks jurisdiction to punish a party in contempt if appeal of the contempt order has been taken. [*See Marshall v. Marshall*, 233 N.C. App. 238, 757 S.E.2d 319 (2014) (**unpublished**) (citing *Webb v. Webb*, 50 N.C. App. 677, 274 S.E.2d 888 (1981), and G.S. 1-294) (trial court lacked jurisdiction to enter contempt order number 2 in October 2012, finding defendant in contempt of contempt order number 1 entered in August 2012, when defendant had appealed contempt order number 1 in September 2012).]

c. Entering a civil contempt order *nunc pro tunc* did not "create jurisdiction anew" where the trial court had been divested of jurisdiction by a party's notice of appeal. [*Simmons v. Simmons*, 291 N.C. App. 693, 895 S.E.2d 922 (2023) (**unpublished**).]

L. Enforcement of an Order by Contempt After Appeal of the Order Is Filed

1. Generally, a perfected appeal stays all further proceedings in the court below upon the judgment appealed from or upon the matter embraced therein. [G.S. 1-294, *amended by* S.L. 2015-25, § 2, effective May 21, 2015, to add "unless otherwise provided by the Rules of Appellate Procedure"; *see Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247 (1981) (noting as "well settled" that an appeal, even of an appealable interlocutory order, operates as a stay of all proceedings relating to issues included therein until the matters are determined on appeal; further noting that jurisdiction of the trial court is divested from the date that notice of appeal was given).]
2. Thus, a party generally may not be found in civil contempt of an order while an appeal of the order is pending, subject to the exceptions set out in Section L.3, below.
   a. "A party may generally not be held in contempt for 'violating the very order then being questioned on appeal.' " [*Whitaker v. Whitaker*, 181 N.C. App. 609, *7, 640 S.E.2d 446, *7 (**unpublished**) (citations omitted), *review denied*, 361 N.C. 370, 646 S.E.2d 774 (2007), *appeal dismissed*, *review denied*, 361 N.C. 370, 662 S.E.2d 552 (2008); *see also Wilson v. Wilson*, 124 N.C. App. 371, 477 S.E.2d 254 (1996) (appeal of an order requiring a nonparty to appear at a deposition divested the trial court of jurisdiction to find the nonparty in contempt of that order, pending the appeal); *McKyer v. McKyer*, 184 N.C. App. 188, 645 S.E.2d 902 (2007) (**unpublished**) (husband's notice of appeal from an order denying his motion to vacate an award of attorney fees to former wife divested the trial court of jurisdiction to hold a contempt hearing and to find husband in contempt for failing to pay the fees).]
   b. Even though a party generally cannot be held in contempt of an order pending appeal of the order, the North Carolina Supreme Court has cautioned parties that there may be consequences for the violation of an order pending appeal. [*Joyner v. Joyner*, 256 N.C. 588, 591, 124 S.E.2d 724, 727 (1962) (court noted that, while an appeal stays contempt proceedings until the validity of the underlying judgment is determined, taking an appeal "does not authorize a violation of the order"; court further noted that a party "who wil[l]fully violates an order does so at his peril" because, if the order is upheld, a violation "may be inquired into" upon remand).]
3. However, by statute, certain orders are enforceable by civil contempt pending appeal of the underlying order.
   a. Order for child support.
      i. Notwithstanding G.S. 1-294, a child support order is enforceable in a trial court by civil contempt pending an appeal of the child support order. [G.S. 50-13.4(f)(9).] The original order, and a finding of contempt based on a violation of that order, may be enforced pending appeal. [*Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002) (G.S. 50-13.4(f)(9) is an exception to G.S. 1-294 and allows enforcement of orders for the payment of child support pending appeal, including any sanctions entered pursuant to an order of civil contempt; appeal of an order finding defendant in contempt for failure to pay child support did not divest the trial court of jurisdiction to enter an enforcement order sanctioning defendant $100 for failure to comply with a purge condition that required the payment of past child support and medical expenses); *Smith v. Smith*, 247 N.C. App. 166, 785 S.E.2d 434 (2016) (G.S. 50-13.4(f)(9) authorized

the trial court to enforce a child support order requiring father to pay child's private school tuition while appeal of the child support order was pending).]

ii. When a trial court enters an order of contempt while a child support order is on appeal, the appellate court in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires. [G.S. 50-13.4(f)(9); N.C. R. App. P. 23.]

iii. An award for attorney fees is "an enforceable component of child custody, child support, and alimony awards pending appeal." [*Simms v. Bolger*, 264 N.C. App. 456, 459, 826 S.E.2d 467, 469 (2019).] Thus, when a defendant did not seek to stay an award of attorney fees included in a child support order by posting bond pursuant to G.S. 1-289, the trial court had jurisdiction to find the defendant in contempt pursuant to G.S. 50-13.4(f)(9) for failure to pay the fees while the matter was on appeal. [*Simms*, (relying on *Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002)).]

b. Order for alimony.

i. Notwithstanding G.S. 1-294 and 1-289, an order for the periodic payment of alimony is enforceable in the trial court by civil contempt pending an appeal of the order. [G.S. 50-16.7(j). *See Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (reading G.S. 1-294 and 50-16.7(j) together, the trial court had jurisdiction to issue a show cause order and a subsequent criminal contempt order for defendant's failure to appear at the hearing on the show cause order).]

ii. G.S. 50-16.7(j) does not appear to allow an action to recover postseparation arrearages after an alimony award has been appealed. [*See Harris v. Harris*, 173 N.C. App. 232, 617 S.E.2d 723 (2005) (**unpublished**) (without considering the application of G.S. 50-16.7(j), the court of appeals found that an appeal from an order awarding wife alimony divested the trial court of jurisdiction to consider wife's motion for civil contempt for failure to pay postseparation support because the alimony award "affected" postseparation support as that term is used in G.S. 1-294; the court also held that the parties' postseparation support order did not continue in force during appeal of the alimony award).]

iii. G.S. 50-16.7(j) does not permit enforcement by contempt of orders directing the payment of a contractual obligation pursuant to an unincorporated spousal agreement. [*Meeker v. Meeker*, 292 N.C. App. 32, 897 S.E.2d 115 (2024) (postseparation support payments set out in a separation agreement but not adopted by a court were not alimony and, therefore, G.S. 50-16.7(j) did not apply to permit enforcement of the agreement pending appeal).]

iv. When a trial court enters an order of contempt while an alimony order is on appeal, the appellate court in which the appeal is pending may stay any order for civil contempt entered for alimony until the appeal is decided, if justice requires. [G.S. 50-16.7(j); N.C. R. App. P. 23.]

v. An award of attorney fees is "an enforceable component of child custody, child support, and alimony awards pending appeal." [*Simms v. Bolger*, 264 N.C. App. 456, 459, 826 S.E.2d 467, 469 (2019).]

c. Custody order.

i. Notwithstanding G.S. 1-294, an order for custody or visitation is enforceable by civil contempt pending an appeal of the order. [G.S. 50-13.3(a); 50-13.1(a) (the word "custody" shall be deemed to include custody or visitation or both, unless a contrary intent is clear).]

ii. When a trial court enters an order of contempt while a custody order is on appeal, the appellate court in which the appeal is pending may stay any order for civil contempt entered for child custody until the appeal is decided, if justice requires. [G.S. 50-13.3(a); N.C. R. App. P. 23.]

iii. An award of attorney fees is "an enforceable component of child custody, child support, and alimony awards pending appeal." [*Simms v. Bolger*, 264 N.C. App. 456, 459, 826 S.E.2d 467, 469 (2019).]

d. Equitable distribution order.

i. There is no statutory provision allowing for the enforcement of an order for equitable distribution by civil contempt pending an appeal of the equitable distribution order. [*See Guerrier v. Guerrier*, 155 N.C. App. 154, 159 n.4, 574 S.E.2d 69, 72 n.4 (2002) (trial court would have been without jurisdiction to enforce an equitable distribution judgment by civil contempt pending appeal because, unlike with child support, child custody, and alimony, no statute provides that an equitable distribution order remains enforceable pending appeal).]

4. Also, after an appeal has been filed, matters not affected by the judgment appealed from are not stayed by the appeal.

a. The general rule is that the appeal of any matter only divests the court below of jurisdiction in matters embraced therein unless otherwise provided by the North Carolina Rules of Appellate Procedure. However, the court below may proceed "upon any other matter included in the action and not affected by the judgment appealed from." [G.S. 1-294.]

b. Therefore, a trial court may consider contempt, or may enforce an order for contempt, if the matter appealed is unrelated to the contempt. [*See Johns v. Johns*, 195 N.C. App. 325, 672 S.E.2d 782 (2009) (**unpublished**) (appeal of an order dismissing husband's various motions in a domestic case did not divest the trial court of jurisdiction to issue an order for his arrest after wife filed an appeal to enforce a contempt order against husband for failure to pay wife's attorney fees; the contempt order was not affected by the appeal of the order dismissing husband's motions).]

5. Appeal of a nonappealable interlocutory order does not deprive a trial court of jurisdiction over an underlying proceeding.

a. When an order being appealed from is interlocutory but does not affect a substantial right or is otherwise not appealable, a trial court has jurisdiction to, and can properly, hold a party in contempt for violating the order. [*Onslow County v. Moore*, 129 N.C. App. 376, 499 S.E.2d 780 (when an order issuing a preliminary injunction was interlocutory and did not affect a substantial right, the trial court could find defendant in contempt for violating the injunction after appeal of the order issuing the injunction), *review denied*, 349 N.C. 361, 525 S.E.2d 543 (1998); *see also Whitaker v. Whitaker*, 181 N.C. App. 609, 640 S.E.2d 446 (**unpublished**) (if an

interlocutory order is not appealable, a trial court is not divested of jurisdiction to hold a party in contempt for violating the order), *review denied*, 361 N.C. 370, 646 S.E.2d 774 (2007), *appeal dismissed*, *review denied*, 361 N.C. 370, 662 S.E.2d 552 (2008).]

III. Criminal Contempt

A. When Used

1. The nature of the proceeding does not determine whether contempt is civil or criminal. Both civil and criminal contempt are available in both civil and criminal proceedings.
   a. A defendant may be charged criminally but be found to be in civil contempt. [*See State v. Mauney*, 106 N.C. App. 26, 415 S.E.2d 208 (1992) (defendant charged with criminal nonsupport was found in civil contempt for failing to comply with an order for blood testing).]
   b. A person may be held in criminal contempt for willfully failing to comply with an order entered in a civil proceeding. [G.S. 50-13.4(f)(9) (child support); 50-13.3(a) (custody); 50-16.7(j) (alimony).]

B. Not a Criminal Conviction

1. Criminal contempt is *sui generis*, meaning "of its own kind or class," and essentially criminal, or quasi-criminal, in nature, and is neither a felony nor a misdemeanor, so consecutive sentences for criminal contempt are permitted. [*State v. Burrow*, 248 N.C. App. 663, 789 S.E.2d 923 (2016) (citing *Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1969)) (finding that nothing in the criminal contempt provisions prohibits consecutive sentences for multiple findings of contempt).] For more discussion, see Jamie Markham, *Consecutive Sentences for Criminal Contempt*, N.C. Crim. L.: A UNC Sch. of Gov't Blog (Nov. 3, 2017), https://nccriminallaw.sog.unc.edu/consecutive-sentences-criminal-contempt/.
2. Under a strict construction of the Structured Sentencing Act then applicable, a 1994 criminal contempt adjudication, assumed to be punishable by a 30-day maximum term, was not a "prior conviction[.]" [*State v. Reaves*, 142 N.C. App. 629, 544 S.E.2d 253 (2001) (the court of appeals' rationale was based in significant part on the fact that there is no right to a trial by jury in a criminal contempt proceeding; the case was decided before a 2009 amendment to G.S. 5A-12(a)(3) providing, under certain circumstances, for imprisonment of up to 120 days for failure to pay child support).]

C. Grounds for Criminal Contempt

1. G.S. 5A-11 sets out the following exclusive grounds for criminal contempt:
   a. Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings. [G.S. 5A-11(a)(1).]
      i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully

contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. Lawyer's conduct in failing to turn off her cell phone upon entering a courtroom, which phone later audibly rang and interrupted the proceedings, was irresponsible but not willful. [*State v. Phair*, 193 N.C. App. 591, 668 S.E.2d 110 (2008) (lawyer's conduct was "certainly irresponsible" but not willful, and a contempt order against her was reversed; G.S. 5A-11(a)(2) was cited as the basis for the contempt here).]

iii. Lawyer's conduct in soliciting a third person to disrupt the criminal trial of his client by standing up and protesting the judge's rulings was willful and interrupted court proceedings. [*In re Paul*, 84 N.C. App. 491, 353 S.E.2d 254 (contempt order affirmed), *cert. denied*, 319 N.C. 673, 356 S.E.2d 779 (1987), *cert. denied*, 484 U.S. 1004, 108 S. Ct. 694 (1988).]

iv. Evidence showing that a defendant was mouthing inaudibly and gesturing as though he was pointing a gun at his head while looking at a witness during the witness' testimony at trial supported the trial court's finding of willful interruption of the proceeding. [*State v. Baker*, 260 N.C. App. 237, 817 S.E.2d 907 (2018).]

v. A self-represented litigant who repeatedly argued matters outside the record during closing arguments after receiving, (1) prior to the start of these arguments, detailed instructions about proper closing argument conduct and (2) repeated admonishments from the trial court during arguments was properly held in direct criminal contempt. [*State v. Salter*, 264 N.C. App. 724, 826 S.E.2d 803 (2019).]

vi. Defendant's refusal to wear a face mask in a jury assembly room when reporting for jury service but while not participating in any ongoing proceedings in a courtroom was not a contemptuous act pursuant to G.S. 5A-11(a)(1). [*State v. Hahn*, ___ N.C. App. ___, 906 S.E.2d 329 (2024).]

vii. For a discussion of whether behavior that occurs in a remote hearing can be punished as direct criminal contempt and punished summarily, see Shea Denning, *Criminal Contempt on the Web*, N.C. Crim L.: A UNC Sch. of Gov't Blog (Feb. 11, 2021), https://nccriminallaw.sog.unc.edu/criminal-contempt-on-the-web/.

b. Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority. [G.S. 5A-11(a)(2).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. If a spectator refuses to rise while a court is adjourning, after being asked to rise and when capable of doing so, the refusal is sufficient grounds for criminal contempt. [*State v. Randell*, 152 N.C. App. 469, 567 S.E.2d 814 (2002) (per

curiam) (reversing an order of criminal contempt against defendant because he was not accorded a summary hearing before being found guilty).]

iii. An attorney, who was not an attorney of record in a proceeding but was, rather, an interloper, was correctly found in direct criminal contempt for refusing to sit down after being ordered to do so, refusing to be quiet after being ordered to do so, repeatedly interrupting the judge by speaking over his voice, disrupting the court proceedings and encouraging the criminal defendant to do the same, and pandering to the audience. [*In re Nakell*, 104 N.C. App. 638, 411 S.E.2d 159 (1991) (attorney's conduct precipitated a violent outburst from the criminal defendant, followed by applause from his supporters in the courtroom, and resulted in removal of the criminal defendant from the courtroom), *stay dissolved, appeal dismissed*, *review denied*, 330 N.C. 851, 413 S.E.2d 556 (1992).]

