Contempt

in North Carolina Courts

New Superior Court Judge Orientation

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Objectives

1. Identify resources
2. Identify proper use of/procedure for direct criminal contempt
3. Identify difference between criminal and civil contempt

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SOG contempt resources

- North Carolina Trial Judges' Bench Book, District Court, Volume 1, Chapter 12, Contempt (2024)(most comprehensive) https://www.sog.unc.edu/benchbook [password: judges]
- Contempt (overview), AOJ Bulletin, M. Crowell 2015: (http://sogpubs.unc.edu/electronicversions/pdfs/aojb1503.pdf)
- Bench Card
- Numerous blog posts at "On the Civil Side": (civil.sog.unc.edu/)
- Numerous blog posts at Criminal Law Blog (nccriminallaw.sog.unc.edu)

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What do you do?

- A defendant in a criminal case responds to a question from you by saying "F… you and this entire process."?
- Assume you are in a good mood and decide to give him another chance, but he responds in the same way when you ask the question again?

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- I am considering holding you in direct criminal contempt for … [briefly describe the conduct]. **Is there anything you would like to say?**
- I find you to be in direct criminal contempt.
- I sentence you to …..

to [12 hours, 24 hours, … up 30 days incarceration; **and/or** [$50, $200, … up to $500 fine; **and/or** a censure]

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Contempt authority is statutory

NC Gen. Stat. Chapter 5A

Criminal Contempt

Civil Contempt

Contempt by Juveniles

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CRIMINAL	CIVIL
To *punish* for an act already committed	To *coerce* compliance with court order
G.S. 5A-11 to 5A-17	G.S. 5A-21 to 5A-26

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A person can't be held in civil *and* criminal contempt for same act.

-G.S. 5A-12(d), -21(c), -23(g)

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CRIMINAL

To *punish* for an act already committed

G.S. 5A-11 to 5A-17

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Criminal contempt is *"sui generis"*

- Quasi-Criminal
  - Standard of proof is beyond a reasonable doubt
  - Constitutional rights apply
    - Counsel
    - No required self-incrimination
- Not true Criminal
  - Can be "resorted to in civil or criminal actions"
    - *Blue Jeans Corp. v. Amalgamated Clothing,* 275 NC 503 (1969)
  - Prosecutor *may* be appointed but is not required

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Criminal contempt - Grounds

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(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.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, direction, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or when so sworn or affirmed, willfully refusing to answer any legal and proper question when the refusal is not legally justified.

(5) Willful publication of a report of the proceedings in court which is false and which is made with malice and a clear and present danger of imminently and seriously threatening the administration of justice, or with reckless disregard of whether it is false or not, or with reckless disregard of whether it may be found to be false, of proceedings in a court.

(6) Willful or grossly negligent misbehavior in office of the officers of courts in an official transaction.

(7) Willful or grossly negligent violation of rules and practices of the court resulting in substantial interference with the business of the court.

(8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.

(9) Willful communication with a juror in an improper attempt to influence his deliberations.

(9a) Willful refusal by a defendant to comply with a condition of probation.

(9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes. ... "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 the supervisee's sentence.

(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11(a)

EXCLUSIVE

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Criminal contempt - Grounds

GS 5A-11(a)(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

Examples:

- Attorney repeatedly demanding to be heard (after warnings to stop) and inciting his purported client to disrupt proceedings. *In re Nakell* (1991).
- Mobile phone ringing? *See State v. Phair* (2008)

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http://nccriminallaw.sog.unc.edu

Contempt and Cellphones

Posted on May. 1, 2013, 9:11 am by Michael Crowell • 2 comments

A couple of this blog's recent Friday News Roundups have linked offbeat stories about contempt and cellphones. In the first a Michigan judge held himself in contempt and ordered a $25 fine when his cellphone rang in court. The second story was the federal Sixth Circuit upholding a 30-day contempt sentence for a courtroom spectator caught texting in federal district court. Actually it was more than that, as he later admitted to also using his phone to photograph his friend being sentenced. After all, what are friends for?

