

On June 28, 2022, Respondent filed and served a Request for Order (RFO), and her Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 28<sup>th</sup>, and a hearing on the RFO was set for September 22<sup>nd</sup>.

In her RFO, Respondent requests the following orders: (1) Exchanges to take place at the minor's school or at the home of the paternal grandparents; (2) Parties to use Talking Parents only, for all forms of communication; (3) Neither party is to use the minor nor any other third party for communication regarding the parenting schedule, well-being, or decision making for the minor; (4) Both parties ordered not to make derogatory comments about the other when the child is present; (5) Petitioner to be ordered to take anger management and parenting classes; (6) Petitioner's parenting time to be temporarily suspended until he can show the court he can parent properly; (7) Legal custody temporarily to Respondent; (8) Petitioner to have supervised visitation only for the time being; (9) Respondent to keep the right of first refusal in the new orders; (10) Petitioner to stay-away from Respondent's home; (11) Petitioner to pay half of all the medical expenses accrued by the minor medical care in total of \$2,112.18; (12) Petitioner to pay Respondent's attorney's fees per Family Code 2030, in total of \$3,500; (13) Petitioner to stay away from all Marshall Medical facilities; (14) Petitioner to take Respondent off the loan of Petitioner's home; and (14) Guideline child support pursuant to the updated custody and visitation schedule.

On July 29<sup>th</sup>, the El Dorado County Department of Child Support Services (DCSS) filed a Notice of Motion for Modification of Child Support. Accordingly, the matter of child support was referred to the DCSS calendar.

The parties attended CCRC as scheduled. At that time Petitioner indicated that he would like the current parenting schedule to remain the same. To date, the parties have been utilizing a week on/week off schedule. The parties were unable to come to any agreements at CCRC, however the CCRC report contains several recommendations from the CCRC counselor. The report was mailed to the parties on September 13, 2022. Given that this was not the requisite ten days prior to the hearing date of September 22<sup>nd</sup>, the court continued the matter to the present date.

CCRC made recommendations for the parties to attend co-parenting counseling, use talkingparents.com for communication and to adhere to enumerated respect guidelines. The CCRC counselor further recommended individual therapy for the minor. Finally, CCRC recommended all other prior orders remain in full force and effect.

On September 20<sup>th</sup> and 21<sup>st</sup>, respectively, Petitioner served and filed his Responsive Declaration to Request for Order. Petitioner notes that he would like some clarification regarding the holiday schedule. He mentions that the parties are to adhere to an alternating schedule but this has not been complied with. Regarding the issue of refinancing the mortgage on the home, Respondent states that this was part of the December 20, 2020 Request for Order which did not require him to actually refinance the debt, it only required him to be responsible for paying for it, which he is. Petitioner does not oppose paying for his portion of the medical bills but only if he receives unredacted copies of the bills or invoices themselves. He claims he has only received screen shots of bills with information redacted. Petitioner requests Respondent pay her own attorney's fees and, if the court does consider awarding attorney's fees, he would like the fact that her brother resides with her and contributes to the

bills taken into consideration. Finally, he asks for sanctions against Respondent pursuant to Family Code Section 271.

Respondent filed and served Declaration of Respondent Regarding CCRC Report Dated September 12, 2022 on September 27, 2022. Respondent states that she agreed to keep the Friday-to-Friday parenting schedule in place and to put in place a holiday schedule but a holiday schedule was not addressed in the CCRC report. She claims that much of the information she told the CCRC counselor was left out of the report. She requests that the parties be re-referred to CCRC to set a parenting schedule.

Notably, both Petitioner and Respondent request the court address and provide clarification on the holiday schedule. However, Respondent's initial RFO does not make any such request and neither party has elaborated on what exactly the issue is regarding holidays. As such, the court declines to rule on the issue at this time but the parties are to discuss the matter further during co-parenting counseling.

After reviewing the aforementioned documents, the court finds the recommendations contained in the CCRC report to be in the best interest of the minor. The court hereby adopts the recommendations of the September 12, 2022 CCRC report as the order of the court. Respondent's requests to order Petitioner to take anger management and parenting classes are denied. Respondent's requests for sole legal custody and the temporary suspension of Petitioner's parenting time, unless supervised, are denied.

Exchanges are to take place either at the minor's school, at the home of the paternal grandparents, or at the Safeway in Pollock Pines. The parties are ordered to remain in their respective vehicles/homes during pick-ups and drop offs. The minor is old enough to walk from one parent to the other on his own.

Petitioner is ordered to pay half of the medical expenses for the minor. Respondent is ordered to provide Petitioner with true and complete copies of all invoices or bills for which she is seeking reimbursement. Petitioner is to pay for his half of the expenses as soon as reasonably possible after his receipt of the invoices/bills.

Respondent's request for an order precluding Petitioner from all Marshall Medical facilities is denied. Petitioner's presence or preclusion from the Marshall Medical facilities is a decision that is best made by Marshall Medical.

