

# CIVIL CONTEMPT

## I. INTIAL STAGE

### Civil Contempt

#### What is contempt?

Where primary object of contempt proceedings is to protect rights of litigants, proceedings are regarded as civil in character but where object of proceedings is to vindicate the dignity or authority of court, proceedings are regarded as criminal in character even though they arise from or are ancillary to a civil action.

- Civil contempt is codified within Code of Civil Procedures §§ 1209-1222.
- Most contempts will fall under 1209(a)(5)
- Family Code §290 authorizes contempt for willful disobedience of lawful judgments or order and Code of Civil Procedure §1209.5 specifically deals with the noncompliance of care and support of children.
- Since a civil contempt proceeding is criminal in nature it must be conducted in strict compliance with statutory procedure. *Petition of Mancini*, 215 Cal. App. 2d 57.
- The accused person is entitled to the procedural safeguards available to a person accused of a criminal charge *Application of Liu*, 273 Cal. App. 2d 135,
- Including due process, notice, and an opportunity to defend before an adjudication of contempt is made. *In re Wren*, 48 Cal. 2d 159, 308 P.2d 329 (1957)
- The accused is entitled to a presumption of innocence. *Farace v. Superior Court*, 148 Cal. App. 3d 915.

### Commencement of the Action

#### Family Law

The FL-410 is the operative charging document and is commonly referred to as the citation.

The following forms are mandatory FL-411 (Affidavit of facts-Financial), 412 (Affidavit of facts domestic violence, custody, and visitation), 415 (Findings and order), FL-645 (Notice to Local Child Support Agency of Intent to Take independent Action to Enforce Support Order). FL-420 ((Declaration of payment history) and (FL-421, payment history) are optional))

## Statute of Limitations

CCP§ 1218.5(b)

Failure to pay family or spousal support **3 years.**

Failure to comply with other orders **2 years.**

## Arraignment

- An arraignment is the first criminal hearing in the Superior Court at the preliminary jurisdiction level. At the arraignment, the Citee must be advised of the charges against him/her and may enter a plea.
- On Misdemeanor and Infraction cases, an attorney may appear for the Citee without the Citee being present (PC §977(a)(1)).

## Elements of an Arraignment

- Appointment/re-appointment of counsel—public defender, alternate public  
**1) Appointment of counsel must happen prior to arraignment pursuant to PC 987(a), 987.2(a)**
- Determining Citee's true name and date of birth.
- Reading of the accusatory pleading (or **waiver of reading**).
- Delivering a true copy of the accusatory pleading to the Citee and/or counsel.
- Advising Citee of constitutional and statutory rights.
- Asking Citee to enter a plea or having counsel enter not guilty plea on his/her behalf. (PC §§1017, 1024)

## Rights guaranteed by U.S. Constitution

- Right to counsel
- Right to speedy trial
- Right to confront and cross-examine witnesses.
- Right to Subpoena witness on own behalf
- Right against self-incrimination
- Right to present evidence
- Right to trial by jury or court (**Jury trial if maximum incarceration is 180 days or more. This is 36 counts or more if no priors or 18 counts or more if priors are alleged.**)
- Right to reasonable time to answer the charge.

- *There are currently no immigration consequences from a conviction of a civil contempt action, but all advisement of immigration consequences must be addressed by counsel if any.*

#### Statutory rights guaranteed by California Statute

- Right to dismissal if not heard within statutory time limits.
- Statutory time for sentencing
- Right to release upon posting of bail
- Right to dismissal of case pursuant to PC 802(a), 1118, 1387

#### Plea (Citee's response to a formal charge)

- Guilty
- Not guilty
- Former judgment of conviction or acquittal (**Once in jeopardy**)
- Not guilty by reason of insanity

#### Waivers

- A Citee must Intentionally, knowingly and voluntarily give up specific rights.
- Waiver of counsel (Faretta Waiver – see Motions section below)
- Waiver of time
- Waiver of jury trial (Must be made by the Citee only and in agreement with the Citor! No 977a jury waiver)
- Waiver of court trial
- Waiver of personal appearance—misdemeanor (PC §977(a))

#### **Motions**

##### Faretta Motion—Faretta v. California (1975) 422 U.S. 806

- This is a motion by the Citee in which he/she voluntarily and intelligently elects to represent himself/herself. The court ***may*** require Citee to complete a questionnaire that includes inquiries as to the Citee's educational background and knowledge of the case or to complete a written waiver as to his or her right to counsel. The minute order must indicate if the court has completed a questionnaire, if a written waiver is filed, or if any inquiries have been made by the court as to Citee's ability to represent him-/herself and the findings and rulings of the court.

