

Contempt

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February 2024

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### SOG contempt resources

- Contempt (overview), AOJ Bulletin, M. Crowell 2015: <https://www.sog.unc.edu/sites/default/files/reports/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/](http://civil.sog.unc.edu/))
- Numerous blog posts at Criminal Law Blog ([nccriminallaw.sog.unc.edu](http://nccriminallaw.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 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 to answer any legal and proper question when the refusal is not based on a claim of privilege or on a fear and present danger of impute or with reckless disregard of what may be said in a court.
- (5) Willful publication of any statement or information that is calculated to bring into disrepute the proceedings of 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 by an officer of the court to perform his duties in an official transaction.
- (8) Willful refusal by a defendant to comply with a condition of probation.
- (9) Willful refusal by a defendant 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 supervisor's sentence.
- (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(d)



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### 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.**
- (4) Willful publication of any statement or information that is calculated to bring into disrepute the proceedings of a court.
- (5) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (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 by an officer of the court to perform his duties in an official transaction.
- (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.
- (10) Willful refusal by a defendant to comply with a condition of probation.
- (11) 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 supervisor's sentence.
- (12) 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 - 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. -SA-17

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



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### Criminal contempt - Procedure

**Summary proceeding**

**Plenary proceeding**

- Direct contempt only

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

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### Criminal contempt - Procedure

**Summary proceeding**

- Direct contempt only

"Direct criminal contempt" is act of contempt committed:

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

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

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### Criminal contempt - Procedure

**Plenary proceeding**

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

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### Criminal contempt - Appeal

District court → Superior Court  
(*de novo*)

Superior court → Court of Appeals  
(on the record)

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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*, COA 2000)
- **NO FINES** (GA-2140)
- **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;
- (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.

**"entered"** (e.g., *Spears v. Spears*, COA 2016)

G.S. 5A-21(a)



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### Civil contempt – The basis

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

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- (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)



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### Civil contempt – The basis

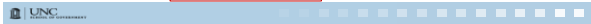
**Failure to comply with an order of a court**

- (1) The order remains in force;
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- (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

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.

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.*

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### Civil contempt – Court’s order

#### Court must include:

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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.***

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### Civil contempt – purge conditions

Defendant must "hold the keys to the jail"



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### 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 \$g." "Deliver car to Plaintiff's home." "Execute g 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)



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### 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 Guryard*, 254 NC App 229(2021)(right to counsel in non-child support civil contempt is determined on a case-by-case basis)

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32

**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
- Both require sworn statement or affidavit by someone with interest in enforcing the order, "including a judge"
- Both require at least 5 days notice before hearing, unless good cause is shown
- 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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33

## 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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## Civil contempt - Appeal

To Court of Appeals

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

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**§ 7B-303. Interference with assessment.**

(a) If any person obstructs or interferes with an assessment required by G.S. 7B-302, the director may file a petition naming that person as respondent and requesting an order directing the respondent to cease the obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the assessment; shall include a concise statement of the basis for initiating the assessment, shall specifically describe the conduct alleged to constitute obstruction of or interference with the assessment; and shall be verified.

b) For purposes of this section, obstruction of or interference with an assessment means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to assess the juvenile's condition.

(c) ...If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an assessment required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference.

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