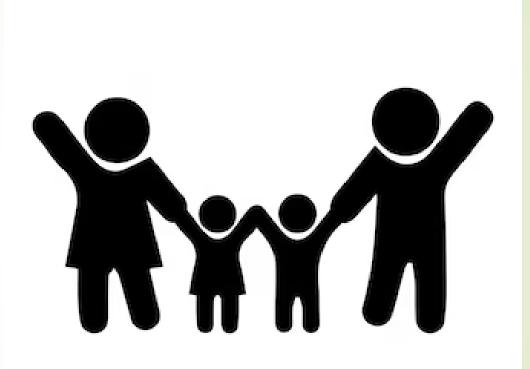
ENFORCING CUSTODY AND VISITATION ORDERS

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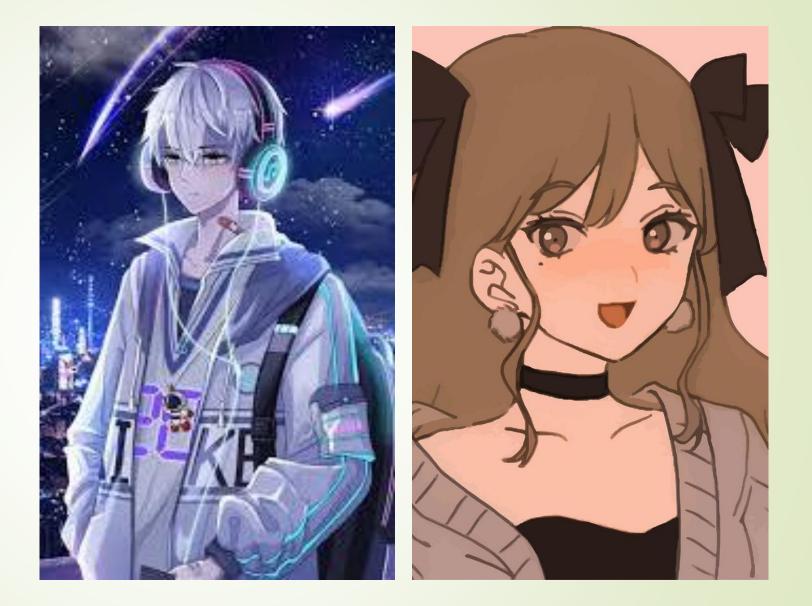


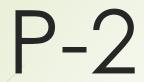
ROADMAP Decisions Options Cost Benefit Potential downsides Potential upsides 2



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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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?





Do you want to modify that order?



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



Do you want to enforce that order?



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)



- 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

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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 orderWillfulness



BURDEN OF PROOF

Beyond reasonable doubton all elements

CONSIDER

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



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)

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 countincreases with subsequent contempt findings
- Community service instead of jail
- Jail instead of fine or community service
- Fines: \$1,000 per count
- Probation

DOMESTIC VIOLENCE

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AN ENTIRELY DIFFERENT APPROACH



