

Contempt

in North Carolina Courts

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Training
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www.sog.unc.edu

SOG contempt resources (selected)

- North Carolina Trial Judges' Bench Book, DCJ Volume 2, Chapter 4, Contempt (most comprehensive)
- Contempt (overview), AOJ Bulletin, M. Crowell 2015: (<http://sogpubs.unc.edu/electronicversions/pdfs/aojb1503.pdf>)
- Contempt of Court - Online training module (<https://www.sog.unc.edu/courses/online-modules/contempt-court>)
- 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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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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“Criminal [contempt] offenses, involving as they do offenses against the courts and organized society, are punitive in nature, and the government, the courts, and the people are interested in their prosecution.”


“Whereas civil [contempt] proceedings, having as their underlying purpose the preservation of private rights, are primarily remedial and coercive in their nature, and are usually prosecuted at the instance of an aggrieved suitor.”

-Gaylon v. Strutts, NC 1954



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


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



CRIMINAL

To *punish* for an act already committed

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



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)



Criminal contempt - Grounds

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

EXCLUSIVE

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 Sep. 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.



civil.sog.unc.edu

The screenshot shows two overlapping blog posts from civil.sog.unc.edu. The top post is titled "Gag order? Punishment for talking about a case? Can a court do that?" and is dated August 18, 2017. The bottom post is titled "Smartphones, YouTube, and criminal contempt" and is dated July 21, 2017. Both posts discuss legal issues related to courtroom conduct and technology.

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)
- Racial slur directed at court officer. *State v. Johnson* (2015) (unpub'd)
- Cursing at officer in probable cause hearing. *State v. Wheeler* (2005) (unpub'd)
- Arguing loudly outside courtroom window. *State v. Evans* (2008)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

⁽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."

Johnson (2015) (unpub'd)
State v. Wheeler (2005) (unpub'd)

- Arguing loudly outside courtroom window. *State v. Evans* (2008)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

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

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

Examples:

- Attempting to coerce witness not to obey subpoena to appear. *State v. Wall* (1980)
- Disobeying order to stay away from judge's offices. *State v. Simon* (2007)
- 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)

(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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(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.

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

Examples:

- Attorney twice attempting to introduce polygraph results in criminal trial. *In re Cogdell* (2007)
- Attorney 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





THE COURT'S INHERENT AUTHORITY TO DISCIPLINE LAWYERS

Michael C. Howell
UNC School of Government
October 2013

The court's inherent authority to discipline lawyers is well recognized and is not superseded by the State Bar's disciplinary powers.

The North Carolina Supreme Court has expressed concern about the loss of civility in the courts and has encouraged trial courts to take appropriate action.

"We have viewed with concern the apparent decline in civility in our trial courts. The Court shall not tolerate, and our trial courts must not tolerate, contempt in court by one lawyer tending to disparage the personality or performance of another. Such comments tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth-finding function by distracting judges and jurors from the serious business at hand. We admonish our trial courts to take seriously their duty to insure that the mandates of Rule 12 (of the General Rules of Practice for the Superior and District Courts) are strictly complied with in all cases and to impose appropriate sanctions if they are not." — *State v. Rivera*, 352 NC 285, 291 (1999)

1. **Disciplinary action may be imposed by either the court or State Bar** — Both statute and case law recognize that the court's inherent authority to discipline lawyers is not restricted by the parallel authority of the State Bar.

"Inherent powers of courts unaffected. — Nothing contained in this Article [North Carolina State Bar] shall be construed as disabling or abridging the inherent powers of the courts to deal with its attorneys." — *NC Gen. Stat. § 84c-10*

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.

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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."

- (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.

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- (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.

- release supervisor" 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



Criminal contempt - Punishment



Criminal contempt - Punishment

- Imprisonment up to 30 days;
 - Child support: Up to 120 days suspended w/ conditions of probation.
- 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, 3:27 am by Jason Mathison • 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 1 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 5A-14 (quoted often in cases)

For an SOG instructional video see <https://www.sog.unc.edu/courses/online-modules/contempt-court>



Video



"Summary opportunity to respond"

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

VACATED.

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

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.





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. (Failure is fatal.)
 - Must state facts found "beyond reasonable doubt." (Failure is fatal.)



AOC-CR-390

Criminal contempt - Procedure

Plenary proceeding

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






<p>CRIMINAL</p> <p>To <i>punish</i> for an act already committed</p> <p>G.S. 5A-11 to 5A-17</p>	<p>CIVIL</p> <p>To <i>coerce</i> compliance with court order</p> <p>G.S. 5A-21 to 5A-26</p>
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<p>CIVIL</p> <p>To <i>coerce</i> compliance with court order</p> <p>G.S. 5A-21 to 5A-26</p>
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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*, COA 2000)
- **NO FINES** (SA-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)



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)



“entered” (e.g.,
Spears v. Spears, COA 2016)

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
- (3) Noncompliance by the person 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.

Consent orders enforceable by contempt?
• Court-approved domestic? In general, yes.
• Others – Only if court makes ff/cl or expressly incorporates settlement terms into judgment



Civil contempt – The basic

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.

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

G.S. 5A-21(a)



Civil contempt – Intentional

Intentional:

- Parent withholding agreed payment of child's tuition to "leverage" better grades. *Barker v. Barker* (2013)
- Mother withholding visitation because she was concerned child's father was living with former drug addict. *Baines v. Baines* (2013)

Not intentional:

- Father did not willfully "entice" child to stop visiting mother by making child's life at father's house more comfortable. *McKinney* (2017)
- Mother's Facebook post about child's mis-scheduled soccer match was not clear violation of prohibition on "derogatory statements." *Chaney* (2016)
- Father's reduced child support payment due to oral modification agreement with mother. *Meehan* (2004)
- Father stopping payments because mother orally agreed he could do so if he waived visitation rights. *Forté* (1983)
- Mother was not required to "force" daughter to visit father pursuant to visitation agreement. *Hancock* (1996)



Intent

Williams v. Chaney, 786 S.E.2d 768 (N.C. App. 2016).

VACATED.

The Plaintiff/Mother shall not intimidate the child or make any derogatory statements about the child or any of the child's family members.

Later, the Mother posted on Facebook:

parents, divorced or not. I was in so much pain and traveled from SC to see that game and wasted all that gas and it could have been avoided with communication. I hope going further the information posted is accurate and the coaching staff is held to a high ethical standard of communicating with all parents or they should not be on the staff to use it as a way to keep a parent from participating/watching their child at a sporting event.



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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.

G.S. 5A-21(a)

Which often means "to pay"

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

Civil contempt – "Ability" to pay

Inadequate findings

- "not complying"
- "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

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 – 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 - Appeal

To Court of Appeals

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



EXERCISES



<https://www.facebook.com/paradase.vallescri/via/videos/734616606700834/>





<http://www.worldstarhiphop.com/videos/video.php?v=wshhkhgTjcs2Sq2Dvl28>

G.S. 5A-31 – Contempt by juveniles

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