

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE  
DISTRICT COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE  
MAGISTRATE COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE  
METROPOLITAN COURTS, THE RULES OF PROCEDURE FOR MUNICIPAL  
COURTS, AND THE CRIMINAL FORMS  
PROPOSAL 2023-016**

**March 24, 2023**

The Rules of Criminal Procedure for Courts Committee has recommended amendments to Rules 5-112, 6-111, 7-111, and 8-110 NMRA and Form 9-611 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 24, 2023**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

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**5-112. Criminal contempt.**

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal 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 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 such 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 criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct criminal contempt.** A direct criminal contempt may be punished summarily at the time of the contempt without further evidentiary proceedings. If the judge determines that direct criminal contempt could warrant a penalty of over six (6) months incarceration and/or a fine in excess of one thousand dollars (\$1,000), 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 criminal 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 criminal contempt, the judge shall forthwith sign and file with the clerk a written order, which shall constitute a judgment and sentence, certifying

[~~(4)~~] (a) the specific facts establishing [~~constituting~~] the direct criminal contempt beyond a reasonable doubt;

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

~~[(3)]~~ (c) the punishment, of no more than six (6) months incarceration and/or a fine not exceeding one thousand dollars (\$1,000), [that] which was summarily imposed after an opportunity for allocution.

(2) **Non-summarily-imposed punishment.** If the judge determines that a penalty of over six (6) months incarceration and/or a fine in excess of one thousand dollars (\$1,000) could be warranted, the contemnor is entitled to a jury trial in accordance with the procedures of Subparagraph (D)(2).

D. **Disposition of indirect criminal 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.**

[~~(4)~~] (a) **Criminal complaint.** [~~An indirect criminal contempt proceeding shall be initiated with~~] To initiate a formal contempt proceeding, the judge shall file a criminal complaint under Rule 5-201 NMRA, which shall be served with a summons as set forth in Rule 5-209 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 Section 34-1-2 NMSA

1978. The complaint shall be treated the same as an information or indictment for procedural purposes ~~[of the Rules of Criminal Procedure for the District Courts]~~.

~~[(2)]~~ (b) *Appointing a prosecutor.* The court shall ~~[appoint]~~ request that the contempt be prosecuted by the district attorney, unless the interest of justice requires the appointment of another attorney. ~~[to prosecute the criminal contempt for the state.]~~ If the district attorney declines the request, the court must appoint another attorney to prosecute the contempt.

~~[(3)]~~ (c) *Rules of Criminal Procedure.* A formal charge of indirect criminal contempt or non-summarily imposed direct criminal contempt shall be prosecuted in accordance with this rule and the Rules of Criminal Procedure for the District Courts to the extent that ~~[such]~~ those rules are not inconsistent with this rule.

~~[(4)]~~ (d) *Judgment and sentence.* If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence.

E **Penalties.** A fine of no more than one thousand dollars (\$1,000) and/or incarceration for no more than six (6) months may be imposed following a hearing without a jury. To penalize a contemnor for more than these penalties, the matter must be tried by a jury. 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.

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

~~[E-]~~ G. **Appeal.** Any person found guilty of criminal contempt may appeal pursuant to the Rules of Appellate Procedure governing appeals from the district court in criminal cases.

[As amended by Supreme Court Order No. 15-8300-020, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 16-8300-016, effective for all cases pending or filed on or after December 31, 2016; suspended by Supreme Court Order No. 21-8300-032, effective November 22, 2021, until further order of the Court; as reinstated and amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — In 2015, the former language in this rule was withdrawn and replaced with a comprehensive rule governing criminal contempt of court proceedings. Prior to the 2015 amendments, this rule provided that “[a]n attorney who willfully fails to observe the requirements of these rules, including prescribed time limitations, may be held in contempt of court and subject to disciplinary action.” Although this former language has been replaced, the 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 criminal contempt of court proceedings that arise from conduct occurring within a criminal action in district court. This rule does not apply to civil contempt proceedings. ~~[Because a criminal contempt proceeding also can arise from conduct occurring within a civil action, a similar rule exists in the Rules of Civil Procedure for the District Courts. See Rule 1-093 NMRA.]~~