iv. An attorney's (1) refusal to sit down and be quiet after being repeatedly told to do so by the trial court, (2) repeated attempts to address the trial court concerning his client although a different matter had been called for hearing, and (3) "basically shouting" at the court after being warned constituted direct contempt. The attorney was held in contempt a second time for continuing to address the trial court even after being taken into custody. [*In re Brown*, 181 N.C. App. 148, 639 S.E.2d 454 (2007) (**unpublished**) (noting that attorney's refusal to sit down when ordered to do so, on its own, constituted contempt of court).]

v. Self-represented litigant who disobeyed a direct order not to make statements about the prosecutor's veracity was properly found in contempt under G.S. 5A-11(a)(2) and (3). [*State v. Williams*, 188 N.C. App. 848, 656 S.E.2d 736 (2008) (**unpublished**).]

vi. A lawyer's response, after being advised that the court could not hear arguments on his motion and after the court ordered him to appear the following morning, "[i]f you wanted to hear my case, you should have heard my case today" was, along with other conduct, disrespectful and contemptuous. [*State v. Lambert*, 152 N.C. App. 719, 568 S.E.2d 337 (2002) (**unpublished**) (although the behavior was contemptuous, the contempt order was reversed because the court did not give the lawyer a summary opportunity to respond).]

vii. A defendant was found in contempt for violating the spirit of a court order when the defendant, who was not a lawyer, attempted to represent a corporation's owner in court proceedings after being ordered not to act in a representative capacity for the corporation. [*State v. Gell*, 151 N.C. App. 599 (2002) (**unpublished**).]

viii. A self-represented litigant who repeatedly argued matters outside the record during closing arguments after receiving, (1) prior to the start of these arguments, detailed instructions about proper closing argument conduct and (2) repeated admonishments from the trial court during arguments was properly held in direct criminal contempt. [*State v. Salter*, 264 N.C. App. 724, 826 S.E.2d 803 (2019).]

ix. Defendant's refusal to wear a face mask in a jury assembly room when reporting for jury service but while not participating in any ongoing proceedings in a

courtroom was not a contemptuous act pursuant to G.S. 5A-11(a)(1). [*State v. Hahn*, ___ N.C. App. ___, 906 S.E.2d 329 (2024).]

c. Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or with its execution. [G.S. 5A-11(a)(3).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. A plaintiff's failure to appear at two court hearings, if constituting contempt at all, constituted criminal contempt. [*O'Briant v. O'Briant*, 313 N.C. 432, 329 S.E.2d 370 (1985) (without deciding whether failure to appear constituted direct or indirect contempt, the court noted that it was clear that the purpose of the contempt judgments in this case was to punish plaintiff's disobedience of the court's orders rather than to provide a remedy for defendant); *State v. Wendorf*, 274 N.C. App 480, 852 S.E.2d 898 (2020) (failure to appear pursuant to a subpoena can be punished as criminal contempt under G.S. 5A-11(a)(3)); *Hodges v. Hodges*, 156 N.C. App. 404, 577 S.E.2d 121 (2003) (the trial court's finding that defendant had willfully failed to appear was not supported by competent evidence when defendant was incarcerated in another state and there was no evidence that defendant was purposefully avoiding disposition).]

iii. A person can be in criminal contempt pursuant to G.S. 5A-11(a)(3) even though a formal written order was never entered and filed with the clerk of court. [*State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853 (defendant was held in indirect criminal contempt of court for visiting the office of the trial court administrator in violation of the trial court's oral directives to stay out of the judges' office area; the relevant "process, order, directive, or instruction" underpinning this contempt ground does not have to be a formal written order; the court noted, however, that the better practice is to put an instruction or directive in writing, especially if the order is to remain effective after the completion of the proceeding or matter then before the court), *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007).]

iv. An exchange between a judge and an attorney, occurring at the conclusion of a voir dire hearing, constituted a directive or instruction of the court, which the attorney disobeyed at a later criminal trial by asking a question that was clearly impermissible under the Rape Shield Statute. [*State v. Okwara*, 223 N.C. App. 166, 733 S.E.2d 576 (2012) (trial court's determination of criminal contempt and censure of defendant was affirmed).]

v. A self-represented litigant who repeatedly argued matters outside the record during closing arguments after receiving, (1) prior to the start of these arguments, detailed instructions about proper closing argument conduct and (2) repeated admonishments from the trial court during arguments was properly held in direct criminal contempt. [*State v. Salter*, 264 N.C. App. 724, 826 S.E.2d 803 (2019).]

vi. G.S. 5A-11(a)(3) can apply to interference with temporary visitation provisions. [*File v. File*, 195 N.C. App. 562, 673 S.E.2d 405 (2009) (mother could be held in

criminal contempt under this section for interfering with a court order allowing father temporary visitation with their child).]

vii. A defendant's failure to appear personally at a show cause hearing as ordered by the court in a show cause order was indirect criminal contempt. [*Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (appearance of defendant's counsel was not sufficient to satisfy the court's order as defendant was personally ordered to appear; the contempt order issued by the court was reversed, however, because due process required that defendant be given a hearing and required that facts be established by a reasonable doubt, neither of which occurred).] Failure to appear pursuant to a show cause order may also constitute contempt under G.S. 5A-11(a)(7).

viii. A defendant who telephoned a witness and encouraged her not to obey a subpoena issued by the court could be held in criminal contempt under G.S. 5A-11(a)(3). [*State v. Wall*, 49 N.C. App. 678, 272 S.E.2d 152 (1980).]

ix. A defendant was properly held in indirect criminal contempt for interfering with a court's lawful process, order, direction, or instructions when he filed suit in South Carolina to receive payment of a commission after a North Carolina court had found another party also had claim to the proceeds. [*Osmar v. Crosland-Osmar, Inc.*, 43 N.C. App. 721, 259 S.E.2d 771 (1979), *cert. denied*, 299 N.C. 331, 265 S.E.2d 397 (1980).]

x. A trial court's finding of criminal contempt was supported by competent evidence where a defendant was given explicit warnings against recording in the courtroom, and where the policy against recording was posted in the courtroom, but where the defendant carried a recording device into the courtroom with the intention to, and in fact did, livestream and record courtroom proceedings. [*In re Eldridge*, 268 N.C. App. 491, 836 S.E.2d 859 (2019), *review denied except as to matters in the dissent*, 373 N.C. 594, 837 S.E.2d 883 (2020), *aff'd per curiam*, 376 N.C. 728, 854 S.E.2d 579 (2021).] For further discussion of criminal contempt and smartphones in court, see Ann Anderson, *Smartphones, YouTube, and Criminal Contempt*, On the Civil Side: A UNC Sch. of Gov't Blog (July 21, 2017), https://civil.sog.unc.edu/smartphones-youtube-and-criminal-contempt/.

d. Willful refusal to be sworn or affirmed as a witness or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified. [G.S. 5A-11(a)(4).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. Testimony that is obviously false or evasive is equivalent to a refusal to testify within the intent and meaning of criminal and civil contempt statutes. [*Galyon v. Stutts*, 241 N.C. 120, 84 S.E.2d 822 (1954) (decided under an earlier version of G.S. 5A-11(a)(4)).]

iii. A reporter's refusal to answer a prosecutor's questions, when she had notice that the trial court had rejected another reporter's claim of privilege in the same trial

and after being warned that her failure to answer would subject her to contempt sanctions, was a willful and deliberate act constituting direct contempt. [*In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999).] **NOTE:** *Owens* was decided before G.S. 8-53.11 was passed, codifying a qualified privilege of journalists against disclosure of confidential or nonconfidential information obtained while acting as a journalist. [*See* S.L. 1999-267, § 1, effective Oct. 1, 1999.]

iv. A minister, duly subpoenaed and called to the stand, who willfully and unlawfully refused to be sworn and to testify on religious grounds was properly found in direct contempt and punished summarily, even though he sincerely believed it was his moral duty as a Christian minister to refuse to testify. [*In re Williams*, 269 N.C. 68, 152 S.E.2d 317 (statute then in effect governing privileged communications between clergy and communicants, G.S. 8-53.1, did not justify the minister's refusal to testify because the communicant did not object to the testimony, which was required at the time to invoke the privilege), *cert. denied*, 388 U.S. 918, 87 S. Ct. 2137 (1967).] **NOTE:** *Williams* was decided before G.S. 8-53.1 (now G.S. 8-53.2) was amended, removing the requirement that the communicant object to the testimony of the clergy member to invoke the privilege. [*See* S.L. 1967-794, effective June 15, 1967.]

e. Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court. [G.S. 5A-11(a)(5).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may be imposed (1) **without** a finding that the act or omission that gave rise to the contempt was willfully contemptuous or (2) **without** a clear warning having been given by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. No person may be held in contempt under G.S. 5A-11 on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice. [G.S. 5A-11(b).]

iii. A court shall not issue any rule or order banning, prohibiting, or restricting the publication or broadcast of matters occurring in open court in any hearing, trial, or other proceeding, civil or criminal. [G.S. 5A-11(c); 7A-276.1.]

iv. A court may not seal, prohibit, or restrict the publication or broadcast of the contents of any public record required to be open to public inspection. [G.S. 7A-276.1; 5A-11(c).]

f. Willful or grossly negligent failure by an officer of the court to perform the officer's duties in an official transaction. [G.S. 5A-11(a)(6).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully

contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. Gross negligence implies "recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the rights of others." [*State v. Okwara*, 223 N.C. App. 166, 170, 733 S.E.2d 576, 580 (2012) (quoting *State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987)) (trial court's determination that a defense attorney's violation of the Rape Shield Statute was willful and grossly negligent was affirmed; the gross negligence finding here was based on the attorney failing to perform her duties as an officer of the court in an official transaction arising from impermissible questioning of the alleged victim).]

g. Willful or grossly negligent failure to comply with schedules and practices of the court, resulting in substantial interference with the business of the court. [G.S. 5A-11(a)(7).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. "'Grossly negligent' for purposes of criminal culpability, implies recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the rights of others." [*State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987) (citation omitted).]

iii. "Substantial interference means that degree of interference with the court's business that is real, and not momentary or illusory [and] has been described as 'willful disobedience, resistance to, or interference with the court's lawful process, order, direction or instructions or its execution.'" [*State v. Key*, 182 N.C. App. 624, 631, 643 S.E.2d 444, 449 (citation omitted) (rejecting the argument that there was no substantial interference because the court was able to transact other business), *review denied*, 361 N.C. 433, 649 S.E.2d 398 (2007).]

iv. Both willfulness or gross negligence and evidence of substantial interference with court business must be established before contempt can be found. [*See State v. Chriscoe*, 85 N.C. App. 155, 354 S.E.2d 289 (1987) (court of appeals reversed trial court's contempt finding for lack of evidence on both elements; the record below contained no evidence that wife's arrival one hour after criminal proceedings against her husband began was willful or negligent and not, as wife asserted, related to transportation failure; nor was there any evidence that wife's tardiness resulted in substantial interference with the business of the court when the trial had just started and wife was expected to testify for the defense).]

v. An attorney was properly held in contempt pursuant to G.S. 5A-11(a)(7) for failure to appear at his client's hearing on an absconder violation and for abandonment of his client by leaving the courthouse. The attorney's actions resulted in the court, its staff, and its officers expending significant time and effort in an attempt to resolve the case over a two-day period. [*State v. Key*, 182 N.C. App. 624, 643 S.E.2d 444, *review denied*, 361 N.C. 433, 649 S.E.2d 398 (2007).]

vi. A defendant's failure to appear personally at a show cause hearing as ordered by the court in a show cause order constituted indirect criminal contempt. [*Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (appearance of defendant's counsel was not sufficient to satisfy the court's order as defendant was personally ordered to appear; a contempt order issued by the court was reversed, however, because due process required that defendant be given a hearing and required that facts be established by a reasonable doubt, neither of which occurred here); *State v. Nwanguma*, 231 N.C. App. 715, 754 S.E.2d 257 (2014) (**unpublished**) (citing *Cox*) (a party's failure to appear for trial as ordered was indirect criminal contempt); *cf. State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979) (expressly declining to rule on the question but assuming that an attorney was in direct criminal contempt after returning to the courtroom eighteen minutes late from a lunch break).] Failure to appear pursuant to a show cause order may also constitute contempt under G.S. 5A-11(a)(3).

vii. A trial court was authorized to find contempt under G.S. 5A-11(a)(7) but instead struck the defendants' answer as a sanction when the parties advised the court of a settlement but the defendants failed to execute settlement documents. The defendants' failure to complete the settlement violated a court-wide rule regarding calendaring and settlement of cases. [*Lomax v. Shaw*, 101 N.C. App. 560, 400 S.E.2d 97 (1991).]

h. Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of G.S. Chapter 15A, Granting of Immunity to Witnesses. [G.S. 5A-11(a)(8).]

i. Punishable by censure, imprisonment of up to 6 months, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a)(1).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

i. Willful communication with a juror in an improper attempt to influence the juror's deliberations. [G.S. 5A-11(a)(9).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may be imposed (1) **without** a finding that the act or omission that gave rise to the contempt was willfully contemptuous or (2) **without** a clear warning having been given by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. A person held in criminal contempt under this section may, for the same conduct, be found guilty of a violation of G.S. 14-225.1 (picketing or parading with intent to influence, among others, a juror), but the person must be given credit for any imprisonment resulting from the contempt. [G.S. 5A-12(e).]

j. Willful refusal by a defendant to comply with a condition of probation. [G.S. 5A-11(a)(9a); *see also* G.S. 15A-1344(e1) (a willful violation of a condition of probation is punishable by criminal contempt).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully

contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

k. Willful refusal to accept post-release supervision, or to comply with the terms of post-release supervision, by a prisoner whose offense is a reportable conviction subject to the registration requirement of the Sex Offender and Public Protection Registration Programs. [G.S. 5A-11(a)(9b), *added by* S.L. 2011-307, § 6, effective June 27, 2011, and applicable to willful refusals to accept post-release supervision and willful refusals to comply with the terms of post-release supervision that occur on or after that date.]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of a sentence. [G.S. 5A-11(a)(9b).]

l. Any other act or omission specified elsewhere in the N.C. General Statutes as grounds for criminal contempt. [G.S. 5A-11(a)(10).]

i. Punishable by censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a).] Punishment may not be imposed unless the act or omission that led to a contempt finding was willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper. [G.S. 5A-12(b).]

ii. Partial listing of state statutes or rules providing for criminal contempt.

(a) A person served with a criminal summons who willfully fails to appear may be punished for criminal contempt. [G.S. 15A-303(e)(3).]

(b) Civil or criminal contempt is authorized for a violation of a temporary restraining order issued by a district court judge to prevent or enjoin criminal activity on or in the immediate vicinity of leased premises. [G.S. 42-74.]

(c) Civil or criminal contempt is authorized for a violation of a civil no-contact order issued by a district court judge under the Workplace Violence Prevention Act. [G.S. 95-269.]

(d) An order for child custody or visitation is enforceable by civil contempt, and its disobedience may be punished by proceedings for criminal contempt. [G.S. 50-13.3(a).] This language has been interpreted as giving a trial court the choice to treat a party's alleged disobedience as civil or criminal contempt. [*Mather v. Mather*, 70 N.C. App. 106, 318 S.E.2d 548 (1984); *see Sloan v. Sloan*, 164 N.C. App. 190, 595 S.E.2d 228 (2004) (mother held in criminal contempt for refusing to comply, on six occasions, with orders providing for telephonic visitation with child's grandparents).]

