

## Alabama Rules of Criminal Procedure

### Rule 33. Contempt.

*Rule 33.3. Disposition of other contempts; citation; arrest; hearing; and sentence.*

(a) OTHER CONTEMPTS. Except as provided in Rule 33.2(a), no person shall be found in contempt without a hearing held after a citation of the charge is given.

(b) CITATION. The citation shall:

(1) Be in writing and state that the person to whom it is directed is cited for contempt of court;

(2) Order that the person cited appear before the court to show cause why he or she should not be found in contempt of court as charged or should not be punished or incarcerated as provided by law;

(3) State the essential facts constituting the contempt cited; and

(4) Specify the time and place of the hearing.

(c) ARREST. A person cited to appear to show cause as provided in Rule 33.3(b) shall not be arrested unless the citation is accompanied by an arrest warrant issued in the same manner as provided in Rules 3.1(a) and 3.2(a).

(d) HEARING. The hearing shall be set so as to allow a reasonable time for the preparation of the defense. The contemnor shall be afforded the opportunity to present exculpatory evidence and evidence of mitigating and extenuating circumstances, shall be entitled to subpoena witnesses on his or her behalf, and shall be entitled to be represented by counsel as provided in Rule 6.

(e) SENTENCE. Sentence shall be pronounced in open court, in the presence of the contemnor, and not later than the latter of seven (7) days after completion of all proceedings under this rule, or the completion of the proceedings during which the contemptuous conduct occurred.

(f) RELEASE. The defendant is entitled to release as provided in Rule 7.

**Committee Comments As Amended Effective July 1, 1994.**

Rule 33.3 provides for disposition of constructive contempts. A person may not be found in contempt under Rule 33.3 unless the person has received notice of the charge and has had an opportunity for a hearing. This requirement comports with both Alabama law and Federal constitutional law.

In *Cooke v. United States*, 267 U.S. 517 (1925), the United States Supreme Court held that, except in prosecutions for contempt committed in open court, due process of law requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. The Court added, "We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." 267 U.S. at 537. Although this requirement has not been imposed upon the states by the Fourteenth Amendment, the Alabama Supreme Court has adopted the language of the *Cooke* decision. *Hunter v. State*, 251 Ala. 11, 37 So.2d 276 (1948). In *State ex rel. Payne v. Empire Life Insurance Co.*, 351 So.2d 538 (Ala.1977), and *Parcus v. Parcus*, 615 So.2d 75 (Ala.Civ.App.1992), Alabama's appellate courts have recognized that, upon request, an accused in a contempt proceeding is entitled to assistance of counsel.

The Alabama cases state the general rule that where a person is charged with constructive contempt, the person must be afforded due process of law, namely notice of the charge and an opportunity to be heard. *Ex parte Bankhead*, 200 Ala. 102, 75 So. 478 (1917); *Hunter v. State*, supra; *In re Tarpley*, 293 Ala. 137, 300 So.2d 409 (1974). The procedure required is that outlined in *Cooke v. United States*, supra. The purpose of Rule 33.3 is to formalize these due process requirements.

Section (b) sets forth the notice requirement. The Alabama Supreme Court has been strict in this respect. In *In re Tarpley*, supra, the summons received by the petitioner gave actual notice of the hearing and stated that the purpose of the hearing was to afford the petitioner an opportunity to explain his absence from the courtroom when he was called as a witness. However, the Court held that since the summons did not contain the word "contempt," the petitioner had no actual notice of the contempt charge or that the hearing was a contempt hearing. The Court added, "We must hold, therefore, that in a criminal case such as this, due process requirements must be rigidly adhered to...." 293 Ala. at 142, 300 So.2d at 414.

In *Hunter v. State*, supra, the Court indicated that a written accusation is necessary, and that it must apprise the accused of the exact nature of the charge and what the accused is called upon to defend. A formal accusation is essential to begin constructive criminal contempt proceedings, since the accusation takes the place of an indictment or information in a criminal case. *Craddock v. Oliver*,

23 Ala.App. 183, 123 So. 87 (1929); *Robertson v. State*, 20 Ala.App. 514, 104 So. 561 (1924).

In *Graham v. City of Sheffield*, 292 Ala. 682, 299 So.2d 281 (1974), the Court said that although usually proceedings for indirect criminal contempt must be initiated by accusation, pleading, or affidavit, formal pleading may be unnecessary as long as the accused has actual notice of the charge and is afforded a hearing. A court may on its own motion institute an indirect contempt proceeding. The rule does not require that the mere citation be supported by affidavit.

Section (c) requires that, in order for the person accused of contempt to be arrested rather than merely cited to appear, there must be an accusation under oath from which the magistrate can determine probable cause.