

CONTEMPT OF COURT – Family Law – *instructions*

WHAT IS “CONTEMPT?”

Contempt is one way to enforce a court order. Fam C §290. In general, any person who willfully disobeys a lawful court order, and has both knowledge of and the ability to comply with that order, may be found in contempt of court and may be fined, required to pay attorney fees, ordered to perform community service, or imprisoned. CCP §§1218(a), (c), 1219; Goold v Superior Court (2006) 145 CA4th 1.

CRIMINAL v. CIVIL CONTEMPT: Contempt of a family law orders may be either civil or criminal. The primary distinction between civil and criminal contempt hinges on the nature of the relief sought and ordered by the court.

Civil contempt is governed by CCP §§1209–1222. A civil contempt proceeding, although criminal in character, is not construed as a criminal action. Pacific Tel.& Tel. Co. v Superior Court (1968) 265 CA2d 370, 371. A **civil contempt** is a "coercive" penalty, which may be avoided by compliance with the order and is designed to achieve the object of the order. The contempt is civil when a conditional sentence is imposed or if the contemnor can purge the contempt by performing a specified act. Hicks on Behalf of Feiock v Feiock (1988) 485 U.S. 624, 108 S. Ct. 1423). **Criminal contempt** is a violation of the penal code. It is considered a crime and is prosecuted and punished as such. Pen C §166. A criminal contempt is a punitive measure, which cannot be escaped by compliance and which is intended to vindicate the authority of the court. In re Ivey (2000) 85 CA4th 793; 803; Turner v Rogers (2011) 564 US 431, 131 S Ct 2507.

RIGHT TO JURY TRIAL: **Civil Contempt:** There is no right to jury trial where the court invokes its general summary contempt power under CCP § 1209. (Mitchell v. Super.Ct. (People) (1989) 49 C3d 1230, 265 CR 144). **HOWEVER** if the contemplated sentence is more than 180 days sentence [36 counts x 5 days in jail per count] per CCP § 1218(a), then **yes**, the citee has the right to a jury trial. In re Kreitman (1995) 40 Cal.App.4th 750, 47 Cal.Rptr. 2d 595. **Criminal Contempt:** There is a right to a jury trial in a criminal contempt case that carries a maximum penalty of six months' imprisonment plus \$1,000 fine regardless of what the Legislature has labeled the offense. Mitchell v. Super.Ct. (People) (1989) 49 C3d 1230, 265 CR 144; U.S. Const. 6th Amend. (6th Amend); Cal. Const., art. I, §16.

RIGHT TO COUNSEL: **Civil Contempt:** There is no *constitutional* right to appointment of counsel. The defendant has the right to **retain his own attorney**. Application of Shelley (1961) 197 CA 2d 199, 16 CR 916. **However**, “where personal freedom is at stake, a due process basis for appointment of counsel is established without consideration of other possible determinants.” County of Santa Clara v. Sup.Ct. (Rodriguez) (1992) 2 Cal.App.4th 1694. **Criminal Contempt:** Defendants have the right to qualified lawyer, of the citee's own choosing, or appointed counsel if they are unable to afford counsel. Mills Municipal Court (Wicks) (1973) 10 Cal.3d 288, 110 Cal.Rptr. 329.

BURDEN OF PROOF: **The alleged contempt must be proved beyond a reasonable doubt.** Ross v Superior Court (1977) 19 Cal.3d 899.

WHAT ORDERS ARE ENFORCEABLE BY CONTEMPT?

1. **Support orders** - child, spousal, or family support (CCP §1218.5(a)), including
 - a. **Job training and seek-work orders for child support:** (Fam.C. §§ 3558, 4505).
 - b. **Earnings assignment orders:** An employer's "willful failure" to comply wage assignment order (Fam.C. § 5200 et seq.; CCP § 1218; Fam.C. §5241(c)).
 - c. **"In the nature of support":** Orders characterized as support orders. (Bushman v Superior Court (1973) 33 CA3d 177, 181 (**pendente lite order to make mortgage payments**); In re Hendricks (1970) 5 CA3d 793, 797 (**pendente lite order to pay past community debts**)).
2. **Custody and visitation orders.** Contempt is available to enforce orders governing the **custody** (Smith v Smith (1953) 120 CA2d 474), **visitation** (Rosin v Superior Court (1960) 181 CA2d 486), or **residence** (Olcott v Superior Court (1945) 68 CA2d 603) **of a child**. Custody and visitation orders issued by a foreign court are also enforceable by contempt. Miller v Superior Court (1978) 22 C3d 923, 927.
3. **Restraining orders.** Restraining orders, including the **standard family law restraining orders** Fam C §290; Goold v Superior Court (2006) 145 CA4th 1), and orders **restraining the conduct** of one party to protect the peace and safety of the other. In re Laham (1956) 145 CA2d 110.
4. **Disobedience of any lawful judgment, order, or process of the court.** CCP §1209 et. seq.
5. **Order compelling compliance with "declaration of disclosure" requirements.** Fam.C. § 2107(c)—including an OSC re Contempt. Elden v. Super.Ct. (Elden) (1997) 53 CA4th 1497, 1510, 62 CR2d 322, 329 (dictum).
6. **Re-entry into real property after judicial ejection.** CCP §1210.

