

FAMILY LAW CRIMINAL CONTEMPTS

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CONTEMPT – WHAT IS IT?

- Contempt is a criminal proceeding whereby the moving party seeks punitive relief (punishment) for the violation of a court order.
- CCP 1209: (a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:
 - **(5) Disobedience of any lawful judgment, order, or process of the court.**

TYPES OF FAMILY LAW CONTEMPT

- Failure to pay child/spousal support
- Failure to comply w/custody orders
- DVRO violations
- Attorney fee-based contempt
- Other “family support” orders
- General restraining orders

FACTORS TO CONSIDER BEFORE FILING AND COMMON PITFALLS TO AVOID

- Great deal of time and expense to your client – minimal likelihood of reimbursement. The underlying orders remain in place even if you win/lose.
- Respondent/Defendant entitled to services of an experienced criminal defense attorney who will zealously defend and fight.
- Risk cross complaint for contempt against your own client.
- Open up potential exposure for your own client – misdeeds and contemptible behaviors are fair game under disentitlement doctrine and other factors. Similar to considerations of putting client on stand in a criminal case. Are you opening a door you will later regret?

FACTORS TO CONSIDER BEFORE FILING AND COMMON PITFALLS TO AVOID

- For Child Support – Reach out to DCSS first (Attorney/Case Worker).
 - Are they able to enforce/collect through other means?
 - CDL (income threshold) /Business license/Passport suspensions?
 - Wage garnishments? Deeper resources for collections/investigate hidden assets.
 - Have them run an updated audit as part of your pre filing due diligence.
- Stand in shoes of a criminal prosecutor and the skill set and ethical obligations required of a criminal prosecutor – strict compliance with foundation, introduction of documents, each element of contempt, and evidence to prove case beyond reasonable doubt, discovery, *Brady* obligations. Realistic assessment of your prosecutorial skill set.
- Inability to pay child support defense simply requires preponderance standard. Can you overcome? Will court appoint PD thus implicitly determine indigent even before start case?

FACTORS TO CONSIDER BEFORE FILING AND COMMON PITFALLS TO AVOID

- Consider best interests of child/family. Promote long term co parenting/de escalation after trying to incarcerate a parent? Factor in 1385 motion considerations.
- What is the end goal? True compliance with an order? Or a strategic move/leverage – boards on ethical issues. Orders remain whether win/lose. Why file?
- Will a strongly worded letter suffice or other informal attempts at resolution?
- If file, consider striking request for incarceration. \$1000 per count/attorney's fees prevail.
- Stays pending RFO's; i.e. support modifications as Defendant has 5th Amendment rights which may be applicable to those proceedings.
- Consider all defenses that will be raised.
- **Criminal contempt should be a last option and reserved for only the most egregious violations**

CONTEMPT – WHAT IS IT?

- Burden of proof: Beyond a Reasonable Doubt –CALCRIM 220 “abiding conviction that the charge is true”
- Because it’s treated as a criminal proceeding – All/the same basic constitutional rights apply:
- Right to counsel
 - Right to confront and cross examine
 - Speedy trial rights
 - 5th Amendment
 - Jury trial (36 Counts = total punishment +180)

PLEADING THE CONTEMPT FL-410 AND FL-411

FL-410

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, State Bar number, and address):		FOR COURT/USE ONLY	
TELEPHONE NO.: E-MAIL ADDRESS (optional): ATTORNEY FOR (name):			
FAX NO. (optional):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:			
ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT		CASE NUMBER:	
NOTICE! A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties include jail sentence, community service, and fine. You are entitled to the services of an attorney, who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.		¡AVISO! Un proceso judicial por desacato es de índole criminal. Si la corte le declara a usted en desacato, las sanciones posibles incluyen penas de prisión y de servicio a la comunidad, y multas. Usted tiene derecho a los servicios de un abogado, a quien debe consultar sin demora para obtener ayuda. Si no puede pagar a un abogado, la corte podrá nombrar a un abogado para que le represente.	
1. TO CITEE (name of person you allege has violated the orders):			
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS. TO GIVE ANY LEGAL REASON WHY THIS COURT SHOULD NOT FIND YOU GUILTY OF CONTEMPT, PUNISH YOU FOR WILLFULLY DISOBEYING ITS ORDERS AS SET FORTH IN THE AFFIDAVIT BELOW AND ANY ATTACHED AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT; AND REQUIRE YOU TO PAY, FOR THE BENEFIT OF THE MOVING PARTY, THE ATTORNEY FEES AND COSTS OF THIS PROCEEDING.			
a. Date: _____ Time: _____ Dept.: _____ Rm.: _____			
b. Address of court: ☐ same as noted above ☐ other (specify): _____			
Date: _____ JUDICIAL OFFICER _____			
AFFIDAVIT SUPPORTING ORDER TO SHOW CAUSE FOR CONTEMPT			
3. ☐ An Affidavit of Facts Constituting Contempt (form FL-411 or FL-412) is attached.			
4. Citee has willfully disobeyed certain orders of this court as set forth in this affidavit and any attached affidavits.			
5. a. Citee had knowledge of the order in that: (1) ☐ citee was present in court at the time the order was made. (2) ☐ citee was served with a copy of the order. (3) ☐ citee signed a stipulation upon which the order was based. (4) ☐ other (specify): _____ ☐ Continued on Attachment 5a(4).			
b. Citee was able to comply with each order when it was disobeyed.			
6. Based on the instances of disobedience described in this affidavit: a. ☐ I have not previously filed a request with the court that the citee be held in contempt. b. ☐ I have previously filed a request with the court that the citee be held in contempt (specify date filed and results): _____ ☐ Continued on Attachment 6b.			
ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT			
Form Adopted for Mandatory Use Judicial Council of California FL-410 (Rev. January 1, 2015)		Family Code, § 292; Code of Civil Procedure, §§ 1211.5, 2015.5 www.courtinfo.ca.gov	