(e) An order for the periodic payment of child support or a child support judgment that provides for periodic payments is enforceable by proceedings

for civil contempt, and disobedience of such an order or judgment may be punished by proceedings for criminal contempt. [G.S. 50-13.4(f)(9).]

(f) Any order for the payment of alimony or postseparation support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt. [G.S. 50-16.7(j).]

(g) Uniform Interstate Family Support Act (UIFSA) orders may be enforced by civil or criminal contempt. [G.S. 52C-3-305(b)(5).]

(h) A violation of a G.S. Chapter 50B order is punishable by contempt. [G.S. 50B-4(a).]

(i) A knowing violation of a civil no-contact order is punishable as civil or criminal contempt of court. [G.S. 50C-10; *see Tyll v. Berry*, 234 N.C. App. 96, 758 S.E.2d 411 (interpreting G.S. 50C-10 as authorizing civil contempt for violation of a 50C order), *review denied*, *appeal dismissed*, 367 N.C. 532, 762 S.E.2d 207 (2014).]

(j) A presiding judge may maintain courtroom order through the use of civil or criminal contempt powers. [G.S. 15A-1035.]

2. Willfulness required by G.S. 5A-11.

a. "Willfulness" under G.S. 5A-11 means an act "done deliberately and purposefully in violation of law and without authority, justification, or excuse." [*State v. Phair*, 193 N.C. App. 591, 594, 668 S.E.2d 110, 112 (2008) (citations omitted).] The term has also been defined as "more than deliberation or conscious choice; it also imports a bad faith disregard for authority and the law." [*State v. Okwara*, 223 N.C. App. 166, 170, 733 S.E.2d 576, 580 (2012) (citing *Phair*) (standard of review is not abuse of discretion or plain error).]

b. The word "willful" when used in a criminal statute means that the act was "done deliberately and purposely in violation of law and without authority, justification, or excuse." [*State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987); *State v. Evans*, 193 N.C. App. 455, 667 S.E.2d 340 (2008) (**unpublished**) (citing *Chriscoe*).]

c. A failure to pay support may be willful under G.S. 5A-11 if a supporting spouse voluntarily takes on additional financial obligations or divests assets or income after the entry of a support order. [*Faught v. Faught*, 67 N.C. App. 37, 46, 312 S.E.2d 504, 509 (citing "a well-established line of authority") (defendant's failure to pay alimony was willful within the meaning of G.S. 5A-11(a)(3) when, after the original alimony award, defendant obligated himself to pay for automobiles for himself, his adult daughter, and his new wife, as well as other obligations for his new family), *review denied*, 311 N.C. 304, 317 S.E.2d 680 (1984).]

d. Defendant did not act willfully where he (1) refused to wear a face mask in a jury assembly room when reporting for jury service; (2) was brought to a judge's courtroom at the judge's insistence to be informed, erroneously, that he was required to wear a face mask pursuant to emergency orders; and (3) was then held in direct criminal contempt when he continued to refuse. [*State v. Hahn*, 906 S.E.2d 329, 335 (N.C. Ct. App. 2024) (the appellate court noted that the trial court's "misapplication of the local emergency order served as the impetus of the conflict").]

3. Gross negligence is required by G.S. 5A-11(a)(6) and (7).
    a. Gross negligence implies "recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the rights of others." [*State v. Okwara*, 223 N.C. App. 166, 170, 733 S.E.2d 576, 580 (2012) (quoting *State v. Chriscoe*, 85 N.C. App. 155, 158, 354 S.E.2d 289, 291 (1987)) (a determination that a defense attorney's violation of the Rape Shield Statute was willful and grossly negligent was affirmed; the gross negligence finding here was based on the attorney failing to perform her duties as an officer of the court in an official transaction as set out in G.S. 5A-11(a)(6), arising from attorney's impermissible questioning of the alleged victim).]

D. When Criminal Contempt Is Not Available

1. Acts that, by statute, may not be the basis for criminal contempt.
    a. No person may be held in contempt under G.S. 5A-11 on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice. [G.S. 5A-11(b).]
        i. Statements made by an attorney at a public rally were not the basis of a trial court's finding of contempt but were admitted at the contempt hearing as relevant to the attorney's motive or intent. [*In re Paul*, 84 N.C. App. 491, 353 S.E.2d 254 (1987) (the attorney was found in contempt for soliciting a third person to disrupt his client's trial), *cert. denied*, 319 N.C. 673, 356 S.E.2d 779 (1987), *cert. denied*, 484 U.S. 1004, 108 S. Ct. 694 (1988).]
    b. Inability, failure, or refusal to pay the appointment fee for appointed counsel shall not be grounds for contempt. [G.S. 7A-455.1(d).]
    c. A citation issued by a law enforcement officer may not be enforced by contempt. [Official Commentary, G.S. 15A-302.]
2. Circumstances that, pursuant to case law, may not be the basis for criminal contempt.
    a. When an order to be enforced by contempt was made without, or in excess of, a court's jurisdiction.
        i. Disobedience of an order made without, or in excess of, jurisdiction is not punishable as contempt. [*In re Contempt Proceedings of Smith*, 301 N.C. 621, 272 S.E.2d 834 (1981) (order requiring out-of-state attorney, who was never admitted to limited practice in North Carolina and was never an attorney in the case, to appear was a nullity; attorney could not be held in criminal contempt for failure to appear); *cf. State v. Jordan*, 228 N.C. App. 361, 748 S.E.2d 775 (**unpublished**) (citing 17 Am. Jur. 2d *Contempt* § 127 (2004)) (even though an order requiring defendant to submit to a competency examination may have been voidable for failing to comply with an applicable statute, when the order was issued by a court having subject matter and personal jurisdiction, defendant was required to obey the order, regardless of the order's "ultimate validity," and defendant could properly be found in criminal contempt for failing to appear), *review denied*, 367 N.C. 243, 748 S.E.2d 325 (2013).]

b. When an order to be enforced by contempt does not compel or prohibit the act complained of.

i. When a defendant witness was not under any legal process, order, or personal instruction by the judge to appear in court, the defendant could not be held in criminal contempt for failure to appear. [*State v. Chriscoe*, 85 N.C. App. 155, 354 S.E.2d 289 (1987) (in the absence of an order to be present, a defendant may not be held in contempt for violation of same).]

c. When the order to be enforced lacks clarity as to what is intended.

i. Language in a temporary injunction prohibiting any person who was "not fully licensed" from, among other things, taking off or landing from an airport was not sufficiently clear to provide the trial court with a basis for holding defendants in criminal contempt. [*Broadbent v. Allison*, 193 N.C. App. 454, 667 S.E.2d 342 (2008) (**unpublished**) (the phrase "fully licensed" was ambiguous because pilots are issued "certificates" and not "licenses" and federal regulations provided no fewer than six different levels of pilot certification).]

d. When the conduct complained of occurred solely after the issuance of a show cause order.

i. A criminal contempt order was reversed—even though the record contained evidence that defendant violated the order at issue, a temporary restraining order, before the show cause order in the contempt matter was issued—because the trial court failed to make the necessary findings beyond a reasonable doubt as to those facts; the trial court's findings only addressed acts occurring subsequent to the issuance of the show cause order. [*State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008).]

E. Matters That Have Not Precluded a Finding of Criminal Contempt

1. The fact that a defendant sincerely believed that his contemptuous statements were truthful is not a bar to a contempt finding. [*State v. Williams*, 188 N.C. App. 848, 656 S.E.2d 736 (2008) (**unpublished**) (fact that defendant sincerely believed that his statements about the prosecutor being a liar were true was beside the point because, regardless of their truth, the trial court repeatedly directed defendant not to make the statements, and defendant disobeyed that order).]
2. The fact that a person's statements may be protected under the First Amendment does not preclude a contempt finding based on those statements. [*State v. Lambert*, 152 N.C. App. 719, 568 S.E.2d 337 (2002) (**unpublished**) (freedom of speech under the First Amendment is not absolute—it yields to a state's compelling interest in maintaining order, decorum, and respect in the operations of its courts; here, a lawyer's conduct and statements that the court should have heard his matter on the day he made the statements were disrespectful and contemptuous and not protected speech; however, an issued contempt order was reversed for procedural deficiencies).]
3. The fact that a reporter believed that, in a criminal matter, she had a qualified privilege to refuse to testify under the First and Fourteenth Amendments was not a bar to a finding of contempt. [*In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999) (reporter's belief that refusal to testify was privileged was irrelevant).]

4. The fact that court proceedings may not have actually begun for the day when a defendant committed acts that subjected him to contempt did not bar the court from finding him in contempt. [*State v. Evans*, 193 N.C. App. 455, 667 S.E.2d 340 (2008) (**unpublished**) (a defendant's loud yelling, cursing, and resistance to giving his name to a probation officer outside a courthouse could constitute criminal contempt when court was still in session for the week and in the process of beginning the day's business and prospective jurors were waiting in two rooms for the start of voir dire).]
5. The fact that a defendant was not "technically" in violation of a court order will not prevent a contempt finding. [*State v. Gell*, 151 N.C. App. 599 (2002) (**unpublished**) (defendant, who was not a lawyer, had been ordered not to act as the legal representative of a corporation; the court ruled that he violated the spirit of that order when he filed documents and appeared in a representative capacity on behalf of the corporation's owners in other court proceedings and found him in contempt).]
6. The fact that a court's directive was oral and not written will not preclude a finding of contempt. [*State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853 (an order holding defendant in indirect criminal contempt of court for visiting the office of the trial court administrator in violation of the trial court's oral directives to stay out of the judges' office area was affirmed), *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007).]
7. The fact that an attorney espoused a correct position when the attorney was not a defendant's attorney of record will not stop a court from finding the attorney in contempt. [*Nakell v. Att'y Gen. of N.C.*, 15 F.3d 319 (4th Cir.), *cert. denied*, 513 U.S. 866, 115 S. Ct. 184 (1994) (it was inappropriate for an attorney to present arguments to the court, regardless of their correctness, when the attorney clearly understood that the court did not recognize him as defendant's counsel; a finding of direct criminal contempt against the attorney was affirmed).]
8. The fact that an alleged contemnor is in compliance on the date of the contempt hearing does not block a court from finding criminal contempt. [*See Reynolds v. Reynolds*, 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (father's payment of arrearages after a contempt motion was filed eliminated the option of civil, but not criminal, contempt), *rev'd per curiam on other grounds for reasons stated in dissenting opinion*, 356 N.C. 287, 569 S.E.2d 645 (2002).]

F. Distinction between Direct and Indirect Criminal Contempt

1. The distinction between direct and indirect criminal contempt is important because summary proceedings are available only for direct criminal contempt. [G.S. 5A-13(a).]
   a. Because G.S. 5A-13(b) requires plenary proceedings for indirect criminal contempt, it is reversible error to proceed summarily in a case of indirect criminal contempt. [G.S. 5A-13(b).]
   b. Because proceedings for direct criminal contempt may be plenary or summary, direct contempt mislabeled as indirect contempt has been found not to warrant reversal. [*See Adams Creek Assocs. v. Davis*, 186 N.C. App. 512, 652 S.E.2d 677 (2007) (incorrectly identifying contempt as indirect when it was direct was not reversible error), *review denied*, *appeal dismissed*, *stay dissolved*, 362 N.C. 354, 662 S.E.2d 900 (2008).]

2. Direct criminal contempt.
   a. Criminal contempt is direct when the act giving rise to the contempt:
      i. Is committed within the sight or hearing of a presiding judicial official;
      ii. Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
      iii. Is likely to interrupt or interfere with matters then before the court. [G.S. 5A-13(a).]
   b. G.S. 5A-13(a) does not require that the presiding judicial official actually see or hear a defendant's act, only that it be committed "within the sight or hearing" of the official. [*State v. Jackson*, 230 N.C. App. 145, 752 S.E.2d 257 (2013) (**unpublished**) (even though the judge did not hear defendant use a racial epithet when she spoke to a deputy on duty as a bailiff, when defendant made the statement in open court during court proceedings, defendant uttered the racial slur in the presence of the judge).]
   c. A judge may punish direct criminal contempt immediately in a summary proceeding, discussed in Section III.G, below, or may defer punishment and hold a plenary proceeding, discussed in Section III.H, below.
3. Indirect criminal contempt.
   a. Indirect criminal contempt is any criminal contempt other than direct criminal contempt. [G.S. 5A-13(b).] See the discussion in Section III.C, above, for a list of conduct that can constitute criminal contempt.
   b. Indirect criminal contempt is punishable only after plenary proceedings. [G.S. 5A-13(b).] See the discussion in Section III.H, below.
4. Examples of direct criminal contempt.
   a. Refusal to obey an order of a court.
      i. If a spectator refuses to rise while a court is adjourning, after being asked to rise and when capable of doing so, the refusal is sufficient grounds for direct criminal contempt. [*State v. Randell*, 152 N.C. App. 469, 567 S.E.2d 814 (2002) (per curiam) (despite defendant's acts qualifying as contemptuous, a contempt order against him was reversed because he was not accorded a summary hearing before being found guilty).]
   b. Disrespectful attitude or demeanor toward the court.
      i. Testimony by defendants (1) that they would not comply with existing court orders requiring them to stay off certain real property and (2) that they would not follow future court orders directing them to vacate the property constituted direct criminal contempt pursuant to G.S. 5A-13(a)(1). The testimony was within the sight and hearing of the presiding judge and was "disrespectful and disparage[d] the respect due to the court and its orders." [*Adams Creek Assocs. v. Davis*, 186 N.C. App. 512, 528, 652 S.E.2d 677, 687 (2007), *review denied*, *appeal dismissed*, *stay dissolved*, 362 N.C. 354, 662 S.E.2d 900 (2008).]
      ii. An attorney's response, after being advised that the court could not hear arguments on his motion and after the court ordered him to appear the following morning, that "[i]f you wanted to hear my case, you should have heard my case today," was, along with other conduct, disrespectful and constituted direct contempt. [*State v. Lambert*, 152 N.C. App. 719, 568 S.E.2d 337 (2002)

(**unpublished**) (but contempt order was reversed when the court did not give the attorney a summary opportunity to respond).]

iii. An attorney's (1) refusal to sit down and be quiet after being repeatedly told to do so by the trial court, (2) repeated attempts to address the trial court concerning his client although a different matter had been called for hearing, and (3) "basically shouting" at the court after being warned constituted direct contempt. The attorney was held in direct contempt a second time for continuing to address the trial court even after being taken into custody. [*In re Brown*, 181 N.C. App. 148, 639 S.E.2d 454 (2007) (**unpublished**) (noting that attorney's refusal to sit down when ordered to do so, on its own, constituted contempt of court).]

iv. A defendant's use of profanity, despite warnings from a court, and his conduct in speaking over the judge interrupted the proceedings and impaired the dignity of the court. [*State v. Ore*, 283 N.C. App. 524, 874 S.E.2d 222 (**unpublished**), *vacated and remanded on other grounds*, 383 N.C. 676, 880 S.E.2d 677 (2022).]

v. A defendant's impairment at a scheduled first appearance, his sleeping in the courtroom, and his agitation directed at the court supported the trial court holding defendant in direct criminal contempt. [*State v. Corpening*, 292 N.C. App. 671, 897 S.E.2d. 926 (2024) (**unpublished**).]

c. Untruthful testimony before the court.

i. At a probation revocation hearing, a defendant's untruthful sworn testimony that a mandatory Saturday class prevented her from reporting for weekend detention constituted direct criminal contempt. [*State v. Terry*, 149 N.C. App. 434, 562 S.E.2d 537 (2002).]

d. Interruption or interference with court proceedings.

i. A defendant's use of a racial epithet when she spoke to a deputy on duty as a bailiff was ruled disruptive and supported a contempt finding; even though the judge did not hear the defendant's statement, the judge immediately stopped the proceedings upon becoming aware of it to address the defendant's behavior and to state that the basis for the contempt was "disruption to the operation of court." [*State v. Jackson*, 230 N.C. App. 145, 752 S.E.2d 257 (2013) (**unpublished**).]

ii. A defendant's conduct, while engaged in a verbal dispute with his former probation officer, created a commotion in front of the courthouse during jury selection for a controversial trial. That conduct, which included the use of profanity, and the defendant's yelling loudly immediately outside a window in the judge's chambers, constituted direct criminal contempt, even though court proceedings had not begun for the day. [*State v. Evans*, 193 N.C. App. 455, 667 S.E.2d 340 (2008) (**unpublished**).]

iii. A defendant was found to not have willfully interrupted or interfered with court proceedings when he had no knowledge that court proceedings were taking place when he took the action alleged to constitute contempt. [*In re Imprisonment of Hennis*, 276 N.C. 571, 173 S.E.2d 785 (1970) (per curiam) (defendant was silently picketing sixty-one feet from the windows of the courtroom and had no knowledge that court was in session or that his actions were interfering with the court conducting its regular business; further, he had not been told to discontinue walking along sidewalks adjacent to the courthouse wearing a

placard; the court found that his conduct could not constitute willful interference with a court proceeding).]

iv. A defendant's willful intent to interfere with court proceedings can be inferred. [*State v. Evans*, 193 N.C. App. 455, 667 S.E.2d 340 (2008) (**unpublished**) (citing *State v. Warren*, 313 N.C. 254, 328 S.E.2d 256 (1985) (defendant's intent must typically be inferred from circumstances).]

