

ENFORCING
CUSTODY AND
VISITATION
ORDERS

L A Law Library
10/23/2023




1

TONIGHT

- ▢ Decisions
- ▢ Options
- ▢ Cost
- ▢ Benefit
- ▢ Potential downsides
- ▢ Potential upsides

2

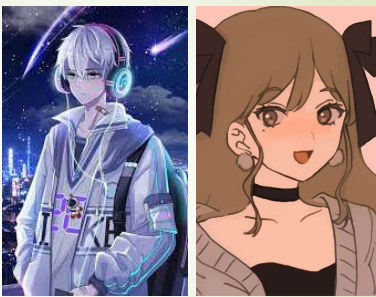


2

OUR FAMILY

P-1 and P-2 have two children, Scooter 12 and Sparky 9. P-1 is the primary custodial parent, P-2 has every other weekend and every Wednesday dinner.

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4

P-2

P-2 is a flake and only shows up $\frac{1}{2}$ of the time.

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DO YOU HAVE AN ORDER?

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COURT ORDER

5

COURT ORDER

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Do you want to modify that order?

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TO MODIFY current custody order

- Fille an FL-300 (mandatory)
- Serve P-2 with papers
- Go to custody mediation
- Go to court
- Get a new order--- or not

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Do you
want to
enforce
that
order?

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ENFORCEMENT OF ORDER

SELF-HELP



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ENFORCEMENT OF ORDER



COURT HELP

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DIRECT CONTEMPT

- Occurs in direct view and presence of the judge (CCP section 1211(a))
- Judge must warn person
- Used VERY sparingly
- Judge must:
 - Recite the facts that occurred
 - Adjudge person guilty
 - Announce punishment

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INDIRECT CONTEMPT

- Forms
 - FL-410 (citation)
 - FL-411 (Affidavit of Facts- Financial)
 - FL-412 (Affidavit of Facts Domestic Violence, Custody and visitation)
 - FL-415 (Findings and Order after hearing—optional)

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REMEMBER

- Right to jury if 180 days in jail alleged –36 counts (5 days in jail each)
 - Can be waived if both agree
- Citee can move for dismissal in interest of justice PC section 1385
- Citee can "cure" the contempt.
- Must go to trial within time frames- unless citee waives

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INDIRECT CONTEMPT

- Service
 - Personal service required
 - May be exceptions-but don't count on it
- Citee no-show can issue a bench warrant
- COURT PROCESS (at least 2 or more court dates)
 - ARRAIGNMENT
 - Advise of charges and potential outcomes
 - Right to an attorney
 - Enter a plea

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INDIRECT CONTEMPT-MUST PROVE

- Violation of a lawful court order CCP section 1209(a)(5)
 - Valid order
 - Knowledge of order
 - Non-compliance with order
 - Willfulness

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16 BURDEN OF PROOF

Beyond reasonable doubt-
on all elements

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17 CONSIDER

- Citee not obligated to provide information- including testimony
- Court not likely to help
- Prosecutor must provide information on demand

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18 Defenses

- Compliance with order
- No ability to comply
- No knowledge of order
- Invalid order
- Verbal order-- order MUST be in writing
- Vague order
- Statute of limitations- 2 years CCP 1218.5(b)

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19 CONTEMPT- RESULT

- Does not modify the order
- Does not force compliance
- Only punishes for violation of order

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20 Contempt-- result



- Sentencing within 5 days
- 5 days in jail per count- increases with subsequent contempt findings
- Community service instead of jail
- Jail instead of fine or community service
- Fines: \$1,000 per count
- Probation

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21 DOMESTIC VIOLENCE

AN ENTIRELY DIFFERENT APPROACH

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22



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