

#### SOG contempt resources

- Contempt (overview), AOJ Bulletin, M. Crowell 2015: https://www.sog.unc.edu/sites/default/files/reports/aojb 1503.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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# Contempt authority is statutory NC Gen. Stat. Chapter 5A Criminal Contempt Civil Contempt Contempt by Juveniles

<u>Crim</u>	<u>inal</u>	con	ten	npt

- To vindicate the dignity of court by punishing disrespect to court or its orders
- To deter future violations
- A judgment, a "conviction" (not a conviction for structured sentencing)

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



#### Civil contempt

- To preserve & enforce rights of party by coercing compliance with court's
- To coerce compliance with court's order
- A status

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)

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### Criminal contempt - Grounds

- (1) Will behavior committed during the sitting of a court and directly sending to interrupt its proceedings.

  (2) Will behavior committed during the sitting of a court and directly sending to interrupt its proceedings.

  (3) Will behavior committed during the sitting of a court and directly sending to interrupt its proceedings to imperiture the sending of the send

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Criminal contempt - Grounds	
<ol> <li>Wilfful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.</li> </ol>	
(2) Walful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect doe its authority. (3) Walful disobedience of, resistance to, or interference with a court's lawful process, order, directly or instruction or its	
execution.  (4) Willful refusal to be sworn or affirmed as a witness, or	
proper question when the refusal is not legally—  (S) Wilful publication of a danger of immine a with recidence or with	
proport question when the refusal is not learn.  Grapper of remines, and the second of	
(8) William for a source of a judge acting pursuant to Article 61 of Chapter 15.0 Carting of Imm	
(9) Wilful commupwor'in an improper attempt to influence his deliberations.  (9a) Wilful refusal his a defendant to comply with a condition of probation.	
(96) 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 1-of the General Statester. — Willful release a locacy post-release supervision or comply with the terms of post- release supervision or supervision or comply with the terms of post- release supervision or comply with the terms of post- second or comply with the terms of post- release supervision or comply with the terms of post- release supervision or comply with the terms of post- second or comply with the terms of	
or chapter and on the destinal statistics. — Within internal to accept pass-remains appreciation for accepting which may be pass- release supervisions "includes, but in one limited is, includingly violating the terms of post-criticase supervision in order to be returned to prison to serve out the remainder of the supervises's sentence.  (10) Any other act or emission societified elements in the General Statutes of North Carolina as ensured for criminal conternot.	
G.S. 5A-11(a)	
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Criminal contempt - Grounds	
Criminal contempt - Grounds	
<ol> <li>Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.</li> <li>Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair</li> </ol>	
(3) Willful disobedience of, resistance to, or interference	
with a court's lawful process, order, directive, or instruction or its execution.	
disregard of whether it was false. No person, however, may be purished 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. 149 Warman or grossly negligent sense also comply more screening in pressure on one court reducing an audicinins an extensive with the business of the court.	
(8) William feed and to extend or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15-5, Cranting of Immunity to Witnesses.  (9) William Communication with a jury in an improper attempt to influence his deliberations.	
(9a) Willful refural by a defendant to comply with a condition of probation.  (9b) Willful refural to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner	
whose offlener requiring post-release supervision is a reportable conviction subject to the registration requirement of Articla 27A, of Chapter 16 of the General Schute. — Willfull release to accept post-release appreciation or to comply with the terms of post- release supervision" includes, but is not limited to, involvingly violating the terms of post-release supervision in order to be returned to prior to serve out the remainded of the upstriven's sentence.	
returned to prison to serve out the remainder of the superviser's sentence.  (10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.	
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Criminal contempt - Punishment	
• Imprisonment up  Suspended sentences allowed with conditions.	
to 30 days; (2007)	
• Censure; and/or	
<ul> <li>Fine up to \$500</li> <li>Judge can withdraw or</li> </ul>	
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 - P	rocedure	
Summary proceeding	Plenary proceeding	
<ul> <li>Direct contempt only</li> </ul>	<ul> <li>All <u>in</u>direct contempt</li> <li>Direct contempt         <ul> <li>(at court's option)</li> </ul> </li> </ul>	
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Criminal contempt - P	rocedure	
	"Direct criminal contempt" is act of	
Summary proceeding	contempt committed:  • Within sight or hearing of presiding judicial official; and	
<ul> <li>Direct contempt</li> </ul>	In, or in immediate proximity to, room where proceedings are being held; and	
<u>only</u>	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 - P	rocedure	
	Plenary proceeding	
	<ul> <li>All <u>in</u>direct contempt</li> <li>Direct contempt (at court's option)</li> </ul>	
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## Criminal contempt - Procedure

# Show cause order Must state facts upon which order is based. Form: ADC-CR-219 Hearing (non-juy trial) Burden of proof on State Beyond a reasonable doubt ol indigent entitled to counsel of Self-incrimination protection applies. Order Guilty or not guilty Findings of fact required. Must find will full makes (or

prior warning).

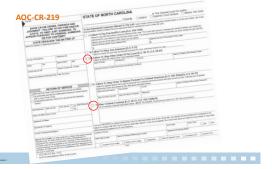
• Must state "beyond reasonable doubt." Failure is fatal.

#### Plenary proceeding

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

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#### § 5A-16. Custody of person charged with criminal contempt.

- (a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.
- (b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1977, c. 711, s. 3.)