Regarding the loan for Petitioner's home, Petitioner states that the issue was addressed as part of the December 20, 2020 RFO. According to the court's file, there was no December 20, 2020 RFO. In December of 2019 there was an ex parte filed by Respondent regarding the property. That matter came before the court on January 30, 2020. The court at that time ruled that Petitioner was to remove respondent from the home loan. Respondent was to incur the costs associated with doing so. The court's prior ruling on this matter remains in full force and effect and the parties are to comply with it.

Petitioner has made a request for sanctions pursuant to Family Code Section 271, however, in his declaration he does not address the amount of fees or costs he has incurred as a result of the present RFO nor the amount of sanctions he is requesting. It does not appear that Respondent's RFO was filed frivolously with the intent to harass or cause Petitioner to incur unnecessary attorney's fees. Accordingly, Petitioner's request for Section 271 sanctions is denied.

Respondent makes her request for attorney's fees pursuant to Family Code Section 2030. The public policy of Family Code Section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." In Re Marriage of Keech, 75 Cal. App. 4<sup>th</sup> 860, 866 (1999). This assures each party has access to legal representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity." Alan S. v Superior Court, 172 Cal. App. 4<sup>th</sup> 238,251(2009). The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. In Re Marriage of Falcone & Fyke, 203 Cal. App. 4<sup>th</sup> 964; 975 (2012). The court must consider the impact of the fee award on the payor taking into account any orders for support. Keech, supra, at 860. Here, while Respondent does earn less than Petitioner, it does not appear that the disparity is such that Respondent is unable to afford counsel. This is especially in light of the fact that she resides with her brother who contributes to the household expenses, though Respondent failed to disclose his monthly income on her Income and Expense Declaration. Respondent's request for attorney's fees is denied.

**TENTATIVE RULING #1: THE COURT HEREBY ADOPTS THE RECOMMENDATIONS OF THE SEPTEMBER 12, 2022 CCRC REPORT AS THE ORDER OF THE COURT. RESPONDENT'S REQUESTS TO ORDER PETITIONER TO TAKE ANGER MANAGEMENT AND PARENTING CLASSES ARE DENIED. RESPONDENT'S REQUESTS FOR SOLE LEGAL CUSTODY AND THE TEMPORARY SUSPENSION OF PETITIONER'S PARENTING TIME, UNLESS SUPERVISED, ARE DENIED. THE COURT DECLINES TO RULE ON THE ISSUE OF A HOLIDAY SCHEDULE AT THIS TIME BUT THE PARTIES ARE TO DISCUSS THE MATTER DURING CO-PARENTING COUNSELING. EXCHANGES ARE TO TAKE PLACE EITHER AT THE MINOR'S SCHOOL, AT THE HOME OF THE PATERNAL GRANDPARENTS, OR AT THE SAFEWAY IN POLLOCK PINES. THE PARTIES ARE ORDERED TO REMAIN IN THEIR RESPECTIVE VEHICLES/HOMES DURING PICK-UPS AND DROP OFFS. PETITIONER IS ORDERED TO PAY HALF OF THE MEDICAL EXPENSES FOR THE MINOR. RESPONDENT IS ORDERED TO PROVIDE PETITIONER WITH TRUE AND COMPLETE COPIES OF ALL INVOICES OR BILLS FOR WHICH SHE IS SEEKING REIMBURSEMENT. PETITIONER IS TO PAY FOR HIS HALF OF THE EXPENSES AS SOON AS REASONABLY POSSIBLE AFTER HIS RECEIPT OF THE INVOICES/BILLS. RESPONDENT'S REQUEST FOR AN ORDER PRECLUDING PETITIONER FROM ALL MARSHALL MEDICAL FACILITIES IS DENIED. ACCORDING TO THE COURT'S ORDER OF JANUARY 20, 2022, THE COURT RULED THAT PETITIONER WAS TO REMOVE RESPONDENT FROM THE HOME LOAN. RESPONDENT WAS TO INCUR THE COSTS ASSOCIATED WITH DOING SO. THE COURT'S PRIOR RULING ON THIS MATTER REMAINS IN EFFECT AND THE PARTIES ARE TO COMPLY WITH IT. PETITIONER'S REQUEST FOR SECTION 271 SANCTIONS IS DENIED. RESPONDENT'S REQUEST FOR ATTORNEY'S FEES IS DENIED. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS**

**BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07.**

On August 10, 2022, Petitioner filed a Request for Order (RFO) seeking custody and visitation orders. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing was set for the present hearing date. There is no Proof of Service on file indicating that Respondent was served with either the RFO or the CCRC referral and Respondent did not appear for the CCRC appointment. The matter is dropped from calendar for lack of proper service.

