

## RULE 66. CONTEMPT PROCEEDINGS

### (a) In General.

(1) *Purpose and Scope.* This rule establishes procedures to implement the inherent and statutory powers of the court to impose punitive and remedial sanctions for contempt. This rule shall not apply to the imposition of sanctions specifically authorized by other provisions of these rules or by statute.

(2) *Definitions.* For purposes of this rule:

(A) “Contempt” includes but is not limited to:

(i) disorderly conduct, insolent behavior, or a breach of peace, noise or other disturbance or action which actually obstructs or hinders the administration of justice or which diminishes the court’s authority; or

(ii) failure to comply with a lawful judgment, order, writ, subpoena, process, or formal instruction of the court.

(B) A punitive sanction is a sanction imposed to punish a completed act of contempt or to terminate any contempt which obstructs the administration of justice or diminishes the court’s authority.

(C) A remedial sanction is a sanction imposed to coerce the termination of an ongoing contempt or to compensate a party aggrieved by contempt.

(D) A summary proceeding is as described in subdivision (b).

(E) A plenary proceeding is as described in subdivisions (c) and (d).

(F) “Court” means a Judge of the District, Probate or Administrative Court or a Justice of the Superior or Supreme Judicial Court.

(3) *Designation of Appropriate Proceeding.* The court or the moving party must designate the nature of the contempt claimed and the sanctions sought. Where both punitive and remedial sanctions are being sought, the court must use procedures for punitive sanctions.

**(b) Summary Proceedings.**

(1) *Applicability.* A summary proceeding under this subdivision may be used when punitive or remedial sanctions are sought for contempt occurring in the actual presence of the court and seen or heard by the court.

(2) *Procedure.* A contempt may be punished summarily if the court certifies that the court saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. Before imposition of sanctions the court shall allow the alleged contemnor an opportunity to be heard in defense and mitigation.

If the court finds that the alleged contemnor committed the contempt, the court shall issue a written order that directly or by incorporation of the record:

(A) specifies the conduct constituting the contempt;

(B) certifies that the conduct constituting contempt occurred in the presence of the court and was seen or heard by the court;

(C) contains the sanction imposed.

(3) *Punitive Sanctions.* The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In a summary proceeding the court may impose a punitive sanction that consists of either imprisonment for a definite period not to exceed 30 days or a fine of a specified amount not to exceed \$5000 or a combination of imprisonment and fine.

(4) *Remedial Sanctions.* The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) *Appeal.* A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

**(c) Plenary Proceedings for Punitive Sanctions.**

(1) *Applicability.* A plenary proceeding under this subdivision must be used when punitive sanctions are sought for contempt occurring outside the

presence of the court. A proceeding under this subdivision may be used when punitive sanctions are sought for contempt occurring in the presence of the court and must be used when a punitive sanction in excess of that provided in subdivision (b), paragraph (3) is contemplated.

(2) *Procedure.* A proceeding under this subdivision shall proceed as provided by the Maine Rules of Criminal Procedure for the prosecution of a Class D crime, except as hereinafter provided.

(A) *Initiation.* A proceeding under this subdivision is initiated by the court on its own motion or at the suggestion of a party.

(B) *Request for Prosecution.* The court may request that an attorney for the state prosecute the proceeding. If that request is refused, the court may appoint a disinterested member of the bar to act as prosecutor.

(C) *Complaint.* The prosecuting attorney shall draft a complaint and summons which shall be served upon the alleged contemnor in accordance with the Maine Rules of Criminal Procedure. The complaint shall

(i) state the essential facts constituting the contempt and whether remedial as well as punitive sanctions are sought; and

(ii) specify the time and place of a hearing.

(D) *Trial.* The date of trial shall allow the alleged contemnor a reasonable time for the preparation of a defense. Trial shall be to the court, except that, if the court concludes that in the event of an adjudication of contempt a punitive sanction of imprisonment of more than 30 days or a serious punitive fine may be imposed, trial shall be to a jury unless waived by the alleged contemnor.

(E) *Failure to Appear.* An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant.

(3) *Punitive Sanctions.* The court may impose a punitive sanction that is proportionate to the conduct constituting the contempt. In order to impose a punitive sanction, the court must find beyond a reasonable doubt that

(A) the alleged contemnor has intentionally, knowingly or recklessly failed or refused to perform an act required or has done an act prohibited by a court order; and

(B) it was within the alleged contemnor's power to perform the act required or refrain from doing the prohibited act.

