

PRESENTERS

COMMISSIONER
ANGELA VILLEGAS

&

JUDGE MICHAEL R. POWELL

CONTEMPT



GOALS



**HOW TO COMPLY WITH DUE
PROCESS PROCEDURES**



**ACCESS TO RESOURCE
MATERIALS TO HANDLE
CONTEMPTS WITH
CONFIDENCE**

MATERIALS

**CALIFORNIA JUDGES
BENCHGUIDE: COURTROOM
CONTROL & AB1058 CHILD
SUPPORT PROCEEDINGS**

**OUTLINE ON CONTEMPT
(PROCEDURE, SENTENCING
OPTIONS, ETC.) AND SCRIPTS TO
USE**

CHALLENGES



JUDICIAL
OFFICERS HAVE
A LEGAL
OBLIGATION TO
KNOW HOW
CONTEMPT
PROCEEDINGS
ARE
CONDUCTED

Ryan v. Commission on Judicial Performance
(1988) 45 Cal.3d 518





WHAT IS CONTEMPT?

Authority, purpose, definitions, and distinctions.

CONTEMPT

CCP §§ 1209-1222 CONTEMPTS

CCP § 1209(a)(1-12) DESCRIBES THE ACTS OR OMISSIONS CONSTITUTING CONTEMPT

CCP § 1209.5 NONCOMPLIANCE WITH ORDER FOR CARE OR SUPPORT OF CHILD



AUTHORIZATION
TO ENFORCE
AND PUNISH

CODE OF CIVIL PROCEDURE §§ 128, 178 AND
FAMILY CODE § 290 AUTHORIZES THE COURT
TO ENFORCE AN ORDER AND TO PUNISH
CONTEMPT



CIVIL CONTEMPT

PUNISHMENT IS
CRIMINAL IN
NATURE &
CONTEMPTS ARE
OFTEN REFERRED
AS TO AS A
“QUASI
CRIMINAL”
PROCEEDINGS

PUNISHMENT

COERCIVE
CCP § 1219

PUNITIVE
CCP § 1218



DIRECT

(IN COURT)

OCCURS IN THE
IMMEDIATE VIEW AND
PRESENCE

INDIRECT

(OUT OF COURT)

DOES NOT OCCUR IN
IMMEDIATE VIEW AND
PRESENCE OF COURT OR
CHAMBERS

HYBRID

(IN AND OUT)

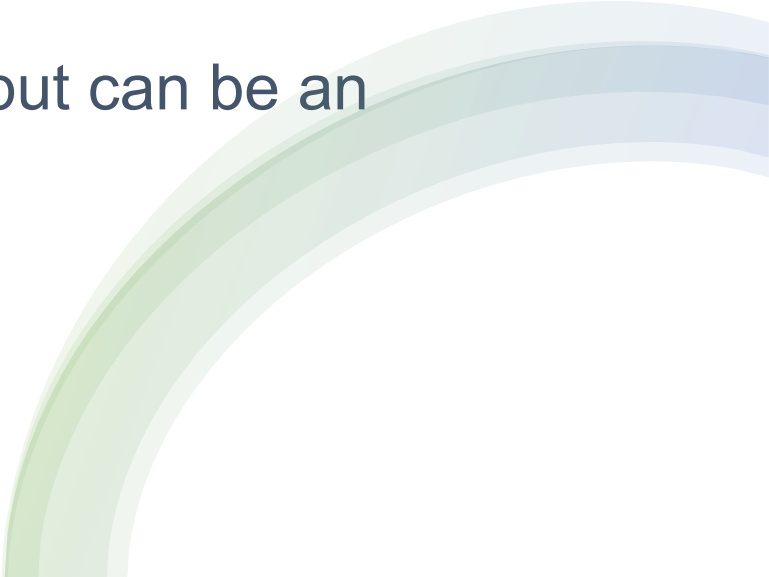
COMMITTED IN
COURT'S PRESENCE BUT
EXCUSED BY A MATTER
OUTSIDE OF THE
COURTROOM



INDIRECT CONTEMPT

- Occurs outside the courtroom.
- Usually, a disobedience of any lawful judgment, order or process of the court (CCP § 1209(a)(5)).
- Often referred as “quasi-criminal proceedings”.
- Due process – written notice and an opportunity to be heard are **MANDATORY!**


ELEMENTS OF CONTEMPT

- A valid court order.
 - Knowledge of the court order.
 - Non-compliance with the order
 - Ability is not a required element in child support cases but can be an affirmative defense!
- 



WHAT IS A VALID ORDER?

