

# Contempt

Cheryl Howell  
School of Government  
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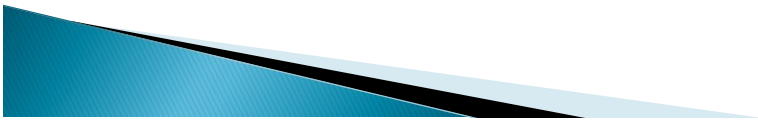
## SOG Resources

- ▶ District Court Bench Book, Child Support Chapter (enforcement section)
  - <http://defendermanuals.sog.unc.edu/content/other-manuals>
  - [https://www.sog.unc.edu/sites/default/files/Bench\\_Book\\_03\\_Child\\_Support\\_2024.pdf](https://www.sog.unc.edu/sites/default/files/Bench_Book_03_Child_Support_2024.pdf)
- ▶ District Court Bench Book Volume 2, Contempt Chapter
  - [https://www.sog.unc.edu/sites/default/files/Bench\\_Book\\_12\\_Contempt\\_of\\_Court\\_2024.pdf](https://www.sog.unc.edu/sites/default/files/Bench_Book_12_Contempt_of_Court_2024.pdf)

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# SOG Resources

- ▶ 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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# Federal/State Regulations

- ▶ **Read** about federal and state direction to child support enforcement agencies regarding the use of contempt to enforce child support
  - <https://civil.sog.unc.edu/new-regulations-regarding-contempt-in-iv-d-child-support-cases/>


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## NC DSS Child Support Enforcement Manual


- **GUIDELINES FOR USE OF CIVIL CONTEMPT IN IV-D CASES**

“The federal Office of Child Support Enforcement (OCSE) has stated: “Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice.” Prior to considering the use of contempt proceedings in a delinquent case, CSS caseworkers should consider the use of administrative enforcement remedies. If a repayment plan can be negotiated successfully, this approach can be considered as a cost savings to the CSS agency.”

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## NC DSS Child Support Enforcement Manual

- “If caseworkers determine other enforcement remedies to be inadequate, then prior to initiating a contempt proceeding in court, they must screen the case for information regarding the NCP’s [NCP is the noncustodial parent] ability to pay (or otherwise comply with the order, if appropriate)....”
  - “Caseworkers must share the results of this review with the IV-D attorney, so that the IV-D attorney can present this information to the court, either if the court requests it or as is otherwise appropriate.”
  - “Alternatively, if the results of the review indicate that the amount of the current court-ordered obligation may no longer be consistent with the NCP’s ability to pay, caseworkers should consider whether modification of the order might be appropriate.”
  - “Prior to a civil contempt hearing, the NCP must also be given notice that his/her ability to pay will be a critical question at the hearing.”
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## Criminal vs. Civil Contempt

- Different purposes
  - Different legal basis, grounds, elements
  - Different legal procedure
  - Different burden of proof
  - Different legal rights
  - Different sanctions
  - Different appellate procedure
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### Criminal contempt

- 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)

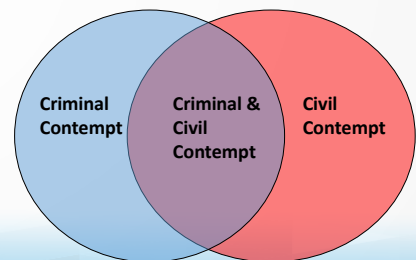
### Civil contempt

- To preserve & enforce rights of party by **coercing** compliance with court’s orders
- To coerce immediate compliance with court’s order
- A status

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## Criminal vs. Civil Contempt

- Distinction is “hazy at best”
  - Failure to comply with court order may be criminal, civil, or both
    - Cannot be held in both civil and criminal contempt for same act



## Kolczak v. Johnson, 260 NC App 208 (2018)

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- Trial court found civil contempt for violations of custody order:
  - failing to inform father of certain events as required by the custody order,
  - failing to give father the right of first refusal when she needed childcare for the child as specified in the custody order,
  - allowing her husband to be present when the children were at her home when order provided that children were to have no contact with the husband, and
  - scheduling the children for camps during times that interfered with father's custodial time with the children.
- Court of Appeals stated:
  - It is not "apparent how an appropriate civil purge condition could coerce the defendant to comply with the court order as opposed to punishing her for a past violation."

