Administrative Office of the Courts

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Supreme Court lifts $1,000 limit on punitive contempt fines

SANTA FE – The state Supreme Court today eliminated a cap of $1,000 on the fines that can be imposed for contempt of court in New Mexico without a jury trial for the person subject to the punishment.

In a unanimous opinion involving disciplinary action against an Albuquerque attorney, the justices overruled the decades-old limit but did not establish a new maximum monetary penalty for behavior constituting contempt of court, such as disobeying a court or disrespecting its authority.

A 1973 decision of the Court established the $1,000 fine limit by holding that penalties imposed above that amount would elevate acts of contempt to a "serious" criminal offense, which would require a jury trial unless waived by the defendant. That dollar amount, if adjusted for inflation, is the equivalent of about $6,738 in 2023, the justices noted.

"We decline to place an express limit on contempt fines today. Instead, we adhere to New Mexico precedent and federal precedent granting courts the power to determine whether an offense is serious under the circumstances of the case," the Court wrote.

In today's per curiam opinion, the Court also clarified that the types of contempt will be reclassified in New Mexico law.

"Contempt charges formerly classified as either 'civil' or 'criminal' should instead be regarded as 'remedial' or 'punitive' to more accurately reflect the distinctions between the different types of contempt," the Court wrote.

What in the past would have been referred to as civil contempt will be considered remedial contempt — reflecting that the sanction is to compel a person's compliance with a court mandate. Punitive contempt, previously termed criminal contempt, occurs when a court punishes

a person for disobedient or disrespectful behavior. Contempt also can be direct – occurring in the presence of the court – or indirect when it happens outside the presence of the court.

The opinion provided the legal reasoning for the Supreme Court holding suspended attorney Victor Marshall in contempt for his behavior at a hearing before the justices in May 2022, and for disciplinary rules violations after his suspension from the practice of law several months earlier.

The hearing was for Marshall to present evidence to show the Court why he should not be held in contempt. Marshall had an attorney at the hearing, but he sought to make legal arguments in his own defense. The Court required that his presentation be done under oath because he was no longer a licensed attorney. However, he declined to be put under oath and repeatedly interrupted the Court.

"We fined Marshall $2,000 as a punitive sanction of his direct contempt by continual interruption of the Court and disregard of the Court's instructions," the justices wrote. "Moreover, we informed Marshall that if he did not timely pay the fee to the Client Protection Fund, there would be additional contempt proceedings forthcoming, which could include 'a penalty up to and or including permanent disbarment.' We hold that this punishment is appropriate in light of Marshall's conduct before the Court."

In January 2022, Marshall was suspended from the practice of law for no less than one year for violating ethical rules by making statements about a judge's integrity with a "reckless disregard" as to their truth. The indefinite suspension period was extended to at least 18 months after Marshall was held in contempt of court for not complying with rules that required him to notify clients, other lawyers and courts about his suspension. Additionally, Marshall filed notices with courts after his suspension asking them to put proceedings on hold – actions that violated the Court's order suspending him from the practice of law.

Marshall was disciplined for statements he made about Judge James Wechsler in pleadings filed about a settlement agreement for San Juan River water rights. The Court issued a written opinion on Monday about the initial disciplinary action against Marshall.

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To read the decision in *In re Victor R. Marshall (II)*, No. S-1-SC-37698, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/521686/index.do