


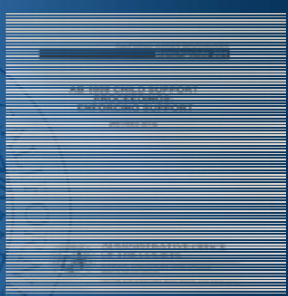


Contempt

An Overview of the Legal and Procedural Issues related to Child Support

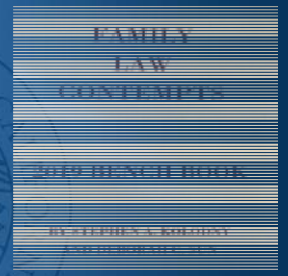


RESOURCES





RESOURCES



kim@kolodnylawgroup.com

Legal Authority for Contempt

- Family Code § 290
- Code of Civil Procedure § 1209(a)(5)
- Code of Civil Procedure § 1209.5
- Family Code § 4500
- Penal Code § 166(a)(4)
- Moss v. Super. Ct. (Ortiz) (1998) 17 Cal.4th 396



Types of Contempt

Criminal Contempt - PC §166(a)(4)

- Full criminal due process protections, including right to counsel
- Seeking punitive relief

Civil Contempt – CCP §1209, CCP §1209.5

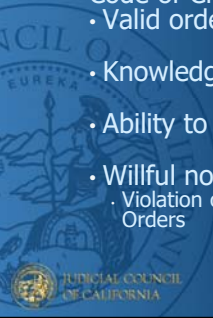
- Procedural protections
- Prosecutorial discretion
- Seeking remedial relief

See Hicks v. Feiock (1988) 485 U.S. 624



Prima Facie Elements of Contempt

- Code of Civil Procedure §1209
- Valid order
- Knowledge
- Ability to comply
- Willful non-compliance
 - Violation of any court order – Seek Work Orders



Code of Civil Procedure §1209.5

Child Support Orders

- Valid order
- Knowledge
 - (present in court or personal service)
 - By inference/Payments or discussion with LCSW
- Non-compliance



Ability to Comply Distinction

- NCP's ability to comply under CCP §1209
- "Proof of ability to pay is not an element of contempt based on a failure to comply with a child support order"

See Moss v. Superior Court (Ortiz) (1998)

- CCP §1290.5



FINAL RULE December 20, 2016, [Federal Register, on page 83474, Volume 81, Number 244](#)

Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

- This final rule strengthens and updates the child support program by amending existing rules, some of which are 35 years old, to:
 - set accurate child support obligations based on the noncustodial parents' ability to pay;
 - increase consistent, on-time payments to families;
 - move nonpaying cases to paying status;
 - increase the number of noncustodial parents supporting their children;
 - improve child support collection rates;
 - reduce the accumulation of unpaid and uncollectible child support arrearages; and
 - incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.
- 45 CFR 301, 302, 303, 304, 307, 308, and 309.



The 2016 Federal Final Rule

- 45 CFR 303.6 was designed to ensure that:
 - the constitutional principles outlined in Turner v. Rogers 564 U.S. 431(2011) are followed;
 - child support case outcomes comport with due process;
 - contempt proceedings are cost-effective and in the best interests of the child;
 - contempt is only used in select cases, not routinely.



CONFLICT BETWEEN FEDERAL & STATE LAW

- CCP§1209.5
 - Inability to pay is an affirmative defense
 - Burden of Proof – preponderance of evidence

MOSS vs. SUPERIOR COURT
(1998) 17 Cal.4th 396



FINAL RULE – LCSA MUST:

Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

Provide the court with information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay.



**FL 410 - Order to Show Cause
and Affidavit for Contempt**

STATUTE OF LIMITATIONS:

CCP§1218.5(b)

NONPAYMENT OF C/ SUPPORT – 3 YRS
VIOLATION OF OTHER ORDERS - 2 YRS



CHARGES:

ONE COUNT PER MONTH

36 COUNTS OR LESS

IF MORE THEN MAXIMUM PENALTY OF 180
DAYS (36X5) THEN RIGHT TO JURY TRIAL
ATTACHES.



SERVICE REQUIREMENTS:

PERSONAL SERVICE

16 DAYS PRIOR TO HEARING



PLEADINGS FRAME THE ISSUE & JURISDICTION:

COURT'S JURISDICTION ONLY EXIST IF AFFIDAVIT ALLEGES PRIMA FACIE CASE. CCP§1211

MAY BE AMENDED AT ANY TIME

NOT EVIDENCE, UNLESS OFFERED AND RECEIVED

SUBJECT TO HEARSAY OBJECTION.



Notice Requirement

- Update to Order to Show Cause pleadings:

Continued on Attachment 8c.