ORDERS NOT ENFORCEABLE BY CONTEMPT

1. **Marital Settlement Agreements not merged into judgment (See Judgment form FL-180, page 2):** Breach of a marital settlement agreement (or any other contract) is not remediable by contempt where the defaulted obligation was never made a part of the judgment. Plummer v. Super.Ct. (1942) 20 C2d 158, 163, 124 P2d 5, 8; compare Marriage of Alper (1981) 116 CA3d 925, 928, 172 CR 402, 404—agreement deemed "merged" into Arizona judgment under Arizona law enforceable in Calif. contempt action.
2. **Marital debt liability orders:** An order requiring a spouse to make specified payments in satisfaction of a community liability is a "debt" *not enforceable by contempt* ... unless the obligation is an integral part of a support order. In re Fontana (1972) 24 CA3d 1008, 1010-1011, 101 CR 465, 467—**car payment**.
3. **Seek work order to pay spousal support or that would jeopardize CalWORKS benefits.** No contempt for "seek-work" orders that would jeopardize obligor's CalWORKs benefits Barron v. Super.Ct. (Martinez (2009) 173 CA4th 293, 92 CR3d 394.). No contempt for failing to seek employment in order to pay *spousal* support. Ex Parte Todd (1897) 119 C 57, 58, 50 P 1071— court has no power to "compel a man to seek employment in order to earn money to pay alimony, and punish him for his failure to do so"; In re Jennings (1982) 133 CA3d 373, 381-385, 184 CR 53, 57-59.

STATUTE OF LIMITATIONS - The contempt remedy is subject to a *statute of limitations*. CCP § 1218.5:

1. **Support orders** - child, family or spousal support no later than **THREE YEARS from the date the payment was due. Each month a separate “count.”** (CCP §1218.5(b));
2. **Other Family Code orders**- no later than **TWO YEARS “from the time that the alleged contempt occurred.”** (CCP § 1218.5(b)).

ELEMENTS OF CONTEMPT: To establish a *prima facie* case for contempt, it is necessary to state **facts sufficient to prove contempt:**

- **defense:** The affidavit does not state facts sufficient to establish a prima facie case for contempt.

1. **Valid Prior Order.** The underlying order must be valid. The order must also be clear, specific, and unequivocal. In re Marcus (2006) 138 CA4th 1009; Wilson v Superior Court (1987) 194 CA3d 1259, 1273. Further, it must be in writing, **and either signed by the judge and filed with the court, or set forth in a detailed minute order.** Oral ruling insufficient. In re Marcus, 138 CA4th at 1015; Ketscher v Superior Court (1970) 9 CA3d 601, 604.

- **defenses:** unlawful order, void order, invalid order, or conflicting order

- **defenses:** ambiguous, vague, uncertain order

2. **Knowledge of Order.** The citee must have knowledge of the order. This requirement is satisfied if the citee was present in court when the order was made or was served with a copy of the order after it was made. Phillips v Superior Court (1943) 22 C2d 256, 258.

Rebuttable presumption of knowledge of the order:

a. If the citee's attorney has knowledge of the terms of the order, either because the attorney was present in court when it was made or because the attorney was served with a copy of the order, there is a rebuttable presumption that the citee knew of the order. Mossman v Superior Court (1972) 22 CA3d 706, 711.

- **best practice:** The best practice is to have the party personally served with a copy of the order.

b. If the party to whom the order was directed obeys the order for some period of time before violating the order, a rebuttable assumption of knowledge of the order will arise. Shibley v Superior Court (1927) 202 C 738, 741.

3. **Ability to Comply.** In general, the court must find that the alleged contemnor had the ability to comply with the order. Anderson v Superior Court (1998) 68 CA4th 1240, 1245; In re McCausland (1955) 130 CA2d 708. The ability to comply must exist at the time of the act of disobedience, not at the time of imposition of the sentence. Sorell v Superior Court (1967) 248 CA2d 157, 161.

- **defense:** A custodial parent may not be held in contempt for violation of a visitation order based on the failure of an unwilling child to visit unless proof of the parent's ability to compel visitation is shown. Coursey v Superior Court (1987) 194 CA3d 147, 154.

- **defense:** Of course, to order a party jailed until such time as he or she complies with the court order, a *present* ability to comply is required. But that added finding is required only for imposition of the particular penalty and is not a prerequisite to finding the party in contempt. Sorell v Superior Court (1967) 248 CA2d at 161; CCP §1219.

