

Contempt

in North Carolina Courts

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New Superior Court Judge
Training
January 17, 2019



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SCHOOL OF GOVERNMENT

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)



CRIMINAL

To *punish* for an act
already committed

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

CIVIL

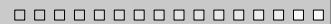
To *coerce* compliance
with court order

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



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)



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- (5) Willful publication of a report of the proceedings in a court that is improper, inaccurate, or with reckless disregard of what is proper, accurate, or true.
- (6) Willful or grossly negligent conduct in the courtroom or with reckless disregard of what is proper, accurate, or true.
- (7) Willful or grossly negligent conduct in the courtroom or with reckless disregard of what is proper, accurate, or true.
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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.
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G.S. 5A-11



<http://nccriminallaw.sog.unc.edu>

Contempt and Cellphones

Posted on May 2, 2014, 3:14 pm by Michael Crowl • 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, coming, 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, 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

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)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

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



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)
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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 substantial interference with the business of the court.

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)

"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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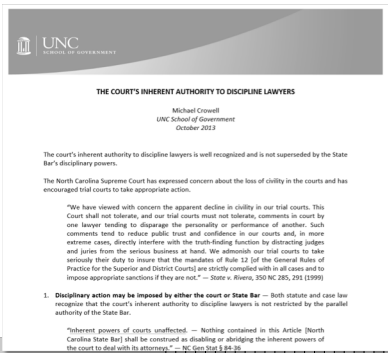
Examples:

- 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)

G.S. 5A-11



sog.unc.edu (search: Judicial Authority)



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(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."

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present substantial interference with the business of the court.

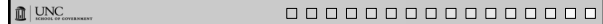
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Criminal contempt - Punishment



Criminal contempt - Punishment

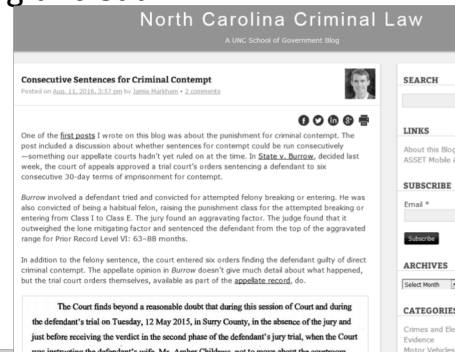
- Imprisonment up to 30 days;
- Censure; and/or
- Fine up to \$500

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)



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).

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[.]’”

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)

Criminal contempt - Procedure

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

Plenary proceeding

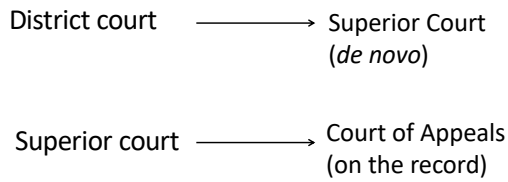
- All indirect contempt
- Direct contempt (at court's option)

AOC-CR-219



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Criminal contempt - Appeal



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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To *coerce* compliance
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G.S. 5A-21 to 5A-26

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** (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)

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)

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.

G.S. 5A-21(a)

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

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)
- Mother was not required to "force" daughter to visit father pursuant to visitation agreement. *Hancock* (1996)

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;
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G.S. 5A-21(a)

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

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

- But, intentional, bad faith divestment of assets/income/work **not** an excuse for not complying
- "x amount of education and experience"
- "able to work in x industry"
- "is employed" (or "has been employed since...")
- Intentionally incurring competing obligations. *Faught* (1984)

- *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.
- 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 – 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;
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- (3) Noncompliance by the person to whom the order is directed is willful; **and**
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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 document." "Pay child's outstanding tuition." "Pay existing credit card balance." (*Watson* 2007)

– No:

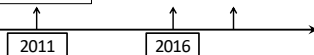
- "D shall not harass or interfere with Plaintiff's custody of the children." *Scott v. Scott*, 157 N.C. App. 382 (2003)
- "D shall not at any time...punish the minor children in any manner that is stressful, abusive, or detrimental." *Cox v. Cox*, 133 N.C. App. 221 (1999)



Adams Creek Assocs. v. Davis (NC Sept. 2018)

Jailed for contempt – refusal to remove equipment

Custodial release hearing



Civil contempt is *continuing* if

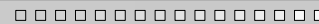
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G.S. 5A-21(a)

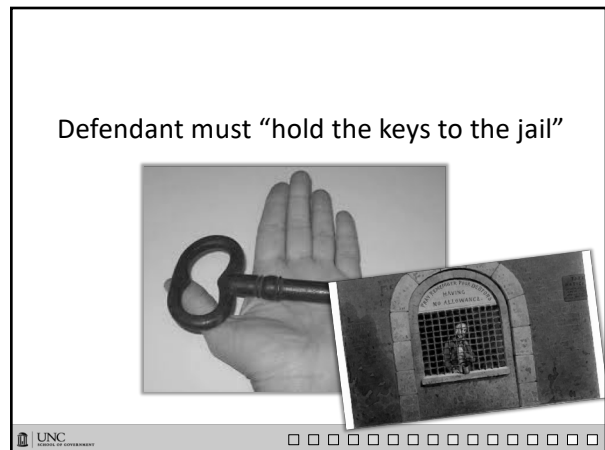
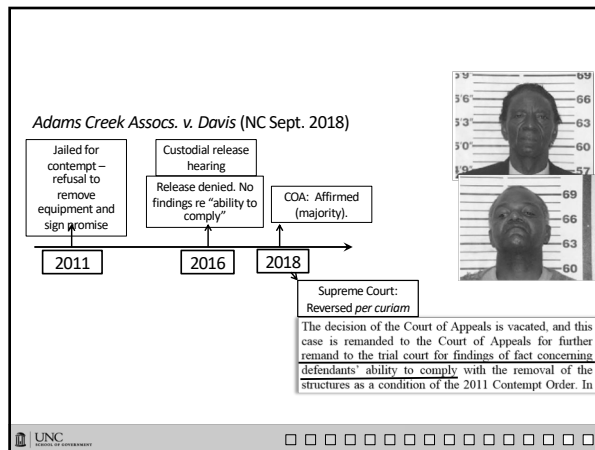
Which often means "to pay"

- Intentional/deliberate failure to comply

- Ability to comply



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Civil contempt - Procedure

Motion by aggrieved party

- Notice to appear for hearing to determine contempt
 - 5 days’ notice
 - Sworn statement/affidavit of reasons
 - *Movant* has burden (e.g., *Tigoni*, COA 2017)
 - Indigent entitled to counsel

Show cause order/notice of hearing from judge

- Initiated by affidavit or sworn statement of aggrieved party or judge
- Judge finds probable cause
 - Burden ostensibly shifts to alleged contemnor
 - *Record must still include evidence required by SA-21(a)*
- 5 days’ notice (unless good cause shown)
- Indigent entitled to counsel

“On the Civil Side” blog: civil.sog.unc.edu

Civil contempt - Appeal

To Court of Appeals

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

EXERCISES