FL-411

PETITIONER/PLAINTIFF:		CASE NUMBER:			
RESPONDENT/DEFENDANT:					
OTHER PARTY:					
AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT Financial and Injunctive Orders Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)					
1. a. Orders for child support, spousal support, family support, attorney fees, and court and litigation costs (separately itemize each default on installment payments):					
DATE DUE	TYPE OF ORDER AND DATE FILED	PAYABLE TO	AMOUNT ORDERED	AMOUNT PAID	AMOUNT DUE
☐ Continued on Attachment 1a.			TOTAL AMOUNT ORDERED	TOTAL AMOUNT PAID	TOTAL AMOUNT DUE
Summary of contempt counts alleged (including all attachments):					
Child support: Spousal support: Family support: Attorney fees: Court and other costs:					
Total			\$	\$	\$
b. ☐ Other orders (specify which order was violated, how the order was violated, and when the violation occurred): _____					
c. ☐ Other material facts (specify): _____ ☐ Continued on Attachment 1b.					
☐ Continued on Attachment 1c.					
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.					
Date: _____					
Form Adopted for Mandatory Use Judicial Council of California FL-411 (Rev. January 1, 2015)		TYPE OR PRINT NAME AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT Financial and Injunctive Orders		SIGNATURE Family Code, § 292; Code of Civil Procedure, §§ 1208, 1211, 2015.5, 2015.9 www.courtinfo.ca.gov	

CONTEMPT STAGES

- Arraignment
- Pretrial/setting
- Trial
- Sentencing

ARRAIGNMENT

- OSC Re: Contempt – form filing (FL-410/411 included with materials)
- Citee must be personally served (file proof of service)
- Demurrer/Motion to Dismiss 1385
- Make sure there's a court reporter/Recording
- Best practices - If you are a criminal defense attorney and defending – File limited scope form (FL-950 form) – (so not caught up in the broader family law issues)
- Rights to be advised at arraignment:
 - Maximum sentence, burden of proof, right to counsel, speedy trial rights (60 days), confrontation rights, right to subpoena and present evidence, right to remain silent, right to trial.
- 977(a) is allowed

DEFENSES: DEMURRER

- Areas to Demurrer: SOL, Defects in OSC, Failure to state date/jurisdiction, failure to advise of constitutional rights, Due Process Notice violations
 - I analyze and attack the underlying order: improper type of Order (minute order or final order/judgment?), Order invalid (order on appeal or constitutionally impermissible), vague/ambiguous Order, did they cite separate counts for 1st/15th support payments – only one per month permitted.
- Demurrer at arraignment OR preserve the right to file a demurrer at a future date.

ELEMENTS OF CONTEMPT

- Non-Support & Non-Atty Fee Contempt
 - 1) Lawful Order of the court was made
 - 2) Citee had knowledge of the order
 - 3) Citee had the ability to comply w/the order
 - 4) Citee willfully disobeyed the order
- Support & Atty Fee Contempt (See CCP 1209.5 –prima facia contempt)
 - 1) Court of competent jurisdiction made an order compelling support/fees
 - 2) Proof that the order was filed and served
 - 3) Citee did not comply w/the order

ELEMENTS OF CONTEMPT

- Lawful Order: must be lawful written order, contempt not valid for “void” order, no contempt for “invalid” order, no contempt for “conflicting” order.
- Knowledge of the Order: personal service not required, just knowledge. Atty knowledge creates a “permissive inference” that Citee is aware. Best practice is personal service though.
- Ability to Pay/Comply: Affirmative defense in support/fee contempts. (defense must prove by preponderance)
- Willful Disobedience of Order:
 - reliance on defense of counsel is not a defense. (atty can be held in contempt for advising client not to comply w/order).

TRIAL

- Same/similar function as a court trial
- Atty may appear w/o citee
- Right to remain silent – **cannot call defendant**
- PC 1050 applies
- Same rules of evidence, foundation, hearsay, etc. apply – Major issue in trial especially with pro per litigants.
- Same procedural rules apply: petitioner/prosecutor must provide witness list, exhibit list, discovery etc.

