

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**1. AMY LEE TATUM v. JACK LEROY TATUM JR.**

**PFL20190602**

On October 13, 2022, Petitioner filed a Request for Order (RFO) seeking to compel responses to Special Interrogatories and asking for attorney's fees and sanctions. The RFO and all other required documents were mail served the same date as filing. Respondent has not opposed the motion.

Discovery Responses

On August 2, 2022, Petitioner electronically served Respondent with Special Interrogatories, Set 1, thereby making responses due on or before September 2nd. A meet and confer letter was sent on September 6<sup>th</sup> wherein responses were requested to be served no later than September 9<sup>th</sup>. However, on September 12<sup>th</sup> the parties entered into a stipulation where, among other things, Respondent agreed to serve responses to the subject discovery no later than September 23<sup>rd</sup>. No such responses were served.

Petitioner's counsel made an additional meet and confer attempt by sending a letter requesting responses no later than October 10<sup>th</sup>. Once again, no responses were served.

"The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory ..." Cal. Civ. Pro. § 2030.210(a). If an objection is made, "the specific ground for the objection shall be set forth clearly in the response." Cal. Civ. Pro. § 2030.240(b). Generally speaking, responses to interrogatories are due within 30 days of the date of service. Cal. Civ. Pro. § 2030.260. If a party fails to provide timely responses, that party waives any right to object to the interrogatories and waives the right to produce writings in response and the propounding party may move for an order compelling responses. Cal. Civ. Pro. §2030.290.

Here, Respondent's failure to comply with discovery is inarguable. The subject interrogatories were served on August 2, 2022. Petitioner has provided copies of the special interrogatories along with the proof of service showing they were properly served on that date. Respondent has had five months to provide responses, well beyond the 30 days afforded to him by the Civil Discovery Act. Accordingly, Respondent is ordered to serve full and complete responses to Special Interrogatories, Set One, no later than January 16, 2023.

Attorney's Fees and Discovery Sanctions

Petitioner is requesting attorney's fees in the amount of \$3,000 and sanctions amounting to \$2,500, pursuant to Civil Procedure Section 2030.010.

"The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process...pay the reasonable expenses, including attorney's fees, incurred by

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

anyone as a result of that conduct...If a monetary sanction is authorized by any provision of this title, the court *shall* impose that sanction unless it finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” Cal. Civ. Pro. 2023.030(a)(emphasis added) & 2023.020. Misuse of the discovery process includes, but is not limited to, failing to respond or submit to an authorized method of discovery, and failing to confer in a reasonable good faith attempt to informally resolve any discovery dispute. Cal. Civ. Pro. § 2023.010. Written interrogatories are an expressly authorized form of discovery under the Civil Discovery Act. Cal. Civ. Pro. § 2030.010. A party requesting sanctions for reasonable expenses that were incurred as a result of discovery abuse must already be liable for those expenses before the court can award the costs as sanctions. *See Tucker v. Pacific Bell Mobile Servs.*, 186 Cal. App. 4<sup>th</sup> 1548 (2010) (anticipated costs for future deposition could not be included in award of sanctions).

In accordance with the Civil Discovery Act, the court is *required* to award attorney’s fees and costs for misuse of the discovery process, unless the sanctioned party has provided substantial justification for his or her actions. Here, Respondent has not provided any response explaining his failure to submit to discovery as he is required to do. Thus, an award of sanctions is proper.

Petitioner is requesting \$3,000 in attorney’s fees and costs, which is “an estimated cost of preparation of the required meet and confer letters, preparation of the Request for Order, preparation and appearance at court, and preparation of the Findings and Orders after Hearing.” The court is to award only those costs and fees that have actually been incurred in accordance with the present motion. Given that Petitioner has not, and may not, incur costs and fees associated with the preparation and attendance at a hearing, if none is requested, then an award in that regard would not be warranted. Thus, the court awards Petitioner \$2,000 in attorney’s fees and costs. This amount may be increased in the event of a hearing on this matter.

Sanctions may be paid in one lump sum or in monthly increments of \$500 due and payable to Petitioner’s counsel on the 15<sup>th</sup> of each month, with payments to begin January 15, 2023. If any payment is missed or late, the entire outstanding amount is to become due and payable within five days of the date the late or missed payment was originally due.