## Other Motions

- A motion to dismiss may be made as to the entire case and/or individual charge. The minute order must indicate the reason for the dismissal and code section that may be appropriate.
- A motion pursuant to PC §1385 is a motion to dismiss in the “furtherance of justice” and may be made on the court’s own motion or on the motion of the prosecuting party. The Citee may *invite* the Court to dismiss pursuant to the statute. The minute order must indicate the reason (*e.g.*, evidence suppressed, witness not available) for the dismissal.
- Specific motions to dismiss include:
  - 1) Dismiss in the furtherance of justice (PC §1385)
  - 2) Dismiss based on retaliatory prosecution (*Twiggs* motion)
  - 3) Dismiss based on denial of speedy trial (*Serna* motion or *Rost* motion)
  - 4) Dismiss prior allegations as Citee was not properly advised on constitutional rights at time of plea—*Boykin-Tahl, Mendella*

## **Failure to Appear**

- Sanctions pursuant to CCP§ 177.5 and CRC 5.14
- Body attachments (see below)

## **Demurrer (PC §1004 et seq.)**

### Definition

- A demurrer is a written objection which challenges the technical merits of the accusatory pleading and must state the specific grounds for the objection. *The objections may be stated orally at the arraignment because CCP 1005 does not require it.* However, you may request the demurrer be in writing.
- No plea can be entered until the court has ruled on the demurrer. The grounds stated may be that:
  - 1) The offense was not within the jurisdiction of the court.
  - 2) The pleading does not conform to the rules.
  - 3) Legal justification or excuse exists.
  - 4) The facts do not constitute a public offense.
  - 5) The order is invalid, void, or voidable.
  - 6) The order is in the process of appeal.
  - 7) The matter concerns a debt.

## Ruling

(1) Overruled: (the Citee must enter a plea)

(2) Sustained:

(a) With leave (time) to amend—The demurrer is sustained. If the defect can be remedied, the Citor must amend the accusatory pleading within 10 days. If not done timely, action is dismissed.

(b) Without leave (time) to amend—The demurrer is sustained and no amendment is permitted. The action or count is dismissed.

## **Mutual Discovery Orders (PC §1054 et seq.)**

- Counsel is mandated by statute to conduct timely pretrial discovery within 30 days of trial.

## **Calculating “Time”**

*A jury or court trial must occur within 45 days unless there is a waiver (Cal. Const. Art. I, §15; PC §1382(a)(3)).*

- CCP §12:  
Time is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.
- CCP §12a:  
(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day which is not a holiday.  
  
(b) Holiday means all day on Saturdays, all holidays specified in CCP §§135 and 12b.
- CCP §12b:  
Closure of any city, county, state, or public office, other than a branch office, for the whole day, causes that day to be considered as a holiday for the purposes of computing time.

## **Bench Warrants, Attachment of Defaulters—Civil Bench Warrants**

- A bench warrant is a process issued by the court itself, or “from the bench”, for the attachment or arrest of a person; either in case of contempt, or where an

indictment has been found, or to bring in a witness who does not obey the subpoena. (*Black's Law Dictionary*)

- Body attachments can only be issued after the court has obtained jurisdiction over the Citee and they seek to return the Citee before the court for further proceedings.
- Body attachments should be issued when the Citee fails to appear after having been:

- (1) Ordered by court to personally appear at specific date and time,
- (2) Instructed to appear by counsel and ordered to appear at specific date and time,
- (3) Ordered to appear at a specific date and time after the OSC Re Contempt has been filed *and properly served*.

