

MY CLIENT WANTS TO APPEAL A CONTEMPT ORDER. NOW WHAT DO I DO?

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You were court-appointed to represent a client on a contempt matter. The court just rendered an order finding your client in contempt of court. Now what do you do?

This is a quick rundown of the steps you should take to preserve your client's rights:

First, make sure the order is appealable. Did the judge specifically find your client in contempt? If not, it probably isn't appealable. The court may have only intended the case to be continued for a ruling on contempt on another court date. Ask the court for clarification if you're not sure. You can also contact me or Wendy Sotolongo at the Office of Parent Representation for a consultation. It's helpful if you can send the order and use the fillable on-line **Appeal Notification Form** available at the IDS website at www.ncids.org.

Second, decide whether the order should be appealed. The right to appeal belongs to the client and clients need to be informed of their rights and obligations prior to making a decision to appeal. It's best to have preliminary conversations with your client about possible outcomes before the hearing and to discuss what the client wants to do if the outcome is not in his favor. You don't want to be having a three second conversation about an appeal as your client is being handcuffed to be taken off to jail.

- Be sure your client is informed that a court-appointed attorney is not a free attorney. This applies to an appellate attorney the same as to a trial attorney.
- Be sure your client knows that you will not (or may not) represent her at the next stage. If it's a civil contempt, the appeal will be assigned to an appellate attorney through the Office of Parent Representation, Appellate Defender's Office. If it's a criminal contempt, the appeal will go to the Superior Court for a trial de novo and you will only be able to handle it if your county permits you to handle cases in superior court.
- Make sure your client understands that an appeal in the Court of Appeals is not a new trial and that it usually takes at least a year to be resolved. An appeal in the Superior Court will be a new trial. However, a Superior Court judge may not necessarily be more sympathetic.

- Be aware that, even if you disagree with your client's desire to appeal, you need to follow your client's wishes and assist him with filing the appeal if that is his desire.
- If you are not sure about how to advise a client about an appeal, please contact me or another attorney in the Office of Parent Representation for a consultation.

Third, determine whether the judge found your client in civil or criminal contempt. This is not always readily apparent. Even if the judge says she is finding your client in criminal contempt, it may actually be civil contempt. Or vice versa. A good tool to have handy is the "Criminal and Civil Contempt Flow Chart" prepared by former School of Government Professor John Saxon available on our website at http://www.ncids.org/New%20Legal%20Resources/Criminal_CivilContemptFlowChart.pdf.

If still in doubt, contact me or Wendy Sotolongo at the Office of Parent Representation for a consultation.

Fourth, enter the notice of appeal within the proper time period.

- For **civil contempt**, a written notice of appeal must be filed with the clerk of superior court, addressed to the North Carolina Court of Appeals, **within 30 days** of the entry of the order.¹ See sample Notice of Appeal for Civil Contempt at the IDS website www.ncids.org.
 - You may express your intention to file a notice of appeal in open court. This will not, however, have any effect on beginning the appeal process.
 - It isn't necessary to include your client's signature on the notice of appeal, but you may include her signature. It may be a good idea to do so if you want to show that your client is committed to the appeal. In any event, be certain that your client has given you the final word about whether or not to proceed with the appeal.
 - The notice of appeal must include the content required by the N.C. Rules of Appellate Procedure, which includes the specific order(s) from which the appeal is taken. Use our sample civil contempt NOA as your guide.
 - A certificate of service must be attached to the notice of appeal and should reflect how it was served. You must comply with Rule 5 of the Rules of Civil Procedure in effectuating service. Placing the notice of appeal in a courthouse mailbox is not sufficient!

¹ Rule 58 of the Rules of Civil Procedure specifies that it is 30 days from the date the order is filed if the order is served within three days. If the order was served more than three days after it was filed, then the 30 days begins from the date it was served (usually mailed). Rule 3(c) of the Rules of Appellate Procedure also specifies that the provision for additional time after service by mail does not apply to filing notices of appeal. DO NOT ADD THREE DAYS FOR SERVICE BY MAIL!!

- The sample NOA includes a request for appointment of appellate counsel. If you were appointed and your client is still indigent, the Appellate Defender will be appointed to perfect the appeal. It is also important to observe local practice regarding whether or not your client needs to file a new affidavit of indigency when he files a notice of appeal. Each county is different! If your client does not complete the affidavit in a county that requires it, the court will not appoint the Appellate Defender.
- Follow up with the clerk's office to be sure that the Appellate Entries form is completed. The clerks are not as familiar with civil indigent appeals as they are with criminal indigent appeals and juvenile appeals. If the clerks have questions, you can refer them to the Office of Parent Representation.
- Complete the **Appeal Notification Form** on the IDS website www.ncids.org before filing the notice of appeal if you need assistance responding to the order or preparing the notice of appeal, or complete the form after filing the notice of appeal to alert us that you have filed the NOA.
- For **criminal contempt**, you may give notice of appeal in open court or in writing to the clerk of superior court **within 10 days** of the entry of judgment. See sample Notice of Appeal for Criminal Contempt at the IDS website www.ncids.org.
 - It's a good idea to also make a request that a court-appointed attorney be appointed to represent your client in superior court and inform the court that your client's financial situation hasn't changed since you were originally appointed (assuming that is correct). The court may require that your client complete a new affidavit of indigency.
 - If the appeal is not withdrawn within 10 days of the entry of judgment, the clerk must transfer the case to the superior court for a trial de novo.
 - Follow up with the clerk to make sure the proper paperwork is completed for the transfer to superior court and for appointment of an attorney.

Fifth, if your client has been incarcerated, request release pending appeal.

- If the court has found your client in **civil contempt**, you must file a motion to stay the execution of the contempt judgment. See sample Motion to Stay at the IDS website www.ncids.org. The court may require that your client pay an appeal bond before release.
 - If the court denies the stay, or requires an appeal bond that exceeds the ability of your client to pay, an application for temporary stay and writ of supersedeas may be made to the court of appeals. Contact the assigned appellate attorney or our office to file these documents.

- If the court has found your client in **criminal contempt**, a bail hearing must be held within 24 hours of the confinement by a superior court judge if notice of appeal has been given, based on a recent amendment to G.S. 5A-17. The court has the option of setting an appeal bond or allowing your client to remain on recognizance for his future appearance.

Sixth, even if the court ordered your client to comply with certain conditions by a certain date to avoid incarceration, you must file a motion to stay the execution of the civil contempt order during the appeal. If the court imposes conditions for your client to purge herself of contempt by a certain date on a **civil contempt** order, you must file a motion to stay in order to stay the execution of the judgment. Otherwise, your client will be required to follow the purge conditions while the appeal is pending and may still be incarcerated if she fails to do so.

Seventh, notify the Office of Parent Representation that you have filed an appeal of a civil contempt order.

- Complete the **Appeal Notification Form** on the IDS website www.ncids.org before filing the notice of appeal if you need assistance responding to the order or preparing the notice of appeal, or complete the form after filing the notice of appeal to alert us that you have filed the notice of appeal.

Please do not hesitate to contact us if you have any questions. We are here to help!

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