Family Code Section 271 Sanctions

In addition to the abovementioned discovery sanctions, Petitioner is seeking \$5,000 in sanctions pursuant to Family Code 271 as a result of Respondent having made false claims in connection with an ex parte application he filed on July 25, 2022. The court reserved on the issue of sanctions at the time of the ex parte. Petitioner argues the July 25<sup>th</sup> ex parte not only

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

cost her attorney's fees, but caused her to return from vacation early which resulted in her incurring airfare fees.

Family Code Section 271 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).

It appears evident that Respondent's conduct does in fact, frustrate the policy of the law to promote settlement and reduce the costs of litigation. Respondent has been sanctioned by this court previously for acting in a similar matter. Given Respondent's lack of cooperation and candidness in this matter the court finds it appropriate to award Petitioner \$2,500 in sanctions.

Sanctions may be paid in one lump sum or in monthly increments of \$500 due and payable to Petitioner's counsel on the 15<sup>th</sup> of each month, with payments to begin January 15, 2023. If any payment is missed or late, the entire outstanding amount is to become due and payable within five days of the date the late or missed payment was originally due.

**TENTATIVE RULING #1: RESPONDENT IS ORDERED TO SERVE FULL AND COMPLETE RESPONSES TO SPECIAL INTERROGATORIES, SET ONE, NO LATER THAN JANUARY 16, 2023. THE COURT AWARDS PETITIONER \$4,500 IN SANCTIONS (\$2,000 FOR ATTORNEY'S FEES AND COSTS, PLUS \$2,500 UNDER FAMILY CODE 271). THIS AMOUNT MAY BE INCREASED IN THE EVENT OF A HEARING ON THIS MATTER. SANCTIONS MAY BE PAID IN ONE LUMP SUM OR IN MONTHLY INCREMENTS OF \$500 DUE AND PAYABLE TO PETITIONER'S COUNSEL ON THE 15<sup>TH</sup> OF EACH MONTH, WITH PAYMENTS TO BEGIN JANUARY 15, 2023. IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE OUTSTANDING AMOUNT IS TO BECOME DUE AND PAYABLE WITHIN FIVE DAYS OF THE DATE THE LATE OR MISSED PAYMENT WAS ORIGINALLY DUE. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**3. BRANDIE ERIN LYONS v. WILLIAM EDWARD COLLINS**

**PFL20200772**

On August 15, 2022, Respondent filed a Request for Order (RFO) for child custody, visitation, and child support orders. Along with his RFO, Respondent filed his Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing was set for October 13<sup>th</sup>.

Prior to the October 13<sup>th</sup> hearing date, the court noted that there was no Proof of Service on file for the RFO, the Income and Expense Declaration or the CCRC referral and neither party appeared at the CCRC appointment. The court dropped the matter from calendar but both parties appeared at the hearing and requested a re-referral to CCRC. A new CCRC appointment was set for November 4<sup>th</sup> and the hearing on the RFO was continued to the present date.

On October 24<sup>th</sup>, Petitioner filed and served her Responsive Declaration to Request for Order and her Income and Expense Declaration.

Respondent would like joint legal and physical custody. He requests to have the minors every Wednesday to Thursday and every other Friday to Monday. He would also like to establish a set holiday and summer schedule. According to Respondent, the children have requested to have increased visitation with him.

Petitioner is opposing the RFO and asking the court to maintain the current custody and visitation orders. She would also like guideline child support as well as an arrears payment of \$200 per month. According to Petitioner, she currently has sole physical custody of the children, and Respondent gets parenting time every other weekend from Friday until Monday. Petitioner claims the children have not been requesting additional time with Respondent but are in fact resistant to their visits with him. She notes that Respondent is in arrears from December of 2020 through February of 2021. At \$1,848, this amounts to a total arrears balance of \$5,544 per month. Finally, Petitioner is asking to have Respondent provide updated paystubs as she is informed and believes that he has received a pay raise since his original August filing.