New Mexico law classifies ~~[contempts]~~ contempt of court as either civil or criminal. See *Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of ~~[a]~~ 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 to 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* [~~*Concha*, 2011-NMSC-031,~~] *id.* ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil 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. “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* *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)[;]~~] [~~and this~~] This rule sets forth the procedures the court must follow if the court intends to pursue criminal contempt sanctions even if the court is also considering civil 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 criminal contempt set forth in Paragraph C of this rule. However, before holding a person in direct criminal contempt, the judge in most cases still must give such person a warning to stop engaging in contemptuous behavior and an opportunity to explain the behavior. *See id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

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

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

If incarcerated, the contempt defendant is entitled due process under [to bail as provided by] Rule 5-401 NMRA. The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court 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.”).

If the defendant is found guilty of direct or indirect criminal 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 criminal 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 criminal contempt sentence as permitted by law.

Whether the defendant is found guilty of direct or indirect criminal contempt, the defendant has a right to appeal under the rules governing appeals from district court in criminal cases. *See* N.M. Const. art. VI, § 2; NMSA 1978, § 39-3-3(A)(1) (1972); *State v. Watson*, 1971-NMCA-104, ¶¶ 20-28, 82 N.M. 769, 487 P.2d 197. 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.”

[As amended by Supreme Court Order No. 15-8300-020, effective for all cases pending or filed on or after December 31, 2015; suspended by Supreme Court Order No. 21-8300-032, effective November 22, 2021, until further order of the Court; as reinstated and amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **6-111. Criminal contempt.**

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal 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 such 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 criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct criminal contempt.** A direct criminal 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 criminal 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 criminal 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 [~~constituting~~] establishing the direct criminal 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, of no more than six (6) months incarceration and/or a fine not exceeding one thousand dollars (\$1,000), [that] which was summarily imposed after an opportunity for allocution.[: and

~~[(4) — that the court has not imposed any term of imprisonment that exceeds six (6) months.]~~

D. **Disposition of indirect criminal 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.***

~~[(1) —]~~ (a) *Criminal complaint.* [An indirect criminal contempt proceeding shall be initiated with] To initiate a formal contempt proceeding, the judge shall file a criminal complaint under Rule 6-201 NMRA, which shall be served with a summons as set forth in Rule 6-205 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 Section 34-1-2 NMSA 1978 or Section 35-3-9 NMSA 1978. The complaint shall be treated the same as an information or indictment for procedural purposes.

~~[(2)]~~ (b) ~~[Prosecution.]~~ *Appointing a prosecutor.* ~~[An indirect criminal contempt may be prosecuted by the district attorney.]~~ The court shall request that the contempt be prosecuted by the district attorney, unless the interest of justice requires the appointment of another attorney. If the district attorney declines the request, the court must appoint another attorney to prosecute the contempt.

~~[(3)]~~ (c) *Rules of Criminal Procedure.* A formal charge of indirect criminal contempt shall be prosecuted in accordance with this rule and the Rules of Criminal Procedure for the Magistrate Courts, to the extent that ~~[such]~~ those rules are not inconsistent with this rule.

~~[(4)]~~ (d) *Judgment and sentence.* If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence. ~~[The court shall not impose any term of imprisonment that exceeds six (6) months.]~~

E. **Penalties.** A fine of no more than one thousand dollars (\$1,000) and/or incarceration for no more than six (6) months may be imposed following a hearing. 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.