- **defense:** *Inability* to pay becomes an affirmative defense that must be proven by the alleged contemnor. In re Ivey (2000) 85 CA4th 793, 798 (attorney fees); In re McCarty (1908) 154 C 534, 538. "To prevail on the affirmative defense of inability to comply with the support order, the contemnor must prove such inability by a preponderance of the evidence." Moss v Superior Court (1998) 17 C4th at 428.

4. **Willful Failure to Comply.** The accused party must have **willfully disobeyed** the court order. Coursey v Superior Court (1987) 194 CA3d 147, 156. Neither advice of counsel, nor mistake of law excuses it. City of Vernon v Superior Court (1952) 38 C2d 509, 518.

ELEMENTS OF CONTEMPT CHILD SUPPORT CASES. The elements of contempt based on a failure to comply with a **child support and family support** order differ slightly from other contempt cases. A prima facie case requires only proof of (CCP §1209.5):

1. A valid court order;
2. Knowledge of the order; and
3. Noncompliance. Willful failure to comply **is not** part of the prima facie case for child support.

- **defense:** Once this prima facie case is established, the alleged contemnor has the burden of showing inability to pay by a preponderance of the evidence. Moss v Superior Court (1998) 17 C4th 396, 415; People v Dilday (1993) 20 CA4th Supp 1.

- **defense:** Consequently, an accused who wishes to defend on the ground that the disobedience was not willful must raise that issue as an affirmative defense. Moss v Superior Court (1998) 17 C4th 396.

Note: A contempt may be imposed when inability to comply is caused by parent's willful failure to seek and accept employment or failing to seek available employment commensurate with the parent's skills and abilities. Moss (supra).

Note: Even though the citee is unable to pay the full amount of the order, if they fail to pay what is within their ability to pay, they may still be adjudged in contempt. Lyon v Superior Court (1968) 68 C2d 446.

SENTENCING: The judge determines guilt and imposes the sentence. CCP §§1218, 1219; Pen C§1449. The sentence **shall** include community service and **may** include payment of fines, attorney fees, order jail time, change of custody, change of visitation, terminate spousal support, probation, conditional sentence, stay pending compliance with order, etc.

- factors to make sentence less severe (mitigating factors): reconciliation of parties, partial payments, late payments, modified payments, bankruptcy, citee's employment/unemployment

Victims of domestic violence or sexual assault. However, a court may not imprison or otherwise place in custody or confine a victim of domestic violence or sexual assault who refuses to testify and is found in contempt for that reason. CCP §1219(b).

NOT APPEALABLE: An adjudication of contempt is final and conclusive and not appealable. The only appellate relief is a writ. Bloom v. Sup.Ct. (1987) 185 Cal.App.3d 409, 229 Cal.Rptr. 74.

GETTING STARTED: **Get copies of the filed orders that were violated.**

FORMS TO BE COMPLETED:

1. Order to Show Cause and Affidavit for Contempt, FL-410 **mandatory**
2. Affidavit of Facts Constituting Contempt, Financial and Injunctive Orders, FL-411 **mandatory** and **Attachment 1a or 1b** if needed;
and/or
3. Affidavit of Facts Constituting Contempt, Domestic Violence, Custody and Visitation, FL-412 **mandatory** and **Attachments 1-7** if needed;
4. **optional** Income and Expense Declaration, FL-150 (when requesting attorney's fees or cost);
5. **blank** Responsive Declaration, FL-320. **Note:** The filing of a declaration in opposition to the Order to Show Cause does not in itself constitute a waiver of the citee's right to refuse to testify. Crittenden v Superior Court (1964) 225 CA2d 101, 105.
6. Notice to Local Child Support Agency of Intent to Take Independent Action to Enforce Support Order, FL-645 **mandatory** if YOU are receiving services of the Local Child Support Agency and YOU are the party filing the OSC for Contempt. **This must be served on the LCSA at least 30 days before you file your OSC.**
7. Proof of Personal Service, FL-330 **mandatory**
8. Findings and Order Regarding Contempt, FL-415

PROCEDURE:

1. **Complete the forms** using black or blue ink, or go online to access the forms at www.courts.ca.gov/forms.
2. **Review forms.** Have the forms reviewed and checked by the Family Law Facilitator, or just file them with the Family Law Clerk. The clerk will check your forms. Check on the status of your case online at www.kern.courts.ca.gov/noncriminal/smartsearch.
3. **Copies.** Make sufficient copies for all parties, including the LCSA and attorneys.
4. **File OSC/Pay Fees:** File original and copies of the OSC with the Family Law Clerk and pay the filing fees. Ask for a Fee Waiver packet if you cannot pay the fees.
5. **Serve Citee & Parties/File the Proof of Service forms.** Have a 3rd person (“server”) personally hand the filed OSC to the citee and his/her attorney, and other parties at least 16 court days before the hearing. CCP § 1005(b). (CCP §§ 1015, 1016; see also FC § 215 (post judgment proceedings)).