The parties attended CCRC on November 4<sup>th</sup> and a report was issued on November 30, 2022 wherein the CCRC counselor has provided a list of recommendations.

On December 14<sup>th</sup> Petitioner filed a Supplemental Declaration of Brandie Lyons in Opposition to CCRC Report; Request for Minor's Counsel. Petitioner is agreeable to adopting the recommendations of the CCRC report with the exceptions of the proposed parenting plan and the recommendation that she participate in a parenting class. She would also like Respondent to be ordered to participate in individual therapy. Petitioner notes that there is a Domestic Violence Criminal Protective Order against Respondent for an incident that occurred

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

on November 8, 2020. The criminal matter is still pending and will likely go to trial in January of 2023 but Petitioner feels the Family Code Section 3044 factors should be addressed. Petitioner feels the children were not adequately heard in the CCRC appointment and she would like Minor's Counsel appointed prior to any decisions being made on the parenting plan. Alternatively, she requests the matter be set for trial.

The court has read and considered the filings as outlined above and makes the following findings and orders:

The court denies Petitioner's request to appoint Minors' Counsel. The court adopts the recommendations from CCRC with the following modifications: the current parenting plan will remain in full force and effect pending the results of Respondent's criminal case. The court sets a further review to hearing to receive the outcome of the criminal case and determine whether Family Code section 3044 applies. The court continues the request to modify child support pending and arrears balance, pending the modification of the parenting plan. The court reserves jurisdiction to retroactive modify support to the date of the filing of the RFO. The court further finds the Department of Child Support Services a party to this case and therefore, the requests to modify child support and arrears will be continued to the child support calendar to be heard by the child support commissioner pursuant to Family Code section 4251. The court will set those dates at the next review hearing date.

**TENTATIVE RULING #3: THE COURT DENIES PETITIONER'S REQUEST TO APPOINT MINORS' COUNSEL. THE COURT ADOPTS THE RECOMMENDATIONS FROM CCRC WITH THE FOLLOWING MODIFICATIONS: THE CURRENT PARENTING PLAN WILL REMAIN IN FULL FORCE AND EFFECT PENDING THE RESULTS OF RESPONDENT'S CRIMINAL CASE. THE COURT SETS A FURTHER REVIEW TO HEARING ON MARCH 23, 2023 AT 8:30 IN DEPARTMENT 5, TO RECEIVE THE OUTCOME OF THE CRIMINAL CASE AND DETERMINE WHETHER FAMILY CODE SECTION 3044 APPLIES. THE COURT CONTINUES THE REQUEST TO MODIFY CHILD SUPPORT PENDING AND ARREARS BALANCE, PENDING THE MODIFICATION OF THE PARENTING PLAN. THE COURT RESERVES JURISDICTION TO RETROACTIVELY MODIFY SUPPORT TO THE DATE OF THE FILING OF THE RFO. THE COURT FURTHER FINDS THE DEPARTMENT OF CHILD SUPPORT SERVICES A PARTY TO THIS CASE AND THEREFORE, THE REQUESTS TO MODIFY CHILD SUPPORT AND ARREARS WILL BE CONTINUED TO THE CHILD SUPPORT CALENDAR TO BE HEARD BY THE CHILD SUPPORT COMMISSIONER PURSUANT TO FAMILY CODE SECTION 4251. THE COURT WILL SET THOSE DATES AT THE NEXT REVIEW HEARING DATE.**

**NO HEARING ON THIS MATTER 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,**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**4. BRIAN CAMERON v. CARLI CAMERON**

**PFL20160660**

Petitioner filed a Request for Order (RFO) on October 11, 2022, seeking orders for child custody and visitation as well as child support. Concurrently therewith, she filed her Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) and the matter was set to be heard on January 5, 2023.

The RFO and all other required documents were served on October 26<sup>th</sup>. Although this is a motion for post-judgment modification of child support, Petitioner did file her Declaration Regarding Address Verification on October 26<sup>th</sup>.

Only Petitioner appeared at the November 3<sup>rd</sup> CCRC appointment. A single parent report was prepared and no recommendations were made pursuant to California Rules of Court, Rule 5.210(h)(4).

