

This excerpt from Chapter 18 provides step-by-step procedures and information for preparing and filing an RFO pursuant to Family Code section 3130-3134.5 when a child has been unilaterally taken or kept. Also included are a sample declaration and a sample order.

Copyright © 2019 by Harriett Buhai Center for Family Law. All rights reserved. No portion of this book may be reproduced without express written permission of the Harriett Buhai Center for Family Law.

18.15 District Attorney Assistance in Locating Children

A. Introduction

Specific civil relief pursuant to Family Code 3130-3134.5 may be requested when a child has been unilaterally taken or kept without consent by a parent or other person, typically a relative or individual with a relationship to the child or the parents (e.g. parent's former boyfriend). These statutes provide for the following relief:

Locate a child who has been taken or kept without consent by a parent or other party in cases where there is no pre-existing order (Family Code 3130);

or

Recover a child in cases where there is a pre-existing custody or visitation order (Family Code 3131).

These statutes are only applicable when the whereabouts of the child and taking parent or person are not known and cannot be found with objectively reasonable efforts. The District Attorney should not be regarded by the Litigant or the lawyer as a process server or a free detective agency. These code sections should be invoked only after the Litigant has made documented efforts to locate the child and taking parent without subjecting herself to danger or harm. **If the other parent can be located and served, then the Litigant should not initially be filing a request under these provisions.**

Note: Pursuing relief under these civil code provisions does not prevent resort to the criminal process in appropriate cases. The decision to report the unlawful taking to local law enforcement should be made in each case by the Litigant with advice from the lawyer. **See Paragraph E** below for a brief discussion of criminal remedies which are within the province of the District Attorney's office to determine whether charges should be filed. In cases of non-parent takings, the criminal justice system may be the most appropriate remedy.

A further cautionary note is warranted before reviewing the specific codes and discussing pleading preparation: Each county District Attorney in California has their own procedures to handle these cases. The text below is based on the current procedures of the Los Angeles County District Attorney's Office. If the child was taken in another county, that county's District Attorney should be contacted immediately to ascertain their policies and procedures.

Lastly, this section is written for the more common occurrence of a parent taking. It does not address special issues which may arise (such as the need for joinder) where the taking is by a third party, not the parent.

B. Family Code 3130: Locating the Child and Serving the Other Parent When There is No Custody or Visitation Order

1. Prerequisites to Requesting Orders Pursuant to Family Code 3130:

- a. There are no existing custody or visitation orders whatsoever.**
This provision does not allow the Litigant to ignore existing orders that she may not like and fail to tell the judge or District Attorney about them (see discussion below about the independent investigation the District Attorney will initiate when a Litigant asks for their help).
- b. The child and taking parent cannot be found after the Litigant makes timely, thorough, and objectively reasonable efforts to locate them.** Such efforts must be documented for the court,

and should include: 1) trying to reach the other parent by e-mail, telephone, and any known social media accounts; 2) contacting relatives, friends, neighbors, employers, familiar haunts (e.g. local bars or restaurants), and any other persons who might know the taking parent and/or his whereabouts, including persons who live outside the state or county; 3) using any online search engines available to the Litigant; and 4) undertaking any other actions a reasonable person would deem appropriate under the circumstances without subjecting the Litigant to danger or harm. The Litigant should make a police report regarding the missing child to help document her efforts, even if the law enforcement agency refuses to take the report. The Litigant should anticipate that the judicial officer will review the case thoroughly before issuing a 3130 order, to make sure that the District Attorney's assistance is actually needed to locate the taking parent, and that the Litigant has made genuine and thorough efforts to do so on her own.

2. Preparing the RFO Pleadings and Declaration under Family Code 3130:

a. Relief Requested:

- i. The RFO should request that the District Attorney **locate and serve** the taking parent. The FL-300 RFO cover page should specifically state under "Other" that the **(LA) District Attorney Locate and Serve the Opposing Party Pursuant to FC 3130 et seq.** This should be the language used exclusively in the FL-300, FL-311, FL-340 and Declaration.
- ii. The RFO must also request the custody and visitation orders the Litigant wants to be put into effect once the child is located and the other parent appears in court. The District Attorney will not locate and serve the other parent without an underlying request for custody and visitation orders.

