

## 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)**

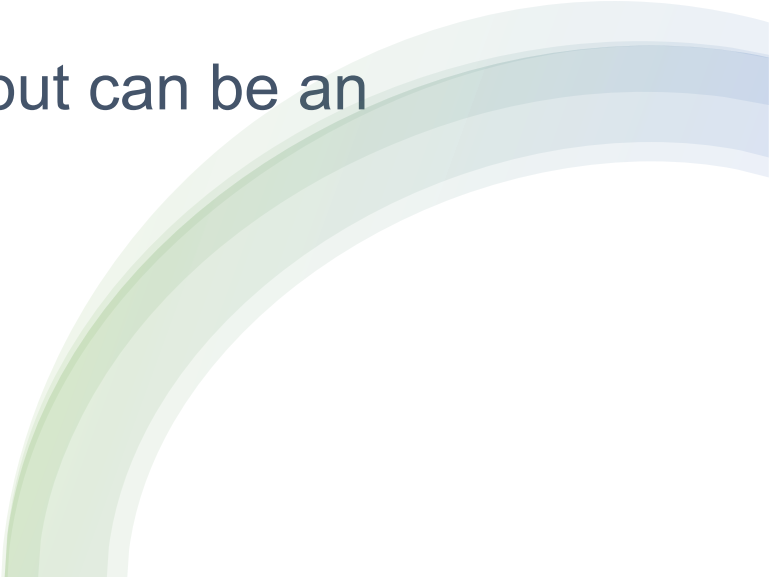
COMMITTED IN  
COURT'S PRESENCE BUT  
EXCUSED BY A MATTER  
OUTSIDE OF THE  
COURTROOM



# 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







- **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

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

5<sup>th</sup> 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!**