Current custody orders are for joint legal custody and physical custody with a 50/50 visitation schedule; however, Petitioner maintains that both minors have resided solely with her since mid-2020. She states that Respondent has not seen or spoken with the younger child since March of that year and he has only seen the older child twice since April of 2020. Petitioner would now like an order awarding her sole physical custody.

Respondent filed a Responsive Declaration to Request for Order and his Income and Expense Declaration on December 29, 2022. However, these documents are untimely as responsive declarations are due to be filed no later than nine court days prior to the date of the hearing, further there is no proof of service on file indicating that Petitioner was properly served with the subject documents. Given their untimeliness and lack of service, the court cannot consider these documents.

The parties are ordered to appear to discuss CCRC.

**TENTATIVE RULING #4: THE PARTIES ARE ORDERED TO APPEAR TO DISCUSS CCRC.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**7. JAMES VERANDES v. ALLISON VERANDES**

**PFL20170788**

On December 8, 2021, the parties submitted a Stipulation and Order RE: Child Custody and Visitation codifying their agreed upon visitation time between Petitioner and the minor children. In February of 2022, Petitioner's parenting time was expanded to include overnights every other weekend from Saturday at 9:00 am to Sunday at 7:00 pm, plus Wednesdays from after school until 7:00 pm. On March 28, 2022, Petitioner filed a Supplemental Declaration requesting joint physical custody with his parenting time to be Sunday at 12:00 pm to Monday at 7:00 pm. Tuesday and Wednesday after school until 7:00 pm and alternating weekends from Saturday at 9:00 am to Sunday at 12:00 pm. Respondent filed a reply, requesting that the current parenting schedule remain as is.

The matter came before the court for hearing on April 7, 2022, at which time the court ordered the following: (1) the parties to enroll and participate in a co-parenting class, proof of completion must be filed and served no later than May 31, 2022; (2) upon the completion of co-parenting class, the parties are to participate in co-parenting counseling with an agreed upon therapist, at the frequency and duration as directed by the therapist; and (3) the parties to return to Child Custody Recommending Counseling (CCRC).

The parties attended CCRC on May 4, 2022. A review hearing was scheduled for July 14<sup>th</sup> but continued by all parties to July 28<sup>th</sup>. As of that date the court made a number of rulings, one of which was to appoint Rebecca Esty-Burke as minors counsel. A review hearing was set for October 6<sup>th</sup> to review the progress of the parties in co-parenting counseling and to assess the parenting plan. Due to several continuances, the October review hearing is now set for the present date.

On December 21<sup>st</sup> Minor's Counsel filed her Statement of Issues and Contentions and Request for Orders. Minor's Counsel requests the following orders: (1) The children to stop seeing Sabrina Griswold as their therapist forthwith; (2) The children shall start seeing Carolyn Whiteman, Elaine Bredl, or Jennifer Alexander as their individual therapist; (3) Respondent to obtain counseling to understand the impact that her statements have on the relationship between the children and their father; (4) Petitioner shall continue with his individual therapist and shall work on modifying his parenting style to one that the children are more receptive to (i.e. no yelling at the children); (5) The parenting plan to change to a week-on week-off schedule with exchanges occurring on Fridays after school or at 3pm (if no school). If there is school but an early release day then the parent receiving the children on that day will start their parenting time early. All exchanges not at school shall take place at the parents' current exchange location; (6) The parties are to continue co-parenting counseling with Ken Johnstone;

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

(7) The children are not to be used as messengers. If any of the exchanges occur not at school – the parties are not allowed to exit their respective vehicles during the exchange. The children are not allowed to carry messages. Once the children leave one vehicle and go to the receiving parent's vehicle they are not to return to the dropping off parent's vehicle; (8) The non-custodial parent shall be allowed a 30-minute telephone call with the children every Tuesday and Thursday beginning at 7:00 pm. The children shall be allowed to contact the non-custodial parent whenever they choose; (9) The children are not allowed to choose whether or not they exercise their parenting times; (10) Neither parent to speak negatively about the other parent and/or their significant others; (11) A hearing to be set in 120 days to review how the children are adjusting, the parties work in co-parenting counseling and each party's progress in individual counseling.

