

Defending Kids In Contempt Hearings

Presented by David Andrews, Assistant Appellate Defender

Agenda

1. Nuts & Bolts
2. Defense Strategies
3. Case Studies
4. How to Appeal
5. Questions

“Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.”

Brown v. United States, 356 U.S. 148 (1958)

Case Study #1

- At the beginning of an adjudication hearing, the juvenile fell asleep. The judge told the juvenile to wake up and said she would hold the juvenile in contempt if he fell asleep again.
- At the end of the hearing, the judge adjudicated the client delinquent. She also said she was considering finding the juvenile in contempt for falling asleep.
- The judge then allowed the defense attorney to talk to the juvenile about the contempt charge. After, the attorney said the juvenile had not slept well the night before and did not intend to fall asleep during the hearing.
- The judge found the juvenile in contempt, stating that contempt was necessary to “maintain the dignity” of the court. She also imposed 5 days of secure custody.

Nuts & Bolts

The judge runs the show

The judge has an “omnipotent role as opposing party, witness, finder of fact, and arbiter of law” in a contempt proceeding.

In re Marshall, 191 N.C. App. 53 (2008).

In light of the power that contempt statutes confer, the judge must follow “all statutory requirements.” *In re Korfmann*, 247 N.C. App. 703 (2016).

Direct Contempt v. Indirect Contempt

Direct Contempt

- The act is committed within the sight or hearing of the judge
- The act is committed in, or in the immediate proximity to, the room where proceedings are being held
- The act is likely to interrupt or interfere with matters before the court

Indirect Contempt

- Contempt that is not direct contempt is indirect contempt

Why does the distinction matter?

- Direct contempt can be addressed summarily.
- Indirect contempt must be treated like any other allegation of delinquency – with a petition, an adjudication hearing, and a dispositional hearing.

What qualifies as contempt?

N.C. Gen. Stat. § 5A-31

Interrupting court proceedings

Behavior that impairs the respect owed to the court's authority

Disobeying a court order

Refusal to testify when the refusal is not justified

Failure to comply with court schedules

Refusal to testify when granted immunity

Attempting to influence jury deliberations

Any other act or omission that would qualify as contempt in other statutes

What does “willful” mean?



The conduct is done “deliberately and purposefully in violation of law, and without authority, justification or excuse.” *State v. Chriscoe*, 85 N.C. App. 155 (1987).



The individual exhibits a “bad faith disregard” for the trial court’s authority. *State v. Phair*, 193 N.C. App. 591 (2008).

Penalties for direct contempt

1

Up to five days of
detention

2

Up to 30 hours of
community service

3

An evaluation to
determine the
juvenile's needs

Defense Strategies

Protections Available at Contempt Hearings

- Notice and an opportunity to be heard
- The appointment of counsel
- Time to confer with counsel
- The reasonable doubt standard of proof
- The requirement of willfulness
- The requirement that the hearing be interrupted
- Termination or reduction of the sanction

The right to a hearing matters

- “[I]n a summary proceeding the defendant must be told the basis for the contempt and given an opportunity to respond before punishment is imposed.” *State v. Perkinson*, 271 N.C. App. 557 (2020).
- “The record shows that defendant was not accorded the summary hearing before being found guilty of contempt. Although the trial court did give defendant ample opportunity to explain himself after the fact, such does not serve to correct the previous error.” *State v. Randell*, 152 N.C. App. 469 (2002).

The right to a hearing matters

- When the trial court chooses to defer its contempt ruling, summary contempt proceedings are not appropriate and the court must hold a “plenary” hearing. *State v. Jacobs*, 925 S.E.2d 364 (2025).
- A plenary hearing occurs at a later time and gives the attorney more time to prepare.

Do the Rules of Evidence apply?

- The rules apply at plenary hearings.
- The rules do not apply at summary hearings.

Evidence Rule 1101(b)(4)

“The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.”

Kent v. United States, 383 U.S. 541 (1966)

Attorneys should play an active role in contempt hearings



Use the Time You're Given



THE COURT: Okay. Give me – I'll give you five minutes and you can have that conversation. I'll be back in five.

(Court at ease at 12:57 p.m.)

(Court resumed session at 12:59 p.m.)

THE COURT: You've had an opportunity to speak with the juvenile?

ATTORNEY: I did.

THE COURT: And anything you wish to report?

ATTORNEY: So the juvenile did not wish to say anything on his behalf. I would apologize for his behavior in court today. And I'll leave it at that.

THE COURT: Okay. All right. I am finding that the juvenile has been willfully contemptuous of this Court.

Kids have a liberty interest at stake in contempt hearings

It is well-settled that individuals maintain a “strong interest in liberty.” *United States v. Salerno*, 481 U.S. 739 (1987).