- The amount of bail, if any is allowed, shall lie with the sound discretion of the judicial officer before whom the defendant appeared, and which may be greater or less than the amount set forth in a bail schedule, subject to the provisions of Penal Code section 1275. However, please see In re Humphrey 11 Cal.5<sup>th</sup> 135 where a decision to set bail on the bail schedule rather than on an individual criteria and inquiry into an amount necessary to satisfy the purpose of money bail violated due process (amount to ensure presence of the party, reasonably able to afford). Bail is the last resort.

## II. AFTER ARRAIGNMENT & PRE-TRIAL

### Time for Filing Motions

- Motion to continue a criminal hearing requires notice 2 court days in advance. (PC §1050)
- Counsel requesting to file motions with less than 10 days' notice must obtain an Order Shortening Time signed by the judge.

### Minute Order Contents

- Parties present (include first and last name);
- Type of motion;
- If oral or written motion;
- Motion filed by prosecutor or defense;
- Names of witnesses (if any);
- Exhibits introduced / received into evidence;
- Rulings of the court;
- Motion may be granted or denied and may be ruled on its entirety or in part;
- May be taken under submission and ruled on later • Reasons for the ruling (if required);

- Disposition of the case:
- All charges dismissed and Citee discharged as to the case (future dates must be vacated).
- Some or no charges are dismissed, and the matter remains set for trial.

### **PC §954 Motion**

A motion to consolidate (to bring together) two or more different citations:

- Citee with 2 or more citations *or*
- 2 or more Citees, different case but same offense.

*The court, on its own motion, may order the consolidation of the matters.*

### **PC §1054.5 Discovery Motion**

- A motion to have the court order the production of information, documents, or evidence that has not yet been provided to the opposing side, such as documents, photos, a list of possible witnesses, or statements of those witnesses.
- Request must be made informally before the filing of a formal motion.

### **PC §1050 Motion**

- A motion to continue any hearing in a criminal proceeding, including the trial.
- A written notice shall be filed and served on all parties to the proceeding at least 2 court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary. (PC §1050(b)(1)).
- A Continuance shall be granted only upon a showing of good cause. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good case, shall state on the record the facts proved that justify its finding. The finding of good cause and the reason for granting the continuance must be entered in the minutes. (PC §1050(e), (f)).

### **Change of Plea Process**

- Most pleas are made as a result of a plea negotiation, and the Citee is aware of the sentence that will be imposed.
- A Citee may enter a guilty plea at any state of the proceedings. If a not guilty plea was originally entered, the Citee must withdraw the not guilty plea before entering a new plea.

- Once a guilty plea is entered, the Citee is now said to be convicted of the offense.

### **Requirements of the plea**

- A plea of guilt is valid only if it is voluntarily and intelligently made.
- The plea must be in open court and must be in the minute order.
- A Citee's counsel may enter the plea on the Citee's behalf pursuant to PC §977(a).
- Prior to accepting a plea of guilty, the court must make certain inquiries of the Citee, advising the Citee of certain consequences, and the Citee must waive his/her constitutional rights.

### **Waiver of Constitutional Rights**

- The Citee must waive (give up) the following constitutional rights, and the waivers must be included in the minute order:
  - 1) Right to jury and/or court trial.
  - 2) Right to confront and cross-examine witnesses.
  - 3) Right to use the subpoena power of the court.
  - 4) Right against self-incrimination.

### **Inquiries to be made by the Court**

- Verify Citee's true name and date of birth (must be in minute order).
- Have any promises been made to Citee and/or family to ensure guilty plea?
- Have any threats been made to Citee and/or family to ensure guilty plea?
- Is plea being made freely and voluntarily?
- Does Citee understand the plea agreement?
- Has Citee had enough time to discuss with counsel (if represented)?
- Does the Citee have any questions?

### **Advisements**

The court should advise Citee of the following (should be in minute order):

- Nature of the charges and defenses available—ensure that Citee understands what he/she is charged with, that there may be legal defenses available, and the possible penalties.
- Effect of entering a plea—the charge to which Citee is pleading guilty could be alleged as a prior allegation in a future case.



## Additional Waivers

Any of the following waivers must be in the minute order.