- b. Declaration:** The Litigant's efforts to locate the taking parent, as discussed above, must be fully documented in a narrative declaration. A supplemental declaration may be necessary to document the efforts the Litigant made between the preparation and filing of the RFO and the first court hearing; see below. This documentation is crucial for success in getting relief from the judge. **See Sample Form 19KK.**

- c. The Litigant should prepare a proposed Initial Order to District Attorney asking the judge to order the District Attorney to locate and serve. In Los Angeles county, the District Attorney has drafted a form proposed order. **See Sample Form 19MM.**

d. Ex Parte Orders:

Orders may be requested on an ex parte basis when the taking is very close in proximity to the court filing. The plea for ex parte relief loses muster when, despite the efforts of the Litigant, significant time has elapsed between the taking and the filing. Thus the Litigant has to use very strenuous efforts to find the child and parent and file in a very timely fashion if she is to request emergency court relief. Otherwise, the matter should be regularly scheduled.

- e. **District Attorney Investigation of the Litigant:** The Litigant should be told that if her requested orders are granted, the District Attorney will fully investigate the backgrounds of both parents or third parties. This includes a criminal records search, outstanding warrants, child abuse and sex offender registries, CLETS and other restraining orders, notices from Domestic Violence shelters, and any other relevant data. These search results, including any adverse information about the Litigant, may be reported to the judge by the District Attorney and may affect the Litigant's case.

3. Procedures for Filing the RFO for 3130 Relief and Appearing at the First Court Hearing:

- a. File the RFO requesting 3130 Relief and Custody and Visitation Orders. The fact that there has been a non-consensual taking may be a major factor in a request for supervised visitation so as to prevent future unlawful attempts to abduct the child.
- b. Absent an ex parte request, the return date for the RFO hearing will be scheduled by the clerk pursuant to the normal calendar. Since service on the taking parent is not possible, the Litigant, and the lawyer if the Litigant is represented, should appear at the first hearing. The Litigant should prepare a supplemental declaration detailing any continuing efforts she has made to locate the taking parent since filing the RFO, showing her good faith attempts to pursue all means of locating the other party before invoking the powers of the District Attorney to do so.

- c. At the hearing, the Litigant should be prepared to explain what she has done to find the taking parent and address any length of time that elapsed between the taking and her making a court request (e.g. she could not obtain legal assistance; the police told her there was nothing they could do). The Litigant should tender the proposed FOAH (**Sample Form 19MM**) to the judge and ask her to sign it. A subsequent return date should be requested, so that the substantive hearing on custody and visitation requests can be held once the taking parent is located and served. The Los Angeles County District Attorney suggests that the return hearing be set at least six weeks out in order to allow time for them to locate and serve.
 - d. If orders are being requested ex parte, the Litigant should be prepared to testify as set forth above on the same day she files her request. The Litigant should present her proposed FOAH to the judge.
- 4. Contacting the District Attorney after the 3130 Order to Locate and Serve has been signed by the Judge:**
- a. After obtaining a signed order, the Litigant should immediately go to the District Attorney's Office to request their services. In Los Angeles County, there is a special office for this purpose. As of June 1, 2015, the Child Abduction Investigation office will be located on the third floor of the Hall of Justice Building, 211 West Temple Street, Los Angeles, CA 90012.
 - b. The Litigant should bring a conformed copy of the order and a full set of her RFO pleadings, including the Declaration. In Los Angeles County, the District Attorney will require the Litigant to complete a lengthy questionnaire at the time assistance is requested. The Litigant will be expected to answer the District Attorney's questions with complete candor, to fully cooperate with the District Attorney throughout the process, and remain in contact with the District Attorney until the next court date.
 - c. The Litigant should appear at the return court date (second court hearing). If the District Attorney has been able to locate and serve the other parent, the underlying custody and visitation matter will then be heard and adjudicated.

Sample Form 19KK: Sample Declaration in Support of Family Code 3130 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT 10: DECLARATION OF MARIA SMITH

I, Maria Smith, am the Petitioner in this action and if called upon could and would competently testify from my personal knowledge to the following:

SUMMARY

1. I respectfully request that the Court order the District Attorney’s Office to assist me in locating and serving the Respondent pursuant to Family Code 3130.
2. The Respondent has taken our two children without my knowledge and consent and I don’t know where they are. I have not seen them or been able to contact them in four weeks.
3. Since Respondent took our children, I have reported their taking to police and continuously contacted his relatives, workplace, friends, and locations that he frequents, without any success. My efforts are described in more detail below.
4. I have tried calling Respondent daily but his phone number has been disconnected. I have emailed Respondent every day and he has not responded to me.
5. I am also requesting that the Court award me sole legal and physical custody of the children, with supervised visitation to Respondent, to prevent Respondent from taking the children again.