Note: If the citee cannot be served within the 16 court day limit above, you must file a new OSC for Contempt and get a new court date.

File a completed Proof of Personal Service FL-330 form for each person served. File the proofs of service with the family law clerk.

6. **Appear at the Hearing/ Present Your Case.** You have the burden of proving **beyond a reasonable doubt** all of the elements of contempt.
 - a. **Appearance at Hearing.** Normally, either the citee or his/her attorney must appear at the hearing; if neither appears, the court can:
 - 1) issue a bench warrant to secure their presence. But it is error for the court to proceed in the absence of the alleged contemnor or his or her attorney, unless it finds the OSC and Affidavit for Contempt forms were validly served and the failure to appear was voluntary. CCP § 1217; Farace v. Super.Ct. (Hale) (1983) 148 CA3d 915, 918, 196 CR 297, 299; Morelli v. Super.Ct. (Berry) (1968) 262 CA2d 262, 269, 68 CR 572, 578;
 - 2) continue the matter;
 - 3) proceed with trial if it finds that the citee has been properly served and is voluntarily absent with full knowledge of the hearing. Farace v Superior Court (1983) 148 CA3d 915, 918.
 - b. **Evidence** - Because the citee cannot be compelled to testify, even as an adverse party under Evid C §776, the moving party must be prepared to present evidence without relying on the citee. Oliver v Superior Court (1961) 197 CA2d 237, 240. Because the charging declaration is hearsay, however, it is inadmissible over objection. Evid C §1200. The same is true of the citee's opposing declaration.
 - Either party may present oral testimony. Fam C §217; Cal Rules of Ct 5.113. If the moving party testifies, the citee is entitled to cross-examination. Evid C §773(a).

- The record in the underlying proceedings may be offered to support a party's position. See, *e.g.*, Freeman v Superior Court (1955) 44 C2d 533, 537 (rebuttable presumption of citee's knowledge of order based on showing from record that citee's attorney was present in court when order made and thereafter served with copy).
- The proponent of the contempt has the burden of proving every element of contempt.

c. **Citee's Responsive Declaration** - If the cite files a responsive declaration and if you do not timely object (2 court days before the hearing in writing; or upon good cause at the hearing orally or in writing), your objections will be considered waived and the declaration may be considered as evidence. Cal Rules of Ct 5.111(c).

7. **Complete Findings and Order Regarding Contempt, FL-415.** This is not a mandatory form but it contains all of the necessary findings. The trial court is required to make finds with particularity and specificity. Petition of Mancini (1963) 215 Cal.App.2d 54, 29 Cal.Rptr. 796.

Support Contempt Orders must find the existence of a specific, valid order, the specific details of how said order was violated, the contemnor's knowledge of the order, the contemnor's willful failure to comply, and the contemnors ability to pay the money, or to do nor not do the act or omission charged, and the court's specific findings as to the violations of the order. Mancini, supra at 57; Powers v. Sup.Ct. (1967) 253 Cal.App.2d 617, 61 Cal.Rptr. 433; Morelli v Sup.Ct. (1968) 262 Cal.app.2d 262, 68 Cal.Rptr. 572.

These materials have been compiled through a grant from the Judicial Council of California. The opinions and findings in this publication are those of the author and not necessarily those of the Judicial Council of California. All rights reserved, April 2009, rev. 8/31/2017. SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN, FAMILY LAW FACILITATOR, 1215 TRUXTUN AVE., BAKERSFIELD CA 93301; WMFACIL@KERN.COURTS.CA.GOV

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, State Bar number, and address): YOUR NAME YOUR ADDRESS CITY, STATE, ZIP TELEPHONE NO.: YOUR PHONE NUMBER FAX NO. (optional): E-MAIL ADDRESS (optional): ATTORNEY FOR (name): IN PRO PER	FOR COURT USE ONLY Original + _____ Make sufficient copies for all parties & attorneys. Citee must be personally served at least 16 court days before the hearing.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1215 TRUXTUN AVENUE MAILING ADDRESS: SAME CITY AND ZIP CODE: BAKERSFIELD, CA 93301 BRANCH NAME: METROPOLITAN DIVISION-JUSTICE BUILDING	CASE NUMBER: CASE NUMBER
PETITIONER/PLAINTIFF: PETITIONER'S NAME RESPONDENT/DEFENDANT: RESPONDENT'S NAME OTHER PARTY/PARENT:	
ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT	