- Harvey waiver—As part of the plea agreement, Citee agrees to pay restitution on charges that are dismissed.
- Arbuckle waiver—Citee waives his right to be sentenced by the judicial officer who presided at time of conviction (plea or trial).
- Cruz waiver—Also referred to as PC §1192.5 waiver—Citee waives right to have the Court abide by the original plea conditions if the Citee fails to appear for sentencing or is arrested for another criminal offense.

## Written and/or Oral Waivers of the Guilty Plea

- Plea and waivers may be:
  - 1) In writing, signed by the Citee, defense counsel (if any), interpreter (if any), and prosecutor (unless plea to the court);
  - 2) Made orally; or
  - 3) A combination of both.

## Admitting Prior and/or Special Allegation

- If the Citee admits a prior and/or special allegation, the court must find the allegation(s) to be true. The admission and finding of the court must be included in the minute order.
- See sentencing below for sentencing range. (See CCP 1218(c)(1-3))

## III. Trial

### Type of Trial

- Court trial - if 35 counts or less and no special allegations
- Jury trial – if 36 counts or more or 18 counts or more with special allegations

### Elements of Contempt

- **Family Support**
  - 1) Valid court order
    - a) **Be mindful of CRC 3.1113(l) and 3.1306(c)(1-2) CRC 5.115**
  - 2) Knowledge of the court order
  - 3) Non-compliance with court order

Defenses: inability to comply, invalid order, laches, corpus delicti (injury, loss, or harm which is a result of the alleged contemnor's act.)

- **Other Family Law Orders**

- 1) Valid Court order
- 2) Knowledge of the court order
- 3) Non-compliance with the court order
- 4) Willfulness
  - a. Defenses inability to comply, invalid order, corpus delicti, laches, other equitable reasons.

- **Monetary Sanctions**

- 1) Sanctions cannot be a subject of contempt unless the order clearly delineates the award of fees as need based or are otherwise proscribed by law.
- 2) See (2022) Newland v. Superior Court of Los Angeles 40 Cal.App. 4<sup>th</sup> 608 classifying sanctions as money judgments.
- 3) See e.g. Code of Civil Procedure §§ 2020.240, 2023.030(e), 2025.480(k) that allow statutorily provide for contempt.

### **Standard of Proof**

- The standard of proof in a criminal trial is “beyond a reasonable doubt.”  
Reasonable doubt is defined as follows:

*It is not a mere possible doubt; because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge. (PC §1096)*

### **Commencement of Trial**

- For purposes of PC §1382, commencement of trial is satisfied when either of the following occurs:
  - 1) In a court trial, when the first witness is sworn, or the first exhibit is presented, whichever occurs first.
  - 2) In a jury trial, when the first 12 prospective jurors are seated in the jury box and voir dire commences.
  - 3) Speedy Trial Right
- Trial must begin within the statutory time frame or within the amount of time matter is set for trial if there is no good cause. (see Jackson v. Superior Court 230 Cal.app.3d 1391; People v. Cole 165 Cal.App.4<sup>th</sup> Supp. 1).
- Citee may seek to dismiss the action pursuant to PC §1382 but only if Citee establishes prejudice (See People v. Davisbragdon 94 Cal.App.5<sup>th</sup> Supp.1).
- Dismissal under PC §1382 results in a dismissal with no ability to refile.

- Dismissal under PC §1382, ***after conviction***, is prohibited unless the Citee can show prejudice. (See Davisbragdon supra.). Prejudice can be the fact that the case should have been dismissed and could not have been refiled because there are no exceptions under PC §1387.
- Jeopardy attaches:
  - 1) In a jury trial when 12 jurors are selected and sworn to try the cause.
  - 2) In a court trial, when the first witness or exhibit is presented.
- Reasonably conflicting inferences are to be drawn in favor of the Citee.
- *All* elements must be proven beyond a reasonable doubt.
- **Prior allegations must be proven (Judicial Notice: see CRC 3.1306(c)(1), CRC 3.1113(I), LCR 3.8)**