5. Examples of indirect criminal contempt.
   a. A defendant was in indirect criminal contempt for visiting the office of the trial court administrator in violation of the trial court's oral directives to stay out of the judges' office area. [*State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853, *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007).]
   b. A defendant's failure to appear personally at a show cause hearing as ordered by the court in a show cause order was indirect criminal contempt. [*Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (a contempt order against defendant was reversed, however, because due process required that defendant be given a hearing and that facts be established by a reasonable doubt, neither of which occurred here); *State v. Nwanguma*, 231 N.C. App. 715, 754 S.E.2d 257 (2014) (**unpublished**) (citing *Cox*) (failure to appear for trial as ordered was indirect criminal contempt)).]
   c. A defendant was found to be in indirect criminal contempt for calling a witness on the telephone and encouraging the witness not to obey a subpoena issued by the court. [*State v. Wall*, 49 N.C. App. 678, 272 S.E.2d 152 (1980).]
   d. A defendant was found to be in indirect criminal contempt under G.S. 5A-11(a)(3) when he filed suit in South Carolina to accomplish certain actions and receive payment of a commission, despite a North Carolina court order prohibiting those actions. [*Osmar v. Crosland-Osmar, Inc.*, 43 N.C. App. 721, 259 S.E.2d 771 (1979), *cert. denied*, 299 N.C. 331, 265 S.E.2d 397 (1980).]
   e. A defendant was found to be in indirect criminal contempt for willfully violating a court's order to comply with all inmate rules and regulations while in jail for direct criminal contempt. [*State v. Williams*, 200 N.C. App. 322, 683 S.E.2d 467 (2009) (**unpublished**) (defendant called the officer in charge of the jail an obscene name and used other profanity when referring to her after being denied certain personal items he had requested).]
   f. A defendant was found to be in indirect criminal contempt of a custody consent order when she willfully allowed her children to be in the presence of her boyfriend, a convicted sex offender, when the parties' consent order explicitly prohibited such contact. [*State v. Mastor*, 243 N.C. App. 476, 777 S.E.2d 516 (2015).]
6. The classification of tardiness or failure to appear in court as direct or indirect criminal contempt is not entirely clear. In light of the lack of clarity on the issue, it is the better practice to conduct a plenary hearing if faced with a tardy or absent contemnor.
   a. The court of appeals has noted that the "willful absence of an attorney from a scheduled trial constitutes contempt of court, although disputes arise over whether it is direct or indirect contempt." [*In re Contempt Procedure of Smith*, 45 N.C. App. 123, 133, 263 S.E.2d 23, 29 (1980), *rev'd on other grounds*, 301 N.C. 621, 272 S.E.2d 834 (1981).]
   b. A litigant's failure to appear personally at a show cause hearing as ordered by the court in a show cause order was found to be indirect criminal contempt. [*Cox v. Cox*,

92 N.C. App. 702, 376 S.E.2d 13 (1989) (classification of contempt as indirect was based on judge's lack of direct knowledge of facts that would establish that defendant's failure to appear was willful); *State v. Nwanguma*, 231 N.C. App. 715, 754 S.E.2d 257 (2014) (**unpublished**) (citing *Cox*) (failure to appear for trial as ordered was not an overt act that occurred in the trial court's presence and thus could not support a finding of contempt).]

c. Other cases in which alleged contemnors have been tardy or have failed to appear have been decided on other grounds, such as deficient notice or opportunity to respond, without classifying the conduct as direct or indirect contempt. [*See O'Briant v. O'Briant*, 313 N.C. 432, 329 S.E.2d 370 (1985) (court elected not to decide whether plaintiff's repeated failure to appear at custody hearings constituted direct or indirect contempt); *State v. Key*, 182 N.C. App. 624, 643 S.E.2d 444 (attorney's failure to appear as counsel at his client's hearing constituted criminal contempt, but court did not classify the contempt as direct or indirect), *review denied*, 361 N.C. 433, 649 S.E.2d 398 (2007); *Pierce v. Pierce*, 58 N.C. App. 815, 295 S.E.2d 247 (1982) (defendant was punished for being twenty-five minutes late for court after a summary proceeding; however, a contempt order against him was reversed for lack of notice and opportunity to respond; neither the trial court nor the court of appeals addressed whether defendant's tardiness constituted direct or indirect criminal contempt).]

G. Summary Proceedings for Criminal Contempt

1. Generally.

a. Summary proceedings are available only for direct criminal contempt. [G.S. 5A-13(a).] Summary proceedings may not be used for civil contempt or indirect criminal contempt. [*See* G.S. 5A-23; -13(b).]

b. The North Carolina Rules of Evidence, other than those with respect to privileges, do not apply to contempt proceedings in which the court is authorized by law to act summarily. [G.S. 8C-1, Rule 1101(b)(4).]

c. "The ability of a judge to maintain order is a necessary function underlying the administration of justice. And when appropriate, direct criminal contempt is a proper mechanism to facilitate order. . . . Inherent in this power is the ability of an entrusted public servant—the judge—to assess a criminal conviction to a citizen's record without the full gambit of protections provided by due process. . . . As such, it is incumbent upon judicial authorities exercising this power to use judicial restraint and act with well-reasoned discernment." [*State v. Hahn*, 906 S.E.2d 329, 332 (N.C. Ct. App. 2024).]

d. A judicial official may choose not to proceed summarily against a person charged with direct criminal contempt and may instead proceed under G.S. 5A-15 for plenary proceedings. [G.S. 5A-13(a).]

e. If proceedings for a person's direct criminal contempt are deferred, a judicial official must, immediately following the person's conduct, inform the person of the official's intention to institute contempt proceedings. [G.S. 5A-13(a).] This rule establishes that a person be cited for contempt at the time the contempt occurs, even if the proceedings are to be held later. [Official Commentary, G.S. 5A-13.]

2. If conduct qualifies as direct criminal contempt under G.S. 5A-11 and 5A-13(a), a trial judge may punish a person summarily when:
   a. Imposing measures is necessary to restore order or maintain the dignity and authority of the court,
   b. The measures are imposed substantially contemporaneously with the contempt, **and**
   c. The person charged with contempt is given summary notice of the charges **and** a summary opportunity to respond. [G.S. 5A-14(a), (b).]
3. Whether measures are imposed substantially contemporaneously with contemptuous conduct.
   a. The statutory phrase "substantially contemporaneously with the contempt" clearly does not require that a contempt proceeding immediately follow alleged misconduct. [*State v. Johnson*, 52 N.C. App. 592, 279 S.E.2d 77, *review denied*, 303 N.C. 549, 281 S.E.2d 390 (1981).]
   b. Factors bearing on whether the punishment imposed is substantially contemporaneous with the contempt include:
      i. A defendant's notice or knowledge of the misconduct,
      ii. The nature of the misconduct, and
      iii. Other circumstances that may have some bearing on the right of the defendant to a fair and timely hearing. [*State v. Johnson*, 52 N.C. App. 592, 279 S.E.2d 77, *review denied*, 303 N.C. 549, 281 S.E.2d 390 (1981).]
   c. Holding a summary proceeding two days after the conduct in question occurred satisfied the "substantially contemporaneously" requirement. [*In re Nakell*, 104 N.C. App. 638, 649, 411 S.E.2d 159, 165 (1991) (the trial court gave the defendant "specification of the contempt" at the time of the conduct and set the hearing to consider the matter and to afford defendant adequate opportunity to respond), *appeal dismissed*, *review denied*, *stay dissolved*, 330 N.C. 851, 413 S.E.2d 556 (1992); *see also Nakell v. Att'y Gen. of N.C.*, 15 F.3d 319 (4th Cir.) (addressing the same hearing in the context of the attorney's/contemnor's habeas petition, the Fourth Circuit found no violation of due process arising from the delay of two days), *cert. denied*, 513 U.S. 866, 115 S. Ct. 184 (1994).]
   d. One day between the conduct underlying a contempt allegation and the contempt hearing was substantially contemporaneous under the "particular circumstances" of the case. [*State v. Johnson*, 52 N.C. App. 592, 279 S.E.2d 77 (such circumstances included that defendant was in court for a brief period for a bond hearing, not a trial; that defendant was put on notice that his conduct was so disruptive that he lost his right to be present and was removed; and that defendant's removal "infuriated" defendant, giving rise to a conclusion that further punishment that day could have further antagonized defendant and further delayed proceedings), *review denied*, 303 N.C. 549, 281 S.E.2d 390 (1981).]
   e. However, the measures imposed by a magistrate were not substantially contemporaneous with the acts of a defendant alleged to be contemptuous where the magistrate and the defendant engaged in a several-minute exchange, and the magistrate then closed the blinds to the public access window, spoke with a colleague, and then summarily held the defendant in criminal contempt, despite the fact that the defendant had already left the courtroom for her car and was not delaying or

disrupting the court's business. Although some delay between misconduct and the imposition of summary contempt can be permissible, in this case the proceedings had effectively ended, and the delay was not appropriate. [*State v. Robinson*, 281 N.C. App. 614, 868 S.E.2d 703 (2022) (magistrate also failed to give defendant notice and an opportunity to be heard, and there was no evidence that defendant failed to seize an opportunity to respond).

4. Summary notice of charge.
   a. Before summarily imposing measures in response to direct criminal contempt, a judicial official must give the person charged with contempt summary notice of the charges. [G.S. 5A-14(b).] This requirement follows the American Bar Association's recommendation that a person charged with contempt be given notice of what the contemptuous action was. [Official Commentary, G.S. 5A-14.]
   b. Formal notice and a hearing are not required in summary proceedings. [*In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999).]
   c. Written notice to an alleged contemnor is not required when a trial court imposes measures substantially contemporaneously with the contempt as provided by G.S. 5A-14(a). [*State v. Johnson*, 52 N.C. App. 592, 279 S.E.2d 77, *review denied*, 303 N.C. 549, 281 S.E.2d 390 (1981).]
   d. Adequate notice of an impending contempt charge was given to an attorney even though the judge never specifically used the word "contempt," when the trial court repeatedly told the attorney that he was out of order and asked him whether he wished to join his client in custody, directly warned the attorney that he was out of order and would be detained if he said one more word, and told the attorney to sit down and be quiet three times. [*In re Brown*, 181 N.C. App. 148, 639 S.E.2d 454 (2007) (**unpublished**).]
5. Summary opportunity to respond.
   a. G.S. 5A-14(b) also requires a judicial official to provide a person facing contempt with a summary opportunity to respond before imposing measures. [G.S. 5A-14(b).]
      i. A summary verbal notice that a person is charged with criminal contempt, and a description of the acts considered contemptuous, meet the requirements of the statute. This requirement is meant to assure that the alleged contemnor is given an opportunity to identify gross mistakes to the trial court. [Official Commentary, G.S. 5A-14; *In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999) (statutory requirements are met if an alleged contemnor has an opportunity to present reasons why the court should not impose a sanction).]
      ii. A written order to appear and show cause is not required in a summary proceeding for direct criminal contempt when a trial court imposes measures substantially contemporaneously with the contempt as provided by G.S. 5A-14(a). [*State v. Johnson*, 52 N.C. App. 592, 279 S.E.2d 77, *review denied*, 303 N.C. 549, 281 S.E.2d 390 (1981).]
   b. Since G.S. 5A-14(b) guarantees a potential contemnor a chance to respond to the contempt charge, a contempt order entered in a summary proceeding will be reversed if a contemnor was not given notice and an opportunity to respond. [*Peaches v.*

Payne, 139 N.C. App. 580, 533 S.E.2d 851 (2000) (when court was immediately recessed after the judge advised an attorney that he was in the bailiff's custody for contempt, a contempt finding was reversed on the ground that the attorney not given a summary opportunity to respond); *Pierce v. Pierce*, 58 N.C. App. 815, 295 S.E.2d 247 (1982) (order for contempt was reversed when defendant father, who had been punished summarily for being twenty-five minutes late for court without offering any excuse, was not given notice or an opportunity to respond, as required in a summary proceeding); *In re Discipline of Sutton*, 205 N.C. App. 321, *3, 697 S.E.2d 525, *3 (2010) (**unpublished**) (citations omitted) (it was error to find attorney in criminal contempt when attorney "was not afforded a 'real opportunity to present reasons not to impose a sanction' "; attorney had already been held in contempt before being taken into custody); *State v. Scott*, 178 N.C. App. 563, 631 S.E.2d 892 (2006) (**unpublished**) (trial court's judgment finding criminal contempt was reversed when defendant was not given summary notice and an opportunity to respond before being found in contempt for filing a frivolous motion for appropriate relief and/or for making false statements under oath at the evidentiary hearing on the motion).]

c. A trial court failed to provide summary notice and an opportunity to be heard where pre-printed language on a form order stated that these process requirements were provided to the defendant but the record contradicted the form language and showed that no notice or opportunity to be heard were given to the defendant. [*State v. Perkinson*, 271 N.C. App. 557, 844 S.E.2d 336 (2020).]

d. A trial court's criminal contempt order was found facially deficient where the provision in the form order stating that the defendant was given summary notice and an opportunity to respond was marked out and no other evidence showed that the defendant was provided notice and an opportunity to respond. [*State v. Tincher*, 266 N.C. App. 393, 831 S.E.2d 859 (2019).]

e. While trial judges must have the ability to control their courts, judges must also be punctilious about following statutory requirements because a finding of contempt against a lawyer may have significant repercussions for that practitioner. [*Peaches v. Payne*, 139 N.C. App. 580, 533 S.E.2d 851 (2000).]

f. The summary hearing on a contempt charge must be held before the defendant is found guilty of contempt. An opportunity for a defendant to explain, given after a judge has found contempt, does not correct a failure to provide a summary opportunity to be heard. [*State v. Randell*, 152 N.C. App. 469, 567 S.E.2d 814 (2002) (per curiam) (reversing a contempt order even though defendant was given "ample" opportunity after finding of contempt to explain his actions); *In re Foster*, 227 N.C. App. 454, 744 S.E.2d 496 (**unpublished**) (a criminal contempt order was reversed because, while magistrate twice warned defendant not to curse, magistrate did not warn defendant that she would be held in contempt if she continued to curse, did not specifically inform defendant about a possible contempt charge before holding defendant in direct criminal contempt, and did not give defendant an opportunity to provide reasons why contempt should not be imposed prior to holding her in contempt), *review denied*, 367 N.C. 222, 747 S.E.2d 533 (2013).]

g. For sample summary notice language, see Appendix B.

