

**5-112. Punitive contempt.**

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal/punitive contempt of court. This rule shall not apply to the imposition of other sanctions specifically authorized by these rules, statute, or the common law, or to the imposition of remedial sanctions for civil/remedial contempt of court. This rule shall not apply to any person who is less than eighteen years old.

B. **Definitions.**

(1) “Contempt” or “contemptuous conduct” includes but is not limited to

(a) disorderly conduct, insolent behavior, or a breach of peace, noise, or other disturbance, if this behavior actually obstructs or hinders the administration of justice or tends to diminish the court’s authority;

(b) misconduct of court officers in official transactions; or

(c) disobedience of any lawful order, rule, or process of the court.

(2) “Direct contempt” means contemptuous conduct committed in the immediate presence of the court that is personally observed by the judge.

(3) “Indirect contempt” means contemptuous conduct that occurs outside the presence of the court, or conduct that is not personally observed by the judge and requires further fact finding.

(4) “Punitive sanction” means a sentence imposed to punish a person for committing an act of punitive contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct punitive contempt.** A direct punitive contempt may be punished summarily at the time of the contempt without further evidentiary proceedings. If the judge determines that

direct punitive contempt could warrant a penalty of over six (6) months incarceration, the penalty shall not be imposed summarily.

(1) ***Summarily-imposed punishment.*** Except in cases of flagrant contemptuous conduct, before summarily punishing a person for direct punitive contempt, the judge shall give the person a warning, either orally or in writing, to no longer engage in the contemptuous behavior and shall give the person an opportunity to explain the conduct. When the judge summarily punishes a contempt defendant for direct punitive contempt, the judge shall forthwith sign and file with the clerk a written order, which shall constitute a judgment and sentence, certifying

(a) the specific facts establishing the direct contempt beyond a reasonable doubt;

(b) that the judge personally observed the contemptuous conduct committed in the presence of the judge without the need for further fact finding; and

(c) the punishment, which was summarily imposed after an opportunity for allocution.

(2) ***Non-summarily-imposed punishment.*** If the judge determines that a penalty of a serious fine or a penalty of over six (6) months incarceration could be warranted, the contemnor is entitled to a jury trial in accordance with the procedures of Subparagraph (D)(2) of this rule.

D. **Disposition of indirect punitive contempt on notice and hearing.** Indirect punitive contempt shall be punished only after notice and hearing in accordance with this paragraph.

(1) ***Order to Show Cause.*** The court may issue an Order to Show Cause to allow the alleged contemnor to appear before the court to be advised of the contemptuous act and

1 to be given an opportunity to explain the contemptuous conduct. The court may then dismiss the  
2 alleged conduct without formal proceedings, enter into an informal agreement with stipulated  
3 conditions to address the conduct, or pursue formal contempt charges as directed in Subparagraph  
4 (D)(2) of this rule. Any statements or admissions made in the hearing on the Order to Show Cause  
5 shall not be used against the alleged contemnor in any formal contempt proceedings.

6 (2) ***Formal contempt proceedings.***

7 (a) *Criminal complaint.* To initiate a formal contempt proceeding, the  
8 judge shall file a criminal complaint under Rule 5-201 NMRA, which shall be served with a  
9 summons as set forth in Rule 5-209 NMRA. Only when proper service cannot be accomplished or  
10 is inappropriate under the circumstances may the court issue a warrant for the contemnor's arrest.  
11 The complaint shall include the essential facts alleging the contemptuous conduct in violation of  
12 NMSA 1978, Section 34-1-2. The complaint shall be treated the same as an information or  
13 indictment for procedural purposes.

14 (b) *Appointing a prosecutor.* The court shall request that the contempt  
15 be prosecuted by the district attorney, unless the interest of justice requires the appointment of  
16 another attorney. If the district attorney declines the request, the court must appoint another  
17 attorney to prosecute the contempt.

18 (c) *Rules of Criminal Procedure.* A formal charge of indirect punitive  
19 contempt or non-summarily imposed direct punitive contempt shall be prosecuted in accordance  
20 with this rule and the Rules of Criminal Procedure for the District Courts to the extent that those  
21 rules are not inconsistent with this rule.

22 (d) *Judgment and sentence.* If the contempt defendant is found guilty of  
23 punitive contempt, the court shall enter a judgment and sentence.

1           E.       **Penalties.** A petty fine and/or incarceration for no more than six (6) months may  
2   be imposed after a hearing without a jury. To penalize a contemnor for more than these penalties,  
3   the matter must be tried by a jury unless the contemnor has waived the right to a jury. The sentence  
4   for contempt may be deferred or suspended, in whole or in part, with a period of probation, and  
5   reasonable conditions of probation that relate to the contemptuous conduct may be imposed.

