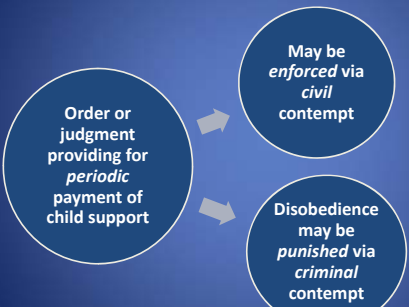


The Law of Contempt

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UNC School of Government
May 1, 2009

Child Support & Contempt



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Civil Contempt: Purpose

Remedial

- Enforce rights of party under court order
- Coerce opposing party's compliance with court order
- Not punitive

Focus

- Present, not past, noncompliance
- Present ability to comply
- Willfulness

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Civil Contempt: Definition

Failure to comply with court order =
continuing civil contempt as long as

| | | | |
|----------------------------|---|--|---|
| Order remains in effect | Purpose of order may be served by compliance | Noncompliance by person who is subject to order is <i>willful</i> | Person who is subject to order <i>present ability</i> to comply or take reasonable measures that would enable compliance |
|----------------------------|---|--|---|

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Civil Contempt: Willfulness



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Civil Contempt: Willfulness & Ability



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Civil Contempt: Ability to Comply



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Civil Contempt: Present Ability

Present ability must be proved not presumed

Finding of
ability to pay
in prior
order

Failure to
request
modification
of order

Ability to
work

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Civil Contempt: Procedure

Motion & Notice of Hearing

- Filed by "aggrieved" party
- Accompanied by sworn statement or affidavit
- Served at least 5 days before hearing

Order or Notice to Appear & Show Cause






- Issued by judicial official
- Finding of probable cause
- Motion & sworn statement or affidavit by "interested person"
- Served at least 5 days before hearing

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Civil Contempt: Motion

-  Service via Rule 5
-  Hearing before district court judge
-  Right to counsel
-  No arrest for failure to appear
-  Moving party has burden of proof

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Civil Contempt: Notice

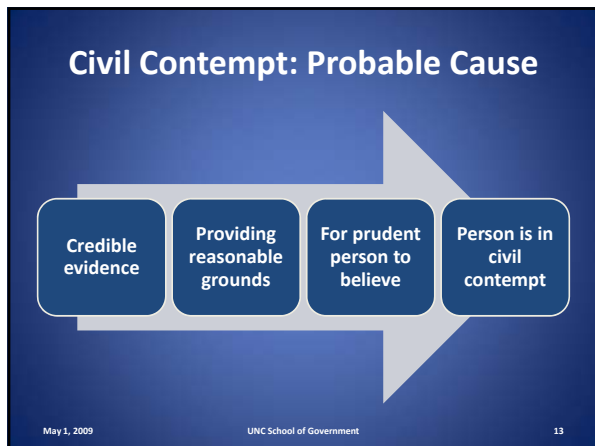
-  Service via Rule 5
-  Hearing before district court judge
-  Right to counsel
-  No arrest for failure to appear
-  Burden of proof

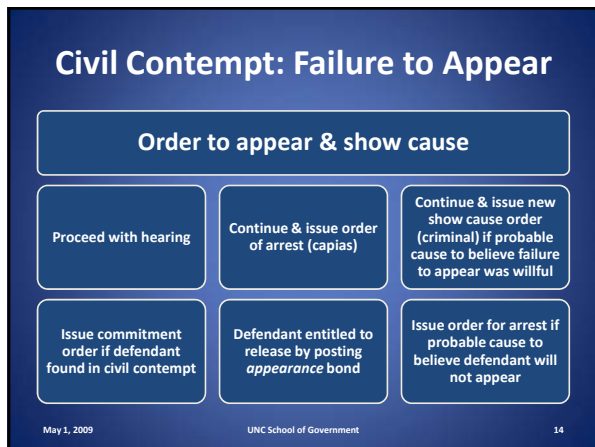
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Civil Contempt: Order

-  Service via Rule 5
-  Hearing before district court judge
-  Right to counsel
-  Arrest for failure to appear
-  Burden of proof

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Civil Contempt: Burden of Proof

Standard of proof

Burden of persuasion

Burden of producing evidence

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Civil Contempt: Findings

Judge must make findings of fact For or against alleged contemnor With respect to each element

Findings must be supported By competent evidence Conclusive on appeal

Findings must support Conclusions of law

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Civil Contempt: Order & Purge

Order must specify action required to purge

Comply with order in whole or in part

Take reasonable steps to comply with order

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Civil Contempt: Order & Purge

Contemnor must have ability to purge

May not be
incarcerated if
unable to purge

May be incarcerated
indefinitely until
contempt purged or
ceases

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Civil Contempt

- Person incarcerated for contempt “holds the keys to the jail in his own pocket.”
- Willful & stubborn failure to comply despite ability to do so
- “Deadbeat” *not* “dead broke”



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Civil Contempt: Appeal

From district court to
court of appeals

Notice of appeal
filed within 30
days of order

Bond required to
stay order
pending appeal

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Criminal Contempt: Definition

Willful disobedience of, resistance to, or interference with

➔

A court's lawful order, process, directive, or instruction

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Criminal Contempt: Purpose

| Purpose | Focus |
|---|---|
| <ul style="list-style-type: none"> Punish disobedience of court order Vindicate court's authority Not enforce party's rights under order | <ul style="list-style-type: none"> Past or present noncompliance Past or present ability to comply Willfulness |

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Criminal or Civil Contempt?

Willful disobedience of court order

∩

Willful failure to comply with court order

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Criminal or Civil Contempt?

| Person found in criminal contempt | Person found in civil contempt |
|--|---|
| <ul style="list-style-type: none">• May not be held in civil contempt for same conduct | <ul style="list-style-type: none">• May not be held in criminal contempt for same conduct |

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Criminal or Civil Contempt?

| Criminal Contempt | Civil Contempt |
|---|--|
| <ul style="list-style-type: none">• Purpose: Punish disobedience• Sanction: Determinate sentence | <ul style="list-style-type: none">• Purpose: Coerce compliance• Sanction: Indeterminate incarceration |

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Criminal or Civil Contempt?

| Sanction is punitive | Sanction is remedial |
|--|---|
| <ul style="list-style-type: none"> • Fixed period of incarceration to punish disobedience | <ul style="list-style-type: none"> • Indefinite period of incarceration conditioned on compliance or purge |

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Criminal or Civil Contempt?

| Sanction is punitive | Sanction is remedial |
|---|--|
| <ul style="list-style-type: none"> • If it is unconditional • Can't be avoided or ended by compliance with order • Suspended sentence for criminal contempt with probation not limited to compliance | <ul style="list-style-type: none"> • If it is conditional • Can be avoided or ended by complying with order • Suspended sentence for "criminal" discharged by compliance with order |

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Criminal Contempt: Due Process

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Criminal Contempt: Findings

Judge must make findings
of fact sufficient to support
judgment

Guilt must be
determined
beyond
reasonable doubt

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Criminal Contempt: Judgment

Sentence of incarceration

- Fixed or determinate period
- Not to exceed 30 days
- May be suspended

Fine

- Not to exceed \$500

Censure

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Criminal Contempt: Sanction

Sentence for criminal contempt

May be terminated or reduced at any time

By judicial official who imposed sentence

If warranted by contemnor's conduct
and ends of justice

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Criminal Contempt: Appeal

Appeal from district to superior court

Notice of appeal filed within 10 days

Sentence stayed pending appeal

Trial de novo in superior court

Appeal from superior court to court of appeals

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Child Support & Contempt: Questions & Issues

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