6. Taking custody of person charged with direct criminal contempt.
   a. A judicial official may orally order that a person being charged with direct criminal contempt be taken into custody and restrained to the extent necessary to assure the person's presence for summary proceedings. [G.S. 5A-16(a).]
7. No right to a jury trial. [See G.S. 5A-14(a), authorizing a judicial official to summarily impose measures in response to direct criminal contempt); *Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 n.2, 114 S. Ct. 2552, 2557 n.2 (1994) (acts of direct contempt that occur in a court's presence may be immediately adjudged and sanctioned summarily).]
8. Standard of proof.
   a. The facts supporting the summary imposition of measures in a summary proceeding for contempt must be established beyond a reasonable doubt. [G.S. 5A-14(b).] See the discussion in Section III.G.9.c, below, for case law regarding the standard of proof.
9. Findings.
   a. Before imposing punishment for contempt under G.S. 5A-14, a judicial official must find facts supporting the summary imposition of punishment in response to the contempt. [G.S. 5A-14(b).]
   b. The findings in a summary contempt order resulting from a summary proceeding should clearly reflect or include:
      i. That the contemnor was given an opportunity to be heard,
      ii. A summary of whatever response was made by the contemnor,
      iii. A finding that the excuse or explanation proffered was inadequate or disbelieved, and
      iv. That the judicial official applied the reasonable doubt standard to the findings of fact. [*State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979).]
   c. Case law on the requirement of a finding as to the court's application of the reasonable doubt standard.
      i. Without a finding that the reasonable doubt standard was applied, a contempt order will be reversed. [*State v. Chavis*, 278 N.C. App. 482, 863 S.E.2d 225 (2021) (contempt order was reversed because it contained no mention of the beyond a reasonable doubt standard of proof); *In re Contempt Proceedings against Cogdell*, 183 N.C. App. 286, 644 S.E.2d 261 (2007) (order that failed to indicate that judge applied the beyond a reasonable doubt standard to his findings was fatally deficient); *State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979) (implicit in G.S. 5A-14(b) is the requirement in a summary proceeding that the judicial official's findings should indicate that the reasonable doubt standard was applied to the findings of fact).]
      ii. However, an order without a reasonable doubt finding has been upheld when there was no factual determination for the court to make. [*See In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), *aff'd per curiam*, 350 N.C. 656, 517 S.E.2d 605 (1999) (it was clear that the court below had considered the contemnor's excuse, the privilege of a reporter to refuse to testify, and had found it inadequate; trial court's order lacking a reasonable doubt finding was upheld).]
      iii. The implicit requirement in G.S. 5A-14(b) that, in a summary proceeding, the findings must not only be established beyond a reasonable doubt but the order

must indicate that the reasonable doubt standard was applied, has been required in an order for criminal contempt issued in a plenary hearing. [*State v. Ford*, 164 N.C. App. 566, 596 S.E.2d 846 (2004) (the court of appeals noted that the import and consequences of the two types of hearings are substantially equivalent; the court held an order of the superior court, entered in a de novo plenary proceeding on appeal from a summary finding of contempt in district court, deficient for not indicating that the reasonable doubt standard had been applied); *see also State v. Phillips*, 230 N.C. App. 382, 750 S.E.2d 43 (citing *Ford* and *State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979)) (order for indirect criminal contempt reversed for failure to indicate application of beyond a reasonable doubt standard), *temporary stay allowed*, 751 S.E.2d 212 (N.C. 2013), *review allowed*, *writ allowed*, 367 N.C 329, 755 S.E.2d 629, *review dismissed as improvidently granted*, 367 N.C. 715, 766 S.E.2d 340 (2014).] See the discussion in Section III.H.10, below, for more on the standard of proof in plenary proceedings.

d. Form AOC-CR-390, Direct Criminal Contempt/Summary Proceedings/Findings and Order, may be used.

10. There is no right to counsel in a summary proceeding for direct contempt. [*In re Williams*, 269 N.C. 68, 76, 152 S.E.2d 317, 323 ("[s]ummary punishment for direct contempt committed in the presence of the court does not contemplate a trial at which the person charged with contempt is represented by counsel"), *cert. denied*, 388 U.S. 918, 87 S. Ct. 2137 (1967); *State v. Land*, 273 N.C. App. 384, 848 S.E.2d 564 (2020) (G.S. 7A-451(a)(1) does not extend the right to court-appointed counsel to summary proceedings conducted to address direct criminal contempt), *review denied*, 377 N.C. 565, 858 S.E.2d 288 (2021).]

H. Plenary Proceedings for Criminal Contempt

1. Plenary criminal proceedings are used for all indirect contempt and can be used for direct contempt. [*See* G.S. 5A-15(a) (stating that when a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when a judicial official may not proceed summarily, the judicial official proceeds with a plenary proceeding).]
2. Criminal contempt can be resorted to in civil or criminal actions. [*Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 508, 169 S.E.2d 867, 870 (1969) (plenary criminal contempt proceeding conducted within a civil action).]
3. Procedure.
   a. A judicial official initiates a plenary proceeding by issuing a show cause order directing the alleged contemnor to appear and show cause why they should not be held in criminal contempt. [G.S. 5A-15(a); *Brandt v. Gooding*, 636 F.3d 124, 135 (4th Cir. 2011) (citations omitted) (criminal contempt proceedings are initiated at the sole discretion of the court; only the court, and not a private litigant, can provide "real notice of the true nature of the charge" against the alleged contemnor).]
      i. Issuance of a show cause order requires a defendant to personally appear at a hearing or risk being found in contempt for failure to appear. [*See Cox v. Cox*, 92 N.C. App. 702, 376 S.E.2d 13 (1989) (appearance of defendant's counsel not sufficient to satisfy a show cause order that specifically ordered defendant to appear).]

b. Unlike in the civil contempt context, there is no provision in the criminal contempt statutes for an application or motion by a party or other person, nor is a finding of probable cause required. [*See* G.S. 5A-11 through -18.]

i. Although a party is not required to file a verified petition or affidavit as a prerequisite to the issuance of a show cause order for criminal contempt, a verified motion or affidavit filed pursuant to a civil contempt proceeding under G.S. 5A-23 may provide a proper basis for the issuance of a show cause order by a judicial official for criminal contempt under G.S. 5A-15(a). [*See Mather v. Mather*, 70 N.C. App. 106, 318 S.E.2d 548 (1984) (husband's motion alleged sufficient facts to show wife's willful disobedience of order setting out husband's visitation rights to support trial court's show cause order).]

ii. Form AOC-CR-219, Show Cause Order, Findings and Judgment – Failure to Pay Fine and/or Costs, to Obey Jury Summons, to Appear Pursuant to Criminal Summons, or For Contempt, may be used.

c. Venue lies throughout the judicial district where the show cause order was issued. [G.S. 5A-15(b).]

i. An objection to venue must be raised by a defendant or it is waived. [*Zetino-Cruz v. Benitez-Zetino*, 249 N.C. App. 218, 791 S.E.2d 100 (2016).]

d. A person ordered to show cause may move to dismiss the order. [G.S. 5A-15(c).]

4. Right to notice and a hearing.

a. A copy of the show cause order must be furnished to the person charged and must direct the person to appear before a judge at a reasonable time specified in the order and show cause why the person should not be held in contempt. [G.S. 5A-15(a).]

i. Service under G.S. 1A-1, Rule 4, is sufficient.

ii. When a show cause order is issued in a pending civil case, where Rule 4 service of process has been accomplished on the respondent, Rule 5 of the Rules of Civil Procedure would allow any order to be served on a party pursuant to Rule 5. Rule 5 allows service by regular mail. [G.S. 1A-1, Rule 5.] However, the use of the term "furnished to the person charged" in G.S. 5A-15(a) implies that service by regular mail may not be sufficient.

iii. For more on service of a show cause order, see Cheryl Howell, *Contempt: Does an Order to Show Cause Have to be Served by Rule 4 Service?*, On the Civil Side: A UNC Sch. of Gov't Blog (Jan. 10, 2024), https://civil.sog.unc.edu/contempt-does-an-order-to-show-cause-have-to-be-served-by-rule-4-service/.

b. For notice to be constitutionally sufficient, it must afford a defendant the opportunity to prepare an adequate defense. [*O'Briant v. O'Briant*, 313 N.C. 432, 439–40, 329 S.E.2d 370, 375 (1985) (noting that under U.S. Supreme Court precedent, even in instances of direct contempt where the trial court postpones announcing punishment for contemptuous behavior that occurred during a trial, the contemnor "should have reasonable notice of the *specific charges* and opportunity to be heard in his own behalf"); *State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008) (citing *O'Briant*) (for indirect criminal contempt proceedings—in which a trial court is not allowed to proceed summarily—a show cause order is analogous to a criminal indictment and is the process by which a defendant is afforded notice)).]

c. A show cause order must provide adequate notice of the grounds for alleged contempt. [*O'Briant v. O'Briant*, 313 N.C. 432, 329 S.E.2d 370 (1985) (a 1983 adjudication of criminal contempt was vacated when plaintiff was not given sufficient notice that she should be prepared to defend herself on contempt charges arising from her failure to attend custody hearings in early to mid-1982; there was no evidence that plaintiff received an order to appear and show cause, and, even if she had received such order, language in the order that the hearing would be "a trial on the merits upon all outstanding issues [and] all outstanding motions pending" did not provide adequate notice of contempt charges, nor did the show cause order specify what acts where alleged to be contemptuous).]

d. Reasonable time requirement in G.S. 5A-15(a).

i. Eighteen hours was sufficient notice for a defendant to appear and answer a charge of indirect criminal contempt when the defendant had an opportunity to seek counsel but voluntarily waived his right to do so, the charges against him were neither complex nor lengthy, and the show cause order described his contemptuous acts. [*State v. Williams*, 200 N.C. App. 322, 683 S.E.2d 467 (2009) (**unpublished**).]

e. A court found that a defendant who was given notice of the charges against him and the assistance of appointed counsel but who elected not to present evidence on his own behalf did not take advantage of his opportunity to be heard and could not complain of improper notice and inadequate opportunity to be heard. [*State v. Gell*, 151 N.C. App. 599 (2002) (**unpublished**).]

f. "The notice requirement in a plenary proceeding for indirect criminal contempt . . . is much less demanding than in an ordinary criminal case in superior court." [*State v. Wendorf*, 274 N.C. App. 480, 486, 852 S.E.2d 898, 904 (2020).]

i. Even so, the failure to comply with the procedural requirements of G.S. 5A-15 has required reversal of a trial court's judgment of indirect criminal contempt. [*GE Betz, Inc. v. Conrad*, 231 N.C. App. 214, 752 S.E.2d 634 (a single email between the trial court and an alleged contemnor setting a date for a hearing on contempt was insufficient notice per G.S. 5A-15(a), and the trial court's failure to indicate in its contempt order that the reasonable doubt standard had been applied, as required by G.S. 5A-15(f), rendered the order fatally deficient), *temporary stay allowed*, 752 S.E.2d 505 (2013), *stay dissolved*, 367 N.C. 786, 766 S.E.2d 837, *review denied*, 367 N.C. 786, 766 S.E.2d 837 (2014).]

ii. The court of appeals has held that a show cause order directing a person to appear before a judge and "show cause why he should not be held in contempt of court" is sufficient notice to allow the court to proceed on criminal contempt. [*State v. Revels*, 250 N.C. App. 754, 762, 792 S.E.2d 744, 750 (2016) (quoting *State v. Pierce*, 134 N.C. App. 149, 516 S.E.2d 916 (1999)).]

5. Special provisions involving direct contempt to be heard at a plenary proceeding.

a. If a judicial official defers a proceeding for direct contempt, the official must, immediately following the alleged contemptuous act, inform the person who committed the act of the official's intent to institute a plenary proceeding for direct contempt. [G.S. 5A-13(a).]

b. A judicial official may orally order that a person being charged with direct criminal contempt be taken into custody and restrained to the extent necessary to assure the person's presence for notice of plenary proceedings. [G.S. 5A-16(a).]

6. Order for arrest of a person charged with criminal contempt to be heard at a plenary proceeding.
   a. In a plenary proceeding for criminal contempt, a court may order a person's arrest if the court finds, based on a sworn statement or affidavit, probable cause to believe that the person will not appear in response to a show cause order. [G.S. 5A-16(b); 15A-305(b)(9); *see also Mather v. Mather*, 70 N.C. App. 106, 318 S.E.2d 548 (1984) (court had the power to have plaintiff wife arrested and held until she posted bail to assure her appearance at a contempt hearing).] Failure to make a probable cause finding that a respondent will not appear is grounds for reversing an order for arrest. [*See Mather*.]
   b. If a court issues an order for arrest and the person named in the order is not brought before a judge for hearing in the contempt proceeding immediately following arrest, the person is entitled to release pending the contempt hearing upon posting an appearance bond or satisfying other pre-trial release requirements pursuant to G.S. 15A-534. [*See* G.S. 5A-16(b).]
   c. If a person fails to appear at a contempt hearing after being released from custody following arrest, the person's appearance bond may be forfeited for the benefit of the public schools but may not be applied to satisfy any amounts the person owes. [*See Mussallam v. Mussallam*, 321 N.C. 504, 364 S.E.2d 364 (1988) (discussing distinction between appearance bond and compliance bond in contempt proceeding relating to civil action for child custody); N.C. Const. art. IX, § 7; G.S. 115C-452 (codification of constitutional provision); G.S. 15A-544.7(c)(1) (providing for clear proceeds to go to county finance officer for benefit of public schools).]