“Among the historic liberties” protected by Due Process is “a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security.” *Ingraham v. Wright*, 430 U.S. 651 (1977).

The highest standard of proof applies to contempt

N.C. Gen. Stat. § 5A-32(a)(3): “The facts shall be established beyond a reasonable doubt.”

The beyond a reasonable doubt standard “is a prime instrument for reducing the risk of convictions resting on factual error.” *In re Winship*, 397 U.S. 358 (1970).

Use Willfulness as a Defense

***State v. Chriscoe*, 85 N.C. App. 155 (1987):**

The defendant was late to court because she did not have transportation and was trying to find her mother

**Not
Willful**

***State v. Phair*, 193 N.C. App. 591 (2008):**

A lawyer failed to turn off a cell phone during court proceedings

**Not
Willful**

The juvenile's conduct must be “likely to interrupt” the proceedings

- The defendant's failure to wear a mask was “unlikely to interrupt or interfere with any court business.” *State v. Hahn*, 295 N.C. App. 530 (2024).

If all else fails, ask for mercy

Under N.C. Gen. Stat. § 5A-32(d): A court that has found a juvenile in contempt may “at any time terminate or reduce a sanction of detention . . . if warranted by the juvenile’s conduct and the ends of justice.”

Other strategies might arise

- You can seek recusal if the contempt charge is based on acts so involving the judge that his or her objectivity may reasonably be questioned. *In re Marshall*, 191 N.C. App. 53 (2008).
- The court cannot use the juvenile's silence as evidence of guilt. *State v. Boston*, 191 N.C. App. 637 (2008).

Protections Available at Contempt Hearings

- Notice and an opportunity to be heard
- The appointment of counsel
- Time to confer with counsel
- The reasonable doubt standard of proof
- The requirement of willfulness
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- Termination or reduction of the sanction

Case Studies

Case Study #1

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Case Study #2

- The juvenile appeared in court to enter an admission to a larceny charge.
- During the plea colloquy, the judge asked the juvenile if he had taken any drugs. The juvenile said he smoked marijuana the night before.
- The judge then said he would charge the juvenile with contempt and directed the juvenile to confer with his attorney.
- After, the defense attorney told the court that the juvenile was not impaired and that the juvenile was capable of pleading guilty.
- The judge held the juvenile in contempt for conduct that interrupted the adjudication hearing.

How to Appeal

Be sure to properly initiate the appeal

There is a right to appeal under
N.C. Gen. Stat. § 5A-32(g)

Give oral and written notice of
appeal

Ask the trial court to stay the
contempt order

Work with the clerk on the
appellate entries

Contact the Office of the
Appellate Defender

Be careful when entering notice of appeal

Act quickly

To ensure the client gets the benefit of the appeal, give oral notice of appeal after the judge finds your client in contempt and ask for a stay

Follow up

After the written contempt order is filed, give written notice of appeal

Reach out

If the court denies a stay, contact the Office of the Appellate Defender, which might be able to get a stay from the Court of Appeals



Be careful when entering notice of appeal

There is a gap in the law

N.C. Gen. Stat. § 5A-32 does not indicate that juveniles can give oral notice of appeal

There is a risk that the appeal will be dismissed if you file written notice of appeal too soon

If you file written notice of appeal before the contempt order is filed, the Court of Appeals might dismiss the appeal on the ground that the notice of appeal is premature