<p style="text-align: center;">NOTICE!</p> <p>A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties include jail sentence, community service, and fine.</p> <p>You are entitled to the services of an attorney, who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.</p>	<p style="text-align: center;">¡AVISO!</p> <p>Un proceso judicial por desacato es de índole criminal. Si la corte le declara a usted en desacato, las sanciones posibles incluyen penas de prisión y de servicio a la comunidad, y multas.</p> <p>Usted tiene derecho a los servicios de un abogado, a quien debe consultar sin demora para obtener ayuda. Si no puede pagar a un abogado, la corte podrá nombrar a un abogado para que le represente.</p>
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1. TO CITEE (name of person you allege has violated the orders):
NAME OF PERSON WHO VIOLATED ORDERS
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS, TO GIVE ANY LEGAL REASON WHY THIS COURT SHOULD NOT FIND YOU GUILTY OF CONTEMPT, PUNISH YOU FOR WILLFULLY DISOBEYING ITS ORDERS AS SET FORTH IN THE AFFIDAVIT BELOW AND ANY ATTACHED *AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT*; AND REQUIRE YOU TO PAY, FOR THE BENEFIT OF THE MOVING PARTY, THE ATTORNEY FEES AND COSTS OF THIS PROCEEDING.

a. Date:	Time:	Dept.:	Rm.:
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b. Address of court: same as noted above other (specify):

Date: _____

JUDICIAL OFFICER

AFFIDAVIT SUPPORTING ORDER TO SHOW CAUSE FOR CONTEMPT

3. An *Affidavit of Facts Constituting Contempt* (form FL-411 or FL-412) is attached.
4. Citee has willfully disobeyed certain orders of this court as set forth in this affidavit and any attached affidavits.
5. a. Citee had knowledge of the order in that
 - CHECK**(1) citee was present in court at the time the order was made.
 - ALL** (2) citee was served with a copy of the order.
 - THAT** (3) citee signed a stipulation upon which the order was based.
 - APPLY**(4) other (specify) : EX: citee's attorney was in court when orders were made;
EX: citee's attorney was served with copy of order
EX: citee obeyed the orders then stopped obeying the orders
 - Continued on Attachment 5a(4).
- b. Citee was able to comply with each order when it was disobeyed.
6. Based on the instances of disobedience described in this affidavit
 - a. I have not previously filed a request with the court that the citee be held in contempt.
 - b. I have previously filed a request with the court that the citee be held in contempt (specify date filed and results) :
list the date and outcome of other contemps you filed against citee if applicable

CHECK ONE

Continued on Attachment 6b.

PETITIONER/PLAINTIFF: PETITIONER'S NAME RESPONDENT/DEFENDANT: RESPONDENT'S NAME OTHER PARTY/PARENT:	CASE NUMBER: CASE NUMBER
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7. Citee has previously been found in contempt of a court order (specify case, court, date):
complete if applicable

**CHECK
ALL
THAT
APPLY**

Continued on Attachment 7.

8. Each order disobeyed and each instance of disobedience is described as follows:

a. Orders for child support, spousal support, family support, attorney fees, and court or other litigation costs (see attached *Affidavit of Facts Constituting Contempt* (form FL-411))

b. Domestic violence restraining orders and child custody and visitation orders (see attached *Affidavit of Facts Constituting Contempt* (form FL-412))

c. Injunctive or other order (specify which order was violated, how the order was violated, and when the order was violated):

Continued on Attachment 8c.

d. Other material facts, including facts indicating that the violation of the orders was without justification or excuse (specify): **State facts that show citee with purpose or willingness committed the act or failed to act as required by the court order**

EX: Citee paid for and bought a 2015 Dodge Ram truck instead of paying child support

check here if you need more room to write

Continued on Attachment 8d.

e. I am requesting that attorney fees and costs be awarded to me for the costs of pursuing this contempt action. (A copy of my *Income and Expense Declaration* (form FL-150) is attached.)

WARNING: IF YOU PURSUE THIS CONTEMPT ACTION, IT MAY AFFECT THE ABILITY OF THE DISTRICT ATTORNEY TO PROSECUTE THE CITEE CRIMINALLY FOR THE SAME VIOLATIONS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: DATE

NAME OF PERSON FILING OSC _____
(TYPE OR PRINT NAME)

▶ SIGN HERE _____
(SIGNATURE)

INFORMATION SHEET FOR ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Order to Show Cause and Affidavit for Contempt* (form FL-410) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form, as well as the *Affidavit of Facts Constituting Contempt* (form FL-411 or form FL-412). You may wish to consult an attorney for assistance. Contempt actions are very difficult to prove. An attorney may be appointed for the citee.

INSTRUCTIONS FOR COMPLETING THE ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT (TYPE OR PRINT FORM IN INK):

If the top section of the form has already been filled out, skip down to number 1 below. If the top section of the form is blank, you must provide this information.

Front page, first box, top of form, left side: Print your name, address, telephone number, and fax number, if any, in this box. If you have a restraining order and wish to keep your address confidential, you may use any address where you can receive mail. **You can be legally served court papers at this address.**

Front page, second box, left side: Print the name of the county where the court is located and insert the address and any branch name of the court building where you are seeking to obtain a contempt order. You may get this information from the court clerk. This should be the same court in which the original order was issued.