Some readers might be wondering about contempt and cellphones in North Carolina courtrooms. In the Tar Heel state you might be held in contempt if your phone goes off, though not necessarily. Here is a brief primer on contempt and some observations about cellphones.

There are two kinds of contempt, civil and criminal. Civil contempt is used only when a person is currently disobeying a court order, and its only sanction is to lock up the person until they comply with the order. The most common example is the deadbeat father not paying child support. He does not get a set sentence; he stays in jail until he pays, and he gets out just as soon as he catches up on the support.

Criminal contempt can be for any of a number of behaviors listed in the statute. The most common are disrupting or showing disrespect for the court, not following the court schedule, refusing to testify. It's shouting at the judge, cursing, refusing to sit down, coming late to court — the stuff people usually think about when they hear the word "contempt." Refusing to obey a court order also may be criminal contempt, just as it may be civil contempt. But it can't be both, the judge has to choose one, either civil or criminal contempt. The difference between the two is that criminal contempt is used to punish the person for past behavior; civil contempt is used to get the person to comply. Criminal contempt carries a set punishment which can be a fine of up to $500 and/or jail for up to 30 days; civil contempt is jail until the order is complied with.

The ringing cellphone in court, or texting or taking photos, would be criminal contempt, not civil.

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Criminal Contempt

GS 5A-11(a)(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.

Examples:

- Yelling at/insulting the judge.
- Coming to court drunk. *State v. Ford* (2004)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

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Criminal Contempt

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

Examples:

- Attempting to coerce witness not to obey subpoena. *State v. Wall* (1980)
- Disobeying order to turn over control of assets to receiver. *Osmar* (1979)
- Disobeying order to keep children away from sex offender. *State v. Mastor* (2015)
- Juror conducting own investigations. *State v. Pierce* (1999)

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Criminal Contempt

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

Examples:

- Attorney abandoned client just before probation hearing because hadn't been paid. *State v. Key* (2007)
- But, *State v. Chriscoe* (1987): Failure of witness to appear promptly at 9:30 was not violation of order because not subpoenaed, not disruptive to schedule.

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Criminal contempt - Punishment

- Imprisonment up to 30 days;
- Censure; and/or
- Fine up to $500

Suspended sentences allowed with conditions.
-*State v. Key (2007)*

If appealed, bail hearing required.
-5A-17

Judge can withdraw or reduce a sentence any time "if warranted by the conduct of the contemnor and the ends of justice."
-5A-12(c)

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Criminal contempt - Procedure

Summary proceeding

- Direct contempt *only*

Plenary proceeding

- *All* indirect contempt
- Direct contempt at court's option or when hearing is not contemporaneous with the behavior

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Criminal contempt - Procedure

Summary proceeding

- Direct contempt *only*

"Direct criminal contempt" is act of contempt committed:

- Within sight or hearing of presiding judicial official; *and*
- In, or in immediate proximity to, room where proceedings are being held; *and*
- Likely to interrupt or interfere with matters before the court.

Summary proceeding appropriate "when necessary to restore order or maintain dignity and authority of the court."

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Criminal contempt - Procedure

Summary proceeding

- Direct contempt *only*

1. Judge gives person summary notice of charges
2. Judge *must* give "summary opportunity to respond."

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Criminal Contempt - Procedure

"summary opportunity to respond"

"…[i]ntended not to provide for a hearing, or anything approaching that…but merely to assure that the alleged contemnor had an opportunity to point out instances of gross mistake about who committed the contemptuous act or matters of that sort." -Official commentary to 5A-14 (quoted often in cases)

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"Summary opportunity to respond"

In re Korfmann, 786 S.E.2d 768 (N.C. App. 2016).

Trial judge:

This Court takes the strong position that technology is not to be utilized by jurors and, in fact, this jury has been warned several times not to use.

In my opinion the utilization by the juror is blatantly disrespecting the Court's order not to use.