BACKGROUND INFORMATION

6. Respondent, Colin Jones and I began a romantic relationship and moved in together in 2004. We ended our relationship in 2013 and Respondent moved out.
7. We have two children together, Henry Jones, age 9 (DOB 2/23/2006) and Lisa Jones, age 6 (DOB 3/1/2009). Respondent signed Voluntary Declarations of Paternity for both children which are attached as Exhibit 1-A and 1-B.
8. After Respondent moved out, we set up an informal custody and visitation plan which we both followed. The children primarily lived with me and Respondent would have the children every other weekend from Friday after school until Sunday at 5 p.m.
9. After I started a new relationship six months ago, Respondent’s behavior towards me

DECLARATION OF MARIA SMITH

F:\Document\Publications\Volunteer Manual\Manual Production\2015\2015 Manual Forms\Chapter 19\19KK-1 Sample Declaration In Support of Family Code 3130 Request.wpd

Sample Form 19KK: Sample Declaration in Support of Family Code 3130 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

1 changed. He would call me after work several times a week and leave voicemails calling
2 me a bitch and a slut and saying that I was setting a bad example for our children and
3 shouldn't be bringing my new boyfriend around them. I believe Respondent was drunk
4 when he left these voicemails because he was slurring his words and was sometimes
5 incoherent.

6 10. Two months ago when Respondent dropped off the children at my house after a visit, he
7 asked me to come outside to talk to him. I could tell Respondent was angry so I said I
8 didn't think it was a good time to talk that he could call me when he calmed down.
9 Respondent forced his way through my front door, grabbed me by the shoulders and
10 began shaking me and yelling at me that I was ruining his life and he didn't have
11 children to let another man raise them. When Lisa started crying and screaming "Daddy,
12 stop it!", Respondent stopped shaking me and abruptly left.

13 11. I was starting to become afraid of letting Respondent take the children for visits, but I
14 thought he had a right to see the children and was also worried about what Respondent
15 would do if I tried to stop him from taking the children.

16 12. Four weeks ago on February 1, 2015, Respondent picked the children up from school on
17 Friday as agreed to keep them for the weekend. Respondent texted me on Friday to
18 confirm he had picked the kids up. That was the last time I heard from Respondent. I
19 tried to call Respondent on Sunday morning to make sure the children would be home by
20 5 p.m. because we had dinner plans with my relatives. Respondent's phone went
21 straight to voicemail. By 5 p.m. on Sunday, February 3, Respondent had not returned
22 the children. Respondent never contacted me or notified me of his whereabouts at any
23 time and I did not give him permission to keep the children past Sunday at 5 p.m. By 7
24 p.m. that night, I was frantic and started calling all over and looking for Respondent and
25 the children but have not been able to locate them.

26 **EFFORTS TO LOCATE CHILDREN**

27 13. On Sunday night, February 3, I began calling and texting Respondent every half an hour
28

Sample Form 19KK: Sample Declaration in Support of Family Code 3131 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

- 1 from 7 p.m. to midnight. My calls all went to voicemail. I left Respondent messages
- 2 asking him to contact me and let me know where he and the children were. I texted
- 3 Respondent, but my text messages were sent back as undeliverable.
- 4 14. I called six local hospitals, the morgue and the police. I was afraid there had been an
- 5 accident and something had happened to them.
- 6 15. I went to my neighborhood police, but they told me it was too early to file a kidnap or
- 7 missing persons report.
- 8 16. I called Respondent’s mother, Yvonne Jones, Respondent’s uncle, Levi Jones, and the
- 9 person who I believe is Respondent’s new girlfriend, Callie Lopez. None of them had
- 10 spoken to Respondent since Friday and none of them had any idea where he might be.
- 11 That night I didn’t sleep at all because I was so worried.
- 12 17. I went to the children’s school on Monday morning hoping that Respondent would show
- 13 up with them. He did not. The school told me I should go to the police.
- 14 18. Before he fled, Respondent worked at the dental office of Dr. Mark Phillips. I called Dr.
- 15 Phillips’ office and asked if they had heard from Respondent. The office manager told
- 16 me that Respondent wasn’t there, that Respondent hadn’t shown up to work on Friday
- 17 either and hadn’t called in to the office.
- 18 19. I went back to the police and this time they allowed me to file a report, which is attached
- 19 as Exhibit 2.
- 20 20. Over the next four weeks I kept trying to contact Respondent. I called him every day.
- 21 Respondent’s phone number was disconnected on February 7, but I continue to call
- 22 every day in case it is reconnected.
- 23 21. I have kept in touch with Respondent’s mother, uncle and girlfriend and employer and
- 24 asked them to let me know if they hear anything from Respondent. As of my last contact
- 25 with each of them two days ago they had not heard from him.
- 26 22. I have tried to contact Respondent through Facebook but I believe he has removed his
- 27 account or blocked me from accessing it because I cannot find Respondent if I do a
- 28