**TENTATIVE RULING #2: MATTER DROPPED FROM CALENDAR FOR LACK OF PROPER SERVICE.**

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On August 11, 2022, Petitioner filed his Income and Expense Declaration. Thereafter, on September 29, 2022, he filed a Request for Order (RFO) seeking guideline spousal support, the ability to retrieve his belongings from the marital home, and attorney's fees in the amount of \$5,000. The Income and Expense Declaration and the RFO were served on September 29, 2022 via U.S. mail.

Respondent filed her Responsive Declaration to Request for Order and her Income and Expense Declaration on October 28<sup>th</sup>. Both were served on October 31<sup>st</sup>. Respondent opposes both requests made by Petitioner on the basis that she was fraudulently induced into the marriage and therefore it should be nullified. She states that Petitioner did not disclose his health issues to her prior to getting married. She feels he married her solely for her health insurance benefits. Since the two separated, Respondent claims Petitioner has drained and closed all of their accounts, debit cards and a joint savings account that contained \$17,000. She states that Petitioner is currently in possession of the garage opener, keys to the PO Box, her Lexus key, her iPhone and gate keys and he refuses to return them to her. She would like the court to order Petitioner to return all of the aforementioned. Finally, she asks that each party be responsible for paying their attorney's fees.

The parties are ordered to appear to choose trial and settlement conference dates. The court reserves jurisdiction to order spousal support back to the date of filing the RFO.

**TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR TO CHOOSE TRIAL AND SETTLEMENT CONFERENCE DATES. THE COURT RESERVES JURISDICTION TO ORDER SPOUSAL SUPPORT BACK TO THE DATE OF FILING THE RFO.**

On June 8, 2022, Respondent filed a Request for Order (RFO) seeking orders regarding the parties' Garcia Annuity account. The RFO was served by mail on June 9<sup>th</sup>. Petitioner has not filed a responsive declaration.

Respondent is requesting the court make the following orders: (1) An order directing Petitioner to immediately restore Respondent as an "authorized user" and co-owner of the Garcia Annuity account at First Bank, subject to the terms of the orders of the parties limiting their respective abilities to access that account; (2) An order the Petitioner immediately provide Garcia Annuity account statements from December 1, 2021 through the date of the hearing and if he fails to provide future statements within 15 days of receiving them, that he pay Respondent sanctions in the amount of \$200 for each occurrence, pursuant to Family Code Section 271; (3) Family Code Section 271 sanctions against Petitioner in the amount of \$5,000.

Throughout the course of this matter Petitioner and Respondent have entered into three separate settlement agreements, all of which have addressed the division of the Garcia Annuity as community property. It appears there is no argument as to this characterization. According to Respondent, she had full access to the account as an authorized user until 2019 when Petitioner unilaterally removed her from the account. In November of 2021, Respondent filed an RFO requesting, among other things, that Petitioner reinstate her as an authorized user. The hearing on that RFO was held on February 17, 2022, at which time the court declined to grant the request but did find that Petitioner had failed to comply with the most recent agreement of the parties, the Clarifying Judgment which was entered on November 13, 2020. The court ordered him to provide Respondent with monthly account statements for the Garcia Annuity in accordance with the Clarifying Judgment and admonished him that failure to do so may result in further court order reinstating Respondent as an authorized user on the account.

In reviewing the filing of Respondent as well as the prior settlement agreements and court ruling, the court finds that Petitioner has continued to defy the terms of the Clarifying Order and the court's February 17<sup>th</sup> ruling on the RFO. Respondent has not received any account statements since December 1, 2021. Accordingly, Petitioner is ordered to provide Respondent with all account statements for the Garcia Annuity from December 1, 2021 through present. Statements are to be provided no later than November 17, 2022. Further, Petitioner is ordered to reinstate Respondent as an "authorized user" on the Garcia Annuity no later than November 17, 2022.

Regarding Respondent's request for sanctions, Family Code Section 271 vests the court with the authority to award attorney's fees and costs based "...on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." Petitioner's repeated flagrant disregard for the orders of this court, and the agreements of the parties, most certainly is not in keeping with the policy of the law to promote cooperation and reduce litigation costs. As a direct result of Petitioner's actions, Respondent has once again incurred attorney's fees and costs associated with her filing of the present motion. As such, the court orders Petitioner to pay Respondent \$5,000 as and for Family Code Section 271 sanctions. Payment may be made in one lump sum or in five installments of \$1,000 due and payable on the 1<sup>st</sup> of each month. If any payment is missed or late, the entire amount, with legal interest, will be immediately due.