Sir, I think that what I am going to do with you is I am going to send you to Wilson County Jail for 30 days for failing to follow the order given to you by this Court.

The ladies and gentlemen of this jury are now excused. You can get a certificate as to where you have been for the last several days. You are excused.

This gentleman is in your custody.

Court of Appeals:

Contempt order VACATED:

"The trial court did not give appellant the necessary 'summary notice of the charges and a summary opportunity to respond[.]"

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2 Recent Cases

- *State v. Jacobs*, NC Court of Appeals, 12/17/25
- *State v. Lancaster*, 296 NC App 519 (2024)

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Criminal contempt - Procedure

Summary proceeding

- Direct contempt *only*

1. Judge gives person summary notice of charges
2. Judge *must* give "summary opportunity to respond."
3. Judge finds facts supporting summary imposition of measures.
   - Must find willfulness.
   - Must state facts found "beyond reasonable doubt"

AOC-CR-390

STATE OF NORTH CAROLINA

County

In The General Court Of Justice

Before The Clerk ☐ District ☐ Superior Court Division

IN THE MATTER OF

Name And Address Of Contemnor

DIRECT CRIMINAL CONTEMPT/ SUMMARY PROCEEDINGS/ FINDINGS AND ORDER

G.S. 5A-11, -12, -13, -14

Name | Sex | Date of Birth | Age

Date | Time ☐ AM ☐ PM | Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted

☐ an initial appearance
☐ a final appearance
☐ a pre-trial motion hearing

☐ a probable cause hearing
☐ an estate proceeding
☐ a special proceeding

☐ a trial
☐ other

The court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did:

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604

☐ be removed for contempt.
☐ shall pay a fine of $ _____ (Max $500.00)
☐ be imprisoned for a term of _____ hours ☐ days in the custody of the ☐ Sheriff ☐ Misdemeanant Confinement Program.
The contemnor shall be given credit for _____ days' pretrial confinement.
☐ Work release is recommended.
☐ shall pay the costs of court.

Date | Name Of Judicial Official (Type Or Print) | Signature Of Judicial Official

ORDER OF COMMITMENT/APPEAL ENTRIES

☐ It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
☐ The contemnor gives notice of appeal from this Findings and Order to the Superior Court to the appellate division. Appeal entries and conditions of post conviction release are set forth on form AOC-CR-350.
☐ The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court judge, the appeal is to Superior Court. G.S. 5A-17. Do appeal from criminal contempt imposed by a magistrate. There must be a bail hearing within a reasonable time period after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Date | Name Of Judicial Official (Type Or Print) | Signature Of Judicial Official

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

SEAL

Date | Signature

Date Certified Copies Delivered To Sheriff

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

Original-File Copy-Sheriff

AOC-CR-390, Rev. 12/13
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What do you do?

- The bailiff approaches the bench to tell you that a person in the back of the courtroom has been belligerent and threatening towards him and other people in the courtroom and used obscenities while responding to the bailiff's questions.

Criminal contempt - Procedure

Plenary proceeding

- All indirect contempt
- Direct contempt at court's option or when hearing not held contemporaneously with behavior

Criminal contempt - Procedure

- Show cause order
  - Must state facts upon which order is based.
  - Form: AOC-CR-219
- Hearing (non-jury trial)
  - Burden of proof on State
  - Beyond a reasonable doubt
  - Indigent entitled to counsel
  - Self-incrimination protection applies.
- Order
  - Guilty or not guilty
  - Findings of fact required.
    - *Must* find willfulness (or prior warning).
  - *Must* state "beyond reasonable doubt." Failure is fatal.

Plenary proceeding

- All indirect contempt
- Direct contempt (at court's option)

AOC-CR-219

File No.

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

STATE VERSUS/IN THE MATTER OF

Name And Address Of Defendant/Contemnor

County Of Residence | Telephone No.

