

\_\_\_\_\_ COURT  
COUNTY OF \_\_\_\_\_ STATE OF NEW YORK, PART \_\_\_\_

\_\_\_\_\_  
IN RE THE CRIMINAL CONTEMPT OF COURT OF

\_\_\_\_\_<sup>1</sup>  
COMMITTED IN THE IMMEDIATE VIEW  
AND PRESENCE OF THE COURT  
(JUDICIARY LAW § 750) WHICH  
OBSTRUCTED AND IMMEDIATELY  
THREATENED TO OSBSTRUCT THE  
PROCEEDINGS AND IMPAIRED THE  
COURT’S AUTHORITY TO PRESIDE  
OVER THE PROCEEDINGS ENTITLED:

**Mandate of Commitment<sup>2</sup>  
for Criminal Contempt  
Committed in the  
Immediate View and  
Presence of the Court<sup>3</sup>**

Index No.: \_\_\_\_\_<sup>4</sup>

\_\_\_\_\_  
At a [Special / Trial / Etc.] Term of the \_\_\_\_\_ Court in the \_\_\_\_\_ Judicial  
Department, held in and for the County of \_\_\_\_\_, on the \_\_\_\_\_ day of [Month],  
[Year], at the Courthouse at [Number And Street], County of \_\_\_\_\_, there was regularly

<sup>1</sup> Some spectator contemnors refuse to identify themselves. This is not an obstacle since the court is punishing the contemnor, not his or her name. Like a “John Doe” indictment, the contemnors’ name—as purely a police-corrections matter—can be substituted for “John Doe.”

<sup>2</sup> N.Y. Judiciary Law § 752 (Jud. Law) Requisites of Commitment for Criminal Contempt; Review of Certain Mandates

Where a person is committed for contempt, as prescribed in section seven hundred fifty-one [up to \$1,000 fine and/or up to 30 days in jail], the particular circumstances of his offense must be set forth in the mandate of commitment. Such mandate, punishing a person summarily for a contempt committed in the immediate view and presence of the court, is reviewable by a proceeding under article seventy-eight of the civil practice law and rules.

Jud. Law § 755. When Punishment may be Summary

Where the offense is committed in the immediate view and presence of the court, or of the judge or referee, upon a trial or hearing, it may be punished summarily. For that purpose, an order [Mandate of Commitment] must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor. Such order is reviewable by a proceeding under article seventy-eight of the civil practice law and rules.

<sup>3</sup> Neither statute nor case law requires the court to specify which subdivision of Jud. Law § 750 is involved. “It [is] proper for the magistrate to interpolate his version of the occurrences in conjunction with the stenographer’s minutes.” *Berkon v. Mahoney*, 268 A.D. 825, 825, 49 N.Y.S.2d 551 (1944), *aff’d*, 294 N.Y. 828 (1945).

<sup>4</sup> Language adapted from *Gompers v. Buck’s Stove and Range Co.*, 221 U.S. 418, 446 (1911).

before the Court a [Trial / Hearing / Motion / Etc.] actually in progress in the above-captioned Action and Proceeding.

WHEREUPON [name of contemnor] who was [Attorney for \_\_\_\_\_ / Client / Witness / Spectator] engaged in the following conduct in the immediate view and presence of the court:<sup>5</sup>

The conduct of [Name of Contemnor], as above set forth, obstructed, immediately threatened to obstruct and impaired the Court's authority to preside over said [Trial / Hearing / Motion / Etc.] in the above-captioned Action and Proceeding.

IT IS THEREFORE ORDERED AND ADJUDGED THAT [contemnor's name] is guilty of Criminal Contempt of Court, committed in the immediate view and presence of the Court.

AND IT IS FURTHER ORDERED AND ADJUDGED THAT as punishment for said criminal contempt of court, [Name of Contemnor] is to be committed to and imprisoned in the jail of this county for a period of \_\_\_\_\_ days [Not To Exceed Thirty] and is fined the sum of \_\_\_\_\_ dollars [Not To Exceed \$1,000], And It Is SO ORDERED.

\_\_\_\_\_  
NAME AND TITLE OF JUDGE

DATED: \_\_\_\_\_

\_\_\_\_\_, New York<sup>6</sup>

<sup>5</sup> Legibly write out what the contemnor did or refused to do in clear, everyday, nonconclusory, noneditorializing English. Be expansively truthful and err on the side of being overly detailed in how the contemnor's conduct obstructed or immediately threatened to obstruct the proceedings or impaired the authority of the court over the proceedings. Incorporate the stenographic minutes by reference.

<sup>6</sup> This Mandate of Commitment is adapted from that which was reproduced in *Waldman v. Churchill*, 262 N.Y. 247 (1933). It complies with Jud. Law §§ 752, 755 and case law distillation. "Jurisdiction of the person . . . attach[es] instantly upon the contempt being committed in the presence of the court." *In re Terry*, 128 U.S. 289, 311 (1888). Absent sufficient averment to the contrary, there is a presumption in favor of a court's summary contempt jurisdiction. *In re Cuddy*, 131 U.S. 280, 286 (1889). But a court filling out a Mandate of Commitment will be well served by bearing in mind that "it is difficult . . . in a written statement, to convey to the mind of the reader a photographic impression of what occurred at the time of an alleged contempt. *Palmieri v. Marean*, 86 A.D. 278, 279, 83 N.Y.S. 843 (2d Dep't 1903). An "immediate-view-and-presence" contempt is one which is seen or heard by the judge presiding so that he can assert the facts based on his own knowledge. "No proof need be given. The knowledge of the judge takes the place of proof and his recital in the Mandate of Commitment of the facts . . . is sufficient. *Douglas v. Adel*, 269 N.Y. 144, 146-47 (1935). "Where [an Article 78 proceeding in the nature of certiorari] is directed to a judge . . . he is obliged to make and file a return [Attorney General's Office] which shall set forth the facts within his knowledge upon which he acted. . . . The return thus made is conclusive." *Id.* at 148-49. An appellate court can only look to the facts recited in the Mandate of Commitment in deciding whether there was an "immediate-view-and-presence" contempt. *Berkon v. Mahoney*, 180 Misc. 659, 663, 43 N.Y.S.2d 334 (Special Term, Kings Co. 1943), *rev'd on other grounds*, 268 A.D. 825, 49 N.Y.S.2d 551 (2d Dep't 1944), *aff'd*, 294 N.Y. 828 (1945). A contempt citation is void without a written Mandate of Commitment which is *stricti juris*. *In re Rotwein*, 291 N.Y. 116 (1943); *Barnes v. Court of Sessions of Albany County*, 147 N.Y. 290 (1895); *Rutherford v. Holmes*, 66 N.Y. 368 (1876); *Paine, Webber, Jackson & Curtis, Inc. v. Pioneer Warehouse Corp.*, 61 A.D.2d 756, 757, 402 N.Y.S.2d 5 (1st Dep't 1978); *Sickmen v. Goldstein*, 59 A.D.2d 731, 398 N.Y.S.2d 583 (2d Dep't 1977); *Solano v. Martin*, 55 A.D.2d 620, 389 N.Y.S.2d 413 (2d Dep't 1976); *In re Boasberg*, 286 A.D. 951, 952, 143 N.Y.S.2d 272 (4th Dep't 1955); *In re Steingut*, 270 A.D. 34, 44, 58 N.Y.S.2d 775 (3d Dep't 1945).