7. No right to a jury trial.
   a. There is no constitutional right to a jury trial in a proceeding for criminal contempt. [*Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1969) (no constitutional right to a jury trial when the prescribed punishment is imprisonment for less than 6 months or a fine of less than $500; punishment for criminal contempt at the time of this case was a fine of $250, imprisonment for 30 days, or both); *see also Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477 (1968) (criminal contempt conviction in a nonjury trial could not be sustained when a 24-month prison sentence was imposed); *but cf. Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552 (1994) (serious noncompensatory contempt fines were criminal and constitutionally could not be imposed absent a jury trial).]
   b. The judge is the trier of facts at a criminal contempt hearing. [G.S. 5A-15(d).]
   c. "When a trial judge sits as 'both judge and juror' in a non-jury proceeding, [the judge has the] duty to weigh and consider all competent evidence, and pass upon the credibility of witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom." [*In re Paul*, 84 N.C. App. 491, 353 S.E.2d 254 (citation omitted), *cert. denied*, 319 N.C. 673, 356 S.E.2d 779 (1987), *cert. denied*, 484 U.S. 1004, 108 S. Ct. 694 (1988).]

d. Amendments made to G.S. 5A-12 permitting imprisonment of up to 6 months for refusing to testify after being granted immunity, imprisonment of up to 90 days for failing to comply with a nontestimonial identification order, and imprisonment of up to 120 days in certain circumstances for failing to pay child support may affect a court's consideration of the jury-trial question. For a discussion as to how the amendments may affect the right to a jury trial, see Michael Crowell, Civil Contempt, presented at the Superior Court Judges Summer 2008 Conference and available at https://www.sog.unc.edu/sites/default/files/course_materials/CivilContempt.pdf.

e. The lack of a requirement for a jury trial in criminal contempt proceedings has played a role in considering whether a criminal contempt adjudication is a prior conviction for purposes of the Structured Sentencing Act. [*State v. Reaves*, 142 N.C. App. 629, 544 S.E.2d 253 (2001) (decided before 2009 amendment to G.S. 5A-12(a)(3) that provides for, under certain circumstances, imprisonment of up to 120 days for failure to pay child support).

8. Privilege against self-incrimination.

a. A person charged with criminal contempt may not be compelled to be a witness against themself at a contempt hearing. [G.S. 5A-15(e).] Thus, a person who asserts the privilege upon a reasonable belief that their answer could be used against them in a criminal prosecution cannot be held in criminal contempt for their refusal to answer. [*See In re Jones*, 116 N.C. App. 695, 449 S.E.2d 221 (1994).]

b. An order holding a defense witness in a murder case in criminal contempt for refusing to answer two questions on cross examination, when the witness had a charge of first-degree murder pending against him in a related case, infringed on the witness's privilege against self-incrimination and required reversal of the order. [*In re Jones*, 116 N.C. App. 695, 449 S.E.2d 221 (1994) (applying a liberal interpretation of the privilege and concluding that it was reasonable for the witness to believe that his answers to both questions could be used against him in a criminal prosecution).]

c. Although a witness is entitled to assert the privilege, a trial court may, in its discretion, strike the witness's direct testimony "in whole or in part" when the witness invokes the privilege on cross-examination in response to questions relating to the details of the witness's direct examination. [*In re Jones*, 116 N.C. App. 695, 699, 449 S.E.2d 221, 223 (1994).]

9. Appointment of a prosecutor or member of the bar to represent the court.

a. A judge conducting a plenary proceeding may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar, to represent the court in hearings for criminal contempt. [G.S. 5A-15(g).]

10. Recusal of judge if judge's objectivity may reasonably be questioned.

a. If criminal contempt is based on acts before a judge that so involve the judge that the judge's objectivity may reasonably be questioned, a contempt order must be returned before a different judge. [G.S. 5A-15(a); *In re Marshall*, 191 N.C. App. 53, 662 S.E.2d 5 (2008) (in connection with a criminal contempt hearing, the court stated that since one purpose behind G.S. 5A-15 is to maintain public confidence in the courts, even the appearance of a lack of objectivity must be avoided); *see also Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S. Ct. 2252 (2009) (identifying criminal

contempt proceedings as one of the situations that may require recusal under the Due Process Clause).]

b. It can be error in such situations not to have criminal contempt heard before a different judge, even when the respondent fails to make such a motion. [*See In re Marshall*, 191 N.C. App. 53, 662 S.E.2d 5 (2008) (vacating a judgment holding attorney in contempt because the show cause order was not returned before a different judge, even though attorney had not made such a request).]

c. G.S. 5A-15 neither expressly nor impliedly places any responsibility on a respondent to file a motion for recusal. Rather, G.S. 5A-15(a) imposes a duty on a judge (1) to acknowledge that his or her involvement in acts allegedly constituting contempt could reasonably cause others to question his or her objectivity and, in such circumstances, (2) to return the show cause order before a different judge *ex mero motu*. [*In re Marshall*, 191 N.C. App. 53, 662 S.E.2d 5 (2008).]

d. The fact that a trial court judge presiding at a summary proceeding requested affidavits from court personnel who witnessed the conduct of an attorney charged with direct criminal contempt, and that the judge gave an interview to a newspaper reporter regarding the contempt charges, did not constitute personal bias that would require the judge's recusal, nor did it render the contempt proceeding unfair. [*Nakell v. Att'y Gen. of N.C.*, 15 F.3d 319, 324 (4th Cir.) (however, the appeals court agreed with the district court that the trial judge's actions were "not a wise judicial activity"), *cert. denied*, 513 U.S. 866, 115 S. Ct. 184 (1994); *accord In re Nakell*, 104 N.C. App. 638, 411 S.E.2d 159 (1991) (record showed no bias, prejudice, or proof that would require the judge before whom contempt was committed to recuse himself from conducting the contempt hearing), *appeal dismissed*, *review denied*, *stay dissolved*, 330 N.C. 851, 413 S.E.2d 556 (1992).]

e. A trial court's denial of a defendant's motion for recusal was affirmed where no facts suggested bias or partiality on the part of the judge and a colloquy between the defendant and the judge showed that the judge could preside over the contempt matter objectively. [*In re Eldridge*, 268 N.C. App. 491, 836 S.E.2d 859 (2019), *review denied except as to matters presented in dissent*, 373 N.C. 594, 837 S.E.2d 883 (2020), *aff'd per curiam*, 376 N.C. 728, 854 S.E.2d 579 (2021).]

11. Standard of proof.

a. Facts supporting a finding that a person is guilty of criminal contempt must be established beyond a reasonable doubt. [G.S. 5A-15(f).]

b. In plenary proceedings for criminal contempt, as in summary proceedings, a contempt order must indicate that the standard of proof used was beyond a reasonable doubt. [*State v. Ford*, 164 N.C. App. 566, 596 S.E.2d 846 (2004) (citing *State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979)) (the import and consequences of summary and plenary hearings are substantially equivalent, and an order not indicating that the reasonable doubt standard of proof was applied was found to be deficient).]

c. An appellate court is not at liberty to make findings for the trial court. There is no precedent or legal authority permitting the appellate court to remand for additional findings of fact by the trial court in an indirect criminal contempt matter. [*State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008) (citing *In re Estate of Lunsford*,

160 N.C. App. 125, 585 S.E.2d 245 (2003)) (a criminal contempt order was vacated—even though the record contained evidence that defendant violated the order at issue, a temporary restraining order, before the show cause order in the contempt matter was issued—because the trial court failed to make the necessary findings beyond a reasonable doubt as to those facts; the trial court's findings only addressed acts occurring subsequent to the issuance of the show cause order).]

d. When a trial court failed to check the appropriate box on a pre-printed contempt order but indicated in open court that the reasonable doubt standard had been applied, the contempt order was affirmed. [*State v. Gonzalez*, 278 N.C. App. 302, 862 S.E.2d 427, *review denied*, 379 N.C. 151, 863 S.E.2d 590 (2021).]

12. Burden of proof.

a. A show cause order in a criminal contempt proceeding is akin to an indictment, and the State bears the burden of proving beyond a reasonable doubt that the alleged contemptuous acts occurred. [*State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008) (noting that in a criminal contempt proceeding, the burden does not shift to the defendant as it does in a proceeding for civil contempt under G.S. 5A-23(a)).]

b. "[I]n a criminal contempt proceeding, as in any other criminal proceeding, the State has the ultimate burden of proof beyond a reasonable doubt o[n] all elements of the offense. . . . '[T]he State must prove all of the requisite elements under the applicable statute, beyond a reasonable doubt.' " [*State v. Simon*, 185 N.C. App. 247, 255, 648 S.E.2d 853, 858 (quoting *State v. Key*, 182 N.C. App. 624, 628, 643 S.E.2d 444, 448 (2007)), *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007).]

c. While the State must prove the facts that form the basis of a contempt charge, when a defendant admits to the underlying facts, leaving no issue of fact to be decided, there is no improper burden on the defendant. [*State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853 (defendant admitted entering judges' office area after judge had ordered him not to), *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007).]

13. Right to and appointment of counsel.

a. An alleged contemnor has the right to be represented by legal counsel in a plenary hearing for criminal contempt.

i. A court should advise every alleged contemnor, in writing in a notice or order to show cause and orally before a contempt proceeding is heard, that they may be incarcerated if found in criminal contempt, that they have the right to be represented by retained counsel, and that they may be entitled to court-appointed counsel if they are unable to afford to retain an attorney. [*See State v. Williams*, 65 N.C. App. 498, 309 S.E.2d 721 (1983) (whether or not a defendant is indigent, any waiver of the right to counsel must be in accordance with G.S. 7A-457, notwithstanding statutory language limiting the provision to indigent defendants).]

ii. An alleged contemnor may waive their right to legal representation. The waiver of legal representation must be knowing, informed, voluntary, and written. If an alleged contemnor waives the right to legal representation, the court must make written findings that, at the time of waiver, the alleged contemnor acted "with full awareness of his rights and the consequences of the waiver." [G.S. 7A-457.]

iii. If an alleged contemnor does not waive the right to legal representation, the court must determine, before it hears the criminal contempt proceeding, whether the alleged contemnor is entitled to court-appointed counsel.

iv. Determinations of indigency and of entitlement to counsel and appointment of counsel may be made by a district court judge or by the clerk of superior court. [*See* G.S. 7A-452(c).]

(a) An alleged contemnor is indigent if they have insufficient income and resources, based on guidelines approved by the Office of Indigent Defense Services, to retain an attorney to represent them in a contempt hearing. [*See* G.S. 7A-452; *see also* G.S. 7A-450(a) for definition of "indigent person."]

b. Counsel for indigent persons in civil contempt proceedings are appointed pursuant to procedures approved by the Office of Indigent Defense Services. [*See* G.S. 7A-452(a).]

c. An alleged contemnor is entitled to court-appointed counsel in a criminal contempt proceeding if (1) the alleged contemnor is indigent and (2) there is a significant likelihood that they will actually be incarcerated as a result of the contempt hearing. [G.S. 7A-451(a) (an indigent person is entitled to court-appointed counsel in any case in which imprisonment or a fine of $500 or more is likely to be adjudged); *State v. Wall*, 49 N.C. App. 678, 272 S.E.2d 152 (1980) (failure to advise a defendant charged with criminal contempt of his right to counsel if he was indigent was not prejudicial error when there was no evidence that defendant was indigent and he voluntarily waived his right to counsel); *Hammock v. Bencini*, 98 N.C. App. 510, 391 S.E.2d 210 (1990) (noting that G.S. 7A-451(a)(1) requires appointment of counsel in any case in which imprisonment is likely to be adjudged, including cases involving citations for criminal contempt for failure to comply with civil child support orders); *Tyll v. Berry*, 234 N.C. App. 96, 102, 758 S.E.2d 411, 415 (citing *Turner v. Rogers*, 564 U.S. 431, 442, 131 S. Ct. 2507, 2516 (2011), and *Scott v. Illinois*, 440 U.S. 367, 374, 99 S. Ct. 1158, 1162 (1979)) (in criminal contempt proceedings, the Sixth and Fourteenth Amendments to the U.S. Constitution generally "require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense"), *review denied*, *appeal dismissed*, 367 N.C. 532, 762 S.E.2d 207 (2014) .]

i. Determinations of indigency and of entitlement to counsel and appointment of counsel may be made by a district court judge or by the clerk of superior court. [*See* G.S. 7A-452(c).]

ii. An alleged contemnor is indigent if they have insufficient income and resources, based on guidelines approved by the Office of Indigent Defense Services, to retain an attorney to represent them in a contempt hearing. [*See* G.S. 7A-452; *see also* G.S. 7A-450(a) for definition of "indigent person."]

d. Child support proceedings.

i. Counsel for indigent obligors in criminal contempt proceedings in child support cases are appointed pursuant to procedures approved by the Office of Indigent Defense Services. [*See* G.S. 7A-452.]

ii. For more on the right to and appointment of counsel in criminal contempt proceedings in the context of child support enforcement, see *Enforcement of Child Support Orders*, Bench Book, Chapter 3, Part 4.

I. Orders for Criminal Contempt

1. Fundamentals of an order finding a person in criminal contempt.
   a. The criminal contempt order should include a finding of guilty or not guilty, [G.S. 5A-15(f).]
   b. The criminal contempt order should indicate whether the nature of the proceeding is for civil contempt or criminal contempt, [*Watkins v. Watkins*, 136 N.C. App. 844, 526 S.E.2d 485 (2000) (urging trial courts to identify whether contempt proceedings are in the nature of criminal or civil contempt).]
   c. The criminal contempt order should indicate that the court applied the reasonable doubt standard, [G.S. 5A-15(f); *State v. Ford*, 164 N.C. App. 566, 596 S.E.2d 846 (2004) (citing *State v. Verbal*, 41 N.C. App. 306, 254 S.E.2d 794 (1979)) (the court of appeals ruled that a superior court order of contempt, entered in a de novo plenary proceeding on appeal from a summary finding of contempt in district court, was required to indicate that the reasonable doubt standard of proof had been applied; because the order failed to do this, it was deficient); *State v. Chavis*, 278 N.C. App. 482, 863 S.E.2d 225 (2021) (trial court erred by failing to explicitly state that the standard of proof used was beyond a reasonable doubt).] and
   d. The criminal contempt order should make findings of fact and enter judgment. [G.S. 5A-15(f).]