DECLARATION OF MARIA SMITH

F:\Document\Publications\Volunteer Manual\Manual Production\2015\2015 Manual Forms\Chapter 19\19KK-1 Sample Declaration In Support of Family Code 3130 Request.wpd

Sample Form 19KK: Sample Declaration in Support of Family Code 3131 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

search for him.

23. I have contacted all of Respondent’s friends that I have or could locate contact information for. I have contacted a total of eighteen of Respondent’s friends via telephone, email or Facebook. Four people did not respond to me, and the other fourteen have told me they have not heard from Respondent. A list of all the people I have contacted, the dates I contacted them and the results of the contact is attached as Exhibit 3.

24. I went to Respondent’s neighborhood and knocked on all the doors on his block to ask if anyone had seen Respondent. Some neighbors refused to talk to me. Others told me they had not seen Respondent.

25. I went back to the police, but they told me they could not do anything without a court order and I needed to get a lawyer and go to court. I had no money so I could not pay for an attorney.

26. I went to the library and they showed me how to do a computer search for Respondent’s name. Because Respondent has a common name, hundreds of results came up and I could not tell if any of them might be Respondent. I do not have enough money to pay for a private investigator to help me locate Respondent.

27. Finally a family member told me to call the Harriett Buhai Center and they are helping me to try and get my children back.

REQUESTS FOR CUSTODY AND SUPERVISED VISITATION

28. I respectfully request the Court award me sole legal and physical custody of the children.

29. I have always been the children’s primary caretaker. The children have lived with me since they were born. I have also financially supported the children on my own.

30. I have always been the only parent to make decisions regarding our children’s education, health, and welfare. I picked our children’s pediatrician and dentist. I am the only one who takes our children to their doctor and dentist appointments. I am the one who enrolled our children in school. I have attended every parent teacher conference, while

DECLARATION OF MARIA SMITH

F:\Document\Publications\Volunteer Manual\Manual Production\2015\2015 Manual Forms\Chapter 19\19KK-1 Sample Declaration In Support of Family Code 3130 Request.wpd

Sample Form 19KK: Sample Declaration in Support of Family Code 3131 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

- 1 Respondent has attended none despite being available to attend.
- 2 31. I believe that Respondent’s actions in taking the children and concealing them from me
- 3 makes him unfit to have joint legal or physical custody and warrants a supervised
- 4 visitation order at this time. I believe that the children are likely extremely traumatized
- 5 by being removed so abruptly from their home and school and not allowed to have any
- 6 contact with me. I am afraid to think of Respondent’s mental state and how his
- 7 instability may harm the children.
- 8 32. Because of my role as the primary caregiver and provider and the fact that Respondent
- 9 has abducted the children without regard for their best interests, I am requesting sole
- 10 legal and physical custody with Respondent to have supervised visitation with a
- 11 professional provider every other Sunday from 12-4 p.m.

RE: REQUEST FOR DISTRICT ATTORNEY ASSISTANCE PURSUANT TO FAMILY CODE 3130

- 14 33. Because I have done everything I can on my own to locate Respondent and our children
- 15 and have not been successful, I am requesting the assistance of the Los Angeles County
- 16 District Attorney to locate Respondent and serve him with my Request for Order of
- 17 which this declaration is a part.
- 18 34. I will not be able to find my children without the help of the District Attorney. I believe
- 19 without the help of the District Attorney, I will not be able to serve Respondent with this
- 20 Request for Order and Respondent will not show up in Court.
- 21 35. I believe that without the help of the District Attorney to find the Respondent and serve
- 22 him so that he comes to court, the children’s health and welfare are in jeopardy.
- 23 36. A copy of the proposed order for District Attorney assistance, which I have obtained
- 24 from the District Attorney’s office, is attached as Exhibit 4 and is also submitted as a
- 25 proposed order for the Court’s approval and signature.