Front page, third box, left side: Print the names of the Petitioner, Respondent, and Other Party/Parent (if any) in this box. Use the same names as appear on the most recent court order disobeyed.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print the court case number in this box. This number is also shown on the most recent court order disobeyed.

Item 1: Insert the name of the party who disobeyed the order ("the citee").

Item 2: The court clerk will provide the hearing date and location.

Item 3: Either check the box in item 3 and attach an *Affidavit of Facts Constituting Contempt* (form FL-411 for financial orders or form FL-412 for domestic violence, or custody and visitation orders), or leave the box in item 3 blank but check and complete item 8.

Item 5: Check the box that describes how the citee knew about the order that has been disobeyed.

Item 6: a. Check this box if you have not previously applied for a contempt order.
b. Check this box if you have previously applied for a contempt order and briefly explain when you requested the order and results of your request. If you need more space, check the box that says "continued on Attachment 6b" and attach a separate sheet to this order to show cause.

Item 7: Check this box if the citee has previously been found in contempt by a court of law. Briefly explain when the citee was found in contempt and for what. If there is not enough space to write all the facts, check the box that says "continued on Attachment 7" and attach a separate sheet to this order to show cause.

Item 8: a. Check this box if the citee has disobeyed orders for child support, custody, visitation, spousal support, family support, attorney fees, and court or litigation costs. Refer to item 1a on *Affidavit of Facts Constituting Contempt* (form FL-411).
b. Check this box if the citee has disobeyed domestic violence orders or child custody and visitation orders. Refer to *Affidavit of Facts Constituting Contempt* (form FL-412).

Information Sheet (continued)

- Item 8: c. If you are completing this item, use facts personally known to you or known to the best of your knowledge. State the facts in detail. If there is not enough space to write all the facts, check the box that says "continued on Attachment 8c" and attach a separate sheet to this order to show cause, including facts indicating that the violation of the orders was without justification or excuse.
- d. Use this item to write other facts that are important to this order. If you are completing this item, insert facts personally known to you, or known to the best of your knowledge. State facts in detail. If there is not enough space to write all the facts, check the box that says "Continued on Attachment 8d" and attach a separate sheet to the order to show cause.
- e. If you request attorney fees and/or costs for pursuing this contempt action, check this box. Attach a copy of your *Income and Expense Declaration* (form FL-150).

Type or print and sign your name at the bottom of page 2.

If you checked the boxes in item 3 and item 8a or 8b, complete the appropriate *Affidavit of Facts Constituting Contempt* (form FL-411), following the instructions for the affidavit above.

Make at least three copies of the *Order to Show Cause and Affidavit for Contempt* (form FL-410) and any supporting *Affidavit of Facts Constituting Contempt* (form FL-411 or FL-412) and the *Income and Expense Declaration* (form FL-150) for the court clerk, the citee, and yourself. If the district attorney or local child support agency is involved in your case, you must provide a copy to the district attorney or local child support agency.

Take the completed form(s) to the court clerk's office. The clerk will provide hearing date and location in item 2, obtain the judicial officer's signature, file the originals, and return the copies to you.

Have someone who is at least 18 years of age, who is not a party, serve the order and any attached papers on the disobedient party. For example, a process server or someone you know may serve the papers. **You may not serve the papers yourself. Service must be personal; service by mail is insufficient.** The papers must be served at least 16 court days before the hearing. The person serving papers must complete a *Proof of Personal Service* (form FL-330) and give the original to you. Keep a copy for yourself and file the original *Proof of Personal Service* (form FL-330) with the court.

If you need assistance with these forms, contact an attorney or the Family Law Facilitator in your county.

PETITIONER/PLAINTIFF: PETITIONER'S NAME RESPONDENT/DEFENDANT:RESPONDENT'S NAME OTHER PARENT:	SAMPLE CASE NUMBER: CASE NUMBER
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AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Financial and Injunctive Orders

Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)

1. a. Orders for child support, spousal support, family support, attorney fees, and court and litigation costs (*separately itemize each default on installment payments*):

DATE DUE	TYPE OF ORDER AND DATE FILED	PAYABLE TO	AMOUNT ORDERED	AMOUNT PAID	AMOUNT DUE	
date support due EX: 1st & 15th of each month commencing 5/1/2015	-list the title of the order violated -list date order was filed EX: Judgment of Parental Relationship filed 4/1/2015	name of person to whom payments were to be made EX: Mother Mary	amount of order EX: \$300 per month	See Attachment 1a	0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
Use Attachment 1a to list all the counts of contempt				TOTAL AMOUNT ORDERED	TOTAL AMOUNT PAID	TOTAL AMOUNT DUE
<input checked="" type="checkbox"/> Continued on Attachment 1a.						
Summary of contempt counts alleged (including all attachments):						
Child support:				3,300.00	0.00	3,300.00
Spousal support:						0.00
Family support:						0.00
Attorney fees:						0.00
Court and other costs:						0.00
Total				\$ 3,300.00	\$ 0.00	\$ 3,300.00

- b. Other orders (*specify which order was violated, how the order was violated, and when the violation occurred*):

Continued on Attachment 1b.

