

SAMPLE MANDATE OF COMMITMENT #3
(Immediate-View-and-Presence Contempt)

Mandate of Commitment¹

The Mandate of Commitment's CAPTION should read: *IN RE* THE CRIMINAL CONTEMPT OF COURT OF (name or description of "John Doe" contemnor)² COMMITTED IN THE IMMEDIATE-VIEW-AND-PRESENCE OF THE COURT (JUDICIARY LAW § 750), WHICH OBSTRUCTED AND IMMEDIATELY THREATENED TO OBSTRUCT THE PROCEEDINGS AND IMPAIRED THE COURT'S AUTHORITY TO PRESIDE OVER THE PROCEEDINGS ENTITLED: (Write in the name of the criminal or civil action or proceeding with the indictment or index number) [adapted from *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 500 (1911)].

The **HEADING** next to the caption box should state: MANDATE OF COMMITMENT FOR CRIMINAL CONTEMPT COMMITTED IN THE IMMEDIATE VIEW AND PRESENCE OF THE COURT.^{3,54}

The **first paragraph** of the Mandate should state: 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 BEFORE THE COURT A (trial, hearing, motion, etc.) ACTUALLY IN PROGRESS IN THE ABOVE-CAPTIONED ACTION AND PROCEEDING.

The **second paragraph** of the Mandate should also state: 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: [*legibly write out what the contemnor did or refused to do in clear, everyday, non-conclusory, non-editorializing 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.*] 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.

1 § 752 Requisites of Commitment for Criminal Contempt; Review of Certain Mandates. Where a person is committed for contempt, as prescribed in § 751 [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 78 of the CPLR.

2 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 contemnor's name—as purely a police–corrections matter—can be substituted for "John Doe."

3 Neither statute nor case law requires the court to specify which subdivision of § 750 is involved. "It was 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 (2d Dep't 1944), *aff'd*, 294 N.Y. 828 (1945).

The **third paragraph** of the Mandate should state: 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.

The **fourth paragraph** of the Mandate should state: 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 YORK⁴

4 This Mandate of Commitment is adapted from that which was reproduced in *Waldman v. Churchill*, 262 N.Y. 247 (1933). It complies with Judiciary Law §§ 752, 755 and case law distillation. “Jurisdiction of the person . . . attache[s] 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 “[i]t 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 . . .” *People ex rel. Palmieri v. Marean*, 86 A.D. 278, 279 (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. “[N]o 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, 147 (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 which shall set forth the facts within his knowledge upon which he acted. . . . The return thus made is conclusive.” *Douglas*, 269 N.Y. at 147–48. 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. A contempt citation is void without a written Mandate of Commitment which is *stricti juris*. *In re Rotwein*, 291 N.Y. 116 (1943); *People ex rel. Barnes v. Court of Sessions*, 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 (1st Dep’t 1978); *Sickmen v. Goldstein*, 59 A.D.2d 731 (2d Dep’t 1977); *Solano v. Martin*, 55 A.D.2d 620 (2d Dep’t 1976); *In re Petition of Boasberg*, 286 A.D. 951, 952 (4th Dep’t 1955); *Steingut v. Imrie*, 270 A.D. 34, 44 (3d Dep’t 1945).