CRIMINAL CONTEMPT FOR MAGISTRATES

Jamie Markham
Assistant Professor, UNC School of Government
919.843.3914; markham@sog.unc.edu

A magistrate may only punish someone *summarily* for *direct criminal contempt*.

1. What is criminal contempt?

Willful behavior committed by a person during the sitting of a court—

a. Directly tending to interrupt the court's proceedings; *or*
b. Directly tending to impair the respect due its authority.

2. What is *direct* criminal contempt?

The contemptuous behavior must meet *all* of the following criteria to be direct:

a. Committed within your sight or hearing; *and*
b. Committed in, or in immediate proximity to, the room where you conduct your proceedings; *and*
c. Likely to interrupt or interfere with matters then before you.

If someone commits an act that meets all these criteria, and you want to punish the person for contempt, you have two options. You can (1) proceed *summarily* if you follow the procedure below, or (2) direct the person (using form AOC-CR-219) to appear before a district court judge for a *plenary* proceeding. You cannot hold a plenary proceeding for contempt.

3. What are some alternatives to punishment for contempt?

a. Disregard the behavior or give a verbal reprimand.
b. If the person is not before you as a criminal defendant, ask them to leave.
c. If the person is a criminal defendant making an initial appearance and is "so unruly as to disrupt and impede the proceedings," under G.S. 15A-511(a)(3), you can have the person "confined or otherwise secured." If you do that, be sure to provide for another initial appearance after a reasonable time.

4. When may I conduct summary proceedings?

When *all* of the following criteria are satisfied, you may conduct a summary proceeding:

a. It is *necessary* to act now to restore order *or* maintain the court's dignity & authority; *and*
b. You have given a clear warning that his or her behavior is improper (thereby avoiding any later dispute about whether the person's behavior was "willfully contemptuous,"); *and*
c. You are responding "substantially contemporaneously" with the person's behavior.

Even if all of these conditions are satisfied, you are not *required* to conduct a summary proceeding. You can instead defer adjudication and order the person to appear before a district court judge at a reasonable time to show cause why he should not be held in contempt. You still must tell the person immediately following the conduct that you intend to institute contempt proceedings.

5. How do I conduct a summary proceeding?

a. Use form AOC-CR-390.
b. The person is not entitled to counsel (275 N.C. 503 (1969)).
c. Give the person summary notice of the charges ("I'm charging you with contempt.")
d. Inform the person of the maximum punishments that could be imposed (see below).
e. Give the person an opportunity to respond.
f. Find facts, beyond a reasonable doubt, regarding what the person did. *Be specific*.
g. Set a punishment—this may include a fine, imprisonment, or both.
    i. Fines
        1. May not exceed $500.
        2. You should probably "consider the burden that payment will impose in view of the financial resources of the defendant." G.S. 15A-1362(a).
            Next to the check-box regarding fines, a good practice would be to write that you considered the defendant's ability to pay before imposing the fine.
        3. If the person fails to pay the fine, the law is not clear on what happens next. A *district court judge* (not a magistrate) would probably conduct a hearing at which the person would appear and show cause why he should not be imprisoned for failing to pay. The judge would consider whether the person was able to pay the fine, and whether he made a "good faith effort to obtain the necessary funds for payment." G.S. 15A-1364(b).
        4. Given the ambiguity in the law and the difficulty of investigating the person's ability to pay, think twice before ordering a fine for contempt.
        5. You may, at any time, remit or reduce a fine you ordered.
    ii. Imprisonment
        1. Up to 30 days.
            Be mindful of the proportionality of your sentence. Consider, for example, that active imprisonment is not even an option under Structured Sentencing for judges who sentence most Class I felonies. Balance the need to punish and maintain order with the costs of incarceration.
        2. You may, at any time, terminate or reduce any imprisonment you ordered.
h. Inform the person that he or she may appeal your decision to the superior court.
i. Set release conditions if the person appeals to the superior court.