(4) *Remedial Sanctions.* The court may impose remedial sanctions of the kind specified in subdivision (d), paragraph (3) of this rule.

(5) *Appeal.* A person upon whom a punitive or remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Criminal Procedure.

**(d) Plenary Proceedings for Remedial Sanctions.**

(1) *Applicability.* Unless remedial sanctions are sought in plenary punitive proceedings under subdivision (c) of this rule, a plenary remedial proceeding under this subdivision must be used when remedial sanctions are sought for contempt occurring outside the presence of the court. A proceeding under this subdivision may be used when remedial sanctions are sought for contempt occurring in the presence of the court.

(2) *Procedure.*

(A) *Initiation.* A proceeding under this subdivision, or a request for remedial sanctions in a proceeding under subdivision (b) or (c) of this rule, is initiated by the court on its own motion or at the suggestion of a party. The motion of a party shall be under oath and set forth the facts that give rise to the motion or shall be accompanied by a supporting affidavit setting forth the relevant facts.

(B) *Notice.* The court shall set the matter for hearing on oral testimony, depositions, or affidavits and shall order that a contempt subpoena be served on the alleged contemnor. The subpoena shall set forth the title of the action and the date, time, and place of the hearing and shall allow the alleged contemnor a reasonable time to file an answer and prepare a defense. The subpoena may include an order to request documents requested by the moving party. The subpoena shall contain a warning that failure to obey it may result in arrest and that if the court finds the alleged

contemnor to have committed contempt, the court may impose sanctions that may include fines and imprisonment, or both.

(C) Service. The contempt subpoena shall be served with a copy of the court order or of the motion and any supporting affidavit upon the alleged contemnor. Service upon an individual shall be made in hand by an officer qualified to serve civil process. Service upon a party that is not an individual shall be made by any method by which service of a civil summons may be made. Service shall be completed no less than 10 days prior to the hearing unless a shorter time is ordered by the court.

(D) Hearing. All issues of law and fact shall be heard and determined by the court. The alleged contemnor shall have the right to be heard in defense and mitigation. In order to make a finding of contempt, the court must find by clear and convincing evidence that:

(i) the alleged contemnor has failed or refused to perform an act required or continues to do an act prohibited by a court order, and

(ii) it is within the alleged contemnor's power to perform the act required or cease performance of the act prohibited.

(E) Failure to Appear. An alleged contemnor who fails to appear as required may be arrested pursuant to a bench warrant and may be subject to a default judgment.

(F) Order. In the event that the court makes a finding of contempt, the court shall issue an order which specifies the sanction to be imposed.

(G) Appeal. A person upon whom a remedial sanction has been imposed in a proceeding brought under this subdivision may seek appellate review as provided by the Maine Rules of Civil Procedure.

(3) *Remedial Sanctions.* The court may impose any of the following sanctions on a person adjudged to be in contempt in a proceeding seeking remedial sanctions. The court may also order such additional relief as has heretofore been deemed appropriate to facilitate enforcement of orders, such as appointment of a master or receiver or requirement of a detailed plan or other appropriate relief. An order containing a remedial sanction shall contain a clear description of the action that is required for the contemnor to purge the contempt.

(A) Coercive Imprisonment. A person adjudged to be in contempt may be committed to the county jail until such person performs the affirmative act required by the court's order.

(B) Coercive Fine. A person adjudged to be in contempt may be assessed a fine in a specific amount, to be paid: (i) unless such person performs an affirmative act required by the court's order; or (ii) for each day that such person fails to perform such affirmative act or continues to do an act prohibited by the court's order.

(C) Compensatory Fine. In addition to, or as an alternative to, sanctions imposed under subparagraph (A) or (B) of this paragraph, if loss or injury to a party in an action or proceeding has been caused by the contempt, the court may enter judgment in favor of the person aggrieved for a sum of money sufficient to indemnify the aggrieved party and to satisfy the costs and disbursements, including reasonable attorney fees, of the aggrieved party.