Other material facts, including facts indicating that the violation of the orders was without justification or excuse (specify):

The TULARE County Department of Child Support Services is providing support enforcement services in this case. [REDACTED] the judgment debtor, is delinquent in the payment of his/her court ordered support obligation (i). Ability to pay constitutes a critical question in a civil contempt action. TDCSS does not have any information that the Ctee is or was cash aided, incarcerated, or disabled either currently, or during the contempt period.

Continued on Attachment 8d.



RIGHT TO COUNSEL

- IF CONTEMPT
- IS CRIMINAL IN NATURE - AT ALL STAGES



CIVIL IN NATURE -

DUE PROCESS IS NOT OFFENDED IF COUNSEL NOT PROVIDED,

WHEN OPPOSING PARTY NOT REPRESENTED AND ABILITY TO PRESENT AND DISPUTE RELEVANT INFO AND COURT FINDINGS IS PROVIDED.

Turner v. Rogers 564 U.S. 431(2011)



APPOINTMENT OF COUNSEL

INDIGENT CITEE
DETERMINATION INDIGENCY
FORM MC210

NOTICE OF POSSIBLE REIMBURSEMENT
TO COUNTY FOR SERVICES OF P.D.
PENAL CODE §987.8(f)



SELF REPRESENTATION

Faretta v. California (75) 422 US 806

Court must hold hearing and make a record as to Defendant's education, training and knowledge.

Court must advise the Defendant of consequence of self representation. Receipt of Record of Faretta Waiver.



PENALTIES CCP§1218(c)(1)-(3)

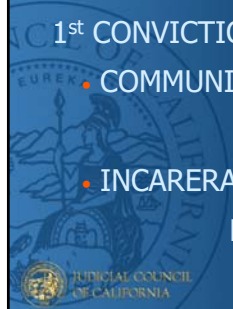
1st CONVICTION

- COMMUNITY SERVICE - 120 HRS

OR

- INCARERATION 120 HRS

PER COUNT



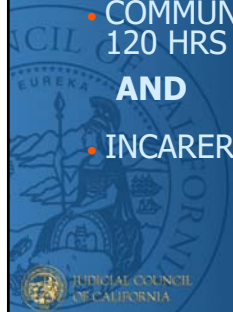
2ND CONVICTION

- COMMUNITY SERVICE – 120 HRS

AND

- INCARERATION – 120 HRS

PER COUNT



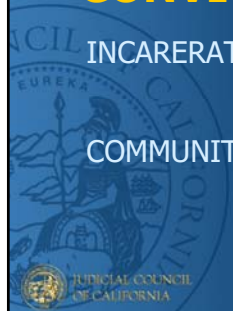
3RD or SUBSEQUENT CONVICTION

INCARERATION -240 HRS

AND

COMMUNITY SERVICE – 240 HRS

PER COUNT



Overview of Contempt Process

- ARRAIGNMENT
 - ADVISEMENT OF RIGHTS
 - READING OF CHARGES
 - ENTRY OF PLEA



PRE-TRIAL

- COUNSEL MEET/OFFER OF DISMISSAL OR SETTLEMENT MADE ON THE RECORD
- TIME WAIVER & STIPULATION TO COMMISSIONER RESETTING OF PRE-TRIAL
- SETTING OF TRIAL
- TAKING OF PLEA



TRIAL

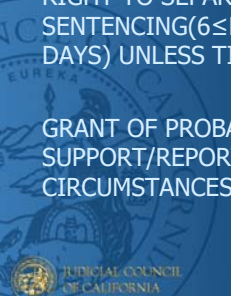
- NO TIME WAIVER-TRIAL TO BE SET WITHIN 30 DAYS
- STIPULATION TO COMMISSIONER
- CITEE NOT SWORN AT OUTSET OF HEARING
- CRIMINAL DUE PROCESS DISCOVERY RIGHTS
- PRESENTATION OF EVIDENCE



SENTENCING

RIGHT TO SEPARATE TIME SET FOR SENTENCING(6≤HOURS OR ≥20 COURT DAYS) UNLESS TIME IS WAIVED

GRANT OF PROBATION 1-3 YRS/PAY SUPPORT/REPORT CHANGE OF CIRCUMSTANCES/SWO Or PAY REVIEWS

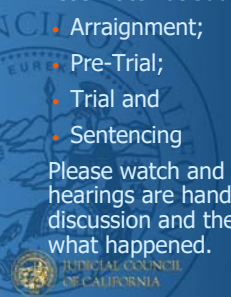


JUDICIAL COUNCIL OF CALIFORNIA

A Day of Contempt Proceedings

- Let's watch as Judicial Officers proceed with:
 - Arraignment;
 - Pre-Trial;
 - Trial and
 - Sentencing

Please watch and take notes as to how the hearings are handled. You will have a table discussion and then we will reconvene and review what happened.

