

Rule 86.2. Contempt

A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b), shall be commenced by the service of a motion or order to show cause. The affidavit upon which the motion or order to show cause is based shall 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. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the contemnor's attorney; otherwise service shall be made personally, in the manner provided for the service of a complaint. If an order to show cause is sought, such order, may upon necessity shown therefor, embody a direction to a United States marshal to arrest the alleged contemnor and hold him 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.

If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, the alleged contemnor shall, upon 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 make written demand therefor on or before the return day or adjourned day of the application; otherwise the alleged contemnor will be deemed to have waived a trial by jury.

In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon 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 include the damages found,

and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof 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 specify the place of confinement. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall 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 be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

In the event the alleged contemnor shall be found not guilty of the charges, the alleged contemnor shall 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.)