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

~~[F.]~~ G. **Appeal.** Any person found guilty of criminal contempt may appeal under Rule 6-703 NMRA and Rule 5-826 NMRA. ~~[of the Rules of Criminal Procedure for the District Courts.]~~ [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. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — This rule applies to criminal contempt of court proceedings that arise from conduct occurring within a criminal action in magistrate court. This rule does not apply to civil contempt proceedings, nor does it address the extent to which the magistrate court has the authority to impose sanctions for civil contempt of court. ~~[Because a criminal contempt proceeding also can arise from conduct occurring within a civil action, a similar rule exists in the Rules of Civil Procedure for the Magistrate Courts. See Rule 2-110 NMRA.]~~

New Mexico law classifies ~~[contempts]~~ contempt of court as either civil or criminal. *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of ~~[a]~~ 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 to 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 [~~Concha, 2011-NMSC-031,~~] id. ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil 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. “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~~] 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)[;] [~~and this~~] This rule sets forth the procedures the court must follow if the court intends to pursue criminal contempt sanctions even if the court is also considering civil 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*[~~v. Sanchez~~], 2011-NMSC-031, ¶ 24[~~, 150 N.M. 268, 258 P.3d 1060~~] (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 criminal contempt set forth in Paragraph C of this rule. However, before holding a person in direct criminal contempt, the judge in most cases still must give such person a warning to stop engaging in contemptuous behavior and an opportunity to explain the behavior. See *id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

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

The defendant may exercise a peremptory election to excuse the judge under Rule 6-106 NMRA. In addition, a judge may be required to recuse for cause in appropriate cases under Rule 6-106[~~(F)~~] NMRA. See *State v. Stout*, 1983-NMSC-094, ¶ 12, 100 N.M. 472, 672 P.2d 645 (providing that a judge is precluded from presiding over a contempt proceeding if the “judge has become so embroiled in the controversy that [~~he~~] [the judge] cannot fairly and objectively hear the case, or when [~~he or one of his staff~~] [the judge or one of the judge’s staff] will necessarily be a witness in the proceeding”).

If incarcerated, the contempt defendant is entitled due process under [~~to bail as provided by~~] Rule 6-401 NMRA. The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court 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.”).

Under NMSA 1978, [§] Section 35-8-1 (2009), a criminal contempt defendant in magistrate court is not entitled to a jury trial. Accordingly, the maximum sentence that a magistrate court may impose for a criminal contempt conviction is six months of imprisonment. *See Taylor v. Hayes*, 418 U.S. 488, 496 (1974) (“[A] State may choose to try any contempt without a jury if it determines not to impose a sentence longer than six months.”); *see also Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826-27 (1994) (explaining that a criminal contempt defendant has a constitutional right to a jury trial if facing more than six months of imprisonment).

If the defendant is found guilty of direct or indirect criminal 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 criminal 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 criminal contempt sentence as permitted by law. ~~[And, because criminal contempt is a crime in the ordinary sense, the court should assess and collect court costs on a criminal contempt conviction as set forth in NMSA 1978, Section 35-6-1.]~~

Whether the defendant is found guilty of direct or indirect criminal contempt, the defendant has a right to appeal under the rules governing appeals from magistrate court in criminal cases. *See* N.M. Const. art. VI, § 27; NMSA 1978, § 35-3-9 (1991); NMSA 1978, § 35-13-1 (1975); Rules 5-826, 6-703 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, effective for all cases pending or filed on or after December 31, 2016; as reinstated and amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **7-111. Criminal contempt.**

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal 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 such 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 criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct criminal contempt.** A direct criminal 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 criminal 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 criminal 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 ~~[constituting]~~ establishing the direct criminal 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, of no more than six (6) months incarceration and/or a fine not exceeding one thousand dollars (\$1,000), [that] which was summarily imposed after an opportunity for allocution.[-; and

~~[(4) that the court has not imposed any term of imprisonment that exceeds six (6) months.]~~

D. **Disposition of indirect criminal 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.***

~~[(1)] (a)~~ ***Criminal complaint.*** ~~[An indirect criminal contempt proceeding shall be initiated with]~~ To initiate a formal contempt proceeding, the judge shall file a criminal complaint under Rule 7-201 NMRA, which shall be served with a summons as set forth in Rule 7-205 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 Section 34-1-2 NMSA 1978 or Section 35-3-9 NMSA 1978. The complaint shall be treated the same as an information or indictment for procedural purposes.