Race | Sex | Date Of Birth | Age

Social Security No. | Drivers License No. & State

Name And Address Of Moving Party, If Not The Court

RETURN OF SERVICE

I certify that this Order was received and served as follows:

☐ By personally serving the defendant/contemnor named above with a copy of this Order

☐ Defendant/contemnor WAS NOT served for the following reason:

Date Received | Date Served | Time Served ☐ AM ☐ PM | Date Returned

Name Of Officer (type or print)

Signature Of Officer

Department Or Agency

County Of Department/Agency

NOTE TO CLERK: An Order under No. 2 is filed in the original criminal infraction case. An Order under No. 3 is either a Miscellaneous or Registration file. Based on its disposition, one Rule of Recordkeeping 16 An Order under No. 3 establishes a new DRCRS case if prosecuted as criminal contempt, but if a filed in the pending case file if dispose as civil contempt. An Order under No. 3 if or if establishes a new DRCRS case in the court in which filed

AOC-CR-219, Rev. 11/13

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STATE OF NORTH CAROLINA

County ☐ District ☐ Superior Court Division

In The General Court Of Justice ☐ Before The Clerk

To the Defendant/Contemnor Named To The Left: Upon motion of the moving party named herein or on its own motion, the Court finds probable cause to believe that you should be held in contempt of court or fined for your

☐ I. Failure To Pay Fine And/Or Costs [G.S. 15A-1364]

Failure to pay the fine and/or costs as ordered in this case. The Court will conduct a hearing and decide whether you should be imprisoned for your failure to pay the fine and/or costs. The amount of the fine and/or costs that you were ordered to pay and the balance due as of the date of this Order are as follows:

Amount Of Fine And/Or Costs Ordered Paid | Balance Due As Of The Date Of This Order

$ | $

☐ II. Failure To Obey Jury Summons [G.S. 9-13]

Failure to report for jury duty as directed pursuant to a jury summons issued on (date) _____

☐ III. Failure To Obey Other Order Of The Court [G.S. 5A-11; G.S. 5A-21]

Failure to obey the order of the Court indicated below:

Date Of Order | File Number | County | Name Of Officer Who Entered Order

Describe Action(s) Ordered And Facts Constituting Contempt

☐ IV. Failure To Obey Order To Appear Pursuant To Criminal Summons [G.S. 15A-301(e)(3); G.S. 5A-11]

Failure to appear before this Court as directed by a criminal summons issued and duly served on you, ordering you to appear before this Court and answer to the offense(s) indicated below:

Date Summons Issued | File Number | County | Name Of Officer Who Issued Summons

Date Summons Served | Date Of Failure To Appear | Offense(s)

☐ V. Other Criminal Contempt [G.S. 5A-11; G.S. 15A-1344(e1)]

Act of criminal contempt described below. (NOTE TO COURT: The grounds provided in G.S. 5A-11(a) are exclusive.)

You are ORDERED to appear before the Court as indicated below and show cause why you should not be punished for contempt or for failure to comply with the Court's order as described above. If you do not appear, the Court may issue an order for your arrest or may enter other sanctions against you in your absence.

Location Of Court | Court Date | Court Time ☐ AM ☐ PM

Date Order Issued | Name Of Issuing Official (type or print) | Signature Of Issuing Official

☐ Superior Court Judge ☐ District Court Judge (Date) ☐ Magistrate ☐ Clerk Of Superior Court ☐ Assistant CSC ☐ Deputy CSC

Criminal contempt - Appeal

District court → Superior Court (*de novo*)

Superior court → Court of Appeals (on the record)

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What do you do?

- You are asked to sign a "show cause" order directing the respondent to appear and show cause why they should not be held "in contempt" for failure to pay a money judgment entered in a civil case where respondent was found to have breached a contract.

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Neither criminal nor civil contempt can be used to enforce a money judgment.

Ibele v. Tate, 163 N.C. App. 779, 594 S.E.2d 793 (2004)(breach of contract judgment)

Pelc v. Pham, NC App, October, 2025 (judgment for damages resulting from failure to abide by Affidavit of Support for an immigrant)

Civil contempt is used to enforce court orders, and failure to follow a court order or directive can be criminal contempt.

