I.C.R. 42b. Summary Proceedings.

Idaho Criminal Rule 42(b). Summary Proceedings.

(1) A summary proceeding may be used only if the contempt was committed in the presence of the court. A contempt is committed in the presence of the court if:

a. The conduct occurs in open court in the immediate presence of the judge;

b. The judge has personal knowledge, based upon personally observing and/or hearing the conduct, of the facts establishing all elements of the contempt; and

c. The conduct disturbs the court's business.

(2) The court may summarily impose a sanction for contempt that is committed in its presence. Before doing so, the court must:

a. Give the contemnor notice of the alleged contempt, which can be oral; and

b. Give the contemnor a brief opportunity to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) Promptly after announcing the sanction, the court must enter in the record a written order, signed by the judge, which:

a. States that the judge saw and/or heard all of the conduct constituting the contempt and that it was committed in the actual presence of the court;

b. Recites each of the specific facts upon which the contempt conviction rests;

c. Adjudges that the contemnor is guilty of contempt; and

d. Sets forth the sanction for that contempt.

Before imposing incarceration as a sanction for summary contempt, the court should consider whether a lesser sanction would be effective. If the sanction includes incarceration, the court may immediately remand the contemnor into custody to begin serving such incarceration and later file the written order. If the sanction includes a civil sanction, the written order must recite precisely what the contemnor must do in order to avoid the sanction or have it cease.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

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