Petitioner filed a supplemental declaration on December 23, expressing his agreement with Minor's Counsel and his assent to her requested orders. Petitioner notes that he has been requesting 50/50 parenting since March of 2021 and has shown consistently that he can and will comply with the court orders. In addition to the orders requested by Minor's Counsel, Petitioner requests each parent to have two weeks of vacation time with the children each year which can be taken in either two 1-week blocks, or one 2-week block, upon 30 days written notice to the other parent.

Respondent has not filed a declaration providing the court with her position.

After reviewing the aforementioned filings, the court is in agreement with the recommendations of Minor's Counsel as they appear to be in the best interests of the minors. As such, the court hereby makes the following orders: (1) The children are to stop seeing Sabrina Griswold as their therapist forthwith, if they have not already done so; (2) The children shall start seeing Carolyn Whiteman, Elaine Bredl, or Jennifer Alexander as their individual therapist as soon as possible; (3) Respondent is to begin individual counseling to understand the impact that her statements have on the relationship between the children and their father; (4) Petitioner shall continue with his individual therapist and shall work on modifying his parenting style to one that the children are more receptive to (i.e. no yelling at the children); (5) The parenting plan to change to a week-on week-off schedule with exchanges occurring on Fridays after school or at 3pm (if no school). If there is school but an early release day, then the parent receiving the children on that day will start their parenting time early. All exchanges not at school shall take place at the parents' current exchange location; (6) The parties are to continue co-parenting counseling with Ken Johnstone; (7) The children are not to be used as messengers. If any of the exchanges occur not at school – the parties are not allowed to exit their respective vehicles during the exchange. The children are not allowed to carry messages. Once the children leave one vehicle and go to the receiving parent's vehicle, they are not to

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

return to the dropping off parent's vehicle; (8) The non-custodial parent shall be allowed a 30-minute telephone call with the children every Tuesday and Thursday beginning at 7:00 pm. The children shall be allowed to contact the non-custodial parent whenever they choose; (9) The children are not allowed to choose whether or not they exercise their parenting times; (10) Neither parent to speak negatively about the other parent and/or their significant others; (11) Each parent is allowed to have two weeks of vacation time with the children each year which can be taken in either two 1-week blocks, or one 2-week block, upon 30 days written notice to the other parent. At least 10 days prior to commencement of the vacation, the custodial parent is to provide the non-custodial parent with itinerary for the entirety of the vacation, including but not limited to, departure dates/times, flight numbers, hotel names and locations, and return flight numbers, dates and times; (12) A review hearing is set for May 4, 2023 at 8:30 in Department 5 to review how the children are adjusting, the parties work in co-parenting counseling and each party's progress in individual counseling. All prior orders not in conflict with this ruling remain in full force and effect.