~~[(2)] (b)~~ ***[Prosecution.] Appointing a prosecutor.*** ~~[An indirect criminal contempt may be prosecuted by the district attorney.]~~ The court shall request that the contempt be prosecuted by the district attorney, unless the interest of justice requires the appointment of another attorney. If the district attorney declines the request, the court must appoint another attorney to prosecute the contempt.

~~[(3)]~~ (c) *Rules of Criminal Procedure.* A formal charge of indirect criminal contempt shall be prosecuted in accordance with this rule and the Rules of Criminal Procedure for the Metropolitan Courts, to the extent that ~~[such]~~ those rules are not inconsistent with this rule.

~~[(4)]~~ (d) *Judgment and sentence.* If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence. ~~[The court shall not impose any term of imprisonment that exceeds six (6) months.]~~

E. **Penalties.** A fine of no more than one thousand dollars (\$1,000) and/or incarceration for no more than six (6) months may be imposed following a hearing. 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.

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

~~[F.]~~ G. **Appeal.** Any person found guilty of criminal contempt may appeal under Rule 7-703 NMRA and Rule 5-827 NMRA. ~~[of the Rules of Criminal Procedure for the District Courts.]~~ [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. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — This rule applies to criminal contempt of court proceedings that arise from conduct occurring within a criminal action in metropolitan court. This rule does not apply to civil contempt proceedings, nor does it address the extent to which the metropolitan court may have the authority to impose sanctions for civil contempt of court. ~~[Because a criminal contempt proceeding also can arise from conduct occurring within a civil action, a similar rule exists in the Rules of Civil Procedure for the Metropolitan Courts. See Rule 3-110 NMRA.]~~

New Mexico law classifies ~~[contempts]~~ contempt of court as either civil or criminal. See *Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of ~~[a]~~ 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 to 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 ~~[Concha, 2011-NMSC-031,]~~ *id.* ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil 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. “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]~~ 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)[;]. ~~[and this]~~ This rule sets forth the procedures the court must follow if the court intends to pursue criminal contempt sanctions even if the court is also considering civil 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[-v. Sanchez]*, 2011-NMSC-031, ¶ 24[; 150 N.M. 268, 258 P.3d 1060] (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 criminal contempt set forth in Paragraph C of this rule. However, before holding a person in direct criminal contempt, the judge in most cases still must give such person a warning to stop engaging in contemptuous behavior and an opportunity to explain the behavior. *See id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

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

The defendant may exercise a peremptory election to excuse the judge under Rule 7-106 NMRA. In addition, a judge may be required to recuse for cause in appropriate cases under Rule 7-106[(-) NMRA]. *See State v. Stout*, 1983-NMSC-094, ¶ 12, 100 N.M. 472, 672 P.2d 645 (providing that a judge is precluded from presiding over a contempt proceeding if the “judge has become so embroiled in the controversy that [he] [the judge] cannot fairly and objectively hear the case, or when [he or one of his staff] [the judge or one of the judge’s staff] will necessarily be a witness in the proceeding”).

If incarcerated, the contempt defendant is entitled due process under ~~[to bail as provided by]~~ Rule 7-401 NMRA. The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court 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.”).

Under this rule, the maximum sentence that the metropolitan court may impose for a criminal contempt conviction is six months of imprisonment. Accordingly, the defendant does not have a constitutional right to a jury trial. *See Taylor v. Hayes*, 418 U.S. 488, 496 (1974) (“[A] State may choose to try any contempt without a jury if it determines not to impose a sentence longer than six months.”); *see also Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826-27 (1994) (explaining that a criminal contempt defendant has a constitutional right to a jury trial if facing more than six months of imprisonment). ~~[The defendant may, however, have a~~

~~statutory right to demand a jury trial if the potential penalty exceeds ninety days of imprisonment. See NMSA 1978, § 34-8A-5 (1981) (jury trial in metropolitan court).]~~

If the defendant is found guilty of direct or indirect criminal 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 criminal 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 criminal contempt sentence as permitted by law. ~~[And, because criminal contempt is a crime in the ordinary sense, the court should assess and collect court costs on a criminal contempt conviction as set forth in NMSA 1978, Section 35-6-1.]~~

Whether the defendant is found guilty of direct or indirect criminal contempt, the defendant has a right to appeal under the rules governing appeals from metropolitan court in criminal cases. See N.M. Const. art. VI, § 27; NMSA 1978, § 34-8A-6 (2019); NMSA 1978, § 35-3-9 (1991); Rules 5-827, 7-703 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.”

