

n

CONTEMPT PROCEDURE CHECKLISTS

Faretta Motion

- 1) This is citee's motion or request to proceed self-represented.
- 2) Citee's election to proceed self-represented must be voluntary and intelligent.
- 3) Court may require citee to complete questionnaire that includes inquiries as to citee's educational background and knowledge of the case or to complete a written waiver as to his or her right to counsel.
- 4) Minute order must indicate if questionnaire has been completed, if written waiver is filed, and/or if any inquiries have been made by Court as to citee's ability to self-represent.
- 5) Minute order must indicate Court's findings and rulings.

Elements of Arraignment

- Determine 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 citee and/or counsel.
- Advise citee of constitutional and statutory rights. (See below.)
- Ask citee to enter a plea or have counsel enter not guilty plea on citee's 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
- Right to reasonable time to answer the charge

Immigration consequences warning not required:

- There are currently no immigration consequences from a conviction of a civil contempt action, but 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
- 1118 (entry of judgment of acquittal if found not guilty), 1387 (previous proceeding arising from same conduct)

Jury Waiver Script

“A jury is made up of 12 members of the community; (2) a defendant or through his or her counsel may participate in jury selection; (3) the standard of proof is beyond a reasonable doubt; (4) all 12 jurors must unanimously agree in order to render a verdict; and (5) if a defendant waives the right to a jury trial, a judge alone will decide his or her guilt or innocence utilizing the same standards; (6) whether the defendant had an adequate opportunity to discuss the decision with his or her attorney, (7) whether counsel explained to the defendant the fundamental differences between a jury trial and a bench trial; (8) or by asking the defendant directly if he or she understands or has any questions about the right being waived”

“Do you give up your right to a jury trial and agree that this Court, alone, will decide the case?”

Additional Motions

PC §954 Motion: A motion to consolidate (to bring together) two or more different citations

- Court may also choose to consolidate citations *sua sponte*

PC §1050 Motion: A motion to continue any hearing in a criminal proceeding, including the trial.

- Written notice must be filed and served on all parties to the proceeding at least 2 court days before the hearing sought to be continued, with affidavits or declarations detailing specific facts showing that a continuance is necessary. PC § 1050(b)(1).
- Continuances require showing of good cause.
- Court must make finding whether good cause has been shown.
- If Court finds good case, then must state on record facts justifying the finding. The finding of good cause and the reason for granting the continuance must be entered on minute order. PC § 1050(e), (f).

PC §654: Cumulative Proceedings/Punishment

- The preclusion of multiple punishment in PC § 654 applies in civil contempt, to the extent the punishment is punitive in nature. (E.g., *Mitchell v. Superior Court* (1989) 49 Cal.3d 1230.
- Improper to impose multiple punishments for amounts to a single disobedience, although continuing in nature. Test is whether there are “separate insults to the authority of the court, not whether the insults happened to occur on the same or different days.’
- BUT for support contempts, each month’s failure to pay may be alleged as a separate count, each with its own punishment. CCP § 1218.5(a).

Minute Order Contents for Motion Rulings

- 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 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, if applicable:
 - (1) all charges dismissed and citee discharged as to the citation; future dates must be vacated
 - (2) Some or no charges are dismissed, and matter remains set for trial

Taking a Plea By Agreement

Waiver of Constitutional Rights

Citee must waive the following, and waivers must be included in 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 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 (must be in minute order):

- *Harvey waiver*—As part of plea agreement, citee agrees to pay restitution on dismissed charges.

- *Arbuckle* waiver—Citee waives right to be sentenced by same 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 Court abide by original plea conditions if the Citee fails to appear for sentencing or is arrested for another criminal offense.

Additional Rights at Sentencing

Arbuckle Rights

- If judicial officer who took the plea is unavailable for sentencing because of internal court administrative practices, 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

- 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 absent citee if citee is represented by counsel, or citee knowingly and intelligently waives the right to be present.
- Court may not pronounce judgment unless it finds that citee's absence is voluntary. PC §§977(a)(1); 1193(b).

Right to Counsel at Sentencing

- Citee has a constitutional right to retained or appointed counsel at the pronouncement of judgment (California Constitution Article I, §5).
- Citee who appears without counsel must be advised of 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 citee to procure counsel (private or public defender).
- Court is not required to inform citee of right to counsel when citee has been advised of, and waived, the right to counsel at an earlier stage of the criminal proceedings.