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### Criminal vs. Civil Contempt

#### Civil contempt

- Avoid or terminate status by compliance

#### Criminal contempt

- Punishment is imposed
- Can't avoid or terminate the "conviction" through compliance
  - Even if sentence suspended, judgment remains

#### ▪ **"Bright line" rule**

##### ▪ **Sanction, not label, is determinative**

▪ *Reynolds v. Reynolds*, 356 NC 287 (2002),

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- Criminal or Civil ???:
- “Defendant is guilty of ... contempt and ordered an active sentence of thirty days in [jail] suspended on the following conditions:
  - Defendant's posting of a cash bond or security of at least \$75,000.00 to secure and assure the timely payment of future cash child support;
  - Defendant immediately paying Plaintiff's attorney the sum of \$212.52, “representing interest on the four delinquent child support payments”;
  - Defendant timely paying each cash child support amount due; and Defendant immediately paying \$10,000.00 in attorney's fees.”

## 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

# Consent Orders

## General rule:

- If court approves and adopts agreement of parties, contempt is not available
  - See *Crane v. Green*, 114 NC App 105 (1995)
- If court makes findings of fact and conclusions of law, contempt is available
  - See *Nohejl v. First Homes of Craven County, Inc.*, 120 N.C. App. 188 (1995)

## Domestic Relations Cases

- All consent orders are enforceable by contempt
- *Henderson v. Henderson*, 307 NC 401 (1983)
- *Walters v. Walters*, 307 NC 381 (1983)

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## GS 5A-21(a)

- Failure to comply with court order is continuing civil contempt as long as:
  - The order remains in force
  - The purpose of the order may still be served by the person's compliance with it
  - The person's failure to comply is **willful**, and
  - The person has the **present ability to comply** with the order or to take reasonable measures that would enable them to comply with the order

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## 'Remedy' for civil contempt

### GS 5A-21(b)

- “[I]f a person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing.”

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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 generally 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. 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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## ***McBride v. McBride*, 334 NC 124 (1993)**

- ▶ Overruled *Jolly* wherein court held no right to counsel because civil contemnor “holds the keys to the jail.”
- ▶ *McBride*: contemnor does not “hold keys to the jail” if contemnor cannot pay the purge.



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## ***McBride v. McBride*, 334 NC 124 (1993)**

- ▶ Despite requirements of the law, “experience has shown” “trial courts do not always make [the required] determination.”
- ▶ Attorneys will prevent “unjustified deprivation of a defendant’s physical liberty” and “increase the accuracy of the proceeding.”



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## Civil Contempt Procedure

- Civil initiated either by:
  - Motion filed by a party.
    - GS 5A-23(a1)
  - Show cause order from court.
    - GS 5A-23
    - GS 50-13.9 (child support)
      - Clerk or judge can issue show cause
      - Must be served by Rule 4 service.
- **\*\*No statutory authority to issue order for arrest for failing to show up as ordered in show cause order for civil contempt**
- 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.
- **Why?**

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## 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

- Probable cause requires trustworthy information sufficient to warrant a prudent man in believing obligor is in civil contempt.
- *Young v. Mastrom, Inc.*, 149 NC App 483 (2002)

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## GS 5A-23

- (c). The person ordered to show cause may move to dismiss the order
- (e). At the conclusion of the hearing, the judicial official must enter a finding for or against the contemnor on each of the elements set out in GS 5A-21(a)

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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\*, 257 NC App 288 \(2018\)](#)
- 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*, 256 NC App 154 (2017)

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Is this  
enough to  
support  
contempt?

Defendant was  
ordered to pay child  
support

Defendant has not  
paid

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What about  
this?

- Defendant has not paid and he:
  - Is healthy and able-bodied
  - Is presently employed
  - Owns a car
  - No ill health or incapacity since entry of order
  - Has ability to earn good wages as a salesman
  - Is experienced in the restaurant business
  - Never requested modification of order

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*Mauney v.  
Mauney,*  
268 NC 254  
(1966)

No – findings insufficient to establish defendant's ability to pay at any time during the period in which he was in arrears.