[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. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **8-110. Criminal contempt.**

A. **Scope.** This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive sanctions for criminal 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 such 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 criminal contempt and may include a reprimand or unconditional fine or unconditional sentence of imprisonment.

C. **Direct criminal contempt.** A direct criminal 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 criminal 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 criminal 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 ~~[constituting]~~ establishing the direct criminal 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, of no more than ninety (90) days incarceration and/or a fine not exceeding five hundred dollars (\$500), which [that] was summarily imposed after an opportunity for allocution.~~;~~ and

(4) ~~that the court has not imposed any term of imprisonment that exceeds ninety (90) days.~~

D. **Disposition of indirect criminal 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.**

~~[(1)] (a)~~ *Criminal complaint.* ~~[An indirect criminal contempt proceeding shall be initiated with]~~ 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 Section 34-1-2 NMSA 1978 or Section 35-14-2 NMSA 1978. The complaint shall be treated the same as an information or indictment for procedural purposes.

~~[(2)] (b)~~ **[Prosecution.]** *Appointing a prosecutor.* ~~[An indirect criminal contempt may be prosecuted by the municipal attorney.]~~ 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.

~~[(3)] (c)~~ *Rules of Procedure.* A formal charge of indirect criminal contempt shall be prosecuted in accordance with this rule and the Rules of Procedure for the Municipal Courts, to the extent that such rules are not inconsistent with this rule.

~~[(4)] (d)~~ *Judgment and sentence.* If the contempt defendant is found guilty of criminal contempt, the court shall enter a judgment and sentence. ~~[The court shall not impose any term of imprisonment that exceeds ninety (90) days.]~~

E. **Penalties.** A fine of no more than five hundred dollars (\$500) and/or incarceration for no more than ninety (90) days may be imposed following a hearing. 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.

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

[F-] **G. Appeal.** Any person found guilty of criminal contempt may appeal under Rule 8-703 NMRA and Rule 5-826 NMRA, ~~[of the Rules of Criminal Procedure for the District Courts.]~~ [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. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

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

New Mexico law classifies ~~[contempts]~~ contempt of court as either civil or criminal. *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060. The classification of ~~[a]~~ 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 to 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* ~~[Concha, 2011-NMSC-031,]~~ *id.* ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

Whether a contempt proceeding is classified as criminal or civil 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. “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]~~ *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)~~[-]~~. ~~[and this]~~ This rule sets forth the procedures the court must follow if the court intends to pursue criminal contempt sanctions even if the court is also considering civil 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*~~[v. Sanchez]~~, 2011-NMSC-031, ¶ 24~~[-, 150 N.M. 268, 258 P.3d 1060]~~ (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 criminal contempt set forth in Paragraph C of this rule. However, before holding a person in direct criminal contempt, the judge in most cases still must give such person a warning to stop engaging in contemptuous behavior and an opportunity to explain the behavior. *See id.* ¶ 27 (“If feasible, even in summary proceedings for an act of direct contempt occurring in open court, an adequate opportunity to defend or explain one’s conduct is a minimum requirement before imposition of punishment.” (internal quotation marks and citation omitted)).

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

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

If incarcerated, the contempt defendant is entitled to due process under ~~[bail as provided by]~~ Rule 8-401 NMRA. The defendant has a right to assistance of counsel. And, if the defendant is indigent and the court 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) (“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.”).]~~

If the defendant is found guilty of direct or indirect criminal contempt, the judge must enter a judgment and sentence. The court shall collect only court costs. An adjudication of guilt on a charge of criminal 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 criminal contempt sentence as permitted by law. ~~[The court should assess and collect court costs as set forth in NMSA 1978, Section 35-14-11.]~~

Whether the defendant is found guilty of direct or indirect criminal 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) (1969); 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, effective for all cases pending or filed on or after December 31, 2016; as reinstated and amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

#### **9-611. Order to show cause.**

STATE OF NEW MEXICO

[COUNTY OF \_\_\_\_\_]

[CITY OF \_\_\_\_\_]



\_\_\_\_\_ COURT

No.