CONCLUSION

- 27 37. For all of the foregoing reasons, I respectfully ask that the Los Angeles County District
- 28

DECLARATION OF MARIA SMITH

F:\Document\Publications\Volunteer Manual\Manual Production\2015\2015 Manual Forms\Chapter 19\19KK-1 Sample Declaration In Support of Family Code 3130 Request.wpd

19 • REQUEST FOR ORDER (RFO) – FORMS

Sample Form 19KK: Sample Declaration in Support of Family Code 3131 Request

CASE NAME: Smith v. Jones

CASE NUMBER: BF123987

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorney be ordered to locate the Respondent and the children, and serve Respondent with these court papers, and that the Respondent be ordered to appear at the next hearing.

38. I request that I be awarded sole legal and physical custody of the children with professionally supervised visitation to Respondent every other Sunday from 12-4 p.m.

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

Dated: 4/15/15

Maria Smith

MARIA SMITH, Petitioner In Pro Per

Sample Form 19MM: Proposed Initial Order to District Attorney

1 Name
2 Address
3 Telephone Number
4 Petitioner/Respondent in Pro Per
5
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10 In Re:)
11) Case No.: _____
12) [PROPOSED] INITIAL ORDER TO
13) DISTRICT ATTORNEY PURSUANT
14) TO FAMILY CODE §§ 3130-3134.5
15) Date: _____
16) Time: 8:30 a.m.
17) Place: Dept. _____
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

18
19 At the above time and place, this Court heard the Request for Order by (petitioner or
20 respondent). Having reviewed all papers filed in support of the Request, as well as any papers filed in
21 opposition to the Request, and having considered any arguments made on the matter, the Court
22 determines that there is reason to believe the minor child(ren) of the parties has (have) been taken,
23 detained, and concealed by the (petitioner or respondent) in violation of an Order of this Court or other
24 custody rights, and hereby rules as follows:

25 IT IS HEREBY ORDERED that pursuant to Family Code sections 3130 through 3134.5, the
26 District Attorney of Los Angeles County is authorized and directed to conduct an investigation and to
27 take all actions necessary to locate the respondent/petitioner and the minor child(ren) and to procure
28 compliance with the custody order in the above entitled matter by taking the following action upon

19 • REQUEST FOR ORDER (RFO) – FORMS

Sample Form 19MM: Proposed Initial Order to District Attorney

1 locating the child(ren) (please select only one):

2 _____ 1. **Take temporary custody of the child(ren)** identified as

3 _____ (list name(s) of child(ren))

4 and turn him/her/them over to _____ (petitioner/respondent) and

5 serve _____ (petitioner/respondent) with a copy of the Request

6 for Order set for hearing in Department _____ of the above-entitled Court located at 111 North Hill

7 Street, Los Angeles, California on _____ (date).

8 **OR**

9 _____ 2. **Do NOT take custody of the child(ren).** Serve _____

10 (petitioner/respondent) with a copy of the Request for Order set for hearing in Department _____ of the

11 above-entitled Court located at 111 North Hill Street, Los Angeles, California on _____ (date).

12 District Attorney Investigator(s) may contact the Court *ex parte* and without notice to the parties
13 in order to obtain any further orders required by any jurisdiction in which the child is found to effectuate
14 the Order. District Attorney Investigator(s) may contact the Court *ex parte* with notice to the party
15 requesting this Order concerning any fact the Investigator believes would be material to the welfare or
16 safety of the child as related to the enforcement of this order.

17 By copy of this Order the requesting party is notified that the District Attorney’s Office will
18 investigate the requesting party in connection with carrying out this Order and, on notice given before
19 10:00 a.m. the day before any appearance before the Court, in accordance with California Rules of
20 Court, Rule 3.1203 and Rule 3.1204, may inform the Court of any facts learned in that investigation,
21 which may bear on the welfare and safety of the child(ren) and the enforcement of this Order.

22
23 DATED: _____

Judge of the Superior Court

24
25
26
27
28