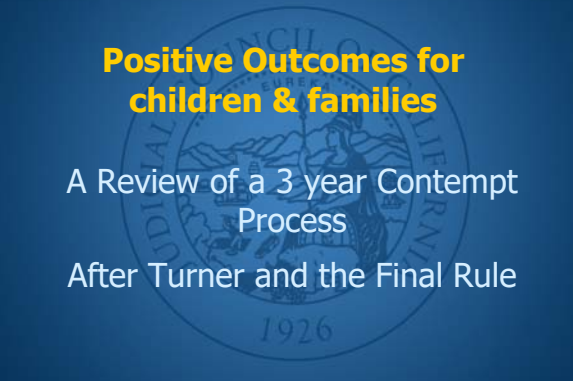


JUDICIAL COUNCIL OF CALIFORNIA

Positive Outcomes for children & families

A Review of a 3 year Contempt Process

After Turner and the Final Rule



JUDICIAL COUNCIL OF CALIFORNIA
1926

Perspective from Tulare County



JUDICIAL COUNCIL OF CALIFORNIA

Tulare County Demographics

Estimated population, July 2017: 464,493
Median Household Income, 2016: \$42,789
Persons in poverty: 24.7 %
HS graduate or higher: 68.2%
49.0% of children live in households with Supplemental Security Income (SSI), cash aid, or Food Stamp/SNAP benefits

JUDICIAL COUNCIL OF CALIFORNIA

Turner v. Rogers 564 U.S. 431(2011)

- Since Turner did not have *clear notice* that *ability to pay* would be the *critical question in this proceeding*, nor was he provided with information or forms that would have allowed Turner to disclose such information, the lower courts erred in finding him able to pay and thus in civil contempt.

JUDICIAL COUNCIL OF CALIFORNIA

The 2016 Federal Final Rule

- 45 CFR 303.6
 - Ensure that:
 - the constitutional principles outlined in Turner v. Rogers are followed;
 - child support case outcomes comport with due process;
 - contempt proceedings are cost-effective and in the best interests of the child;
 - contempt is only used in select cases.



Local Child Support Agency Requirements

- (1) Screen the case information regarding the obligor parent's ability to pay or otherwise comply with the order.
- (2) Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the contempt action.
- (3) Provide the court with information regarding the noncustodial parent's ability to pay, or otherwise comply with the order.



Ability to Pay

Discussed at all stages of the contempt.

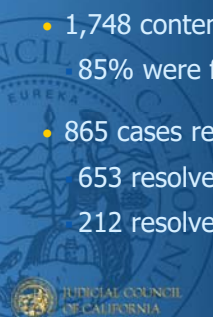
Procedural Justice
Best Interest of Child.

- Arraignment:
 - FLF Mod. Pack/FLF Brochure Court Inquires/CDL/Reset of liquidation/Med Verification Forms
- Pre-Trial:
 - NOM/Reset of liquidation/CDL COAP/Decl.-direct payments 60-90
- Trial: Dismissals/Continuances



Three Years Data

- 1,748 contempt filings from 2015 - 2018
 - 85% were failure to pay child support
- 865 cases resolved:
 - 653 resolved in a dismissal (75.5%)
 - 212 resolved in a conviction (24.5%)



JUDICIAL COUNCIL OF CALIFORNIA

Collections

\$1,160,916.73

- Average of \$1,342.10/case

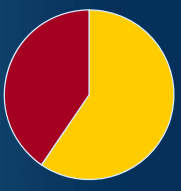


JUDICIAL COUNCIL OF CALIFORNIA

Increased distribution of support to Children and Families

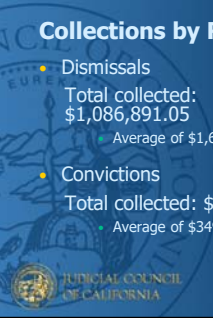
Collections by Result

- Dismissals
 - Total collected: \$1,086,891.05
 - Average of \$1,664.46/case
- Convictions
 - Total collected: \$74,025.68
 - Average of \$349.18/case



collections

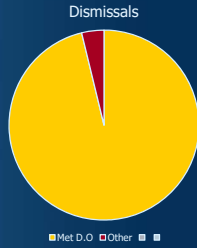
■ dismissals ■ convictions ■



JUDICIAL COUNCIL OF CALIFORNIA

Dismissals

- 81.3% met dismissal offer.
- 18.7% medical disability, cash aid, bankruptcy, custodial parent requested closure or waived arrears.



Convictions

- 83.5% are first convictions
- Sentence: community service + jail time ISS
- Probation 36 mons.
- SWO-Enroll EDD/ 6mon Court Review / 6 mons In office
- 91.5% of convictions resulted in a SWO entered



Compliance after Case Resolution

- Dismissal:
 - 6 months 60.4%
 - 12 months 47.9%
- Conviction:
 - 6 months 36.8%
 - 12 months 32.6%