**TENTATIVE RULING #5: PETITIONER IS ORDERED TO PROVIDE RESPONDENT WITH ALL ACCOUNT STATEMENTS FOR THE GARCIA ANNUITY FROM DECEMBER 1, 2021 THROUGH PRESENT. STATEMENTS ARE TO BE PROVIDED NO LATER THAN NOVEMBER 17, 2022. FURTHER, PETITIONER IS ORDERED TO REINSTATE RESPONDENT AS AN "AUTHORIZED USER" ON THE GARCIA ANNUITY NO LATER THAN NOVEMBER 17, 2022. THE COURT ORDERS PETITIONER TO PAY RESPONDENT \$5,000 AS AND FOR FAMILY CODE SECTION 271 SANCTIONS. PAYMENT MAY BE MADE IN ONE LUMP SUM OR IN FIVE INSTALLMENTS OF \$1,000 DUE AND PAYABLE ON THE 1<sup>ST</sup> OF EACH MONTH. IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT, WITH LEGAL INTEREST, WILL BE IMMEDIATELY DUE.**

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On August 11, 2022, Petitioner filed a Request for Order (RFO) and an Income and Expense Declaration. Both documents, along with several others, were personally served on September 2<sup>nd</sup>. This is a motion made subsequent to a Final Judgment of Dissolution. However, given that service was effectuated personally, instead of by mail, no post-judgment address verification form is necessary. Fam. Code § 215(b). The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was scheduled for November 10<sup>th</sup>.

By way of her RFO Petitioner requests the following orders: (1) Custody orders that reflect the actual timeshare the parties are exercising; (2) Reduction in monthly support until Respondent has reimbursed Petitioner for all backed expenses; (3) Order an arrears amount of \$15,811.00 for amounts Respondent owes Petitioner, including her tax return which was withheld by the IRS to pay Respondent's 2016 debt; (4) Order Respondent to seek work where he must provide proof to counsel and the court that he is actively seeking gainful employment for the support of the children; (5) Provide information regarding any employment training that Respondent is engaged in, including a timeline for completion and predicted future earnings estimate.

According to Petitioner, the parenting plan the parties previously agreed upon is not what is being practiced in actuality. The minors spend the majority of their time with Petitioner to ensure their schoolwork is being done. As such, she requests an order allowing the minors to spend their weekdays and alternating weekends with Petitioner. The remaining weekends will be with Respondent.

Because the minors spend the majority of their time with Petitioner, she is also requesting to have child support recalculated based on the new timeshare. Moving forward, she would like child support reduced to cover the amounts of expenses that she is owed by Respondent for school supplies, clothing, orthodontics, and other necessities for the children. She states Respondent owes her \$14,686 for amounts paid for the children.

She also asserts that Respondent owes her \$1,125 for her tax refund that was retained by the IRS to pay Respondent's penalties from 2016.

The parties attended CCRC and were able to reach agreements regarding the parenting plan and holidays. A report was prepared by CCRC and mailed to the parties on September 22<sup>nd</sup>. The court finds the agreements of the parties contained in the CCRC report to be in the best interest of the minor children and therefore adopts them as the order of the court.

The parenting plan set forth in the CCRC report appears to be largely the same as the plan the parties had previously agreed to which was used for calculating the prior support order. With no change to the timeshare, it appears no recalculation of child support is necessary. Petitioner's request to reduce child support is denied.

On the issues of amounts owed to Petitioner and a seek work order, the court finds additional evidence is needed prior to ruling on these matters. The parties are ordered to appear to choose trial and settlement conference dates. Additionally, Respondent is ordered to file an Income and Expense Declaration no later than 10 days prior to the chosen trial date.

**TENTATIVE RULING #6: THE COURT FINDS THE AGREEMENTS OF THE PARTIES CONTAINED IN THE CCRC REPORT TO BE IN THE BEST INTEREST OF THE MINOR CHILDREN AND THEREFORE ADOPTS THEM AS THE ORDER OF THE COURT. PETITIONER'S REQUEST TO REDUCE CHILD SUPPORT IS DENIED. ON THE ISSUES OF AMOUNTS OWED TO PETITIONER AND A SEEK WORK ORDER, THE COURT FINDS ADDITIONAL EVIDENCE IS NEEDED PRIOR TO RULING ON THESE MATTERS. THE PARTIES ARE ORDERED TO APPEAR TO CHOOSE TRIAL AND SETTLEMENT CONFERENCE DATES. ADDITIONALLY, RESPONDENT IS ORDERED TO FILE AN INCOME AND EXPENSE DECLARATION NO LATER THAN 10 DAYS PRIOR TO THE CHOSEN TRIAL DATE.**

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On May 17, 2022, Petitioner filed a Request for Order (RFO) requesting the court make child custody, parenting time, child support and spousal support orders. Petitioner filed an Income and Expense Declaration the same day. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on June 27, 2022 and a review hearing on August 11, 2022. Petitioner filed an amended RFO and Income and Expense Declaration on May 24, 2022. Respondent was personally served with the RFO and CCRC referral on June 4, 2022.

Petitioner requested sole legal and physical custody of the minor with Respondent to have supervised parenting time after he completes in-patient substance abuse treatment. Petitioner requested guideline child support as well as \$1,500 per month as temporary spousal support. Petitioner also requested property control orders for the residence located at 2432 Black Rock Lane in Cool, California.

