

8-110. 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. 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. 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

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

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

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

If the judge determines that summarily-imposed punishment is not appropriate, the judge should follow the procedures for indirect punitive contempt as set forth in Paragraph D of this rule.

D. Disposition of indirect punitive contempt on notice and hearing. Indirect criminal 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 to be given an opportunity to explain the contemptuous conduct. The court may then dismiss the alleged conduct without formal proceedings, enter into an informal agreement with stipulated conditions to address the conduct, or pursue formal contempt charges as directed in Subparagraph

(D)(2). Any statements or admissions made in the hearing on the Order to Show Cause shall not be used against the alleged contemnor in any formal contempt proceedings.

(2) Formal contempt proceedings.

(a) *Criminal complaint.* To initiate a formal contempt proceeding, the judge shall file a criminal complaint under Rule 8-201 NMRA, which shall be served with a summons as set forth in Rule 8-204 NMRA. Only when proper service cannot be accomplished or is inappropriate under the circumstances may the court issue a warrant for the contemnor's arrest. The complaint shall include the essential facts alleging the contemptuous conduct in violation of NMSA 1978, Section 34-1-2 or NMSA 1978, Section 35-14-2. The complaint shall be treated the same as an information or indictment for procedural purposes.

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

(c) *Rules of Procedure.* A formal charge of indirect punitive contempt shall be prosecuted in accordance with this rule and the Rules of Procedure for the Municipal Courts, to the extent that those rules are not inconsistent with this rule.

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

E. Penalties. The penalty for contempt in the municipal court shall not exceed ninety (90) days incarceration and/or a fine of up to five hundred dollars (\$500.00). The sentence for contempt may be deferred or suspended, in whole or in part, with a period of probation, and reasonable conditions of probation that relate to the contemptuous conduct may be imposed.

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

G. **Appeal.** Any person found guilty of criminal contempt may appeal under Rule 8-703 NMRA and Rule 5-826 NMRA.

[As amended, effective January 1, 1996; as amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016; as reinstated and amended by Supreme Court Order No. S-1-RCR-2025-00158, effective for all cases pending or filed on or after October 9, 2025.]

Committee commentary. — This rule applies to punitive contempt of court proceedings that arise from conduct occurring in municipal court. This rule does not apply to remedial contempt proceedings, nor does it address the extent to which the municipal court has the authority to impose sanctions for remedial contempt of court.

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

1 why the court is invoking its contempt powers. *See id.* Civil contempt sanctions are remedial and
2 may be imposed as coercive measures to compel a person to comply with an order of the court or
3 to enforce the rights of a private party to a lawsuit. *See id.* ¶ 25; *State ex rel. Bliss v.*
4 *Greenwood*, 1957-NMSC-071, ¶ 6, 63 N.M. 156, 315 P.2d 223. A person held in civil contempt
5 “carries the keys of his prison” and can end continuing contempt sanctions by complying with the
6 court’s orders. *Concha*, 2011-NMSC-031, ¶ 25 (internal quotation marks and citation omitted).
7 Criminal contempt sanctions are imposed to punish the contempt defendant for a completed act of
8 contempt and to preserve the dignity and authority of the court. *See id.* ¶ 26; *Greenwood*, 1957-
9 NMSC-071, ¶ 6.

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

1 The applicable procedures for a criminal contempt proceeding depend on whether the
2 criminal contempt is direct or indirect. “Direct contempts are contemptuous acts committed in the
3 presence of the court, while indirect contempts are such acts committed outside the presence of
4 the court.” *Concha*, 2011-NMSC-031, ¶ 24 (citation omitted) (text only). If the contemptuous
5 conduct has occurred in court and the judge has personal knowledge, based on perceiving the
6 conduct, of the facts establishing all elements of the contempt, the court may follow the summary
7 procedures for direct punitive contempt set forth in Paragraph C of this rule. However, before
8 holding a person in direct punitive contempt, the judge in most cases still must give the person a
9 warning to stop engaging in contemptuous behavior and an opportunity to explain the
10 behavior. *See id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt
11 occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum
12 requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

13 “When the judge has not personally witnessed the defendant’s contemptuous behavior in
14 the course of a court proceeding,” the court must follow the Rules of Procedure for the Municipal
15 Courts and the procedures set forth in Paragraph D of this rule for indirect punitive contempt. *See*
16 *id.* ¶ 28. The indirect punitive contempt may be prosecuted by a municipal attorney.

17 A judge may be required to recuse in appropriate cases under Rule 8-106 NMRA. *See State*
18 *v. Stout*, 1983-NMSC-094, ¶ 12, 100 N.M. 472, 672 P.2d 645 (providing that a judge is precluded
19 from presiding over a contempt proceeding if the “judge has become so embroiled in the
20 controversy that [the judge] cannot fairly and objectively hear the case, or when [the judge or one
21 of the judge’s staff] will necessarily be a witness in the proceeding”).

22 If incarcerated, the contempt defendant is entitled to due process under Rule 8-401 NMRA.
23 The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court

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contemplates the imposition of any sentence of imprisonment, the defendant is entitled to representation by an attorney at the state's expense.

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 court costs. 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 municipal court. *See* N.M. Const. art. VI, § 27; NMSA 1978, § 35-15-1(B); Rules 5-826, 8-703 NMRA. Under NMSA 1978, Section 39-3-15(A) (1966), "In any case of criminal contempt, the taking of an appeal operates to stay execution of the judgment without bond."

[Adopted by Supreme Court Order No. 16-8300-016; as reinstated and amended by Supreme Court Order No. S-1-RCR-2025-00158.]