[STATE OF NEW MEXICO]  
[COUNTY OF \_\_\_\_\_]  
[CITY OF \_\_\_\_\_]

v.

\_\_\_\_\_, Defendant

SSN: \_\_\_\_\_

DOB: \_\_\_\_\_

and

\_\_\_\_\_, (*surety*)

\_\_\_\_\_, (*surety*)

**ORDER TO SHOW CAUSE**

TO: \_\_\_\_\_ (*defendant*)

\_\_\_\_\_ (*address*)

YOU ARE HEREBY ORDERED to appear before the Honorable

\_\_\_\_\_, \_\_\_\_\_ judge,

at the \_\_\_\_\_ court located at

\_\_\_\_\_, on the \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ .m., to show

cause, why you should not be held in contempt of court for:

☐ failure to pay fine(s), fee(s) (and) (court costs) in the amount of \$ \_\_\_\_\_

☐ failure to register for school

☐ failure to comply with the first offender program

☐ failure to comply with probation

☐ failure to perform community service hours

☐ failure to appear]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
This hearing may be cancelled if you immediately pay all fines, fees and costs and show the clerk that you have complied with all court orders.

FAILURE TO APPEAR WILL RESULT IN A WARRANT FOR YOUR ARREST AND AN ADDITIONAL \$100.00 ADMINISTRATIVE WARRANT FEE.

Judge

**CERTIFICATE OF MAILING**

I certify that on this date I mailed a copy of this order to

\_\_\_\_\_ (*name*) at the address indicated above.

Date of Mailing:

\_\_\_\_\_, \_\_\_\_\_ (*Judge*) (*Clerk*)

**USE NOTE**

**(Use Note is not to be printed on pre-printed forms)**

This form may be modified to meet the needs of individual courts.

[Effective, October 1, 1991; as amended, effective January 1, 1995; withdrawn 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. \_\_\_\_\_.]



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

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## [rules.supremecourt-grp] Rule Proposal Comment Form, 04/22/2023, 5:56 pm

1 message

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**web-admin@nmcourts.gov** <nmcourtswebforms@nmcourts.gov>

Sat, Apr 22, 2023 at 5:56 PM

Reply-To: nmcourtswebforms@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Your  
Name: Melissa Kennelly

Phone  
Number: 575-445-5584

Email: [ratdmak@nmcourts.gov](mailto:ratdmak@nmcourts.gov)

Proposal  
Number: 2023-016

Comment: The rule seems clear. I suggest removing the \$1,000 fine limit throughout the rule in light of Matter of Marshall, S-1-SC-37698, \_\_\_\_ P.3d \_\_\_\_, Mar. 16, 2023, paragraph 19 ("Going forward, we clarify that this [\$1,000] limit no longer exists for contempt charges.").

The rule clarifies that a jury trial must be held if the potential punishment exceeds 6 months imprisonment, but what if the contemnor files a waiver of jury trial in order to avoid a sentence exceeding 6 months imprisonment? I suggest that the rule clarify that a sentence exceeding 6 months imprisonment may be imposed only after a jury trial "or the contemnor's waiver thereof."

One thing is unclear to me in the second paragraph of the committee commentary to the district court rule. It says that this rule only applies to criminal contempt arising from conduct in criminal cases in the district court. The language is stricken that once referred the reader to the identical rule of civil procedure for criminal contempt arising out of civil proceedings. This may create confusion in that a judge in a civil, domestic, or other non-criminal proceeding may believe that they cannot hold someone in criminal contempt in those types of proceedings. It may be worth clarifying that the absence of a rule for criminal contempt in non-criminal proceedings does not prohibit the court from exercising its inherent and statutory authority to conduct direct or indirect criminal contempt proceedings arising out of non-criminal proceedings.

Thank you.