DISCOVERY

- Criminal Case – PC 1054.1 – Prosecution must disclose automatically (no defense request required) if in possession:
 - Statements and witness information (names, addresses, statements, including reports/recorded interviews)
 - Evidence – All relevant real evidence ie documents, photos, video
 - Felony convictions of witness
- Comply with discovery and provide EVERYTHING – same as criminal trial. No sandbagging.
- Timing: 30 days before trial; if discovered later = immediately.
- Brady (duty to disclose exculpatory evidence) applies

COURT'S INHERENT AUTHORITY

Contempt actions under CCP 1209 and/or CCP 1211 are contempt's **against the authority of the court** and thus the court has inherent authority to dismiss pursuant to PC 1385 in the interests of justice.

COMMON DEFENSES

■ **Motion to Dismiss – Penal Code 1385 – Gives courts broad discretion.**

1385 (a) : “The judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.....”

➤ **Grounds include:**

- De minimis conduct
- Best interest of child
- Disentitlement Doctrine/Unclean Hands (subsequent slide)
- Courts have broad discretion to consider any factor that might fall under interest of justice argument.
- Vexatious litigant? Common argument in high conflict divorce
- Other strong mitigating factors

COMMON DEFENSES

Disentitlement Doctrine/Unclean Hands Bars Contempt

- **A person who is in contempt of a court order shall not be permitted to enforce such order or judgment, by way of execution or otherwise against the other party** (not applicable to apply to the enforcement of child/spousal support orders, citing CCP 1218), page 72 and citing *Ramirez v. Superior Court* (1970), 72 Cal.App.3d 351.
- **Does not require a formal contempt petition or citation. Demonstration of contemptible conduct suffices.** The Koldnoy Benchbook notes that the disentitlement doctrine may be used to dismiss (here an appeal) even in “the absence of a formal citation and judgment of contempt” *In re Marriage of Hofer* (2012) 208 Cal.App.4th 454. See also *MacPherson v. MacPherson* (1939) 13 Cal.2d. 271).
- CCP 1218(b) “Any party, who is in contempt of a court order... shall not be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.”

COMMON DEFENSES

Property Settlement Agreements Not Enforceable As Contempt

- Equalizing payments are NOT subject of contempt – Article I, section 10 of California Constitution prohibits imprisonment for debt.
 - See *In re Fontana* (1972) 24 Cal. App. 3d 1008 – an order for payment of money in connection with the division of property is not the property subject of a criminal contempt proceeding.
 - *Martins v. Superior Court*. (1970) 12 Cal. App. 3d 870 – Property settlement/agreed upon division of assets = debt and not constitutionally enforceable. (Child support/spousal not considered “debt”)

COMMON DEFENSES

- Attacking the Order:
 - Vague/Ambiguous?
 - Invalid order?
 - Order on Appeal?
 - Order that contains no mandatory directions,
 - Insufficient factual basis for the order in the 1st place, etc.
 - Waiver or Estoppel (Secreting children/deprive visitation)
 - Credit for retirement/disability pay – did aggrieved party receive direct payment from federal government by SSA/Railroad Retirement Act/VA on behalf of noncustodial parent?

COMMON DEFENSES

- Mitigation efforts
- Bankruptcy – stays contempt (obligations incurred up to date of BK filing)
- Inability to pay = affirmative defense (simple **preponderance**)
 - Recommend read Moss v. Superior Court (17 Cal.4th 396 (Cal. 1998))
 - Unemployment/Disability/SSI
- SOL: PC 166: 1 year; CCP 1218.5 3 years for support contempts; 2 years for other Family Code orders.

SENTENCING

- CCP 1218(a): if guilty of the contempt “a fine may be imposed on him or her not exceeding \$1,000, payable to the court...or imprisoned not exceeding 5 days, or both.”
- CCP 1218(c) (Family Code contempt): **1)** upon 1st finding of contempt court “shall order” contemner to perform up to 120 hours of c/s OR imprisonment up to 120 hours (5 days), for each count. **2)** upon 2nd conviction 120 hours in addition to 120 hours of jail. **3)** 3rd conviction up to 240 hours c/s and jail.
- Court can also order atty’s fees.
- Jail can run concurrent or consecutive.
- Court cannot reduce or modify custody or visitation as a penalty.
- Court also cannot order payment of unpaid support as a condition at sentencing.
- No repercussions for filing OSC that fails or is dismissed.

CONTEMPT – POST CONVICTION

- CCP 1222: contempt adjudication is “final and conclusive”. No appeal, but writ relief is available so long as judgment not rendered yet.
- Writ standard of review is whether there existed any substantial evidence to sustain “conviction.”

RESOURCES

- **2013 Family Law Contempts by Stephen Kolodny**
- <https://www.purposedrivenlawyers.com/wp-content/uploads/2021/10/2013-Family-Law-Contempts-Cover-and-Benchbook.pdf>
- **LACBA Family Law Section 57th Annual Family Law Symposium - 5/2/26 – Will Receive Updated 2026 Family Law Contempts Handbook By Kolodny.**
- <https://lacba.org/?pg=events&evAction=showDetail&eid=321101>

QUESTIONS?

Please feel reach out to me as a resource or ask questions when considering filing.

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