

Proposed Amendments to Rule 86.2

Rule 86.2 is amended as follows:

Rule 86.2. Contempt

(a) Motion for Contempt. A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b), ~~shall~~**must** be commenced by the service of a motion or order to show cause. The affidavit ~~upon~~**on** which the motion or order to show cause is based ~~shall~~**must** set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the ~~moving party~~**movant**. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage.

(b) Service. Where the alleged contemnor has appeared in the ~~action~~**case** by an attorney, the notice of motion or order to show cause and the papers ~~upon~~**on** which it is based may be served ~~upon~~**on** the contemnor's attorney; otherwise service ~~shall~~**must** be made personally, in the manner provided for the service of a complaint.

(c) Arrest – Bail. If an order to show cause is sought, such order, ~~may~~**upon, on** ~~a showing of~~**a showing of** necessity ~~shown therefor~~, embody a direction to a United States marshal to arrest the alleged contemnor and hold ~~him~~**the alleged contemnor** in bail in an amount fixed by the order, conditioned for the contemnor's appearance at the hearing, and further conditioned that the alleged contemnor will be thereafter amenable to all orders of the court for surrender.

(d) Oral Evidence; Trial by Jury. If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, the alleged contemnor ~~shall~~,

~~up~~**will**, on demand therefor, be entitled to have oral evidence taken ~~thereon~~, either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, the alleged contemnor ~~shall~~**must** make written demand therefor on or before the return day or adjourned day of the application; otherwise the alleged contemnor will be ~~deemed~~**considered** to have waived a trial by jury.

(e) Court Order of Contempt. In the event the alleged contemnor is found to be in contempt of court, an order ~~shall~~**will** be made and entered: (1) reciting or referring to the verdict or findings of fact ~~upon~~**on** which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine ~~shall~~**will** include the damages found, and naming the person to whom such fine ~~shall~~**will** be payable; (4) stating any other conditions, the performance ~~whereof~~**of which** will operate to purge the contempt; and (5) directing the arrest of the contemnor by a United States marshal, and confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. The order ~~shall~~**will** specify the place of confinement.

(f) Confinement. No party ~~shall~~**will** be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. ~~Upon~~**On** such an order, no person ~~shall~~**will** be detained in prison by reason of nonpayment of the fine for a period exceeding 6 months. A certified copy of the order committing the contemnor ~~shall~~**will** be sufficient warrant to the marshal for the arrest and confinement.

(g) Remedies. The aggrieved party ~~shall~~**will** also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(h) Discharge. In the event the alleged contemnor ~~shall be~~**is** found not guilty of the charges, the alleged contemnor ~~shall~~**will** be discharged from the proceeding.

~~**PRACTICE COMMENT:** Pursuant to the renumbering of the Rules, the former Rule 63 now will be identified as Rule 86.2.~~

(Added Sept. 30, 2003, eff. Jan. 1, 2004.; **and amended _____, 2009, eff. _____, 2010.**)

Advisory Committee Note

The language of Rule 86 has been amended and restructured as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. The Practice Comment referring to the 2004 renumbering of certain rules has also been deleted as no longer necessary.