Only Petitioner appeared at the CCRC appointment on June 27, 2022. Respondent contacted the court a half-hour prior to the appointment to inform the counselor that his vehicle broke down. Petitioner was unwilling to allow Respondent to participate via phone, as she suspected he was under the influence. A single parent CCRC report was filed with the court though no recommendations could be made.

A copy of the report was mailed to the parties on July 5, 2022. At the August 11<sup>th</sup> hearing the court rereferred the parties to CCRC and set a review hearing for September 21<sup>st</sup> which was later continued by order of the court to the present hearing date. Pending the review hearing the court ordered Petitioner to have temporary sole legal and physical custody of the minor. Respondent was to have professionally supervised visitation twice a week for two hours each with Respondent to pay the cost of the supervision. The court ordered child support in the amount of \$998 per month with an arrears balance of \$2,994. The court reserved jurisdiction to modify child support retroactively to the date of filing of the RFO and ordered the parties to file and serve updated Income and Expense Declarations at least 10 days prior to the next hearing date. Likewise, the court ordered temporary spousal support in the amount of \$548 per month with an arrears balance of \$1,644. Again, the court reserved jurisdiction to retroactively modify back to the date of the RFO. Finally, the court awarded Petitioner exclusive control of the marital property in Cool, California.

The parties attended CCRC on September 21, 2022. A report was issued on October 28<sup>th</sup> and mailed to the parties on November 1<sup>st</sup>. The parties could not come to any agreements at CCRC but the CCRC counselor provided recommendations regarding legal custody, parenting time, phone contact, communication between the parties, alcohol or substance abuse, respect guidelines and counseling.

Prior to receiving the CCRC report, Respondent filed an RFO of his own on September 21<sup>st</sup> asking to modify the custody and support decisions made in the court's prior ruling. The RFO was personally served on October 10<sup>th</sup>. It was set for hearing on December 8<sup>th</sup>. Given the overlap in requests between the present hearing and the pending RFO, in the interest of judicial economy, the court continues the hearing to join with the December 8<sup>th</sup> hearing at 1:30 in Department 5. All prior orders remain in full force and effect. The court continues to reserve jurisdiction to modify child support and spousal support back to the date of filing of the May 17<sup>th</sup> RFO.

**TENTATIVE RULING #7: GIVEN THE OVERLAP IN REQUESTS BETWEEN THE PRESENT HEARING AND THE PENDING RFO, IN THE INTEREST OF JUDICIAL ECONOMY, THE COURT CONTINUES THE HEARING TO JOIN WITH THE DECEMBER 8<sup>TH</sup> HEARING AT 1:30 IN DEPARTMENT 5. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. THE COURT CONTINUES TO RESERVE JURISDICTION TO MODIFY CHILD SUPPORT AND SPOUSAL SUPPORT BACK TO THE DATE OF FILING OF THE MAY 17<sup>TH</sup> RFO.**

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Respondent filed a Request for Order (RFO) on September 16, 2022. A Proof of Service was filed the same day indicating that a “Notice of Hearing” was among the documents served. It is unclear if this reference is meant to include the entire RFO or if just the notice was served. Nonetheless, even if service was defective, Petitioner filed and served a Responsive Declaration to Request for Order and an Income and Expense Declaration on October 28<sup>th</sup> so the court finds Petitioner to have had actual notice of the RFO and any defect in service was waived.

Prior to the filing of the RFO, Respondent filed and served a Memorandum of Points and Authorities & Declaration of Dale R. Gomes in Support of Motion for Attorney’s Fees Pursuant to Family Code Section 6344. In his motion, Respondent seeks attorney’s fees in an amount not less than \$2,500 and not to exceed \$13,500. According to Respondent, when Petitioner filed for a Domestic Violence Restraining Order (DVRO) on September 9, 2021, Respondent was forced out of his home, despite having no income. A hearing for a permanent order commenced on December 1<sup>st</sup> and it was not until January 14, 2022, that the court determined there was no basis to issue a permanent order. Respondent claims he was forced to borrow money from family to retain counsel. Based on the declaration of Mr. Gomes, Respondent paid \$2,500 in fees, though the amount of attorney hours spent exceeds 30 hours which, at a billable rate of \$450, amounts to \$13,500 which was actually incurred.

Petitioner opposes the request for attorney’s fees citing the discretionary nature of Family Code Section 6344 and argues that the incomes, needs, and abilities of the parties to pay should all be considered. While Petitioner concedes that her monthly income exceeds Respondents, she states that this is only because she works two jobs to support herself and her children. Her monthly expenses are such that she has little in the way of disposable income. Further, she notes that Respondent’s Income and Expense Declaration is incomplete as he did not provide paystubs nor did he complete section 15 of the declaration which discloses the total amount of attorney’s fees paid.

