

Section 7.01: Contempt—criminal

Under Fed. R. Crim. P. 42(b):

1. The notice may be given:
  - (a) orally by you in open court in defendant's presence;  
or
  - (b) by an order to show cause on the application of the U.S. attorney or of an attorney appointed by the court for that purpose; or
  - (c) by an order of arrest.
2. If giving oral notice to defendant in open court is not possible, you should ask the U.S. attorney to prepare for your signature an order to show cause directed to defendant and ordering defendant to show cause why he or she should not be found in criminal contempt because of the offending conduct.
3. The notice, whether oral or written, must set down a definite time and place for the hearing and must describe the conduct constituting the charged contempt and describe it as being criminal contempt. You must accord defendant a reasonable period in which to engage an attorney and prepare a defense.

Remember that under the rule another judge must conduct the trial if the contemptuous conduct involved criticism of or disrespect for yourself, unless defendant expressly waives the right to trial by another judge.
4. Because a person found guilty of criminal contempt may be imprisoned, defendant has a right to counsel. If defendant cannot afford counsel, you must appoint an attorney for him or her.
5. Defendant has a right to a jury trial unless before trial you, on your own motion or on the government's motion, limit the maximum sentence that you will impose to the maximum authorized for a petty offense, that is, imprisonment for six months or a fine of \$5,000 (for an individual; the fine limit on organizations for petty offenses is \$10,000 (but see *Muniz v. Hoffman*, 422 U.S. 454 (1975), *United States v. Twentieth Century Fox Film Corp.*, 882 F.2d 656 (2d Cir. 1989), *cert. denied*, 110 S. Ct. 722 (1990),