

RULE 3.830 | DIRECT CRIMINAL CONTEMPT

A criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against the defendant and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced therefor. The defendant shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court.

Committee Notes

1968 Adoption. This proposal is consistent with present Florida practice in authorizing summary proceedings in direct criminal contempt cases. See *Ballengee v. State*, 144 So.2d 68 (Fla. 2d DCA 1962); *Baumgartner v. Joughin*, 105 Fla. 334, 141 So. 185 (1932); also see *State v. Lehman*, 100 Fla. 481, 129 So. 818 (1930), holding that the defendant is not entitled to notice of the accusation or a motion for attachment. Fairness dictates that the defendant be allowed to present excusing or mitigating evidence even in direct criminal contempt cases.

Much of the terminology of the proposal is patterned after Federal Rule of Criminal Procedure 42(a) with variations for purposes of clarity. What may be considered a significant change from the terminology of the federal rule is that the proposal provides for a “judgment” of contempt, whereas the term “order” of contempt is used in the federal rule. Both terms have been used in Florida appellate cases. The term “judgment” is preferred here since it is consistent with the procedure of adjudicating guilt and is more easily reconciled with a “conviction” of contempt, common terminology on the trial and appellate levels in Florida. It also is consistent with appeals in contempt cases. See, e.g., *State ex rel. Shotkin v. Buchanan*, 149 So.2d 574, 98 A.L.R.2d 683 (Fla. 3d DCA 1963), for the use of the term “judgment”.

1972 Amendment. Same as prior rule.