Respondent’s moving papers cite Family Code Section 6344(b). Generally, Section 6344 allows the court to order the payment of attorney’s fees and costs of the prevailing party. Fam. Code § 6344(a). An award of fees and costs pursuant to subsection (a) is discretionary and may be made to either party so long as that party is the prevailing party. *Id.* An award under this section is not mandatory (*See Id.* (statute states that the court “may” make such an award), whereas an award pursuant to subsection (b) is mandatory. *See* Cal. Fam. Code § 6344(b) (statute uses the term “shall”). However, subsection (b) only applies where Petitioner is the prevailing party and cannot afford to pay his or her attorney’s fees. *Id.* Such is not the case here. Thus, the court is to apply the discretionary standard.

Here, Respondent is the prevailing party making the request for fees. In furtherance of the court’s discretionary authority, the court has reviewed the Income and Expense Declarations filed by Respondent and Petitioner on August 10<sup>th</sup> and October 28<sup>th</sup> respectively. Based on the filings of the parties it does there is a substantial disparity in income and assets. While Section 15 of his Income and Expense Declaration is incomplete, Respondent does provide notice of the amount of attorney’s fees sought in his RFO as well as in the declaration provided by Mr. Gomes which provides the same information as requested by Section 15 of the Income and Expense Declaration. Given that an award of attorney’s fees under Section 6344 is pursuant to a discretionary standard and because the court is unaware of any authority which would preclude an award of attorney’s fees pursuant to Section 6344 solely due to a party’s failure to complete section 15 of the Income and Expense Declaration, the court

does not find this to be grounds to deny Respondent's RFO. Further, the court notes that according to Petitioner's Income and Expense Declaration, her monthly income far exceeds her expenses thus clearly demonstrating that she has the ability to pay. Considering the disparity in income, Petitioner's ability to pay, and Respondent's position as the prevailing party at the DVRO hearing, the court finds it justified to award Respondent the \$2,500 of attorney's fees actually paid by Respondent to his counsel.

In addition to the \$2,500 actually paid by Respondent, he seeks additional fees based on amounts that were incurred but not paid. The court may make an award of attorney's fees where the fees were incurred by the attorney, even though they were not charged, nor paid by, the client. See In re Marriage of Ward, 3 Cal. App. 4<sup>th</sup> 618 (1992) (legal services organization providing pro bono services to wife in dissolution proceeding was entitled to reasonable attorney fees). That said, it is unclear from the Declaration of Mr. Gomes how he arrived at the estimated 30 hours of work. There is no ledger or other supporting documentation to aid the court in substantiating the number of hours worked nor the relationship between the work done and the DVRO hearing. Additionally, the court notes that Respondent is no longer represented by Mr. Gomes but instead Ms. Bentley is now the attorney of record. In light of the foregoing, the court does not find that an award of anything in excess of the \$2,500 paid by Respondent is warranted.

Petitioner is ordered to pay Respondent \$2,500 as and for attorney's fees and costs pursuant to Family Code Section 6344. Payment may be made in one lump sum or in increments of \$500 each, due and payable on the 1<sup>st</sup> of each month, with the first payment due on or before December 1, 2022. In the event any payment is missed or late, the entire amount shall become immediately due with legal interest.

**TENTATIVE RULING #8: PETITIONER IS ORDERED TO PAY RESPONDENT \$2,500 AS AND FOR ATTORNEY'S FEES AND COSTS PURSUANT TO FAMILY CODE SECTION 6344. PAYMENT MAY BE MADE IN ONE LUMP SUM OR IN INCREMENTS OF \$500 EACH, DUE AND PAYABLE ON THE 1<sup>ST</sup> OF EACH MONTH, WITH THE FIRST PAYMENT DUE ON OR BEFORE DECEMBER 1, 2022. IN THE EVENT ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT SHALL BECOME IMMEDIATELY DUE WITH LEGAL INTEREST. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

On September 13, 2022, Petitioner filed a Request for Order (RFO) requesting guideline child support. He states that he supports the minor 100% of the time without any financial assistance from Respondent. The RFO indicates that Petitioner is requesting other orders, but there are none specified. Also, the RFO indicates that facts to support his requests are listed below or attached but again, there are none listed nor is there an attached declaration. In conjunction with his RFO, Petitioner filed his Income and Expense Declaration. There is no Proof of Service on file indicating that Respondent was served with the aforementioned documents. However, on October 28<sup>th</sup> Respondent filed a Responsive Declaration to Request for Order. Therefore, the court finds Respondent to have actual notice of the pending RFO and any defect in service is waived.

In her declaration Respondent indicates that she filed an RFO seeking spousal support and a release of funds which is currently set for December 22, 2022. She requests that the hearing on that RFO be advanced to join with the present hearing date. Given that Petitioner was provided notice of the December 22<sup>nd</sup> hearing date on those issues, and the fact that he has not yet filed a responsive declaration to that RFO, the court is not inclined to advance the hearing date. However, noting the overlap in issues between the two RFOs and in the interest of judicial economy, the court continues the hearing on this matter to join with the hearing on Respondent's RFO which is set for December 22, 2022 at 8:30 a.m. in Department 5.