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		G.S. 5A-21 to 5A-26	
		with court order	
		To coerce compliance with court order	
		CIVIL	
		CIVIL	
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	G.S. 5A-11 to 5A-17	G.S. 5A-21 to 5A-26	
	•		
	To <i>punish</i> for an act already committed	To coerce compliance with court order	
	CRIMINAL	CIVIL	
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Superio	reduct	(on the record)	
Superio	r court —	Court of Appeals	
District	court	Superior Court (de novo)	
Crimin	al contempt - App	neal	

Civil contempt	
Only purpose is to coerce complianc after court concludes party has the p 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 FINES (5A-21) 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.

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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.,	
(2) The purpose of the order is served b, Spears v. Spears COA 2016)	
<ul><li>(3) Noncompliance by the person to whom the order is directed is willful; and</li></ul>	
(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)	
<u> </u>	
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Civil contempt – The basis • Intentional/	
deliberate	
Failure to comply with an order of a co	
(1)The order remains in force; Had ability	
(2) The purpose of the order is served b to comply	
(3) Noncompliance by the person to whom the order is	
directed is willful}; <b>and</b> (4)The person to whom the order is directed <u>is</u>	
able to comply or is able to take reasonable	
measures to comply.	
G.S. SA-21(a)	
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Civil contempt – The basis Intentional/	
deliberate failure to	
Failure to comply with an order of a comply	
(1)The order remains in force; • Had ability	
(2) The purpose of the order is served to comply (3) Noncompliance by the person to whom the order is directed is willful and	
(4) The person to whom the order is directed <u>is</u>	
<u>able to comply</u> or <u>is</u> able to take reasonable measures to comply.	
G.S. 5A-21(a)	
Which often means "to pay"	
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Civil contempt — "Ability  Inadequate findings	y" to pay    More specificity needed	
<ul> <li>Able to work ("able-bodied")</li> <li>"not incompetent"</li> <li>"x amount of education and</li> </ul>	Liquid assets     Or, [for purge] assets that can     be liquidated ("reasonable     measures")	·
experience"  "able to work in <u>x</u> industry"  "is employed" (or "has been employed	Available/disposable income     Other available funds/resources	
Since")  - Clark, 171 N.C. App. 120 (2005); Hodges, 64 N.C. App. 550	Other reasonable steps	
(1983)		
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Civil contempt – Court's	cordor	
Court must include:	What are the <u>facts</u>	
<ul> <li>Findings as to elements i</li> </ul>	constituting the	
Non-compliance with order that (1) Remains in force; (2) The purpose of the order is se	acts/omissions?  • How was it	
(3)Noncompliance by the persor is directed is willful; and	n to whom the order  Intent Ability	
(4) The person to whom the orde comply or is able to take reaso	onable measures to comply.	
<ul> <li>If contempt found, ho purge.</li> </ul>	w the contemnor may	
Q C		
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Civil contempt – Court's	sorder	
Court must include:  • Findings as to elements i	What are the <u>facts</u> constituting the non-compliance?	
<ul> <li>Findings as to elements i Non-compliance with order that         <ul> <li>(1) Remains in force;</li> </ul> </li> </ul>	• What acts/omissions?	
(2)The purpose of the order is se (3)Noncompliance by the persor	erved by compliance; willful ?	
is directed is willful; <b>and</b> (4)The person to whom the orde comply <i>or</i> is able to take reaso	er is directed is able to	
• If contempt found, ho	w 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	
<ul> <li>Present ability to do (not future, open-ended, or "indefinite" (Wellows, 229 N.C. App. 164 (2013))</li> </ul>	
<ul> <li>Yes: D must "pay \$1000"; or D must "turn over the car to plaintiff"</li> <li>No:</li> </ul>	
<ul> <li>"D must pay child support obligations as they come due"</li> <li>"D must pay \$500 per month"</li> </ul>	
<ul> <li>"D may not remove the child from North Carolina in the future without court permission." Ning Goo (2013)</li> </ul>	
<ul> <li>Clear conditions.</li> <li>Yes: "Pay St." "Deliver car to Plaintiff's home." "Execute a document." "Pay child's outstanding futution." "Pay existing credit card balance." (Wotson 2007)</li> </ul>	
- "D shall not harass or interfere with Plaintiff's custody of the children." Scott x Scott, 157 N.C. App. 38 (2003)  "D shall not at any time punish the minor children in any manner that is stressful, abusive, or detrimental." Carv. Cox, 131 N.C. App. 212 (1999)	
Sci essiti, audsive, of detiniental. 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.	
may purge himself of the contempt.	

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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- Contemnor must 'hold the keys to the jail'
- Because contemnor can walk out of the jail at any time, there is no right to course lor other safequards required in criminal cases where liberty is in jeopardy
   Turner & Regen, 564 US 413 (2011)/or right to consel for child support contempt)
   Medical with the conseller of the disupport contempt of the conseller of the disupport

contempt)

Wilson v. Guinyard, 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 initiated either by:
  Motion filed by a party.
  G SA-23[a1]
  Show cause order from court.
  G SA-23
  No statutory authority to issue order for arrest for falling 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.

Civil Contempt **Procedure** 

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- 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-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing.ability-to-gardy-to-tablishing-to-tabl

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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 etition naming that person as respondent and requesting an order directing the respondent to cease the obstruction or netreference. The netition shall contain the name and date of birth and address of the invenile who is the subiect of the	
interterence. The petitions mail comman the hame and uate of other and autoress or the juveline who is the subject on the sessement; shall include a concise statement of the basis for initiating the assessment, shall specifically describe the onduct 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 observations 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	
nformation and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an valuation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to arry 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 espondent, without lawful excuse, has obstructed or interfered with an assessment required by G.S. 7B-302, the court way order the respondent to cease such obstruction or interference.	
and officer the respondent to cease such obstruction of interference.	