Court should "take an inventory of the property of the defendant; find what are his assets and liabilities and his ability to pay and work – an inventory of his financial position."

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What about...

- Alleged contemnor has not paid and:
  - Is an able-bodied 32-year old
  - Attended high school up to 10<sup>th</sup> grade
  - Has work experience in the furniture industry but prefers to work outside jobs
  - Worked full time for 8 months last year as a brick mason

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*Clark v. Gragg*,  
171 NC App 120  
(2005)

- Findings insufficient to show defendant's noncompliance was willful.
  - *See also County of Durham v. Burnette*, 262 NC App 17 (2018)(need evidence of income, assets, liabilities and reasonable subsistence needs)
- To support conclusion of willful noncompliance, must establish ability to pay "during the time he was in default".
- In addition, court must find present ability to comply with purge.
  - Order must show contemnor "holds the keys to the jail".

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tempt-nc-court-of-appeals-vacates-a-springing-order-for-arrest/

Alert Carolina Adverse Conditions: Critical - University extending Condition 2 to 11:59 p.m. on Monday, Feb. 2. More info: [alertcarolina.unc.edu](https://alertcarolina.unc.edu)

## On the Civil Side

A UNC School of Government Blog  
<https://civil.sog.unc.edu>

### Contempt: NC Court of Appeals vacates a "springing" order for arrest

This entry was contributed by Cheryl Howell on July 10, 2025 at 9:00 am and is filed under Contempt.

In this earlier post, my current colleague Danny Spiegel (who was an NC Assistant Appellate Defender at the time the post was published), analyzed the law of civil contempt and concluded that "springing orders for arrest upon future nonpayment of purge payments in child support civil contempt proceeding without contemporaneous inquiry into ability to pay" are unlawful. <https://civil.sog.unc.edu/civil-contempt-and-springing-orders-for-arrest/>. In an opinion issued June 18, 2025, the NC Court of Appeals agreed with that assessment. *Collins v. Holley*, NC App. (June 18, 2025).

#### What is a 'springing' order for arrest?

The purpose of civil contempt is not to punish but, rather, to coerce a defendant to comply with an order of the court. *Shippen v. Shippen*, 204 N.C. App. 188 (2010) (citing *Scott v. Scott*, 157 N.C. App. 382 (2003)). Because immediate coercion is the purpose of civil contempt, the statutory remedy for civil contempt is incarceration until the civil contempt is purged. *GS 5A-21(b)*. An order for civil contempt must specify how a person can purge themselves from contempt, *GS 5A-22(a)*, and a court order cannot provide that a person will be in civil contempt indefinitely. *Spears v. Spears*, 245 NC App. 260 (2016); *Collins v. Holley*, NC App. (June 18, 2025).

As Danny's earlier blog post points out, it is not uncommon in some courts throughout North Carolina for orders issued in child support enforcement proceedings to determine that a respondent is in civil contempt but stay incarceration and order the respondent to pay ongoing monthly payments until all arrears are satisfied. These orders often also provide that, if the respondent fails to make a monthly payment, the respondent is to be immediately arrested and incarcerated. The order for arrest and incarceration 'springs' into effect upon the respondent's future failure to comply with the monthly payment schedule.

#### What's wrong with that?

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# Remedy for civil contempt

GS 5A-21

Person found in civil contempt "may be imprisoned as long as the civil contempt continues."

## Indefinite incarceration:

- Purge that does not require payment of money
- Purge that requires payment of money for child support
- GS 5A-21(b)

## Required review after 90 days:

- Purge that requires payment of money for something other than child support
- GS 5A-21(b2)
- See *McKenzie v. McKenzie*, 275 NC App 126 (2020)

Imprisonment is the only remedy

- Short 'stays' of incarceration are permissible but not suspended sentences
- See *Blanchard v. Blanchard*, 865 SE2d 693 (N.C. Ct. App. Sept. 21, 2021)(10-day stay upheld)
- See *Gordon v. Gordon*, 233 NC App 477 (2014)(60-day stay okay where evidence showed ability to pay purge in 60 days)
- *Watson v. Watson*, 187 NC App 55 (2007)(90-day stay okay where evidence showed party had property that could be sold)