- c. Other material facts (*specify*):

list any facts that will show the citee's "bad acts" and disobedience of the court order

Continued on Attachment 1c.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: DATE

NAME OF PERSON FILING THIS OSC _____
(TYPE OR PRINT NAME)

SIGN HERE

▶ _____
(SIGNATURE)

SHORT TITLE:

SAMPLE

CASE NUMBER:

CASE NUMBER

PETITIONER'S NAME v RESPONDENT'S NAME

1 ATTACHMENT 1a AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT:
 2 JUDGMENT/ORDER VIOLATED STATES IN RELEVANT PART: (quote the exact terms of the order that
 3 was violated) "...The Court Orders.....6.b. The parent ordered to pay support must pay current child
 4 support as follows:

5 Name of Child:	Date of birth:	Monthly support amount:
6 Child's Name	06/03/2006	\$112.00
7 Child's Name	10/25/2009	\$188.00

86.b.(3) for a total of \$300.00 payable on the first day of each month beginning (date):
 9 5/01/2015..."

10

11 THE CITEE VIOLATED THE JUDGMENT/ORDER AS FOLLOWS:

12	Type of Order	Amount	Amount	Amount
13	Due Date: & Date Filed:	Payable To:	Ordered:	Paid: Due:
14	5/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
15	6/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
16	7/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
17	8/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
18	9/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
19	10/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
20	11/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
21	12/1/2015 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
22	1/1/2016 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
23	2/2/2016 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00
24	3/1/2016 Child Support 6/15/2015	Mother Mary	\$300.00	\$0 \$300.00

25

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line
 27 numbers): ATTACHMENT 1a

This page may be used with any Judicial Council form or any other paper filed with the court.

Page _____

SAMPLE

PETITIONER/PLAINTIFF: PETITIONER'S NAME	CASE NUMBER:
RESPONDENT/DEFENDANT:RESPONDENT'S NAME	CASE NUMBER
OTHER PARENT:	

CHECK ALL THAT APPLY

AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation
Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)

1. The Citee has violated the restraining order issued on (date): _____ by contacting, molesting, harassing, attacking, striking, threatening, sexually assaulting, battering, telephoning, sending any messages to, following, stalking, destroying the personal property of, disturbing the peace of, keeping under surveillance, or blocking movements in public places and thoroughfares of me or any other person protected by the restraining order. (Specify which order was violated, how the order was violated, and when the violation occurred):

Continued on Attachment 1.

2. The Citee has violated the restraining order issued on (date): _____ by not moving from and staying away from the residence as ordered by the court. (Specify how the order was violated and when the violation occurred):

Continued on Attachment 2.

3. The Citee has violated the restraining order issued on (date): _____ by not staying (specify): _____ yards away from me, the other protected persons, my residence, my place of work, the children's school or place of child care, my vehicle, or other (specify): _____ (Specify which order was violated, how the order was violated, and when the violation occurred):

Continued on Attachment 3.

4. The Citee has violated the restraining order issued on (date): _____ by not relinquishing his or her firearm(s) as ordered by the court. (Specify which order was violated, how the order was violated, and when the violation occurred):

Continued on Attachment 4.

5. The Citee has violated the restraining order issued on (date): _____ by failure to complete court-ordered batterer's treatment/anger management class (specify how the order was violated):

Continued on Attachment 5.

6. The Citee has violated order issued on (date): 5/4/2015 by violating the following custody or visitation order (specify which order was violated, how the order was violated, and when the violation occurred):

Continued on Attachment 6.

7. The Citee has violated the order issued on (date): _____ by violating other orders (specify which order was violated and how the order was violated):

Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: DATE

NAME OF PERSON FILING THIS OSC _____
(TYPE OR PRINT NAME)



(SIGNATURE)

SHORT TITLE:

SAMPLE

CASE NUMBER:

PETITIONER'S NAME v RESPONDENT'S NAME

CASE NUMBER

1 ATTACHMENT 6

2 Respondent violated the custody and visitation order contained in the Mediation Agreement And
3 Order filed 5/4/2015 which states in relevant part: (quote the exact terms of the order violated)
4 "...The father shall have the children on the first and third weekends of the month as defined by the
5 Saturday, from Friday at 6:00pm to Sunday at 6:00pm."

6
7 Respondent willfully violated the Mediation Agreement And Order filed 5/4/2015 as follows:

8 Count 1: When violated: 5/7/2017

9 How violated: On Sunday 5/7/2017 at 6:00pm, I went to Respondent's house to pick up
10 the children from Respondent. I knocked on the door, there was no answer. I telephoned
11 Respondent, he answered the phone. I told Respondent I was at his house to pick up the children.
12 Respondent told me he and the children were in Pismo, CA and would not be home until after
13 10:00pm that night and I could get the children Monday morning.