#### IV. Sentencing

##### Setting of Sentencing Hearing

- The statutory time limit for pronouncement of judgment for a Citee convicted of contempt is beyond 6 hours but within 5 days of conviction. (PC §1449).
- The court may extend time for sentencing without a time waiver from the Citee for the following reasons:
  - 1) Pre-judgment motions are still pending.
  - 2) Doubt is declared as to Citee's present mental competence (PC §1368).
- A Citee who appears for judgment must be informed of the nature of the charge, the plea to the charge, and any verdict returned on the plea. (PC §1200).
- Arraignment for imposing sentence is generally waived by Citee's counsel and the court will inquire if there is any **legal** cause show why judgment should not be pronounced. (PC §1200 and *Stenback v. Municipal Court* 1969 272 CA2d 27).
- Legal.
  - 1) PC §1201 defines the following as legal causes why judgment should not be pronounced:
    - a) Motion for New Trial has not been ruled on
    - b) Declaration of doubt as to present mental competence declared (PC §1368)
- If the offense is punishable by imprisonment as well as by fine (see CCP§1218(a)), a judgment that the Citee pay a fine, with or without other punishment, may also direct that Citee be imprisoned until the fine is satisfied (PC §1205(a)).
- The Citee must receive credit on the fine for each day he or she is held in custody at the rate specified in the judgment (PC §1205(a)). The minimum conversion rate is \$125 per day (PC §§1205(a), 2900.5(a)).
- The judgment may further order that the imprisonment in lieu of the fine be served consecutively to any other imprisonment imposed (PC §1205(a)).

The sentence imposed may include any of the following:

- Serve time in custody.
- Pay a fine.
- Pay a fine or serve time in jail in lieu of paying fine.
- Serve time in custody and pay a fine.
- Serve time in custody and pay a fine or serve time in jail in lieu of paying fine.
- Community service or Cal Trans
  
- The court will impose the sentence utilizing one of the following (Also see Outcomes at Sentencing section below):
  - 1) Probation denied, and sentence imposed.
  - 2) Probation denied, sentence imposed and suspended.
  - 3) Sentence imposed, execution of sentence suspended and placed on probation.
  - 4) Imposition of sentence suspended and placed on probation.

### **Additional Sentencing Rights of Citee**

#### Arbuckle Rights

- If the judge who took the Citee's plea is unavailable for sentencing because of internal court administrative practices, the Citee has the right to withdraw his or her plea (*People v. Arbuckle* 1978 22 C3d 749, 757).  
The Arbuckle rule does not apply when the judge's unavailability arises from circumstances clearly beyond the power of the court, such as the resignation, retirement, illness, or death of the judge.
- If another judge will sentence a Citee, the Citee must enter an *Arbuckle* waiver on the record and the waiver must be included in the minute order.

#### Right to Be Present at Sentencing

- A Citee has a constitutional right to be present at the pronouncement of judgment and sentence (California Constitution Article I, §15).
- However, judgment in a misdemeanor case may be pronounced against the Citee in his or her absence if the Citee is represented by counsel, or the Citee knowingly and intelligently waives the right to be present.
- **The court may not pronounce judgment unless it finds that the Citee's absence is voluntary (PC §§977(a)(1), 1193(b)).**

### Right to Counsel at Sentencing

- A Citee has a constitutional right to retained or appointed counsel at the pronouncement of judgment (California Constitution Article I, §5).
- A Citee who appears without counsel must be advised of his or her right to counsel and asked if assistance of counsel is desired. When the Citee wishes to retain counsel or seek the appointment of a public defender, the court should postpone sentencing for a brief period to allow the Citee to procure counsel or a public defender.
- The court is not required to inform a Citee of the right to counsel when the Citee has been advised of, and waived, the right to counsel at an earlier stage of the criminal proceedings.

### Penal Code §654

- Penal Code §654(a) states that “an act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.” (See Koehler v. Superior Court 181 Cal.App.4<sup>th</sup> 1153.) Accordingly, in determining whether separate adjudications or divisible counts of contempt are proper, the test is whether there were separate insults to the authority of the court, not whether the insults happened to occur on the same or different days.
- The burden by a preponderance of the evidence lies with the Citee to prove the counts are indivisible.

