


Contempt

in North Carolina Courts

New Superior Court Judge
Orientation
January 2025

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SCHOOL OF GOVERNMENT

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Objectives

1

2

3

Identify
resources

Identify difference
between criminal
and civil contempt

Identify proper use
of/procedure for
direct criminal
contempt

2

SOG contempt resources

- North Carolina Trial Judges’ Bench Book, DCJ Volume 2, Chapter 4, Contempt (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
nccriminalaw.sog.unc.edu

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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

To *punish* for an act
already committed

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

CIVIL

To *coerce* compliance
with court order

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, directive, or instruction or its execution.
- (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.
- (5) 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.
- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (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.
- (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)

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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 to refuse to answer any legal and proper question when the refusal is not based on a claim of privilege.
- (5) Willful publication of a report of the proceedings of a court in a newspaper or other publication, or with reckless disregard of whether such publication would be likely to result in a substantial interference with the proceedings in a court.
- (6) Willful or grossly negligent conduct in an official transaction.
- (7) Willful or grossly negligent conduct in an official transaction resulting in a substantial interference with the business of the court.
- (8) Willful refusal to testify or produce other information pursuant to the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of immunity to a witness.
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
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- (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)

Criminal contempt - Grounds

(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)

- (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.
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G.S. 5A-11

<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.

Criminal contempt - Grounds

(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)

(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

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Criminal contempt - Grounds

(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.

"Courtroom decorum and function depends on the respect shown by its officers and those in attendance.

Unexcused refusal[] to stand creates a rift in that respect and interrupts the normal proceedings of the court."

- Racial slur directed at court officer. *State v. Johnson* (2015) (unpub'd)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

(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.

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G.S. 5A-11

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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, 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)

(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.

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G.S. 5A-11

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- (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.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

with the business of the court.

Examples:

- Attorney twice attempting to introduce polygraph results in criminal trial. *In re Cogdell* (2007)
- Attorney repeatedly failing to comply with Rape Shield Statute when questioning witness. *State v. Okwara* (2012)

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

G.S. 5A-11

Criminal contempt - Grounds

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- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present

(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.

Example:

- 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.

Criminal contempt - Grounds

"[T]hat degree of interference with the court's business that is **real, and not momentary or illusory.**"

ing of a court and directly tending to interrupt its proceedings.
ing of a court in its immediate view and presence and directly tending to impair
interference with a court's lawful process, order, directive, or instruction or its
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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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North Carolina Criminal Law

A UNC School of Government Blog

Consecutive Sentences for Criminal Contempt

Posted on Aug. 11, 2016, 3:37 pm by James MacIsaac • 2 comments



One of the first posts I wrote on this blog was about the punishment for criminal contempt. The post included a discussion about whether sentences for contempt could be run consecutively — something our appellate courts hadn't yet ruled on at the time. In *State v. Burrow*, decided last week, the court of appeals approved a trial court's orders sentencing a defendant to six consecutive 30-day terms of imprisonment for contempt.

Burrow involved a defendant tried and convicted for attempted felony breaking or entering. He was also convicted of being a habitual felon, raising the punishment class for the attempted breaking or entering from Class I to Class E. The jury found an aggravating factor. The judge found that it outweighed the lone mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level VI: 63–88 months.

In addition to the felony sentence, the court entered six orders finding the defendant guilty of direct criminal contempt. The appellate opinion in *Burrow* doesn't give much detail about what happened, but the trial court orders themselves, available as part of the appellate record, do.

The Court finds beyond a reasonable doubt that during this session of Court and during the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and just before receiving the verdict in the second phase of the defendant's jury trial, when the Court was instructing the defendant's wife, Ms. Amber Childress, not to move about the courtroom

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Criminal contempt - Procedure

Summary proceeding

Plenary proceeding

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

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."

Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

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

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 SA-14 (quoted often in cases)



Criminal contempt - Procedure

Plenary proceeding

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

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

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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)

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

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AOC-CR-219

File No.

CHARGE OR DER, FINDINGS AND JUDGMENT - FAILURE TO PAY FINE AND COSTS, TO OBEY ANY SUMMONS TO APPEAR PURSUANT TO CRIMINAL SUMMONS OR FOR CONTEST

STATE VERIFIY THE MATTER OF

Name and Address of Defendant(s)

Court of Jurisdiction

Defendant No.

Date of Birth

Sex

Race

Mar

Current Location

Age

Name and Address of Plaintiff Party Other the Court

RETURN OF SERVICE

I certify that this Court has received notice and return of service, and is hereby proceeding with the enforcement of the enforcement summons served on defendant with a copy of this Court.

Defendant's Name and Address and NOT served for the following reason:

Date Served Date Returned Date Served Date Returned

Signature of Officer

Signature of Plaintiff

Signature of Defendant

Signature of Plaintiff

Signature of Defendant

Signature of Plaintiff

Signature of Defendant

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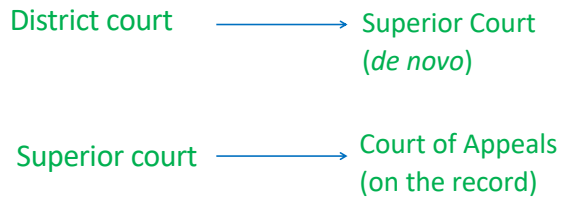
Signature of Plaintiff

Signature of Defendant

Signature of Plaintiff

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Criminal contempt - Appeal



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CRIMINAL

To *punish* for an act
already committed

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

CIVIL

To *coerce* compliance
with court order

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

33

CIVIL

To *coerce* compliance
with court order

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

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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

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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 N.C. App 58 (2000))
- **NO FINES** (5A-21(d))
- **Attorney fee-shifting allowed only in:**
 - Very limited general civil?
 - Certain domestic judgments

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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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Civil contempt – The basis

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

- (1) The order remains in force; “entered” (e.g., *Spears v. Spears*, COA 2016)
- (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)

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)

Civil contempt – The basis

Failure to comply with an order of a court

- (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 is able to comply *or* is able to take reasonable measures to comply.

G.S. 5A-21(a)

Civil contempt – The basic test

- Intentional/deliberate failure to comply
- Had *ability* to comply

Failure to comply with an order of a court

- (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.

Which often means "to pay"

G.S. 5A-21(a)

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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

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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.

What are the **facts** constituting the non-compliance?

- What acts/omissions?
- How was it willful?
 - Intent
 - Ability

- If contempt found, *how the contemnor may*

purge.

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. Guilford*, 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

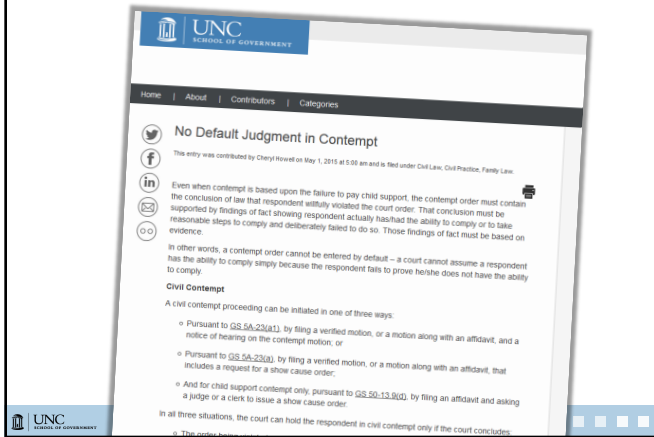
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Civil Contempt

- 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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Civil contempt - Appeal

To Court of Appeals

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

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