14
15 Count 2: When violated: 5/21/2017

16 How violated: On Sunday 5/21/2017 at 6:00pm, I went to Respondent's house to pick
17 up the children from Respondent. I knocked on the door, there was no answer. I telephoned
18 Respondent, he did not answer. A minute later, I received a text from Respondent indicating he
19 took the children to the 5:30pm show and they would be back at his house at 9:00pm that night.
20 Then Respondent texted me "ha ha ha!"

21
22
23
24
25
26 *(Required for verified pleading)* The items on this page stated on information and belief are *(specify item numbers, not line*
numbers): ATTACHMENT 6

27 This page may be used with any Judicial Council form or any other paper filed with the court.

Page _____

ADDITIONAL PAGE CONTEMPT SAMPLE

SHORT TITLE:
CONTEMPT SAMPLE

CASE NUMBER:
CASE NUMBER

1 ATTACHMENT 6 TO AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT:

2 ORDER VIOLATED: _____

3 _____

4 _____

5 _____

6 _____

7 _____

8 COUNT # _____. WHEN VIOLATED: _____

9 HOW VIOLATED: _____

10 _____

11 _____

12 _____

13 _____

14 COUNT # _____. WHEN VIOLATED: _____

15 HOW VIOLATED: _____

16 _____

17 _____

18 _____

19 _____

20 COUNT # _____. WHEN VIOLATED: _____

21 HOW VIOLATED: _____

22 _____

23 _____

24 _____

25 _____

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers): ATTACHMENT 6 TO AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT:

27 This page may be used with any Judicial Council form or any other paper filed with the court.

Page _____

SHORT TITLE:
CONTEMPT SAMPLE

CASE NUMBER:
CASE NUMBER

1 ATTACHMENT 6 TO AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT:

2 COUNT #_____. WHEN VIOLATED: _____

3 HOW VIOLATED: _____

4 _____

5 _____

6 _____

7 _____

8 COUNT #_____. WHEN VIOLATED: _____

9 HOW VIOLATED: _____

10 _____

11 _____

12 _____

13 _____

14 COUNT #_____. WHEN VIOLATED: _____

15 HOW VIOLATED: _____

16 _____

17 _____

18 _____

19 _____

20 COUNT #_____. WHEN VIOLATED: _____

21 HOW VIOLATED: _____

22 _____

23 _____

24 _____

25 _____

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers): ATTACHMENT 6 TO AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT:

27 This page may be used with any Judicial Council form or any other paper filed with the court.

Page _____

ADDITIONAL PAGE CONTEMPT SAMPLE

ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) <i>(Name, State Bar number, and address)</i> YOUR NAME YOUR ADDRESS CITY, STATE, ZIP TELEPHONE NO.: YOUR PHONE NUMBER FAX NO.: ATTORNEY FOR (Name): IN PRO PER	FOR COURT USE ONLY THE PERSON SERVING THE OSC FOR CONTEMPT MUST COMPLETE A SEPARATE FL-330 FOR EACH PARTY/ATTORNEY SERVED. FILE THE FL-330s WITH THE FAMILY LAW CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1215 TRUXTUN AVENUE MAILING ADDRESS: SAME CITY AND ZIP CODE: BAKERSFIELD, CA 93301 BRANCH NAME: METROPOLITAN DIVISION-JUSTICE BUILDING	
PETITIONER/PLAINTIFF: PETITIONER'S NAME RESPONDENT/DEFENDANT: RESPONDENT'S NAME OTHER PARENT/PARTY:	CASE NUMBER: CASE NUMBER <i>(If applicable, provide):</i> HEARING DATE: hearing date HEARING TIME: time of hearing DEPT.: division/dept of hearing
PROOF OF PERSONAL SERVICE	

1. I am at least 18 years old, not a party to this action, and not a protected person listed in any of the orders.
2. Person served (name): **CITEE'S NAME**
3. I served copies of the following documents (specify):
PETITIONER'S/RESPONDENT'S/ OTHER PARENT'S ORDER TO SHOW CAUSE AND AFFIDATIV FOR CONTEMPT
4. By personally delivering copies to the person served, as follows:
 - a. Date: **date OSC served**
 - b. Time: **time OSC served**
 - c. Address: **the address/ location where Citee/Party/Atty was served**

5. I am
 - a. not a registered California process server.
 - b. a registered California process server.
 - c. an employee or independent contractor of a registered California process server.
 - d. exempt from registration under Business & Profession Code section 22350(b).
 - e. a California sheriff or marshal.

6. My name, address, and telephone number, and, if applicable, county of registration and number (specify):

SERVER COMPLETES #5, #6, #7 OR #8, DATES, PRINTS NAME & SIGNS

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
8. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **DATE**

NAME OF SERVER _____

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

SERVER SIGNS HERE _____

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)