Contempt order must provide "purge"

- Must specify how and when contempt will be lifted
- *Kolczak v. Johnson*, 260 NC App 208 (2018)(civil contempt vacated for lack of a purge)
- Indefinite civil contempt is not allowed
- *Wellons v. White*, 229 NC App 164 (2013)
- *Spears v. Spears*, 245 NC App 260 (2016)

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# Remedy for civil contempt

Fines are not allowed

- GS 5A-21(d)

Costs and Damages are not allowed

- *Watson v. Watson*, 187 N.C. App. 55 (2007)(no expert witness fees)
- *Attassi v. Attassi*, 122 N.C. App. 356 (1996)(no compensatory damages)

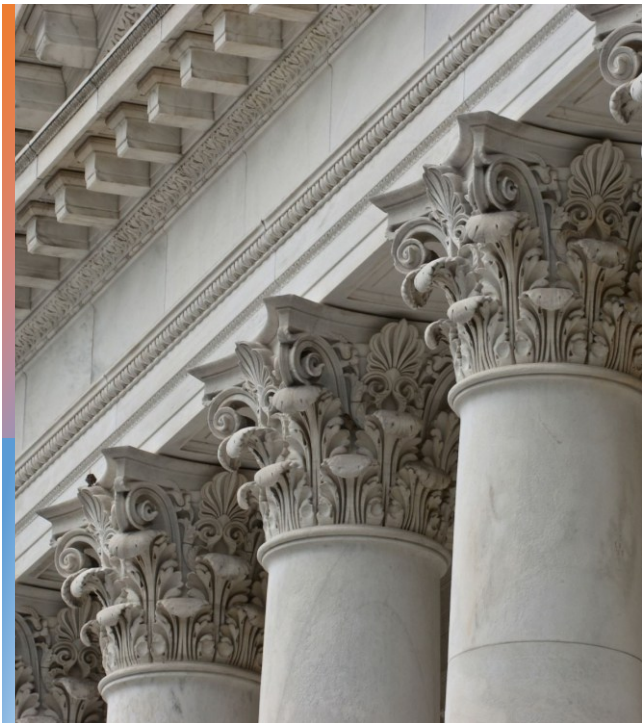
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## Attorney Fees

- Court can order contemnor to pay a “reasonable attorney fee” to moving party in child support case for contempt proceeding pursuant to GS 50-13.6
- But only if court finds:
  - *Moving party has insufficient means to defray cost of litigation*
  - *Moving party acted in good faith*
  - The lawyer’s skill
  - The lawyer’s hourly rate, and
  - The nature and scope of services rendered

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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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# 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 of the court with intent to bring the court into disrepute or with reckless disregard of whether such publication will bring the court into disrepute.
- (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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G.S. 5A-11

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# Criminal contempt - Punishment

- Imprisonment up to **30 days**; up to **120 days for child support**, if suspended on conditions related to payment of support
- 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)

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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 - Procedure

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

## Plenary proceeding

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

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**AOC-CR-219**

**STATE OF NORTH CAROLINA**

In The General Court Of Justice  
☐ County ☐ District ☐ Superior Court Division ☐ Before The Clerk

To the Defendant/Contemnor Named To The Left: Upon motion of the moving party named herein or on its own motion, the Court finds probable cause to believe that you should be held in contempt of court or fined for your:

☐ I. Failure To Pay Fine And/Or Costs [G.S. 15A-1364]  
 Failure to pay the fine and/or costs as ordered in this case. The Court will conduct a hearing and decide whether you should be imprisoned for your failure to pay the fine and/or costs. The amount of the fine and/or costs that you were ordered to pay and the balance due as of the date of this Order are as follows:  
 Amount Of Fine And/Or Costs Ordered Paid \$ \_\_\_\_\_ Balance Due As Of The Date Of This Order \$ \_\_\_\_\_

