

Drilling Down on the Clerk's Civil Contempt Authority

****UPDATE: Effective July 21, 2017, Session Law 2017-158 expands the clerk's civil contempt authority. The clerk now has the authority to exercise civil contempt in any instance when the clerk has original subject matter jurisdiction and issued the order that is the basis for the civil contempt in addition to any instance where a statute expressly provides for the clerk's civil contempt authority. See [S.L. 2017-158, Sec. 11](#).**

Earlier this month, I had the pleasure of attending the [elected clerk of superior court summer educational conference](#) in Nags Head, NC. The elected clerks gather annually this time of year to install new conference officers, attend educational sessions, and generally catch up on matters concerning the court system throughout the State. I was invited by the clerk's program committee to teach a session on civil contempt. As part of my session, we identified the statutes that authorize the clerk to use civil contempt. As noted in my [previous post](#) on the clerk's contempt authority, the clerk only has the authority to use civil contempt where a statute expressly provides for it. [G.S. 5A-23\(b\)](#). Below is a list of statutes that authorize the clerk to use civil contempt.

Statutes that Authorize Civil Contempt by the Clerk*

There are some notable exceptions to the clerk's civil contempt authority. A few are included in the list below.

The Clerk's Civil Contempt Authority Likely Absent*

Compelling Compliance with a Clerk's Order Where the Clerk Lacks Specific Civil Contempt Authority

As I noted in my [earlier contempt post](#), just because the clerk does not have civil contempt authority does not mean the clerk's order is unenforceable via civil contempt. The clerk may initiate a civil contempt proceeding and a judge may hear the matter. The clerk does this by entering a show cause order or notice, if there is probable cause to believe there is civil contempt. [G.S. 5A-23\(a\)](#). The clerk typically uses AOC form [CR-219](#) to initiate the civil contempt proceeding (it can also be used to initiate a criminal contempt proceeding, which is also within the authority of the clerk to initiate). Section III on the form provides a space for the clerk to describe the action ordered and the facts constituting contempt.

When the clerk initiates the proceeding and lacks specific civil contempt authority, the substantive hearing on the civil contempt must be before a judge. [G.S. 5A-23\(b\)](#). The statute provides that proceedings for civil contempt are before "a district court judge, unless a court superior to the district court issued the order in which case proceedings are before that court." [G.S. 5A-23\(b\)](#). My reading of this statute is that any hearing on civil contempt arising out of an order of the clerk would go to district court because district court is superior to the clerk of superior court. However, there is an argument that whether a superior or district court judge presides over the proceeding depends on the underlying nature of the proceeding. For example, if the contempt arises out of a clerk's order in an estate proceeding, the civil contempt hearing would be before a superior court judge as appeals of estate matters are to superior court. If it arises out of an adoption, it would go to district court on that same analysis. If it arises out of a civil matter, such as in a supplemental proceeding, it would go to the court with jurisdiction of the underlying matter.

What do you think? Where would you calendar the civil contempt hearing arising from an order of the clerk where the clerk lacks specific contempt authority? Feel free to leave a comment below and let me know.

* This list is based, in part, on a previous outline prepared by Joan Brannon, a former colleague at the School of Government, and co-author of the [Clerk of Superior Court Procedures Manual](#).