I.C.R. 42c. Nonsummary Proceedings -- Commencement.

Idaho Criminal Rule 42(c). Nonsummary Proceedings -- Commencement.

Nonsummary contempt proceedings may be commenced only as provided herein.

(1) Order to show cause. If the alleged contempt consists of failing to appear in court, the contempt proceedings may be commenced by an order to show cause directed to the respondent. The order to show cause must be supported by an affidavit unless it is prepared by or at the direction of the judge and the facts recited in it are based upon the judge's personal knowledge and/or upon information from the court file contained in documents prepared by court personnel. The order to show cause must:

a. Notify the respondent of the charge of contempt;

b. Recite all facts constituting the alleged contempt, other than that the respondent's failure to appear in court was willful; and

c. Set a time, date, and place for the respondent to appear to answer to the charge of contempt.

The order to show cause may be prepared by the court or by a party at the court's direction.

(2) Motion and affidavit. All contempt proceedings, except those initiated by an order to show cause for the failure to appear in court, must be commenced by a motion and affidavit. The affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

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