6. Representative case summaries

a. Contempt orders upheld by the appellate courts

State v. Hooker, 183 N.C. 763 (1922): The town mayor, functioning as a justice of the peace, stepped out of the office for a moment between cases "to get his spittoon," whereupon he was "approached, abused, and assaulted" by Mr. Hooker, who said "What in the hell did you issue a warrant against my son, S.D. Hooker, for?" He then denounced the mayor, calling him a "liar, a common street loafer, a leech upon the community, and a son of a bitch," and pushed him on the shoulder and opened his pocket knife. The

mayor coolly responded “I don’t care to have any argument. The matter can be settled in court.” Mr. Hooker followed the mayor back into his office, continuing to slander him. The mayor found Mr. Hooker in contempt of court and imposed imprisonment for 30 days and a $200 fine. The Supreme Court upheld the imprisonment but overturned the fine, which exceeded the $50 statutory limit in place at the time.

State v. Wheeler, 174 N.C. App. 367 (2005) (unpublished): The defendant repeatedly disrupted an initial appearance by interrupting a police officer who was testifying to the magistrate. The magistrate warned the defendant that he would be found in contempt if he continued to disrupt the proceeding, and that he could get up to 30 days for contempt. The defendant responded to the warning by saying “Go ahead and give me thirty days, give me sixty days, I don’t give a damn, give me ninety days.” The magistrate obliged, finding the defendant in contempt and ordering 30 days imprisonment and a $500 fine. While being escorted to the jail, the defendant inquired as to whether the magistrate wanted to “kiss his ass.” The Court of Appeals upheld the order, finding that the magistrate’s repeated warnings provided the defendant with sufficient notice and opportunity to respond to the charge.

b. Contempt orders reversed by the appellate courts

1. Failure to give summary opportunity to respond

State v. Randall, 152 N.C. App. 469 (2002): A man in a courtroom didn’t obey the bailiff’s call to rise as the judge left the room for a recess. The judge said to the man, “Come on up, sir.” The defendant replied “For what?” The judge said “You’re in custody. Thirty days.” “For what?” “Contempt of court.” The Court of Appeals reversed the contempt ruling, finding that the judge failed to give the defendant a “summary opportunity to respond” as required by statute. (The Court of Appeals did note, however, that the defendant’s failure to stand when asked was, in fact, contemptuous.)

2. Insufficient evidence of contempt

State v. McGee, 66 N.C. App. 369 (1984): A magistrate sentenced a defendant to 30 days imprisonment for saying “Shut up fellow, I don’t have to hear this,” to the magistrate and for making harassing phone calls to the magistrate. The Court of Appeals reversed the order saying there was insufficient evidence to support the magistrate’s finding.

3. Violation deemed not willful

State v. Phair, 668 S.E.2d 110 (2008): A lawyer’s cell phone rang during a criminal trial. The lawyer immediately silenced the phone and the trial continued, with no discussion of the incident at that time. There was a sign outside the courtroom that gave a clear warning that cell phones must be turned off. At the end of the trial, the judge found the lawyer in contempt and ordered that she forfeit her cell phone in order for it to be destroyed or pay a $100 fine within 10 days. The Court of Appeals reversed the order, finding that the lawyer’s act was not done willfully—that is, with a bad faith disregard for the law—and was thus not contemptuous.

c. The worst case scenario

State v. Greer, 308 N.C. 515 (1983): Larry Hafner, arrested for throwing a bottle at another motorist's windshield, came before magistrate Robert Greer. Mr. Hafner, by all accounts "drunk as a cooter" at the time, repeatedly interrupted the initial appearance with unruly behavior. Mr. Greer ordered the attending officers to put Mr. Hafner in jail for contempt, but never issued any criminal process against Mr. Hafner. Instead, he told the victims of the bottle incident (whose windshield was damaged to the tune of $125) that he would "handle it his own way." Mr. Hafner's stepfather showed up at the jail and paid $200 as a "bond for contempt." Mr. Greer then called the victims and told them he had $190 for them to pick up. (The victims asked Mr. Greer to send them a cashier's check, but Mr. Greer refused, saying he didn't want to leave a paper trail "since he had handled the matter in an 'underhanded' manner.") Mr. Greer gave the victims $125, telling them the other $65 was for "court costs." Magistrate Greer was convicted of corrupt practices under G.S. 14-230 and removed from his office as magistrate for Caldwell County. (Epilogue: The Supreme Court did note in upholding the magistrate's conviction that Mr. Hafner's behavior at the initial appearance would have justified a contempt charge.)