# On the Civil Side

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# NO FINES FOR CIVIL CONTEMPT

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This Post was written by Professor Michael Crowell, UNC School of Government.

The question about fines for civil contempt is now resolved. Just over a year after the court of appeals allowed the use of a fine for civil contempt the General Assembly stepped in to say no, fines are not allowed for civil contempt, the only sanction is confinement until the person complies with the court order. In doing so, the legislature restored the law to what most thought it was before the appellate court ruling.

This all began with the court of appeals' May 2014 decision in *Tyll v. Berry*, a case from Orange County. Toward the end of 2012 the district court found Berry in contempt for having sent emails to the Tylls in June 2012 in violation of a Chapter 50C no-contact order. As its sanction the court ordered Berry jailed until he "purged" the contempt by paying $2,500 to the Tylls. The order went on to say that he would be fined $2,500 for each future violation of the no-contact order.

The court of appeals upheld the district court order. The appellate panel found, first, that the district court order, which did not specify whether it was for civil or criminal contempt, was for civil contempt. The court then said a fine was a permissible sanction for civil contempt, although the statute seemed to provide only for jailing the offender. (The criminal contempt statute, on the other hand, provides for imposition of a fine or imprisonment for a set time, generally limited to 30 days.) And the court treated the $2,500 as a fine even though it was to be paid to the other parties in the case.

As discussed in a June 2014 post on the School of Government's Criminal Law Blog, the *Tyll v. Berry* decision appeared to break new ground in North Carolina. Based on previous law one would have thought the contempt was criminal rather than civil because it was punishment for past conduct, the previous violation of the no-contact order. Civil contempt, by contrast, is used when the court is not interested in punishment for past behavior but is still attempting to get the defendant to obey a court order. The court does that by locking up the defendant not for a set time, as with criminal contempt, but only until the defendant purges the contempt by complying with the order — paying the money owed, signing the document, whatever has not been done.

The defendant is released as soon as the purge is complete, whether it be one day or several months since the incarceration began. Because the only purpose of civil contempt is to obtain compliance with a court order, and because the statute only listed jail as a sanction, it was thought before *Tyll v. Berry* that a fine was not allowed.

The opinion in *Tyll v. Berry* confused both judges and lawyers because it seemed to change the nature of civil contempt and upset the common understanding that fines were reserved for criminal contempt and not available in civil contempt. The questions reached the General Assembly in Raleigh and it enacted Session Law 2015-210, signed by governor McCrory on August 11th. Section 1 of the act amends G.S. 5A-21 by adding a new subsection that says, "A person who is found in civil contempt under this Article is not subject to the imposition of a fine." That portion of the act takes effect October 1, 2015, and applies to contempt orders entered on or after that date.

The new legislation appears to definitively answer the questions generated by *Tyll v. Berry.* The answer is that a fine is not available as a sanction for civil contempt.

This entry was tagged with the following terms: Civil contempt; fine.


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