**Advisory Committee's Notes**  
**June 1, 2000**

Rule 66, subdivisions (a), (b), and (d) are amended to revise and clarify language that has created confusion in implementation of the 1997 rule changes. Going through the text of the rule, the following changes are recommended:

1. The definition of "contempt," subdivision (a)(2)(A)(i), is broadened to include any obstructing, demeaning, or hindering action, returning to the interpretation, prior to the 1997 amendment, which narrowed the definition. "Contempt of court may be defined as an act which is calculated to embarrass, hinder or obstruct a court in the administration of justice or which is calculated to lessen its authority or dignity." *In re Bernard*, 408 A.2d 1279, 1281 n.2 (Me. 1979) citing *In re Holbrook*, 133 Me 276, 280 (1935).

2. The definition of punitive sanction, subdivision (a)(2)(B), is amended to recognize that it may be imposed either to punish a completed act of contempt or to punish and stop an ongoing act of contempt. The existing definition with the word "retrospectively" created concern that contempt could not be imposed until after the contemptuous act or disruption

was completed. Sometimes the court must act while the disruption is ongoing.

3. Subdivision (a)(3) is revised to remove the requirement for citation of a specific subdivision of this rule as part of the initiation of a contempt proceeding.

4. Subdivision (a)(4) is removed. The general law regarding disqualification and recusal would continue to apply, as it always has, in contempt proceedings.

Discussing the former disqualification rule under M.R. Civ. P. 42(b), the Law Court, in *Alexander v. Sharpe*, 245 A.2d 279, 285 (Me. 1968) stated:

Rule 42(b) expressly excepts from this requirement the action of a justice for contempts occurring in the justice's presence. Neither our Rule 42(a) nor the Federal Rule from which ours was adopted disqualifies the Presiding Justice from dealing with contempts committed in open court in his presence in cases where the alleged contemptuous conduct, besides offending the orderliness of the proceedings, also impugns the integrity of the Justice. The need for summary action plus the advantage of the presiding justice's first hand observation of the offending actions and their background must be balanced against the danger that personal resentment may enter into the Justice's evaluation of the incident.

Accordingly, no special rule governing disqualification is needed in contempt proceedings.

5. Subdivisions (b)(1) and (2) are revised to follow the summary contempt language and practice of the first sentence of F.R. Crim. P. 42(a). Under this revision, summary contempt may be imposed where contempt is committed in the actual presence of the court. Subparagraphs (A) and (B) of subdivision (b)(2) are stricken as unnecessary, and subparagraphs (C) and (D) are incorporated into the text of subdivision (b)(2). These amendments are designed to return summary contempt practice to practice as it existed prior to the 1997 amendments.

6. Subdivision (b)(3) is amended to increase the fine cap for summary contempts from \$1000 to \$5000.

7. Subdivision (d)(2)(C) is amended to permit the court to order that a hearing be held less than 10 days after service in appropriate circumstances. Such may be particularly important in cases seeking contempt for violation of parental rights orders.

8. Subdivision (d)(2)(D) is amended to remove the prohibition on court appointed counsel. There may be circumstances such as alleged violation of child protective orders or termination of parental rights orders, where individuals may have rights to court appointed counsel as a result of operation of other provisions of law. Because the general law regarding assistance of counsel and right to court appointed counsel applies to such proceedings, and there generally is no such right in civil proceedings with some exceptions, removal of the entire sentence is recommended.

9. Subdivision (d)(3) is amended to specify that sanctions may be imposed after a finding of contempt but during the same contempt proceeding. This removes concern that two hearings may be required to complete a remedial contempt process.

This is not inconsistent with *Wells v. State*, 474 A.2d 846 (Me. 1984). In *Wells*, the petitioners had been jailed without any judicial determination of ability to pay their unpaid debt, 474 A.2d at 851. The Court held that a “subsequent hearing” on ability to pay was required, but only because that determination had not been made in the initial contempt hearing, 474 A.2d at 852. A trial court may address and decide all contempt issues in one hearing.

**Advisory Committee’s Notes**  
**June 2, 1997**

Rule 66 is identical to M.R.Crim.P. 42, both rules being adopted at the same time to clarify present confusion about contempt and to provide a road map applicable to all contempt proceedings. *[Effective July 1, 2003, M.R.Crim.P 42 was abrogated except for a cross reference and statement that M.R. Civ. P. 66 governs procedure for contempt matters arising in criminal cases.]*

Subdivision (a) is intended to make the rule applicable to a contempt proceeding unless the imposition of sanctions is specifically covered by rule or



specific statutory provisions. For example, the rule does not apply to the specific sanctions found in other provisions of the Civil and Criminal rules. *See, e.g.*, M.R. Civ. P. 11, 37, 76(f); M.R.Crim.P. 16(d), 16A(d). Nor does it apply to a statutory provision such as 17-A M.R.S.A. § 1304 (1983 & Supp. 1995). Paragraph (3) assures that the proceeding will follow the correct procedural path, according to whether the contempt occurred in or outside the presence of the court and whether punitive or remedial sanctions are sought.