6           F.       **Docketing.** Any punitive contempt proceeding commenced under this rule shall be  
7   docketed as a separate criminal matter with a new case number.

8           G.       **Appeal.** Any person found guilty of punitive contempt may appeal under the Rules  
9   of Appellate Procedure governing appeals from the district court in criminal cases.

10   [As amended by Supreme Court Order No. 15-8300-020, effective for all cases pending or filed  
11   on or after December 31, 2015; as amended by Supreme Court Order No. 16-8300-016, effective  
12   for all cases pending or filed on or after December 31, 2016; suspended by Supreme Court Order  
13   No. 21-8300-032, effective November 22, 2021, until further order of the Court; as reinstated and  
14   amended by Supreme Court Order No. S-1-RCR-2025-00158, effective for all cases pending or  
15   filed on or after October 9, 2025.]

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17           **Committee commentary.** — In 2015, the former language in this rule was withdrawn and  
18   replaced with a comprehensive rule governing criminal contempt of court proceedings. Before the  
19   2015 amendments, this rule provided that “[a]n attorney who willfully fails to observe the  
20   requirements of these rules, including prescribed time limitations, may be held in contempt of  
21   court and subject to disciplinary action.” Although this former language has been replaced, the  
22   district court retains both statutory and inherent power to hold an attorney in contempt of court,

and an attorney also may be subject to discipline as provided in the Rules Governing Discipline, Rules 17-101 to -316 NMRA.

This rule applies to punitive contempt of court proceedings that arise from conduct occurring within a criminal or civil action in district court. This rule does not apply to remedial contempt proceedings.

In *In re Marshall*, the Court determined that, going forward, “criminal” and “civil” contempt should more accurately be referred to as “punitive” and “remedial” contempt, respectively. 2023-NMSC-009, ¶ 15, 528 P.3d 670. However, other case law refers to them as “criminal” and “civil” contempt. Thus, the Committee has changed the language in the rule to reflect the *Marshall* decision, but has left the original criminal/civil language in most of the commentary to reflect the language used in the cases cited.

New Mexico law classifies contempt of court as either civil (remedial) or criminal (punitive). *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of contempt as civil or criminal does not depend on whether the contempt proceeding arises out of an underlying criminal action or civil action. Instead, the focus should be on the reason why the court is invoking its contempt powers. *See id.* Civil contempt sanctions are remedial and may be imposed as coercive measures to compel a person to comply with an order of the court or to enforce the rights of a private party to a lawsuit. *See id.* ¶ 25; *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, ¶ 6, 63 N.M. 156, 315 P.2d 223. A person held in civil contempt “carries the keys of his prison” and can end continuing contempt sanctions by complying with the court’s orders. *Concha*, 2011-NMSC-031, ¶ 25 (internal quotation marks and citation omitted). Criminal contempt sanctions are imposed to punish the contempt defendant for a completed act of

contempt and to preserve the dignity and authority of the court. *See id.* ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil (punitive or remedial) will impact the procedures the court must follow. Because civil contempt sanctions are remedial and not intended to punish, the court may impose civil contempt sanctions “by honoring the most basic due process protections—in most cases, fair notice and an opportunity to be heard.” *Concha*, 2011-NMSC-031, ¶ 25. Criminal contempt, on the other hand, is a “crime in the ordinary sense; it is a violation of the law.” *Id.* ¶ 26 (internal quotation marks and citation omitted). “A criminal contempt defendant is therefore entitled to due process protections of the criminal law, the specific nature of which will depend on whether the criminal contempt is categorized as direct or indirect.” *Id.* A contempt proceeding can result in both civil and criminal contempt sanctions. *See State v. Pothier*, 1986-NMSC-039, ¶¶ 4-6, 104 N.M. 363, 721 P.2d 1294 (recognizing that both civil and criminal sanctions can be imposed for contemptuous conduct). This rule sets forth the procedures the court must follow if the court intends to pursue criminal/punitive contempt sanctions even if the court is also considering civil/remedial contempt sanctions.

