

1 (Firm)
2 BY: (Attorney) CSB#
3 Address XXXXXXX
4 Phone XXXXXXX
5 Fax XXXXXXX

6 Attorney for (FATHER), FATHER

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF X
10 JUVENILE DIVISION

11 In re the Matter of:) Case No.:
12)
13 (MINOR)) MOTION FOR SANCTIONS
14) (C.C.P. 177.5); POINTS AND
15) AUTHORITIES; DECLARATION
16)
17) DATE: X, 2005
18) TIME: 8:30 A.M.
19) DEPT:
20)
21)
22)
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25)

26 To Attorney, :

27 NOTICE IS HEREBY GIVEN that on X, 2005 at 8:30 a.m. or as soon thereafter
28 as the matter may be heard, in Department of this Court, located at, ___ attorney for
29 the father, (Father), will move for an order pursuant to Code of Civil Procedure Section
30 177.5 imposing monetary sanctions against ___, for a violation of the Court's order
31 dated X, 2005. Specifically, on X, 2005 the honorable ordered ___ and all counsel to be
32 present the following Monday, X, 2005 at 1:30 p.m. in Department for the
33 commencement of trial. ___ did not advise the court of the fact that she had another

1 court appearance at the same date and time. ___ failed to abide by the Court's order
2 and attended another court appearance in another County at the time scheduled for
3 this trial. ___ showed up at approximately 3:15 p.m. significantly inconveniencing the
4 court, parties and attorneys.
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8 Respectfully submitted,

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10 DATED: _____

11 Attorney for (FATHER)
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1 (Firm)
2 BY: (Attorney) CSB#
3 Address XXXXXXX
4 Phone XXXXXXX
5 Fax XXXXXXX

6 Attorney for (FATHER), FATHER

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF X
10 SITTING AS THE JUVENILE COURT

11 In the matter of:) CASE NO.
12 (MINOR))
13) DECLARATION OF
14) IN SUPPORT OF MOTION
15) FOR SANCTIONS
16)
17)

18 I, __, state and declare the following:

- 19
- 20 1. I am an attorney at law, licensed to practice in all courts in the State of
21 California. I am knowledgeable about the facts and issues herein and
22 could and would testify competently thereto.
 - 23 2. On X, 2005, four months past the original trial setting, the matter was
24 continued to X, 2005 due to Ms. W. being ill. On February 17, 2005 the
25 matter was again continued to X, 2005. On X, 2005, ____ failed to call the
court to advise of her inability to attend the trial that day; no
representative from ____ office was sent to the court, no appearance by

1 ___ or the mother was made, and no different dates were proposed to the
2 court. Consequently the court went forward with the trial.

3 3. ___ later filed a motion for reconsideration asking the court to set aside
4 the court's prior orders. In support of ___ motion, she alleged that she
5 was led to believe that the matter had been continued to X, 2005 and that
6 is why she failed to appear on X, 2005. Over the objection of counsel for
7 the father and County Counsel, the Court granted ___'s motion and
8 selected a new trial date.
9

10 4. The first day of trial was eventually set for X, 2005. However due to the
11 unavailability of witnesses the matter was continued to X, 2005.

12 5. On X, 2005, when this matter was reset for X, 2005 the Court ordered all
13 parties and attorneys to be present on X, 2005 at 1:30 p.m. to commence
14 the trial. All counsel and parties agreed that they were available and
15 would be ready to start the trial on that date, at 1:30 p.m. in Department.
16 No mention was made by ___ of another court appearance in a different
17 county.

18 6. On the morning of X, 2005, ___ contacted Department and advised them
19 that she had a brief appearance in another County and would be at court
20 in Department at about 2:30 p.m. On X, 2005, ___ did not appear in court
21 until approximately 3:15 p.m. All counsel waited for ___ to appear.
22

23 7. According to County Counsel, ___ set a Pitchess Motion in a criminal
24 case. This motion was set for X, 2005. According to, County Counsel was
25 not properly noticed for the motion and consequently did not appear at the

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X, 2005 hearing. ___ had a hearing scheduled for X, 2005 when she knew she was ordered to be in Department on that same date and time.

I, declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was signed in , California.

Respectfully Submitted:

DATED: _____

Attorney for (FATHER)

1 (Firm)
2 BY: (Attorney) CSB#
3 Address XXXXXXX
4 Phone XXXXXXX
5 Fax XXXXXXX

6 Attorney for (FATHER), FATHER

7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF X
9 JUVENILE DIVISION

10 In re the Matter of:) Case No.:
11 (MINOR)) POINTS & AUTHORITIES IN SUPPORT
12) OF MOTION FOR SANCTIONS
13) (C.C.P. 177.5)
14) DATE: X, 2005
15) TIME: 8:30 A.M.
16) DEPT:
17)

18 I.

19 STATEMENT OF THE FACTS

20 On X, 2005, the above-referenced matter came on for a contested hearing
21 pursuant to Welfare and Institutions Code Section 366.21(e) and (f). This matter first
22 came on calendar for a hearing pursuant to Welfare and Institutions Code Section
23 366.21(e), on X, 2004. On X, 2004 the matter was set for trial by counsel for the
24 mother, _____. The trial date was originally set for X, 2004. The matter was continued
25 due to illness and jury duty of minor's counsel to X, 2005. On X, 2005 the matter was
continued at the request of _____ because she allegedly had a cracked molar. On X,

1 2005 the matter was continued because the Court was involved in an ongoing trial. On
2 X, 2005 the matter was again continued due to ___ reportedly being ill. The matter was
3 continued to X, 2005 in Department. The matter was continued again to X, 2005, as
4 ___ was reportedly still ill. On X, 2005 ___ did not call in to the Court to advise the court
5 of her inability to attend the trial that day. No representative was sent from ___ office.
6 No appearance was made by the mother and no different dates were proposed by ____.
7 Consequently, the Court went forward with the proceedings without _____. ____ later filed
8 a motion for reconsideration asking the court to set aside its prior orders. In support of
9 her motion, ___ alleged that she was led to believe that the matter had been continued
10 to X, 2005 and that is why she failed to appear on X, 2005. Over the objection of
11 counsel for the father, and County Counsel, the Court granted ___'s motion for
12 reconsideration and selected a new trial date.
13

14 The first day of the re-set trial was X, 2005. Due to the unavailability of
15 witnesses this matter was continued to X, 2005. On X, 2005, when this matter was
16 reset, the Court ordered all parties and attorney's to be present on X, 2005 and ready
17 to commence the trial. All counsel agreed that they were available on that date. No
18 mention was made by ___ of another court appearance in a different county.
19

20 On the morning of X, 2005 ___ contacted Department and advised them that
21 she had a brief appearance in another court and would be at court in Department at
22 about 2:30 p.m. On X, 2005 ___ did not appear in Department until approximately 3:15
23 p.m. All counsel and the court waited for ___ to appear. According to County Counsel,
24 ___ set a Pitchess motion in a criminal case for the same date at 1:00 p.m.. According
25 to X, County Counsel was not properly noticed for the motion and consequently did not

1 appear at the hearing. In any event, ___ was not present in Department when the Court
2 ordered all counsel to appear on X, 2005 at 1:30 p.m.

3 **II.**

4 **LAW AND ARGUMENT**

5 **THE COURT HAS AUTHORITY TO IMPOSE REASONABLE SANCTIONS**

6 California Code of Civil Procedure Section 177.5 sets forth the authority of a judicial
7 officer to impose sanctions for the violation of a lawful order. California Code of Civil
8 Procedure Section 177.5 states as follows:
9

10 A judicial officer shall have the power to impose reasonable money sanctions,
11 not to exceed fifteen hundred dollars (\$1500.00), notwithstanding any other
12 provision or law, payable to the County in which the judicial officer is located, for
13 any violation of a lawful court order by a person, done without good cause or
substantial justification. This power shall not apply to advocacy of counsel
before the court. For the purposes of this section, the term "person" includes a
witness, a party, a party's attorney, or both.