**TENTATIVE RULING #9: THE COURT CONTINUES THE HEARING ON THIS MATTER TO JOIN WITH THE HEARING ON RESPONDENT'S RFO WHICH IS SET FOR DECEMBER 22, 2022, AT 8:30 A.M. IN DEPARTMENT 5.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

Petitioner filed a Request for Order (RFO) on September 28, 2022, requesting a modification of child support. Petitioner filed an Income and Expense Declaration concurrently therewith. Respondent was personally served on September 29, 2022.

Petitioner asserts a change in child support orders is necessary as the minors are currently residing with him full time. Petitioner states Respondent currently has a 2% timeshare.

Respondent filed a Responsive Declaration on October 28, 2022. Upon review of the court file, there is no Proof of Service showing Petitioner was served with the Responsive Declaration.

Parties are ordered to appear for the hearing.

**TENTATIVE RULING #10: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**



On August 10, 2022, Respondent filed a Request for Order (RFO) asking the court for custody and visitation orders. The RFO was served on September 14<sup>th</sup>. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was set to be heard on November 10<sup>th</sup>. Petitioner filed a Responsive Declaration to Request for Order on November 1<sup>st</sup>. It was mail served on October 14<sup>th</sup>.

Respondent would like the court to terminate the temporary custody and visitation orders that were made in February of 2022 and reinstate the prior custody orders. As they currently stand, Respondent is to have visitation with the children during the day on the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> weekends (Saturday to Sunday), with the children staying the night in the home of the paternal grandparents.

Petitioner objects to any change in the current custody and visitation orders. She notes that nothing has changed since the last orders were put in place. Respondent continues to face criminal charges for domestic violence and she continues to feel that the children are unsafe in his care. She requests Family Code Section 271 sanctions for Respondent having filed a frivolous motion.

The parties attended CCRCC on September 19<sup>th</sup>. A report was issued on October 31<sup>st</sup> and mailed to the parties on November 1<sup>st</sup>. The parties were unable to reach any agreements but CCRC did provide recommendations regarding legal custody, parenting time, and other additional provisions.

Given the ongoing criminal case regarding domestic violence against a current cohabitant, the court finds the provisions of Family Code Section 3044 to be applicable. Fam. Code § 3044(a)(code section is applicable when domestic violence is committed against any person as defined in Fam. Code § 3011(a)(2)(A)). Section 3044 gives rise to a rebuttable presumption that an award of sole or joint physical or legal custody to an individual who has perpetrated domestic violence is not in the best interest of the child. *Id.* “This presumption may only be rebutted by a preponderance of the evidence.” *Id.* To overcome the presumption, the perpetrator bears the burden of proving (1) giving sole or joint legal or physical custody to the perpetrator is in the best interest of the child; and (2) a balancing of the factors listed in Section 3044(b)(2) supports the legislative findings in Section 3020. Fam. Code § 3044(b). Among the factors to be considered are the following: completion of a batterer’s treatment program, completion of a parenting class, the existence of a restraining order or protective order, whether or not further acts of domestic violence have occurred and whether or not the perpetrator is on probation or parole. *Id.*

Here, Respondent has indicated that he and his current wife are in therapy. He states that there have been no subsequent acts of domestic violence and his visits with the children are going well. He believes he will be required to complete an anger management program as part of the plea in his criminal case. Further, both parties agree that the children have expressed their dissatisfaction with the current parenting plan. It does not appear that they have any fear of Respondent or being in his home if they want to return to the previous custody orders. Family Code Section 3020, declares that it is the public policy of the state to ensure the “health, safety, and welfare of children” and to ensure that the children have “frequent and continuing contact with both parents.” Fam. Code § 3020(a) & (b). Given the circumstances, the court finds that Respondent has provided sufficient information to overcome the Section 3044 presumption against custody. Having frequent and continuing contact with both parties, where it has been shown that such contact would not jeopardize the health or safety of the children is

certainly in the best interest of the children. As such, the court adopts the recommendations contained in the October 31, 2022 CCRC report as the order of the court. All prior orders not in conflict with this order are to remain in full force and effect.

Petitioner has made a request for sanctions pursuant to Family Code Section 271 which states in pertinent part, "...the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation of the parties..." Fam. Code § 271(a). Respondent's filing of the present motion did not frustrate the policy of the law where it was an issue contested by both parties and was not filed solely for harassing or frivolous purposes. Petitioner's request for sanctions is denied.