J. Punishment for Criminal Contempt

1. Censure, imprisonment, or a fine under G.S 5A-12(a).
   a. G.S. 5A-12(a) provides generally that a person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three, subject to the following exceptions.
      i. A person who commits contempt as described in G.S. 5A-11(a)(8) (willful refusal of a witness given immunity to testify) is subject to imprisonment not to exceed 6 months, in addition to censure and a fine. [G.S. 5A-12(a)(1).]
      ii. A person who has not been arrested who fails to comply with a nontestimonial identification order is subject to censure, imprisonment of up to 90 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a)(2).] For further discussion of the enforcement of nontestimonial identification orders, see Section V, below.
      iii. A person who fails to comply with an order to pay child support is subject to censure, imprisonment of up to 30 days, a fine not to exceed $500, or any combination of the three. A sentence of 120 days may be imposed, provided the sentence is suspended upon the imposition of conditions reasonably related to the contemnor's payment of child support. [G.S. 5A-12(a)(3), *added by* S.L. 2009-335, § 1, effective Dec. 1, 2009, and applicable to offenses committed on or after that date.] For additional discussion of this statutory exception, see Section III.J.2, below, and *Enforcement of Child Support Orders*, Bench Book, Chapter 3, Part 4.
   b. Contempt is *sui generis*, meaning "of its own kind or class," and essentially criminal, or quasi-criminal, in nature, and is neither a felony nor a misdemeanor, so consecutive

sentences for criminal contempt are permitted. [*State v. Burrow*, 248 N.C. App. 663, 789 S.E.2d 923 (2017) (citing *Blue Jeans Corp. v. Amalgamated Clothing Workers*, 275 N.C. 503, 169 S.E.2d 867 (1969)) (finding that nothing in the criminal contempt statutes prohibits consecutive sentences for multiple findings of contempt); *Blue Jeans Corp.* (the process by which contempt is tried is essentially criminal or quasi-criminal in nature).] Note, however, that stacked sentences that exceed 180 days could trigger a defendant's Sixth Amendment right to a jury trial, as discussed in Jamie Markham, *Consecutive Sentences for Criminal Contempt*, N.C. Crim. L.: A UNC Sch. of Gov't Blog (Aug. 11, 2016), https://nccriminallaw.sog.unc.edu/consecutive-sentences-criminal-contempt/.

c. A judicial official who finds a person in criminal contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment if warranted by the contemnor's conduct and the ends of justice. [G.S. 5A-12(c).]

d. A court may suspend a contemnor's incarceration and impose conditions of probation. [*See* G.S. 15A-1343.] The contemnor's probation may be revoked and their sentence activated if they violate or fail to fulfill the conditions of probation. [*See* G.S. 15A-1344 and -1345.] See Sections III.J.2.d and III.J.3, below, discussing suspension and conditions of probation in the context of child support.

   i. "[W]hile the trial court is authorized to suspend a sentence based on a finding of contempt, it is a violation of due process to allow the sentence to be activated based on the alleged violation of a probationary condition without the opportunity first to be heard on the matter." [*Unger v. Unger*, 268 N.C. App. 142, 147, 834 S.E.2d 649, 652 (2019), *appeal dismissed*, 837 S.E.2d 721, *cert. denied*, 851 S.E.2d 721 (N.C. 2020).]

e. Criminal contempt may not be purged, so provisions that can be avoided or terminated by compliance should not be included in a criminal contempt order. [*Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (an act of criminal contempt cannot be undone or remedied).] However, a sentence in a criminal contempt case may be suspended upon the imposition of conditions. [*See Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting).]

f. A fine imposed in a criminal contempt proceeding is payable to the state and may not be ordered to be paid to the aggrieved party or to be applied to satisfy support arrearages owed by the contemnor. [*See In re Rhodes*, 65 N.C. 518 (1871) (per curiam) (stating that a fine for contempt is a punishment for a wrong to the state and that payment goes to the state).]

g. A provision in a criminal contempt adjudication requiring a defendant to pay $3,150 in damages to a plaintiff exceeded the amount allowed by statute, was impermissibly awarded to a private party, and was invalid. [*M.G. Newell Co. v. Wyrick*, 91 N.C. App. 98, 370 S.E.2d 431 (1988).]

h. For an overview of criminal contempt, see the chart in Appendix C.

2. Punishment for criminal contempt of a child support order.
   a. An obligor who is found in criminal contempt of a child support order is subject to censure, imprisonment for a definite and fixed term not to exceed 30 days, a fine not to exceed $500, or any combination of the three. [G.S. 5A-12(a)(3).]
   b. However, a sentence of imprisonment for up to 120 days may be imposed for criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon the imposition of conditions reasonably related to the contemnor's payment of child support. [G.S. 5A-12(a)(3), *amended by* S.L. 2009-335, § 1, effective Dec. 1, 2009, and applicable to offenses committed on or after that date.]
   c. As in the case of civil contempt, an obligor who is found in criminal contempt for willfully failing to pay court-ordered child support may not be sentenced to jail under an order that allows release from jail upon purging the contempt (usually by paying all or part of the child support arrearages owed). Purge conditions are imposed in civil, not criminal, contempt proceedings. [*See Hancock v. Hancock*, 122 N.C. App. 518, 471 S.E.2d 415 (1996) (where a contempt order allows a contemnor to avoid or terminate imprisonment by performing an act required by the court, then the contempt is civil in nature).]
   d. A court, however, may find an obligor in criminal contempt for willfully failing to pay court-ordered child support, may impose a definite period of incarceration on the obligor, may suspend the sentence, and may, as one of the conditions of the obligor's probation, require the obligor to pay all or part of the child support arrearages owed or to continue to pay the court-ordered child support obligation as it becomes due. [G.S. 15A-1343(b)(4); *see Bishop v. Bishop*, 90 N.C. App. 499, 369 S.E.2d 106 (1988); *Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (defendant was also required to post a cash bond or security to guarantee timely payment of future cash child support as well as to satisfy other conditions).] These conditions are conditions of probation and are not purge conditions.
   e. **Important note**: If a judge finds a child support obligor in criminal contempt, sentences the obligor, suspends the obligor's sentence, and imposes only conditions of probation requiring compliance with the underlying child support order, the order constitutes an order of civil, rather than criminal, contempt. [*See Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (where court imposed a determinate 30-day term, suspended upon certain conditions, e.g., that obligor pay counsel fees and interest upon delinquent child support payments, post a cash bond, and make each child support payment when due, the order was for criminal contempt); *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 108 S. Ct. 1423 (1988) (case remanded to determine whether father's payment of arrearages would purge his determinate jail sentence; if so, the proceeding was civil in nature).]
3. Special conditions of probation.
   a. As a special condition of probation, a defendant may be required to satisfy any conditions determined by the court to be reasonably related to his or her rehabilitation. [G.S. 15A-1343(b1)(10).]
   b. After finding an attorney guilty of criminal contempt and suspending his sentence, a court placed the attorney on probation on the condition that he not violate any state

law, not speak profanely to any court official, and not appear as an attorney in any matter in the Wake County district or superior courts for one year. These conditions of probation did not constitute an abuse of discretion. [*State v. Key*, 182 N.C. App. 624, 643 S.E.2d 444, *review denied*, 361 N.C. 433, 649 S.E.2d 398 (2007) (noting that the attorney did not challenge the conditions of probation as not reasonably related to his rehabilitation under G.S. 15A-1343(b1)(10)); *Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting) (an active 30-day jail sentence was to be suspended upon defendant's posting of a cash bond or security to secure the timely payment of future child support, defendant's immediate payment of interest on delinquent child support payments and immediate payment of attorney fees, and defendant's timely payment of future child support).]

c. A one-year probationary sentence, imposed for criminal contempt and suspended upon certain conditions, was not an abuse of a trial court's discretion where the conditions were reasonably related to the necessity of preventing further disruptions to the court without unduly infringing upon the defendant's rights. [*In re Eldridge*, 268 N.C. App. 491, 836 S.E.2d 859 (2019) (conditions included paying a fine and costs, writing an essay about the importance of respect for the court system, and remaining out of the courtroom until the essay was approved by the judge and posted on the defendant's social media accounts), *review denied except as to matters presented in dissent*, 373 N.C. 594, 837 S.E.2d 883, *aff'd per curiam*, 376 N.C. 728, 854 S.E.2d 579 (2021).]

4. Disbarment.

a. The disbarment of an attorney guilty of criminal contempt for willfully interrupting trial court proceedings was upheld. [*In re Paul*, 84 N.C. App. 491, 353 S.E.2d 254 (evidence supported trial judge's findings that respondent attorney solicited disruptive behavior in open court during criminal trial), *cert. denied*, 319 N.C. 673, 356 S.E.2d 779 (1987), *cert. denied*, 484 U.S. 1004, 108 S. Ct. 694 (1988).]

5. Criminal contempt and the Structured Sentencing Act.

a. A criminal contempt adjudication, assumed to be punishable by a 30-day maximum term, was not a "prior conviction" under a strict construction of the Structured Sentencing Act then applicable, based in significant part on the fact that there is no right to a trial by jury in criminal contempt cases. [*State v. Reaves*, 142 N.C. App. 629, 544 S.E.2d 253 (2001) (not expressly addressing whether (1) an adjudication of criminal contempt based upon a failure to comply with a nontestimonial identification order for which the sentence was not to exceed 90 days or (2) a violation of G.S. 5A-11(8) might constitute a "prior conviction" under the Act; this case was decided prior to S.L. 2009-335, § 1, which amended G.S. 5A-12(a)(3) to authorize, under certain circumstances, imprisonment of up to 120 days for failure to pay child support).]

K. Attorney Fees in Criminal Contempt Proceedings

1. The general rule is that, subject to certain exceptions in family law, a court may award attorney fees in contempt matters only when specifically authorized to do so by statute or pursuant to an express provision in an agreement between the parties.

a. A court may require a contemnor to pay an aggrieved party's attorney fees if there is statutory or case law authority to do so. [*M.G. Newell Co. v. Wyrick*, 91 N.C. App. 98, 370 S.E.2d 431 (1988) (condition of suspended sentence in criminal contempt

adjudication that required defendant to pay plaintiff's attorney fees was invalid when award of fees not authorized by statute or case law); *see also Lafell v. Lafell*, 177 N.C. App. 811, 630 S.E.2d 257 (2006) (**unpublished**) (requiring mother to pay father's attorney fees for mother's criminal contempt of custody order is authorized by G.S. 50-13.6).]

2. See the discussion in Section II.J, above, discussing when an award of attorney fees is authorized by statute, case law, or agreement in contempt proceedings generally and in contempt proceedings in the family law area specifically.
3. Attorney fees are allowed as a sanction under G.S. 1A-1, Rule 11 in a criminal contempt case.
   a. A trial court was within its discretion to award a defendant mother attorney fees as a sanction under G.S. 1A-1, Rule 11 for having to defend allegations by child's father that were not legally sufficient to constitute criminal contempt of a custody order. [*Jackson v. Jackson*, 192 N.C. App. 455, 665 S.E.2d 545 (2008) (court found that mother was not guilty of criminal contempt with respect to most of the custody violations alleged by father and was entitled to attorney fees for having to defend those claims; however, mother was found in criminal contempt for failing to allow father reasonable telephone access to their child).]
4. An appeal of a district court order directing a party to pay attorney fees for a criminal contempt proceeding held within a civil child custody action is a civil matter and is immediately appealable to the court of appeals. [*Grier v. Grier*, 286 N.C. App. 775, 879 S.E.2d 907 (2022) (**unpublished**).]
5. If a trial court does not address the issue of payment of court-appointed attorney fees with a defendant and give the defendant the opportunity to be heard on the matter, even if the defendant has notice, any resulting civil judgment against the defendant for attorney fees must be vacated. [*State v. Baker*, 260 N.C. App. 237, 817 S.E.2d 907 (2018) (citing *State v. Friend*, 257 N.C. App. 516, 809 S.E.2d 902 (2018)).]

L. Appeal of an Order of Criminal Contempt

1. Appeal by a person found in criminal contempt in either a civil or a criminal proceeding.
   a. A person found in criminal contempt in district court may appeal to superior court for a trial de novo. [G.S. 5A-17(a); 15A-1431.]
   b. Upon appeal in a case imposing confinement for criminal contempt, a bail hearing must be held within a reasonable time after imposition of the confinement. The contemnor cannot be retained in custody for more than twenty-four hours from the time of imposition of confinement without a bail determination being made. [G.S. 5A-17(b), (c), *added by* S.L. 2013-303, § 1, effective Dec. 1, 2013.]
   c. Bail hearings shall be held by:
      i. A district court judge if the confinement is imposed by a clerk or a magistrate;
      ii. A superior court judge if the confinement is imposed by a district court judge;
      iii. A superior court judge other than the superior court judge that imposed the confinement; or,
      iv. If a designated judicial official has not acted within twenty-four hours of the imposition of confinement, any judicial official shall hold a bail hearing.

[G.S. 5A-17(c), *added by* S.L. 2013-303, § 1, effective Dec. 1, 2013, and applicable to confinement imposed on or after that date.]

d. The court of appeals lacks jurisdiction to hear an appeal of a district court order adjudicating a defendant in criminal contempt. [*See Reynolds v. Reynolds*, 356 N.C. 287, 569 S.E.2d 645 (2002), *rev'g per curiam for reasons stated in dissenting opinion in* 147 N.C. App. 566, 557 S.E.2d 126 (2001) (John, J., dissenting); *Summerville v. Summerville*, 259 N.C. App. 228, 814 S.E.2d 887 (2018) (the sole recourse for a person being held in criminal contempt by a district court judge is appeal to superior court); *Roberts v. Roberts*, 235 N.C. App. 424, 763 S.E.2d 926 (**unpublished**) (court of appeals lacked authority to review appeal of district court order finding defendant in criminal contempt for violation of consent custody order), *review denied*, 367 N.C. 795, 766 S.E.2d 652 (2014).] *But cf. Jackson v. Jackson*, 192 N.C. App. 455, 665 S.E.2d 545 (2008) (holding that a party has a right to appeal to the court of appeals from a district court when the party argues that a criminal contempt order impermissibly modifies a child custody order or exceeds the trial court's authority); *see also File v. File*, 195 N.C. App. 562, 673 S.E.2d 405 (2009) (without addressing the appropriateness of the appeal, the court of appeals affirmed a district court order finding mother in criminal contempt of an order allowing father visitation with their child).

e. The de novo hearings in superior court for appeals of contempt orders are plenary proceedings that must be conducted in accordance with G.S. 5A-15. [*State v. Ford*, 164 N.C. App. 566, 596 S.E.2d 846 (2004).]

f. When reviewing a contempt order de novo, a superior court reviews the facts and law, and additional testimony can be heard. [*State v. Ford*, 164 N.C. App. 566, 596 S.E.2d 846 (2004).]

   i. A superior court did not err by allowing the district court judge who presided over the criminal contempt proceeding at issue to testify in the de novo hearing. [*State v. Wendorf*, 274 N.C. App. 480, 852 S.E.2d 898 (2020) (the district court judge was not prohibited from testifying by the N.C. Rules of Evidence).]

g. G.S. 5A-17 addresses an appeal only by a person found in criminal contempt. It makes no provision for appeal when no contempt is found. The court of appeals has found no right to appeal an alleged contemnor's acquittal of criminal contempt charges. [*Patterson v. Phillips*, 56 N.C. App. 454, 289 S.E.2d 48 (1982) (noting that courts in other jurisdictions generally agree that no appeal lies to review an acquittal from criminal contempt charges; finding that the individual plaintiff, child's mother, could not appeal defendant attorney's acquittal of criminal contempt charges based on his alleged interference with a custody order); *Hardy v. Hardy*, 270 N.C. App. 687, 693, 842 S.E.2d 148, 153 (2020) (there is no right to appeal a district court order that does not find a person in criminal contempt unless "the order affects a substantial right claimed by the appellant").]

h. An appeal of a criminal contempt order is not moot even if the sentence imposed by the order has already been completed by the defendant. [*State v. Perkinson*, 271 N.C. App. 557, 559, 844 S.E.2d 336, 337 (2020) (rejecting the idea that "a judge may criminally confine a defendant and then escape judicial review so long as the sentence has been completed"; contempt order reversed for lack of summary notice and opportunity to be heard).]