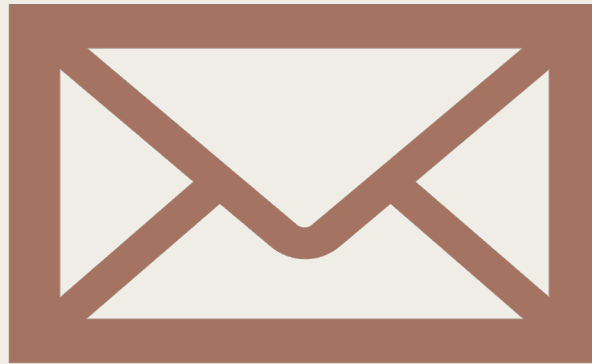
The Appellate Entries

STATE OF NORTH CAROLINA	
County	
In The General Court Of Justice District Court Division	
IN THE MATTER OF:	
APPELLATE ENTRIES IN DELINQUENCY PROCEEDING	
G.S. 7B-2604, -2605	
Name And Address Of Prosecutor	Name And Address Of Juvenile's District Court Counsel
Telephone No.	Telephone No.
Date(s) Of Hearing(s) On Which Appeared Order(s) Is Based	Juvenile's Initial Appellate Counsel ☐ The Appellate Defender, 123 W. Main Street, Suite 500 Durham, NC 27701 (919) 354-7210 (The Appellate Defender is appointed unless the juvenile retains counsel.) ☐ Name, address, telephone number of retained appellate counsel
INITIAL APPEAL ENTRIES	
1. Pursuant to G.S. 7B-2604, ☐ the juvenile, ☐ the juvenile's parent(s), custodian, or guardian ☐ the State ☐ the County has given notice of appeal to the North Carolina Court of Appeals. ☐ 2. The juvenile is released pursuant to G.S. 7B-2605. ☐ 3. Release of the juvenile pursuant to G.S. 7B-2605 is denied. (NOTE: Under G.S. 7B-2605, the juvenile is released pending appeal unless the Court orders otherwise.) Compelling reasons release is denied: _____ 4. Pursuant to G.S. 7A-450 and G.S. 7B-2600, the juvenile is conclusively presumed to be indigent and has requested a transcript of all adjudication and disposition hearings. 5. The juvenile does not read or speak the English language, but reads and/or speaks his or her native language of _____. The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings. The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts. 6. IT IS ORDERED that the juvenile is allowed to appeal as an indigent and: a. The Office of Indigent Defense Services shall pay the costs of producing a transcript and of reproducing the record and the juvenile's brief and other pleadings, unless retained counsel appears in the case at the time of the notice of appeal. IDS is relieved of responsibility of paying the cost of the transcript. b. The Appellate Defender is appointed to perfect the juvenile's appeal, unless retained appellate counsel enters the case at the time of the notice of appeal. c. The Clerk shall furnish to the juvenile's appellate counsel a copy of the complete trial division file in the delinquency and/or undisciplined case and, upon request, any documentary exhibits. d. The Clerk has duplicated the audio recording of the hearing(s), date(s) listed above, and shall deliver the duplicate recording, two copies of these Appellate Entries, and a copy of the order upon which this appeal is based to the person designated by the Clerk on the reverse of these Appellate Entries to produce a transcript of the hearing(s) under the conditions specified by the Court on the reverse. No fee shall be charged for the cost of the duplicate recording. e. The Clerk shall deliver to the Appellate Defender or to retained appellate counsel a copy of these Appellate Entries and a copy of the order(s) from which the juvenile appeals. f. The Clerk shall transmit a copy of these entries to the prosecutor, the juvenile, the juvenile's parent(s), and the court-appointed guardian or custodian.	
Date	Name Of Presiding Judge (type or print)
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ORDER OF TRANSCRIPT	
hereby designates the person named below to receive a duplicate recording of the hearing(s) in this action. The is authorized to listen to the duplicate recording and to transcribe the proceedings verbatim.	
Telephone No. Of Authorized Person (type or print)	
Telephone No.	
at the authorized person maintain strict confidentiality of the record(s) in accordance with the statutes. This person icate recording of this proceeding to the custody of the Clerk of Superior Court immediately upon the completion of this matter. The Clerk, upon receipt of the duplicate recording of this confidential proceeding, shall erase it.	
TRACKING AND RECEIPT	
the authorized person named above the duplicate recording, two copies of these Appellate Entries, and a copy of the personally delivering those items to that person. ☐ mailing those items via the U.S. Postal Service to that person.	
Signature	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
duplicate recording and the order from the Clerk of Superior Court and have acknowledged receipt by promptly k this signed copy of the Court's Appellate Entries.	
Signature Of Person Authorized To Transcribe	
recording and the order have been returned to the Clerk Of Superior Court by the authorized person.	
Signature	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
THIRTY DAY EXTENSION OF TIME TO PREPARE TRANSCRIPT	
and 27 of the N.C. Rules of Appellate Procedure, upon motion of the respondent, and for good cause shown, the time for preparation of the transcript is extended 30 days to and including _____.	
may grant only one extension of time for a maximum of thirty days to prepare the transcript. A motion for any further extension of time must be teplate Division. Rules 7(b)(1) and 27(c)(2), N.C. Rules of Appellate Procedure.	
Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
THIRTY DAY EXTENSION OF TIME TO SERVE PROPOSED RECORD ON APPEAL	
and 27 of the N.C. Rules of Appellate Procedure, upon motion of the respondent, and for good cause shown, the time for service of the proposed record on appeal is extended for 30 days to and including _____.	
may grant only one extension of time for a maximum of thirty days to serve the proposed record on appeal. A motion for any further extension of time in the Appellate Division. Rules 7(b)(1) and 27(c)(2), N.C. Rules of Appellate Procedure.	
Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
CERTIFICATION	
ellate Entries form is a true and complete copy of the original on file in this case.	
Nature And Seal	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

Questions?



Thank You

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