CCP § 1003 Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. This includes written “opinions” (see *Maxwell v. Perkins* (1953)116 Cal.App.2d 752.)



WHAT IS NOT AN ORDER SUBJECT TO CONTEMPT?

- Vague and ambiguous orders. (e.g., lacks specificity as to when, where, why, how, and what.)
- Oral pronouncements except in child support cases (See CCP § 1209.5).
- Void orders.
- Orders not entered into the Court's minutes.

WHAT IS NOT AN ORDER SUBJECT TO CONTEMPT?

- Lack of jx to make an order.
- Signed stipulations that have not been signed off by the court.
- Orders that are incorporated in the minutes but are subject to a finding and order after hearing (FOAH). Found in Juvenile, Family and Probate courts.
- Money judgments may not be enforced using a contempt proceeding.



INVALID ORDERS FOR CONTEMPT

Orders that are not punishable by contempt remain valid orders if they are legal in all other respects.





CAUTION!!!!

**Judicial Notice of orders
pursuant to EC §§452-453
should be requested by the
Citor pursuant to CRC, rules
3.1113(l) & 3.1306(c).**



KNOWLEDGE

- Evidence can be direct or circumstantial
- Presence in court
- Proof of service
 - Rebuttable presumption of valid service if served by a registered process server. (EC § 647...)



NON-COMPLIANCE

Evidence can be direct or circumstantial





WHAT DO I DO
NOW??



- **FAMILY LAW CONTEMPTS MUST USE MANDATORY FORMS (FL-410, FL-411)**
- **MUST BE PERSONALLY SERVED!** (CCP § 1016; *Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281.)
 - **EXCEPTIONS:** Service may be substituted (CCP § 415.50) if a party has taken steps reasonably calculated to apprise the contemner of the action. (See *Albrecht v. Superior Court* (1982) 132 Cal.App.3d 612.)

PROCEDURE

ARRAIGNMENT

```
graph TD; A[ARRAIGNMENT] --> B[PRETRIAL]; B --> C[TRIAL]; C --> D["GUILTY/NOT GUILTY SENTENCING"]
```

PRETRIAL

TRIAL

GUILTY/NOT GUILTY
SENTENCING

ARRAIGNMENT

Number of contempt counts must be clear

Must advise the alleged contemnor of the consequences

Reading or waiver of the counts of contempt & entry of plea

Entitled to a jury trial if over 35 counts or more than 179 days of jail

5th Amendment applies

Trial to begin 45 days from date of arraignment unless waived

PRETRIAL



Motions to
dismiss/demurrers



Discovery in accordance w/
PC § 1054 et seq.



May change plea

TRIAL



**ALL ELEMENTS PROVEN BEYOND A
REASONABLE DOUBT
CONTEMPT PROCEEDINGS ARE FULL
TRIALS... NOT LAW AND MOTION
HEARINGS!**



**REMEMBER CRC
REGARDING
ADMISSION OF ORDER
OR CCP § 1209.5**

POST TRIAL

NOT GUILTY/GUILTY

\$1,000.00 FINE, 5-DAYS JAIL, OR BOTH, PER COUNT. (Family Law contempts - specific rules (see CCP § 1218(b-d), CCP § 1218.5 [re: priors and escalating penalties])

PAYMENT OF REASONABLE ATTORNEY FEES (BY EITHER PARTY)



OTHER CONSIDERATIONS:

- WARRANTS OF ATTACHMENT CAN BE ISSUED TO COMPEL APPEARANCE (Bail?)
- COUNSEL MAY NEED TO BE APPOINTED
- ANY CITATION ALLEGING 35 OR MORE CHARGES REQUIRES A JURY
- **REMAND ORDERS MUST INDICATE THE CCP STATUTE...NOT THE CRIMINAL STATUTE!!!**
- GUILTY VERDICTS ADJUDICATED UNDER THE CCP ARE NOT REPORTED ON CLETS!



OTHER OPTIONS????

Sanctions under

CCP § 177.5

CRC § 2.30

CCP § 128.7



PENAL CODE § 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.



FINAL THOUGHTS



**SAVE AND READ THE
MATERIALS WE HAVE
PROVIDED**



**SUGGEST
ALTERNATIVES TO
THE PARTIES**



**USE PRUDENCE AND
CAUTION BUT DON'T
BE AFRAID OF PC §
1385!**