☐ II. Failure To Obey Jury Summons [G.S. 9-13]  
 Failure to report for jury duty as directed pursuant to a jury summons issued on (date) \_\_\_\_\_

☐ III. Failure To Obey Other Order Of The Court [G.S. 5A-11; G.S. 5A-21]  
 Failure to obey the order of the Court indicated below:  
 Date Of Order \_\_\_\_\_ File Number \_\_\_\_\_ County \_\_\_\_\_ Name Of Official Who Entered Order \_\_\_\_\_  
 Describe Action(s) Ordered And Facts Constituting Contempt \_\_\_\_\_

☐ IV. Failure To Obey Order To Appear Pursuant To Criminal Summons [G.S. 15A-303(e)(3); G.S. 5A-11]  
 Failure to appear before the Court as directed by a criminal summons issued and duly served on you, ordering you to appear before this Court and answer to the offense(s) indicated below:  
 Date Summons Issued \_\_\_\_\_ File Number \_\_\_\_\_ County \_\_\_\_\_ Name Of Official Who Issued Summons \_\_\_\_\_  
 Date Summons Served \_\_\_\_\_ Date Of Failure To Appear \_\_\_\_\_ Offense(s) \_\_\_\_\_

☐ V. Other Criminal Contempt [G.S. 5A-11; G.S. 15A-134(e)(1)]  
 Act of criminal contempt described below. (NOTE TO COURT: The grounds provided in G.S. 5A-11(a) are exclusive.)  
 \_\_\_\_\_

You are ORDERED to appear before the Court as indicated below and show cause why you should not be punished for contempt or for failure to comply with the Court's order as described above. If you do not appear, the Court may issue an order for your arrest or may enter other sanctions against you in your absence.

Date Order Issued \_\_\_\_\_ Name Of Issuing Official (type or print) \_\_\_\_\_ Court Date \_\_\_\_\_ Court Time ☐ AM ☐ PM  
☐ Superior Court Judge ☐ District Court Judge ☐ Magistrate ☐ Clerk Of Superior Court ☐ Assistant CSC ☐ Deputy CSC

**RETURN OF SERVICE**  
 I certify that this Order was received and served as follows:  
☐ By personally serving the defendant/contemnor named above with a copy of this Order.  
☐ Defendant/contemnor WAS NOT served for the following reason: \_\_\_\_\_

Date Received \_\_\_\_\_ Date Served \_\_\_\_\_ Time Served ☐ AM ☐ PM Date Returned \_\_\_\_\_  
 Name Of Officer (type or print) \_\_\_\_\_ Signature Of Officer \_\_\_\_\_  
 Department Or Agency \_\_\_\_\_ County Of Department/Agency \_\_\_\_\_

NOTE TO CLERK: An Order under No. 2 is filed in the original criminal/infection case. An Order under No. 3 is either a Miscellaneous or Registration file, based on its disposition, see Rule of Recordkeeping 16. An Order under No. 4 establishes a new CR/CRS case if processed as an original contempt, but if it is filed in the existing case file if disposed as an original contempt. An Order under No. 5 or 6 establishes a new CR/CRS case in the court in which filed.

AOC-CR-219, Rev. 11/15  
 © 2015 Administrative Office of the Courts

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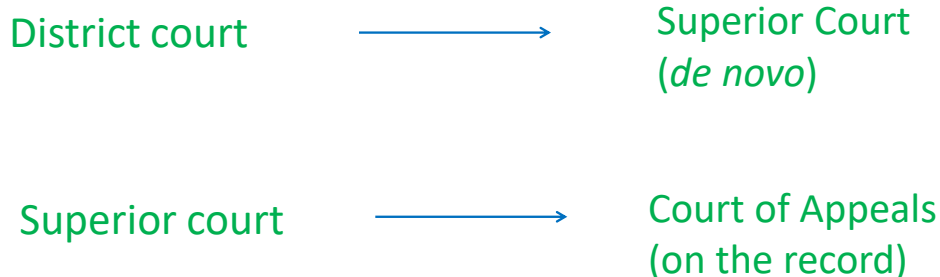
## § 5A-16. Custody of person charged with criminal contempt.

(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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## Criminal contempt - Appeal



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