Subdivision (b) provides a summary procedure for contempt occurring in open court and actually seen or heard by the judge or justice. Both punitive and remedial sanctions may be sought in the same summary proceeding for such a contempt. In the court discretion, plenary proceedings under subdivision (c) or (d) may be used for in-court contempt. Sanctions must be proportionate to the offense. *State v. Alexander*, 257 A.2d 788 (Me. 1969). There is no right to jury trial. *State v. Spickler*, 637 A.2d 857 (Me. 1994). The alleged contemnor may be heard through counsel if counsel is present.

Subdivision (c) provides for a plenary proceeding when punitive sanctions are sought. Remedial sanctions may be imposed in the same proceeding. Jury trial is provided if the court expects to seriously consider imposing a punitive sanction of a serious punitive fine or imprisonment in excess of 30 days upon adjudication of contempt. The language “serious punitive fine” is taken from *United Mine Workers v. Bagwell*, 512 U.S. 821, 837-39 (1994), which used it to describe the constitutional trigger for the right to jury trial. That Court, in holding that a \$52,000,000 fine against the labor union was “unquestionably . . . a serious contempt sanction,” found it unnecessary to “answer . . . the difficult question where the line between petty and serious contempt fines should be drawn.” *Id.* at 837 n.5. However, it did point out that in *Muniz v. Hoffman*, 422 U.S. 454, 477 (1975) it had held that a fine of \$10,000 imposed on a union was insufficient to trigger the Sixth Amendment right to jury trial and also cited to “18 U.S.C. § 1(3) (defining petty offenses as crimes, the penalty for which . . . does not exceed imprisonment for a period of six months or a fine of not more than \$5,000 for an individual and \$10,000 for a person other than an individual, or both)” as additional source material supporting the proposition. *Id.* The Court reference to the current language of 18 U.S.C. § 1(3) serves to at least suggest what “magnitude of contempt fine” constitutes a serious punitive fine. *Id.* The potential imposition of a punitive sanction of up to 30 days imprisonment does not trigger the right to a jury trial under the United States Constitution. *Bloom v. Illinois*, 391 U.S. 194 (1968). Nor would such potential imposition trigger a jury trial right under the common law. *Id.* at 196. *See also Eilenbecker v. District Court of Plymouth*

*County*, 134 U.S. 31, 36-39 (1890). Although the issue was left open in *State v. Sklar*, 317 A.2d 160, 171 n.11 (Me. 1974), the Maine Constitution, like that of its mother Commonwealth, presumably accords no jury trial right. *See generally*, *Root v. MacDonald*, 157 N.E. 684, 691 (Mass. 1927); *Miaskiewicz v. Commonwealth*, 402 N.E.2d 1036 (Mass. 1980). An alleged contemnor has the right to retained or appointed counsel as provided in Rule 44 of the Maine Rules of Criminal Procedure. Proof that the alleged contemnor has acted “intentionally, knowingly or recklessly” satisfies the state of mind element.

Subdivision (d) provides a plenary proceeding for remedial sanctions for contempt, designed either to coerce obedience to an order of the court or to compensate a party injured by disobedience. Remedial sanctions may also be awarded for in-court contempt under subdivision (b) or in conjunction with punitive sanctions under subdivision (c). The procedure is consistent with 14 M.R.S.A. §§ 252 and 3136 (Supp. 1995). There is no right to trial by jury in proceedings for remedial sanctions. *City of Rockland v. Winchenbaugh*, 667 A.2d 602, 604 (Me. 1995). The standard of proof is that of clear and convincing evidence. This is consistent with the standard in all the federal circuits, *see, e.g.*, *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Cir. 1991), and with the Law Court decision in *Small v. Small*, 413 A.2d 1318, 1325, n.7 (Me. 1980). The opportunity to purge gives the imprisoned contemnor “the keys to his freedom.” *Slauenwhite v. Slauenwhite*, 679 A.2d 93, 94 (Me. 1996). *See also Bagwell*, 512 U.S. 821 at 828-29.