

The Clerk's 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](#).****

The clerk of superior court and assistant clerks, when acting as judicial officials, have the authority to punish criminal contempt and hold persons in civil contempt. [G.S. 7A-103\(7\)](#). However, this authority does not exactly mirror the authority of district or superior court judges who have broad contempt powers. In fact, the clerk's authority is limited to two instances:

1. Punishing direct criminal contempt, and
2. Enforcing orders through civil contempt where a statute specifically provides for the exercise of contempt power by the clerk.

Recap: Two Types of Contempt

[As discussed before on this blog](#), there are two types of contempt: civil and criminal. The purpose of *civil contempt* is to preserve the rights of the parties and to compel future obedience of an order of the court for the benefit of a party. The [only sanction](#) available to the court upon a finding of civil contempt is imprisonment until the party complies. [G.S. 5A-21\(d\)](#). The court must identify a purge condition (the way to get out of jail) in the court order. [G.S. 5A-21\(b2\)](#).

In contrast, the purpose of *criminal contempt* is to preserve the authority and dignity of the court and to punish disobedience. If the court enters an order for criminal contempt, the court has the option to impose on the contemnor any one or combination of the following:

1. a censure,
2. a fine up to \$500.00, or
3. imprisonment for up to 30 days.

[G.S. 5A-12\(a\)](#). At any time after entry of the order for direct criminal contempt, the clerk has the discretion to withdraw the censure, terminate or reduce the sentence of imprisonment, or reduce a fine in the event the clerk finds the conduct of the contemnor or justice to warrant it. [G.S. 5A-12\(c\)](#).

The Clerk's Civil Contempt Authority

The clerk's authority to exercise civil contempt is limited to those instances where the General Statutes specifically provide for the exercise of civil contempt by the clerk of superior court. [G.S. 5A-23\(b\)](#). When a statute states that a proceeding is "as for contempt," the proceeding is for civil contempt. [G.S. 5A-25](#). For example, the clerk has express contempt authority in estate administration for the failure to file an inventory or an accounting or to compel production of a will. [G.S. 28A-20-2](#); [G.S. 28A-21-4](#); [G.S. 28A-2A-4](#).

If a clerk enters an order, a person fails to comply with the order, and a statute does not authorize the clerk to exercise contempt authority to compel compliance with that order, it does not mean the person who fails to comply with the order may not be held in contempt. It just means that the order is not enforceable by a contempt proceeding *before the clerk*. Instead, in those cases, a proceeding for civil contempt must be initiated before the district court unless a court superior to that court issued the order, in which case the proceedings are before that court. [G.S. 5A-23\(b\)](#).

The Clerk's Criminal Contempt Authority

Criminal contempt is a statutory construct and the grounds for criminal contempt listed in [G.S. 5A-11](#) are exclusive. Criminal contempt may be categorized as direct criminal contempt or indirect criminal contempt. [G.S. 5A-13\(a\) and \(b\)](#). Criminal contempt is direct criminal contempt when the act of criminal contempt:

1. Is committed within the sight or hearing of the presiding judicial official; and
2. Is committed in, or in the immediate proximity to, the room where proceedings are being held before the court; and
3. Is likely to interrupt or interfere with matters before the court.

[G.S. 5A-13\(a\)](#). Any other criminal contempt is indirect criminal contempt. [G.S. 5A-13\(b\)](#). Indirect contempt is that which arises from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice. *Atassi v. Atassi*, 122 N.C. App. 356, 361 (1996). Indirect criminal contempt is only enforceable through a plenary proceeding (a plenary proceeding is one that is a separate proceeding that takes place at a later time). [G.S. 5A-13\(b\)](#). A clerk has no authority to preside over an indirect criminal contempt proceeding. [G.S. 5A-13\(a\)](#).

The clerk only has the authority to exercise direct criminal contempt power and only in a summary proceeding. *Id.*

In response to direct criminal contempt occurring before the clerk, a clerk may choose to proceed in one of two ways: (1) immediately hold a summary contempt proceeding, or (2) enter a show cause order for a plenary proceeding at a later date and time. If the clerk elects to immediately hold a summary contempt proceeding, the clerk has the authority to enter the direct criminal contempt order and impose the punishments listed above. This is because the clerk "personally

witnessed the contemptuous acts and needs no other testimony or evidence to determine what occurred.” *State v. Nwanguma*, 231 N.C. App. 715 (2014) (unpublished).

If the clerk chooses not to proceed summarily, the clerk may enter a show cause order for a plenary proceeding that directs the alleged contemnor to appear before a judge at a later reasonable time. [G.S. 5A-14](#); [G.S. 5A-15](#). The plenary criminal contempt hearing is before the district court unless a court superior to that court issued the order, in which case the proceedings are before that court. [G.S. 5A-15\(b\)](#).

There’s much more to be said about contempt, but for now, I’ll end the conversation with a chart I’ve put together to help summarize the clerk’s authority. Stay tuned for more on the clerk and contempt at a later date.