

ENFORCING CUSTODY AND VISITATION ORDERS

L A Law Library

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ROADMAP

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



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.



P-2

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

DO YOU HAVE AN
AGREEMENT?

OR

DO YOU HAVE AN
ORDER?

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Do you
want to
modify
that
order?

TO MODIFY current custody order

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



Do you
want to
enforce
that
order?

ENFORCEMENT OF ORDER

SELF-HELP



ENFORCEMENT OF ORDER



COURT HELP

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

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)

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

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

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

BURDEN OF PROOF

Beyond reasonable doubt-
on all elements

CONSIDER

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

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)

CONTEMPT- RESULT

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

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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DOMESTIC VIOLENCE

AN
ENTIRELY
DIFFERENT
APPROACH



**THANK
YOU**