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What do you do?

- You are asked to sign a "show cause" order directing the respondent to appear and show cause why they should not be held "in contempt" for failure to pay money as required by an order for specific performance entered after respondent was found to have breached a contract.

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An order requiring a party to specifically perform their obligations under a contract is enforceable by contempt.

See Gen. Motors Acceptance Corp. v. Wright, 154 N.C. App. 672, 573 S.E.2d 226 (2002)

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CRIMINAL	CIVIL
To *punish* for an act already committed	To *coerce* compliance with court order
G.S. 5A-11 to 5A-17	G.S. 5A-21 to 5A-26

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CIVIL

To *coerce* compliance with court order

G.S. 5A-21 to 5A-26

Civil contempt

- Only purpose is to coerce compliance with a court order after court concludes party has the present ability to comply with the order

Civil contempt – The Remedy

- Imprisonment
  - –Until complies with purge condition(s)
    - For child support – indefinite
    - For non-monetary orders – indefinite
    - For other monetary orders – indefinite
      But re-commitment required at 90 days with de novo hearing. One year maximum.

- **NO DAMAGES** *(e.g., Blevins v. Welch*, 137 NC App 98 (2000)
- **NO FINES** (5A-21(d))
- **Attorney fee-shifting allowed only in**:
  - Very limited general civil?
  - Certain domestic judgments

Civil contempt – The basis

Failure to comply with an order of a court *if*

(1) The order remains in force;

(2) The purpose of the order is served by compliance;

(3) Noncompliance by the person to whom the order is directed is willful; ***and***

(4) The person to whom the order is directed is able to comply *or* is able to take reasonable measures to comply.

G.S. 5A-21(a)

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Consent Orders

General rule:

- If court approves and adopts agreement of parties, contempt is not available
  - *See Crane v. Green,* 114 NC App 105 (1995)
- If court makes findings of fact and conclusions of law, contempt is available
  - *See Nohejl v. First Homes of Craven County, Inc.*, 120 N.C. App. 188 (1995)

Domestic Relations Cases

- All consent orders are enforceable by contempt
- *Henderson v. Henderson*, 307 NC 401 (1983)
- *Walters v. Walters*, 307 NC 381 (1983)

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Civil contempt – "Ability" to pay

Inadequate findings

- Able to work ("able-bodied")
- "not incompetent"
- "x amount of education and experience"
- "able to work in x industry"
- "is employed" (or "has been employed since…")

- *Clark*, 171 N.C. App. 120 (2005); *Hodges*, 64 N.C. App. 550 (1983)

More specificity needed

- Liquid assets
  - Or, [for purge] assets that *can be liquidated* ("reasonable measures")
- Available/disposable income
- Other available funds/resources
- Other reasonable steps

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Civil contempt – Court's order

Court must include:

- *Findings* as to elements in G.S. 5A-21(a).
  Non-compliance with order that
  (1) Remains in force;
  (2) The purpose of the order is served by compliance;
  (3) Noncompliance by the person to whom the order is directed is willful; ***and***
  (4) The person to whom the order is directed is able to comply *or* is able to take reasonable measures to comply.
- If contempt found, *how the contemnor may purge.*

What are the *facts* constituting the non-compliance?
- What acts/omissions?
- How was it willful ?
  - Intent
  - Ability

Civil contempt – purge conditions

Defendant must "hold the keys to the jail"

Civil contempt – purge conditions

- *Present* ability to do (not future, open-ended, or "indefinite" (*Wellons*, 229 N.C. App. 164 (2013))
  - Yes: D must "pay $1000"; or D must "turn over the car to plaintiff"
  - No:
    - "D must pay child support obligations *as they come due*"
    - "D must pay $500 *per month*"
    - "D may not remove the child from North Carolina in the future without court permission." *Ning Gao* (2013)
- *Clear* conditions.
  - Yes: "Pay $x." "Deliver car to Plaintiff's home." "Execute x document." "Pay child's outstanding tuition." "Pay existing credit card balance." (*Watson* 2007)
  - No:
    - "D shall not harass or interfere with Plaintiff's custody of the children." *Scott v. Scott*, 157 N.C. App. 382 (2003)
    - "D shall not at any time…punish the minor children in any manner that is stressful, abusive, or detrimental." *Cox v. Cox*, 133 N.C. App. 221 (1999)

GS 5A-22(a)

- A person imprisoned for civil contempt must be released when his civil contempt no longer continues.
- The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt.