### **Outcomes at Sentencing**

#### Probation Denied and Terminal or Straight Sentence Imposed

- Imposition of a sentence that does not include probation or conditions of probation is referred to as a terminal or straight sentence. The court retains jurisdiction over the Citee until such time as all conditions of the sentence have been met.
- When the Citee has met all the requirements of the sentence, the court’s jurisdiction over the Citee is terminated.
- The case may constitute a prior if the Citee receives another case, but the Citee cannot be sentenced to additional fines or jail on the case.

#### Probation Denied; Sentence Imposed and Suspended

- The court imposes a sentence (jail and/or fine) and suspends execution of the sentence. This type of sentence is more common with infraction and/or low-grade

misdemeanors. Although the Citee is sentenced jail time and/or fine, the Citee will not serve the jail time or pay the fine and the court is suspending the sentence.

#### Sentence Imposed, Execution of Sentence Suspended, and Citee Placed on Probation

- PC 1203(A-D) Citee is sentenced to serve a certain amount of time in jail and execution of the jail sentence is suspended.
- The Citee is then placed on probation and ordered to comply with certain terms and conditions of probation.
- If the grant of probation is later revoked because of a violation, the court must order the previously suspended sentence placed into effect (PC §1203.2(c)).
- The court may not modify or stay any portion of the previously suspended sentence. (*People v. Arguello* 1963 59 C2d 475 and *People v. Chagolla* 1984 151 CA3d 1045).

#### Imposition of Sentence Suspended and Placed on Probation (PC §1203(a))

- As used in this code, “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of sentence and the order of a revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infraction or misdemeanors.
- The Citee must agree to accept and abide by all terms and conditions imposed by the court. A violation of probation may result in probation being revoked and reinstated with new terms or conditions of probation, probation being revoked and terminated, or probation revoked and sentence imposed.

#### **Informal or Summary Probation**

- Probation was recognized as a valid sentencing option in IRMO Rice and Eaton (2012) 204 Cal.App.4th 1073.
- Also known as summary probation or a conditional sentence unsupervised it requires:
  - 1) The Citee to comply with certain terms and conditions of probation and orders of the court without the supervision of a probation officer. The court will monitor the progress of the Citee to ensure compliance with all terms and conditions of probation.
  - 2) Summary probation places greater responsibilities on the court than formal probation. The court must furnish the Citee with a written statement of the

terms and conditions of probation (PC §1203.12) and the court must order the Citee to report to the court periodically to monitor the Citee's compliance with the conditions imposed.

(PC §1203.1 and *People v. Municipal Court (Lozano)* 1956 145 CA2d 767).

- 3) The court may order specific conditions reasonably related to the offense committed and aimed at deterring future criminal conduct.
- 4) The conditions of probation must be stated in the probation order to give notice to the Citee of what is required of him or her and to allow the court to determine whether any condition has been violated (*People v. Hernandez* 1991 226 CA3d 1374).
- 5) The court should always ask the Citee if he or she understands and accepts probation on the terms and conditions stated. If the Citee does not object to the imposition of a probation condition at the sentencing hearing, he or she waives the right to challenge the condition on appeal (*People v. Welch* 1993 5 Cal. 4<sup>th</sup> 228).
- 6) The period of probation in misdemeanor cases may not exceed 1 year, (see AB1950).

### **Fines Authorized by Statute**

- A fine may be imposed of up to \$1,000.00 upon adjudication that is payable to the court (CCP 1218(a)).

### **Jail Time**

- The court may order the Citee to serve jail time as a condition of probation or the sentence. The amount of time is usually up to the court.
- There are some contempts that require mandatory jail time.
- When the court imposes a jail sentence, and the Citee is ready to begin serving jail, the clerk must complete the custody paperwork required by local court and county policy.
- The court may allow the Citee to surrender on a later date to commence the county jail sentence. The minutes must indicate the date and location where Citee is to surrender.

### **Concurrent or Consecutive Time**

- When the court imposes jail time within a given case or in multiple cases, the relationship between those jail terms must be specified within the minutes and on any commitment orders prepared. The relationship may be either concurrent or consecutive.
- Concurrent means that the periods of time will be served at the same time.
- Consecutive means that the periods of time will be served one after the other.