**TENTATIVE RULING #11: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE OCTOBER 31, 2022 CCRC REPORT AS THE ORDER OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER'S REQUEST FOR SANCTIONS IS DENIED. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

Petitioner filed a Request for Order (RFO) on August 30, 2022. It was served by mail on September 26, 2022. The RFO seeks an order modifying the settlement agreement of the parties which, according to Petitioner, contains a clerical error. As it currently stands, the agreement states that Petitioner will pay Respondent \$80,000 per month upon Petitioner's refinancing of the marital home. Petitioner states that the intent of the parties was for the agreement to say Petitioner would pay one lump sum of \$80,000. He would like this corrected.

Respondent filed and served a Responsive Declaration to Request for Order on October 27<sup>th</sup>. Respondent requests the court set this issue to join with the issues set for trial on December 20<sup>th</sup>. She asks the court to award her reasonable attorney's fees and costs as well as Family Code Section 271 sanctions but asks the court to reserve on this request until trial as well.

The issues currently set to be heard on December 20<sup>th</sup> arose from two separate RFOs previously filed by the parties. On May 24, 2022, Respondent filed a Request for Order (RFO), requesting spousal support in the amount of \$1,500 per month and indicating that she feels Petitioner has no intention of paying the \$80,000. On June 24, 2022, Respondent filed an RFO asking the court to set aside the default entered on March 8, 2022, and the Default Judgment filed April 7, 2022, and granting Respondent leave to file a Response to the Petition for Dissolution. On September 1<sup>st</sup> the court noted its need for additional information prior to ruling on the set aside request and its inability to rule on the request for spousal support until a determination is made on the set aside. Thus, the court set both issues for trial on December 20<sup>th</sup> with a settlement conference on November 28<sup>th</sup>. The court reserved on jurisdiction to award spousal support back to the date of filing the subject RFO.

Given the noted overlap of issues, in the interest of judicial economy, the court continues the hearing on this RFO to join with the matters currently scheduled for settlement conference on November 28<sup>th</sup> and trial on December 20<sup>th</sup>. The court continues to reserve on jurisdiction to award spousal support back to the date of filing the RFO.

**TENTATIVE RULING #12: THE COURT CONTINUES THE HEARING ON THIS RFO TO JOIN WITH THE MATTERS CURRENTLY SCHEDULED FOR SETTLEMENT CONFERENCE ON NOVEMBER 28<sup>TH</sup> AND TRIAL ON DECEMBER 20<sup>TH</sup>. THE COURT CONTINUES TO RESERVE ON JURISDICTION TO AWARD SPOUSAL SUPPORT BACK TO THE DATE OF FILING THE RFO. THE COURT ALSO RESERVES JURISDICTION ON RESPONDENT'S REQUEST FOR FAMILY CODE SECTION 271 SANCTIONS.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

On April 29, 2022, Respondent filed a Request for Order (RFO). The RFO was served via U.S. Mail on May 10, 2022. On June 30, 2022, Respondent filed a Declaration of Yama Khursand Re: Modification of Custody and a Declaration of Wallace Francis Re: Modification of Custody, both of which are in support of Respondent's RFO and both of which were served electronically.

On July 6, 2022, Petitioner filed and served her Responsive Declaration to Request for Order. Minor's Counsel filed her Statement of Issues and Contentions and Request for Orders on July 11, 2022, which had been served the day prior on July 10, 2022.

Respondent's RFO asked the court to institute a 2-2-4 schedule with a graduated step-up plan to 50/50 physical custody, or a schedule recommended by a child custody evaluator, for the youngest minor. Additional orders requested in the RFO were as follows: (1) the court to order a complete child custody evaluation under Family Code section 3111; (2) Remove Donelle Anderson as therapist and Barbara Newman as minor's counsel and appoint neutral, unbiased individuals for those roles; (3) Respondent to attend graduation. The RFO was set to be heard on August 11<sup>th</sup>.

At the August 11<sup>th</sup> hearing the court ruled on all matters including ordering the parties to participate in a Family Code Section 3111 evaluation with an Evidence Code Section 730 component. All parties were ordered to cooperate in the evaluation. Respondent was ordered to pay the cost of the evaluation but the court reserved jurisdiction to allocate the costs of the 3111 evaluation. Finally, the court noted the overlap in issues between the 3111/730 evaluation and the trial date which was previously set for August 11<sup>th</sup>. The court vacated the August 11<sup>th</sup> trial date and set a review hearing for November 10<sup>th</sup> to review the 3111/730 report and choose new trial dates.

On October 6<sup>th</sup> the parties stipulated to appoint Jacqueline Singer as the 3111/730 evaluator. Given that the parties just recently filed their stipulation agreeing to the evaluator, the court continues the matter to February 16, 2023 in order to ensure the evaluator has sufficient time to conduct her evaluation and complete the report.

**TENTATIVE RULING #13: THE COURT CONTINUES THE MATTER TO February 16, 2023 IN ORDER TO ENSURE THE EVALUATOR HAS SUFFICIENT TIME TO CONDUCT HER EVALUATION AND COMPLETE THE REPORT.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**