2. Standard of review.
   a. After being reviewed in a de novo hearing in superior court, a criminal contempt order can be appealed to the court of appeals. [G.S. 7A-27(b)(1).] The standard of review for contempt cases is "whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment," not whether the trial court abused its discretion. [*State v. Phair*, 193 N.C. App. 591, 593, 668 S.E.2d 110, 111 (2008) (citing *State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853, *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007)).]
   b. While conclusions of law are reviewable de novo, the findings of fact are not. "On appellate review of a contempt order, 'the trial judge's findings of fact are conclusive . . . when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency.' " [*State v. Coleman*, 188 N.C. App. 144, 148, 655 S.E.2d 450, 453 (2008) (quoting *O'Briant v. O'Briant*, 313 N.C. 432, 436–37, 329 S.E.2d 370, 374 (1985)); *File v. File*, 195 N.C. App. 562, 673 S.E.2d 405 (2009) (citing *State v. Simon*, 185 N.C. App. 247, 648 S.E.2d 853, *review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007)).]
   c. When a defendant alleges that the order giving rise to a finding of criminal contempt lacks sufficient clarity, the appellate court may review the order de novo. [*See Broadbent v. Allison*, 193 N.C. App. 454, 667 S.E.2d 342 (2008) (**unpublished**) (relying upon *State v. Haddock*, 191 N.C. App 474, 664 S.E.2d 339 (2008), wherein the appellate court reviewed a criminal indictment de novo when the defendant alleged that the indictment lacked sufficient clarity).]
   d. There is no precedent or legal authority permitting an appellate court to remand for additional findings of fact by the trial court in an indirect criminal contempt matter. [*State v. Coleman*, 188 N.C. App. 144, 655 S.E.2d 450 (2008).]
3. Release of defendant pending appeal.
   a. The terms of a defendant's release are within a trial court's discretion. [*In re Paul*, 84 N.C. App. 491, 353 S.E.2d 254 (the trial court did not abuse its discretion when it ordered the respondent attorney not to practice law during the appeal of his conviction for criminal contempt; release in this case was pursuant to G.S. 15A-536, release after conviction in superior court), *cert. denied*, 319 N.C. 673, 356 S.E.2d 779 (1987), *cert. denied*, 484 U.S. 1004, 108 S. Ct. 694 (1988).]
   b. A pretrial release order remains in effect pending appeal unless the judge modifies the order. [G.S. 15A-1431(e).]
4. Stay pending appeal of a criminal contempt order.
   a. An appeal of a criminal contempt order to superior court stays execution of all portions of the judgment, including payment of a fine, probation or special probation, and active punishment. [G.S. 15A-1431(f1).]

IV. Juvenile Contempt

A. When Applicable

1. Juvenile contempt is governed by G.S. 5A-31 through -34.

2. For contempt purposes, a juvenile is anyone 6 years of age or older, but not yet 18, who is unemancipated and who has not been convicted of any crime in superior court. [G.S. 5A-31(a).]
   a. However, G.S. 7B-1501(7) requires that, for purposes of juvenile contempt, a delinquent juvenile must be "at least 10 years of age." Thus, indirect juvenile contempt, which is governed by Subchapter II of G.S. Chapter 7B, is limited to juveniles ages 10 to 17 who are unemancipated and have not been convicted of any crime in superior court.
3. The juvenile contempt statutes make no distinction between criminal and civil contempt.

B. Grounds for Juvenile Contempt

1. G.S. 5A-31(a) lists the acts which can constitute contempt by a juvenile and contains many of the same acts listed in G.S. 5A-11(a).
2. G.S. 5A-31(b) provides that any contemptuous act that occurs within the sight or hearing of a court or in a court or in the immediate proximity of a court, or that is likely to interrupt or interfere with matters before a court is direct contempt by a juvenile. [G.S. 5A-31(b).]
3. Contempt by a juvenile that is not direct contempt is indirect contempt by a juvenile. [G.S. 5A-31(c).]
4. Direct contempt by a juvenile is governed by G.S. 5A-32.
   a. G.S. 5A-32(a) permits a court to act summarily and take measures to respond to direct contempt by a juvenile when necessary to restore order or to maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt. [G.S. 5A-32(a).]
   b. Before taking such measures in cases involving direct contempt by a juvenile, a court must:
      i. Provide the juvenile with summary notice of the contempt allegation and a summary opportunity to respond,
      ii. Appoint an attorney to represent the juvenile and allow the juvenile and attorney time to confer, and
      iii. Find facts, beyond a reasonable doubt, which support the summary imposition of the measures. [G.S. 5A-32(a).]
   c. Form AOC-J-305, Direct Contempt by Juvenile (Summary Proceeding), may be used.
   d. A court may choose not to proceed summarily and may instead enter an order to appoint counsel, set the matter for hearing in a juvenile proceeding, and direct the juvenile to show cause why they should not be held in contempt. [G.S. 5A-32(b).]
      i. The order must be given to the juvenile and the juvenile's attorney. [G.S. 5A-32(b).]
      ii. If the direct contempt is based on acts before a judge that so involve the judge that the judge's objectivity may reasonably be questioned, the order must be returned before a different judge presiding in juvenile court. [G.S. 5A-32(b).]
   e. In either a summary proceeding pursuant to G.S. 5A-32(a) or a plenary proceeding pursuant to G.S. 5A-32(b), the court must find that the juvenile's act was willfully

contemptuous or was preceded by a clear warning by the court that the conduct was improper. [G.S. 5A-32(c).]

f. If a court determines that a juvenile has committed direct contempt, the court may order that the juvenile:
   i. Be detained in a juvenile detention facility for up to 5 days,
   ii. Complete thirty hours of supervised community service, and/or
   iii. Undergo any evaluation necessary for the court to determine the needs of the juvenile. [G.S. 5A-32(c).]

5. Indirect contempt by a juvenile.
   a. If a juvenile's allegedly contemptuous acts do not meet the requirements for direct contempt set out in G.S. 5A-31(b), then the acts are considered indirect contempt and may only be adjudged and sanctioned pursuant to Subchapter II of G.S. Chapter 7B. [G.S. 5A-33.]
   b. Violation of a disposition order requiring a 15-year-old juvenile to attend school regularly amounted to indirect contempt pursuant to G.S. 5A-31(c). [*In re B.W.C.*, 285 N.C. App. 284, 877 S.E.2d 444) (2022) (adjudication of delinquency and imposition of probation for 6 months complied with statutory requirements in G.S. Chapters 5A and 7B).]
6. Appeal from an order finding juvenile contempt is to the court of appeals. [G.S. 5A-32(g).]

V. Enforcement of a Nontestimonial Identification Order

A. Civil or Criminal Contempt Available

1. A person who resists compliance with authorized nontestimonial identification procedures by failing to appear or by refusing to submit to the designated procedures as required by the nontestimonial identification order may be held in criminal contempt pursuant to G.S. 5A-12(a)(2) or civil contempt pursuant to G.S. 5A-21(b). [G.S. 15A-279(e).]

B. If Criminal Contempt Is Found

1. A person who has not been arrested for the offense to which the nontestimonial identification order is related and who fails to comply with the nontestimonial identification order is subject to censure, imprisonment not to exceed 90 days, a fine not to exceed $500, or any combination of the three, if found in criminal contempt. [G.S. 5A-12(a)(2).]

C. If Civil Contempt Is Found

1. A person who has not been arrested for the offense to which the nontestimonial identification order is related but is found in civil contempt for failure to comply with that nontestimonial identification order issued pursuant to G.S. 15A-271 *et seq*. may not be imprisoned for more than 90 days. [G.S. 5A-21(b1).]

2. After being imprisoned for 90 days for civil contempt, the person must be released or arrested on probable cause for the offense to which the nontestimonial identification order is related. [Official Commentary, G.S. 5A-21.]
3. If the person is arrested on probable cause for the criminal offense related to the nontestimonial identification order, imprisonment may be imposed for as long as the person continues to refuse to comply with the nontestimonial identification order. [Official Commentary, G.S. 5A-21 (stating that after arrest on probable cause, the 90-day limitation no longer applies).]

Appendix A. Distinctions Between Criminal and Civil Contempt

	CRIMINAL CONTEMPT G.S. 5A-11 through -17	CIVIL CONTEMPT G.S. 5A-21 through -25
Purpose	To punish conduct that has already occurred	To force compliance with a court order
Grounds	Committing one of the willful acts specified in G.S. 5A-11(a); see chart in Appendix C	Failure (1) to comply with a court order if the person is able to comply or (2) to take reasonable measures that would enable the person to comply (G.S. 5A-21(a))
When the Grounds Must Exist	During the court proceedings or at any time after the entry of the original order (if an order is involved in the case)	At the time of the hearing; the alleged contemnor is no longer in civil contempt if they are in compliance with the court's order by the time of the hearing
Procedure	Plenary proceeding (G.S. 5A-15); summary proceeding (G.S. 5A-14)	Plenary proceeding (G.S. 5A-23)
Order and Findings	A finding of criminal contempt must be based on evidence that supports findings of fact beyond a reasonable doubt (G.S. 5A-14(b); -15(f))	An order finding a person in civil contempt must include the facts constituting civil contempt and must specify the actions by which the person may purge himself or herself of the contempt (G.S. 5A-23(e))
Punishment	Censure, $500 fine, 30 days imprisonment, or a combination of these measures. A judge may reduce a defendant's sentence or fine at any time based on the defendant's actions and on the ends of justice (G.S. 5A-12(c))	Imprisonment for as long as the civil contempt continues; a defendant must be released when the civil contempt ceases (G.S. 5A-21(b))
Appeal	To superior court (G.S. 5A-17; 15A-1431 *et seq.*); see Section III.L, above	To the court of appeals (G.S. 5A-24; 1-268 *et seq.*); see Section II.K, above

Appendix B. Sample Summary Notice Language

[Mr./Mrs. Defendant or Party], you are hereby notified, as required by G.S. 5A-14, that you are charged with direct criminal contempt of court, in that when the court overruled an objection by your attorney to certain testimony by the witness Mr. X, you pounded the table with your fist and called the witness a "liar" and the court a "kangaroo court" [describe other conduct as appropriate]. When warned by the court, as the record will show, you repeated the "liar" and "kangaroo court" language and further threatened to "take care of" the witness after the trial. You are advised that you may now respond to this charge before the court takes further action. You may respond through your counsel or directly or both.

Appendix C. Overview of Criminal Contempt

Grounds (G.S. 5A-11)	Showing of willfulness or prior warning required to impose fine or imprisonment (G.S. 5A-12(b))	Type of contempt (G.S. 5A-13; -14(a); -15(a))	Punishment—any combination of the following (G.S. 5A-12):
1. Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings (G.S. 5A-11(a)(1))	Yes	Direct or indirect	Censure; 30 days' imprisonment; $500
2. Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority (G.S. 5A-11(a)(2))	Yes	Direct	Censure; 30 days' imprisonment; $500
3. Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, instruction, or its execution (G.S. 5A-11(a)(3))	Yes	Direct or indirect	Censure; 30 days' imprisonment; $500 **Exceptions:** • If a defendant has not been arrested and failed to comply with a nontestimonial identification order, then punishment is 90 days' imprisonment • If a defendant has failed to pay child support, then punishment is 120 days' imprisonment • If a defendant's sentence has been suspended upon conditions reasonably related to the payment of child support, then punishment is 120 days' imprisonment
4. Willful refusal to be sworn or affirmed as a witness or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified (G.S. 5A-11(a)(4))	Yes	Direct	Censure; 30 days' imprisonment; $500
5. Willful publication of a report of court proceedings as specified in G.S. 5A-11(a)(5)	No	Indirect	Censure; 30 days' imprisonment; $500
6. Willful or grossly negligent failure by a court officer to perform duties in an official transaction (G.S. 5A-11(a)(6))	Yes	Direct or indirect	Censure; 30 days' imprisonment; $500
7. Willful or grossly negligent failure to comply with court schedules and practices that substantially interfere with a court's business (G.S. 5A-11(a)(7))	Yes	Direct or indirect	Censure; 30 days' imprisonment; $500

(continued)

(continued)

Grounds (G.S. 5A-11)	Showing of willfulness or prior warning required to impose fine or imprisonment (G.S. 5A-12(b))	Type of contempt (G.S. 5A-13; -14(a); -15(a))	Punishment—any combination of the following (G.S. 5A-12):
8. Willful refusal to testify or to produce other information on a judge's order under G.S. Chapter 15A, Article 61 (G.S. 5A-11(a)(8))	Yes	Direct	Censure; 6 months' imprisonment; $500
9. Willful communication with a juror in an improper attempt to influence the juror's deliberations. (G.S. 5A-11(a)(9))	No	Direct or indirect	Censure; 30 days' imprisonment; $500; such conduct is also punishable under G.S. 14-225.1 (but see limitation on punishment in G.S. 5A-12(e))
9(a). Willful refusal by a defendant to comply with a condition of probation (G.S. 5A-11(a)(9a))	Yes	Indirect	Censure; 30 days' imprisonment; $500
9(b). Willful refusal to accept or comply with post-release supervision as specified in G.S. 5A-11(a)(9b)	Yes	Indirect	Censure; 30 days' imprisonment; $500
10. Any other act or omission specified elsewhere as grounds for criminal contempt (G.S. 5A-11(a)(10))	Yes	Direct or indirect	Censure; 30 days' imprisonment; $500

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☑ Chapter 12 Checklists

Contempt Checklists

Findings for Civil Contempt

- ☐ 1. The act alleged to constitute contempt
- ☐ 2. Party advised of
  - ☐ The possibility of incarceration
  - ☐ The right to counsel
  - ☐ The right to court-appointed counsel if indigent
- ☐ 3. Counsel
  - ☐ Counsel appointed
  - ☐ Defendant waived right to counsel
- ☐ 4. Findings on each element of G.S. 5A-21
  - ☐ The underlying order remains in force
  - ☐ The purpose of the order may still be served
  - ☐ The contemnor's noncompliance was willful
    - ☐ The contemnor had the actual ability to comply with the court order at the time of noncompliance OR had the ability to take reasonable measures that would enable the party to comply
    - ☐ Deliberate and intentional failure to comply
- ☐ 5. If civil contempt found, the facts that constitute civil contempt
- ☐ 6. If civil contempt found, imprisonment for an indefinite and open-ended period until purge conditions are met
  - ☐ Short stay of imprisonment is allowed if evidence shows the respondent can comply in the very near future
  - ☐ Imprisonment is the only remedy; no fines may be imposed
- ☐ 7. Purge conditions
  - ☐ Specific action the party must take to purge contempt and be released from imprisonment
  - ☐ That party has the present means to comply with the purge conditions
  - ☐ Must include a definite date by which the contempt may be purged

Findings for Indirect Criminal Contempt

- ☐ 1. The act alleged to constitute indirect criminal contempt
- ☐ 2. The facts established beyond a reasonable doubt
- ☐ 3. The defendant advised of
  - ☐ The possibility of incarceration
  - ☐ The right to counsel
  - ☐ The right to court-appointed counsel if indigent
- ☐ 4. Counsel
  - ☐ Counsel appointed
  - ☐ Right to counsel waived
- ☐ 5. Finding that defendant's conduct was willful
  - ☐ The contemnor had the actual ability to comply with the court order at the time of noncompliance OR had the ability to take reasonable measures that would enable the party to comply
  - ☐ Deliberate and intentional failure to comply or conduct that was done deliberately and without authority, justification, or excuse
- ☐ 6. Finding of guilty or not guilty
  - ☐ If guilty, any combination of
    - ☐ Censure,
    - ☐ Fine not to exceed $500, or
    - ☐ Imprisonment for a definite and fixed term not to exceed 30 days
  - ☐ If guilty due to failure to pay child support, then imprisonment for up to 120 days is authorized, provided the sentence may be suspended upon conditions reasonably related to the payment of child support
- ☐ 7. Purge conditions are improper in criminal contempt
- ☐ 8. Contempt matter should/must be heard before another judge if the alleged contemptuous acts so involve the judge that their objectivity may reasonably be questioned
- ☐ 9. If imprisonment is suspended, a clear statement of all conditions of the suspension

Findings for Direct Criminal Contempt

- ☐ 1. The act alleged to constitute indirect criminal contempt
- ☐ 2. The facts established beyond a reasonable doubt
- ☐ 3. Defendant acted willfully
- ☐ 4. Defendant given summary notice of the charges and summary opportunity to respond