- If the court imposes a second jail term for a single Citee and fails to state the relationship of this period to the first period imposed, the second period of time shall run concurrently. (PC §669)

#### County Jail In lieu of Paying Fine

- In lieu of paying the fine, the court may allow Citee to serve time in county jail.
- The court must state the amount of credit Citee is to receive toward the base fine for each day served, minimum of \$125 per day.
- Any time served lieu of fine is to run consecutive to time imposed on the charge.

#### Community Service In lieu of Paying Fine

- In lieu of paying the fine, the court may allow Citee to complete community service. The court must state the amount of credit Citee is to receive toward the fine for each hour completed. The Citee is to be given credit for the minimum wage for each hour of community service completed.
- Community Service is not the same as Community Labor. However, the Penal Code does not distinguish between the two.

#### **Attorney Fees: PC §987.8**

- If the court determines that a Citee has the present ability to pay all or a part of the cost of appointed counsel, the court shall set the amount to be reimbursed and order the Citee to pay the sum to the county in the manner in which the court believes is reasonable and compatible with the Citee's financial ability.
- The Citee is entitled to a hearing to determine his/her financial ability to pay the attorney fees.

#### **Attorney Fees for Opposing Counsel: CCP§ 1218(a)**

- A person adjudged guilty of contempt *may* be ordered to pay reasonable attorney's fees and costs incurred by the prosecuting party in connection with the contempt proceedings.

#### **Sentencing Forms**

- Family Law
  - 1) Use FL-415 and any attachments is necessary to clearly outline the sentence.
  - 2) 2) May use for sentencing and dismissal.
  - 3) State in the minute order that the charge or charges have been dismissed.



## V. POST SENTENCING

### Probation Violations (PC §1203.2)

- Citor must make a motion for a violation of probation.
- The motion defines charges and the sentence previously imposed and consequences either asked for or to be imposed as a matter of law.
- Specifies condition of probation allegedly violated and how it was violated.
- The motion may request a body attachment be issued or an order to show cause be issued with a date for the Citee to appear in court.

### Initial Hearing on Probation Violation

- Appearance is made by the Citee.
- Appearance may be a result of the Citee's citation for a new charge of contempt.
- When a probationer is arraigned on a new charge, he/she must be given notice of any alleged violation of probation.
- Revoke Probation
- The Citee must admit or deny the violation.
  - 1) Admitted: sentencing after revocation hearing is set. 2) Denied: evidentiary hearing is set.

### Probation Hearing (Evidentiary Hearing)

- Hearing is a non-criminal hearing to prove/disprove the violation.
- Proof by a preponderance.
- No 6<sup>th</sup> amendment right to confrontation
- Testimony and exhibits may be offered.
- A hearing may be held in conjunction with proceedings in a new case.
  - 1) Willful violation not proved: Probation is reinstated with same terms and conditions.
  - 2) Willful violation proved: Probation revoked and sentencing after revocation is set.
- (See CA Supreme Ct. decision People v. Gray 533 P.3d 519, 311 Cal.Rptr.3d 611 regarding guidance on handling probation revocation hearings.)

### Sentencing After Revocation of Probation

- Depending on the level of the case, a violation of probation may result in a variety of possible actions including, but not limited to, the following:
  - 1) Court may reinstate probation:
    - a) On existing terms and conditions.
    - b) With new terms and conditions.

- c) Court may revoke and terminate probation, then sentence Citee to local jail
- d) Court may revoke and terminate probation with no additional punishment because of a punishment imposed on a new case.
- e) Court may revoke and terminate probation, then order the previous jail sentence imposed to commence forthwith (Execution of Sentence Suspended). A jail sentence previously imposed and suspended must be vacated if the court chooses to impose a different sentence.

#### Probation Modification

- May be requested when a previously imposed condition of probation needs to be augmented, changed, or deleted.
- A Request may be made by probationer, his counsel, the probation officer, or any other interested party.
- A Request may be made in writing or set on the court's calendar per local policy.
- The Prosecuting party has the right to a hearing in open court before any term of probation is modified.

#### Other Probation-Related Hearings

- Review—set for the Citee to report on his probation progress.
- Proof of Compliance—set for the Citee to submit proof of compliance with some term of probation.