14 Sanctions pursuant to this section shall not be imposed except on notice
15 contained in a party's moving or responding papers; or in the court's own motion
16 after notice and an opportunity to be heard. An order imposing sanctions shall be
17 in writing and shall recite in detail the conduct or circumstances justifying the
order.

18 In the instant case, ___ was ordered on to appear on X, 2005 at 1:30 p.m. in
19 Department for a trial that was originally set for X 2004 and which had previously been
20 continued on at least two occasions due to the unavailability of ___. Furthermore, it was
21 a case where the Court actually went forward and entered orders against ___ client
22 because ___ failed to appear on the date of trial. This constitutes a violation of a lawful
23 court order without good cause or substantial justification. This conduct is most
24 egregious, particularly when considered in light of the numerous delays in this case,
25

1 prior illnesses of ____, her failure to appear at a prior trial and her history of similar
2 conduct¹.

3 A case which is particularly on point is Seykora v. Superior Court of Los Angeles
4 County (1991) 232 Cal.App.3rd 1075, 283 Cal.Rptr. 857. In Seykora, respondent court
5 imposed sanctions upon a public defender pursuant to California Code of Civil
6 Procedure Section 177.5 after the public defender disobeyed the Court's repeated
7 orders for the public defender to remain in court. The public defender claimed that her
8 departure was necessary due to a scheduled appearance in another court.
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10 In rejecting the public defender's writ challenging the imposition of sanctions, the
11 Court of Appeal specifically rejected the public defender's contention that good cause
12 existed for her violation of a court order as she was attending another hearing in a
13 different court.

14
15 In the instant case, ____ violated this court's order to be present at
16 trial on X, 2005 at 1:30 p.m., ____ knew that this was a case that had been continued
17 numerous times in the past and furthermore that witnesses were traveling from X.
18 Counsel for the minor advised the court that the minor, a child afflicted with Down's
19 syndrome, was visibly emotionally distraught at the prospect of having to testify. ____
20 delay prolonged this child's suffering.

21 III.

22 CONCLUSION

23 _____
24 ¹ ____ has been sanctioned for the failure to appear in court and for violating Court orders. Please see
25 Notice of Disciplinary Charges in the matter of ____ attached hereto and labeled Exhibit "A".

1 For the reasons set out above it is respectfully requested that this court impose
2 sanctions on ___ in the amount to be determined by this court for a violation of this
3 court's lawful order.
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5 Respectfully submitted,
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8 DATED: _____
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10 Attorney for (FATHER)
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1 **PROOF OF SERVICE**

2 **Case Name: IN RE: (MINOR)**
3 **Court: COUNTY SUPERIOR COURT; JUVENILE DIVISION**
4 **Case No.:**

5 I am a resident of the United States and of the State of California. I am employed in the
6 County of. My business address is. My business telephone number is; fax number is . I am
7 over the age of eighteen years. I am not a party to the within action or proceeding. On, X,
8 2005, I served the following document(s):

- 9 **1. Motion for Sanctions**
10 **2. P & A in Support of Motion for Sanctions**
11 **3. Declaration of in Support of Motion for Sanctions**

12 I am familiar with the practice of X for the collection and processing of correspondence
13 for mailing with the United States Postal Service. In accordance with the ordinary course of
14 business, the above-mentioned document(s) would have been deposited with the United States
15 Postal Service on the same day on which it was placed at X for deposit

16 X by causing a true copy thereof to be delivered to the person(s) at the addresses set
17 forth below, by and/or through the services of:

- 18 1. X FAX (Followed by First Class Mail; Rules of Court §2009 and
19 §2010) Pursuant to Rules of Court §2009(i)(3), this document was
20 sent by facsimile transmission and this transmission was reported
21 as complete and without error.

22 2.
23 **COUNTY COUNSEL**

24 **ATTORNEY AT LAW**

25 **Child's Counsel**

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on X 2005 at, California.