The applicable procedures for a criminal contempt proceeding depend on whether the criminal contempt is direct or indirect. “Direct contempts are contemptuous acts committed in the presence of the court, while indirect contempts are such acts committed outside the presence of the court.” *Concha*, 2011-NMSC-031, ¶ 24 (citation omitted) (text only). If the contemptuous conduct has occurred in court and the judge has personal knowledge, based on perceiving the conduct, of the facts establishing all elements of the contempt, the court may follow the summary procedures for direct punitive contempt set forth in Paragraph C of this rule. However, before holding a person in direct punitive contempt, the judge in most cases still must give the person a

1 warning to stop engaging in contemptuous behavior and an opportunity to explain the  
2 behavior. *See id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt  
3 occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum  
4 requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

5 “When the judge has not personally witnessed the defendant’s contemptuous behavior in  
6 the course of a court proceeding,” the court must follow the Rules of Criminal Procedure for the  
7 District Courts and the procedures set forth in Paragraph D of this rule for indirect punitive  
8 contempt. *See id.* ¶ 28. The court shall appoint the district attorney to prosecute the contempt  
9 charge. *See* NMSA 1978, § 36-1-18(A) (2001) (“Each district attorney shall . . . prosecute . . . for  
10 the state in all courts of record of the counties of his district all cases, criminal and civil, in which  
11 the state or any county in his district may be a party or may be interested.”). In no case shall the  
12 court both serve as the prosecutor of the indirect contempt charge and preside as judge over the  
13 indirect contempt proceeding. *See* Rule 21-211(A)(2)(b) NMRA (providing that the “judge shall  
14 disqualify himself or herself in any proceeding” in which the judge is “acting as a lawyer”).

15 The defendant may exercise a peremptory election to excuse the judge under Rule 5-  
16 106 NMRA. In addition, a judge may be required to recuse for cause in appropriate cases under  
17 Rule 5-106. *See State v. Stout*, 1983-NMSC-094, ¶ 12, 100 N.M. 472, 672 P.2d 645 (providing  
18 that a judge is precluded from presiding over a contempt proceeding if the “judge has become so  
19 embroiled in the controversy that [the judge] cannot fairly and objectively hear the case, or when  
20 [the judge or one of the judge’s staff] will necessarily be a witness in the proceeding”).

21 If incarcerated, the contempt defendant is entitled due process under Rule 5-401 NMRA.  
22 The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court  
23 contemplates the imposition of any sentence of imprisonment, the defendant is entitled to

representation by an attorney at the state’s expense. *See* NMSA 1978, § 31-15-10(C) (2001) (“The district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in any court within the district with any crime that carries a possible sentence of imprisonment.”). In addition, the defendant may be entitled to a jury trial as provided by law. *See, e.g.*, NMSA 1978, § 34-1-4 (1965) (“In all proceedings in the district courts for indirect criminal contempt arising out of written publications made out of court, the contemnor shall have the right to a trial by jury.”); *In re Herkenhoff*, 1997-NMSC-007, ¶ 15, 122 N.M. 766, 931 P.2d 1382 (“If the punishment to be imposed is imprisonment for less than six months or a fine of less than \$ 1000, . . . no jury trial is required.”). There is no limit, either by statute or rule, on incarceration after a jury trial—the court must make that determination in light of the nature of the contempt. The maximum fine that could be imposed without a jury trial was previously one thousand dollars (\$1,000.00). *Seven Rivers Farm, Inc. v. Reynolds*, 1973-NMSC-039, ¶ 42, 84 N.M. 789, 508 P.2d 1276, *abrogated by Marshall*, 2023-NMSC-009, ¶ 19. However, in *Marshall*, the Supreme Court expressly abrogated this limit, and left to individual district courts to determine what level of fine elevated the penalty from a petty one, which could be imposed without a jury, to a serious penalty, which requires a jury trial. *Id.* ¶¶ 19-20.

If the defendant is found guilty of direct or indirect punitive contempt, the judge must enter a judgment and sentence. The court shall collect only the appropriate docket fee. An adjudication of guilt on a charge of punitive contempt constitutes a criminal conviction, which may result in collateral consequences and may have other implications for the defendant. The court may defer or suspend a punitive contempt sentence as permitted by law.

Whether the defendant is found guilty of direct or indirect punitive contempt, the defendant has a right to appeal under the rules governing appeals from district court in criminal



**DISTRICT COURT CRIMINAL  
RULE 5-112  
[REINSTATED AND AMENDED]**

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1 cases. *See* N.M. Const. art. VI, § 2; NMSA 1978, § 39-3-3(A)(1) (1972); *State v. Watson*, 1971-  
2 NMCA-104, ¶¶ 20-28, 82 N.M. 769, 487 P.2d 197. Under NMSA 1978, Section 39-3-15(A)  
3 (1966), “In any case of criminal contempt, the taking of an appeal operates to stay execution of  
4 the judgment without bond.”  
5 [As amended by Supreme Court Order No. 15-8300-020; suspended by Supreme Court Order No.  
6 21-8300-032; as reinstated and amended by Supreme Court Order No. S-1-RCR-2025-00158.]