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Watson v. Watson
187 NC App 55 (2007)

- "A civil contempt proceeding does not command the procedural and evidentiary safeguards that are required by criminal contempt proceedings."
- Why??

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Civil contempt

- Contemnor must 'hold the keys to the jail'
- Because contemnor can walk out of the jail at any time, there is no right to counsel or other safeguards required in criminal cases where liberty is in jeopardy
  - *Turner v. Rogers*, 564 US 431 (2011)(no right to counsel for child support contempt)
  - *Cf. McBride v. McBride*, 334 NC 124 (1993)(right to counsel for child support contempt)
  - *Wilson v. Guinyard*, 254 NC App 229(2017)(right to counsel in non-child support civil contempt is determined on a case-by-case basis)

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Civil Contempt Procedure

- Civil initiated either by:
  - Motion filed by a party.
    - GS 5A-23(a1)
  - Show cause order from court.
    - GS 5A-23
    - No statutory authority to issue order for arrest for failing to show up
- If initiated by motion, moving party has burden of going forward at hearing
- If initiated by show cause order, respondent obligor has burden of going forward at hearing.

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Civil Contempt Procedure

Show cause cannot issue unless judicial official determines, based on verified motion and sworn statement, there is probable cause to believe obligor is in civil contempt.

The finding of probable cause justifies the shifting of the burden of presenting evidence in the contempt trial

- Requires information sufficient to warrant a prudent man in believing obligor is in civil contempt

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Civil Contempt

- Order of civil contempt must contain findings of fact supported by evidence in the record establishing defendant has the present ability to comply with the purge ordered
  - *See Durham DSS ex rel Alston v. Hodges*, COA January 2, 2018
- There is no contempt by default
  - http://civil.sog.unc.edu/no-default-judgment-in-contempt/
  - https://civil.sog.unc.edu/contempt-establishing-ability-to-pay/
  - *Tigani v. Tigani*, 805 SE2d 546 (NC App 2017)

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"On the Civil Side" blog: civil.sog.unc.edu

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No Default Judgment in Contempt

This entry was contributed by Cheryl Howell on May 1, 2015 at 5:00 am and is filed under Civil Law, Civil Practice, Family Law.

Even when contempt is based upon the failure to pay child support, the contempt order must contain the conclusion of law that respondent willfully violated the court order. That conclusion must be supported by findings of fact showing respondent actually has/had the ability to comply or to take reasonable steps to comply and deliberately failed to do so. Those findings of fact must be based on evidence.

In other words, a contempt order cannot be entered by default – a court cannot assume a respondent has the ability to comply simply because the respondent fails to prove he/she does not have the ability to comply.

Civil Contempt

A civil contempt proceeding can be initiated in one of three ways:

- Pursuant to GS 5A-23(a1), by filing a verified motion, or a motion along with an affidavit, and a notice of hearing on the contempt motion; or
- Pursuant to GS 5A-23(a), by filing a verified motion, or a motion along with an affidavit, that includes a request for a show cause order;
- And for child support contempt only, pursuant to GS 50-13.9(d), by filing an affidavit and asking a judge or a clerk to issue a show cause order.

In all three situations, the court can hold the respondent in civil contempt only if the court concludes

- The order being

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Civil contempt - Appeal

To Court of Appeals

- Within 30 days
- Immediately appealable due to "substantial right"
- "On the record" review

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Test Yourself

- Criminal or civil?
  - You are asked to issue a show cause for a respondent alleged to have violated a Rule 65 TRO by destroying documents they were ordered to maintain.

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