

Section 7.01: Contempt—criminal

6. Retire the jury. Have the offender brought before you.  
(The offender is not entitled to counsel in a summary proceeding.)
7. Advise the offender that you intend to find him or her in criminal contempt for obstructing the administration of justice by reason of (here describe the conduct).
8. Ask the offender if he or she would care to say anything in mitigation.
9. After hearing the offender out, impose sentence in words to this effect:

I find you in criminal contempt for so conducting yourself in this courtroom that you obstructed the administration of justice. The conduct for which I find you in criminal contempt was [here describe the conduct observed by you]. I sentence you to \_\_\_\_ hour(s) [day(s)] in jail [or I fine you \$\_\_\_\_] for that conduct. [In criminal contempt you cannot both imprison and fine.] The serving of this sentence shall commence at once [or shall commence at the conclusion of this trial].

- (a) No sentencing guideline has been prescribed for contempt because of the variety of behaviors covered. See U.S.S.G. § 2J1.1, Application Note. In the absence of a guideline, the court is to “impose an appropriate sentence, having due regard for the purposes set forth in [18 U.S.C. § 3553(a)(2),] . . . for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.” 18 U.S.C. § 3553(b).
  - (b) It is possible for the court to find a person in summary criminal contempt but to defer commencement of the sentence until the trial ends. In this case, however, using the Fed. R. Crim. P. 42(b) procedure rather than the summary procedure of 42(a) is probably best.
10. You must prepare, sign, and file an order of contempt. This order is intended to permit informed appellate review. The order must contain all that you saw or heard