**TENTATIVE RULING #7: THE COURT HEREBY MAKES THE FOLLOWING ORDERS: (1) THE CHILDREN ARE TO STOP SEEING SABRINA GRISWOLD AS THEIR THERAPIST FORTHWITH, IF THEY HAVE NOT ALREADY DONE SO; (2) THE CHILDREN SHALL START SEEING CAROLYN WHITEMAN, ELAINE BREDL, OR JENNIFER ALEXANDER AS THEIR INDIVIDUAL THERAPIST AS SOON AS POSSIBLE; (3) RESPONDENT IS TO BEGIN INDIVIDUAL COUNSELING TO UNDERSTAND THE IMPACT THAT HER STATEMENTS HAVE ON THE RELATIONSHIP BETWEEN THE CHILDREN AND THEIR FATHER; (4) PETITIONER SHALL CONTINUE WITH HIS INDIVIDUAL THERAPIST AND SHALL WORK ON MODIFYING HIS PARENTING STYLE TO ONE THAT THE CHILDREN ARE MORE RECEPTIVE TO (I.E. NO YELLING AT THE CHILDREN); (5) THE PARENTING PLAN TO CHANGE TO A WEEK-ON WEEK-OFF SCHEDULE WITH EXCHANGES OCCURRING ON FRIDAYS AFTER SCHOOL OR AT 3PM (IF NO SCHOOL). IF THERE IS SCHOOL BUT AN EARLY RELEASE DAY, THEN THE PARENT RECEIVING THE CHILDREN ON THAT DAY WILL START THEIR PARENTING TIME EARLY. ALL EXCHANGES NOT AT SCHOOL SHALL TAKE PLACE AT THE PARENTS' CURRENT EXCHANGE LOCATION; (6) THE PARTIES ARE TO CONTINUE CO-PARENTING COUNSELING WITH KEN JOHNSTONE; (7) THE CHILDREN ARE NOT TO BE USED AS MESSENGERS. IF ANY OF THE EXCHANGES OCCUR NOT AT SCHOOL – THE PARTIES ARE NOT ALLOWED TO EXIT THEIR RESPECTIVE VEHICLES DURING THE EXCHANGE. THE CHILDREN ARE NOT ALLOWED TO CARRY MESSAGES. ONCE THE CHILDREN LEAVE ONE VEHICLE AND GO TO THE RECEIVING PARENT'S VEHICLE, THEY ARE NOT TO RETURN TO THE DROPPING OFF PARENT'S VEHICLE; (8) THE NON-CUSTODIAL PARENT SHALL BE ALLOWED A 30-MINUTE TELEPHONE CALL WITH THE CHILDREN EVERY TUESDAY AND THURSDAY BEGINNING AT 7:00 PM. THE CHILDREN SHALL BE ALLOWED TO CONTACT THE NON-CUSTODIAL PARENT WHENEVER THEY CHOOSE; (9) THE CHILDREN ARE NOT ALLOWED TO CHOOSE WHETHER OR**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

NOT THEY EXERCISE THEIR PARENTING TIMES; (10) NEITHER PARENT TO SPEAK NEGATIVELY ABOUT THE OTHER PARENT AND/OR THEIR SIGNIFICANT OTHERS; (11) EACH PARENT IS ALLOWED TO HAVE TWO WEEKS OF VACATION TIME WITH THE CHILDREN EACH YEAR WHICH CAN BE TAKEN IN EITHER TWO 1-WEEK BLOCKS, OR ONE 2-WEEK BLOCK, UPON 30 DAYS WRITTEN NOTICE TO THE OTHER PARENT. AT LEAST TEN DAYS PRIOR TO THE COMMENCEMENT OF THE VACATION, THE CUSTODIAL PARENT IS TO PROVIDE THE NON-CUSTODIAL PARENT WITH ITINERARY FOR THE ENTIRETY OF THE VACATION, INCLUDING BUT NOT LIMITED TO, DEPARTURE DATES/TIMES, FLIGHT NUMBERS, HOTEL NAMES AND LOCATIONS, AND RETURN FLIGHT NUMBERS, DATES AND TIMES; (12) A REVIEW HEARING IS SET FOR MAY 4, 2023 AT 8:30 AM IN DEPARTMENT 5 TO REVIEW HOW THE CHILDREN ARE ADJUSTING, THE PARTIES WORK IN CO-PARENTING COUNSELING AND EACH PARTY'S PROGRESS IN INDIVIDUAL COUNSELING. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS RULING REMAIN IN FULL FORCE AND EFFECT.

NO HEARING ON THIS MATTER 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.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**8. KIMBERLY DEVAUGHN v. MARK B. DEVAUGHN**

**PFL20180127**

The present review hearing is to assess the minor's progress in becoming accustomed to Stephanie Stilley and discuss the possibility of commencing reunification therapy between the minor and Respondent. Currently Petitioner has temporary sole legal and physical custody. On October 23, 2022, Respondent's request to begin supervised visits was denied, but Petitioner was ordered to contact Stephanie Stilley to complete the intake process for reunification therapy. The parties were ordered to equally share the cost of Ms. Stilley's fees. Ms. Stilley was to consult with the minor's individual therapist but ultimately the progression of the reunification process is to be determined by Ms. Stilley.

Minor's Counsel's Statement of Issues and Contentions and Request for Orders was filed on December 21<sup>st</sup>. To date, Ms. Stilley has conducted intake interviews with both parties. She is in the process of contacting the minor's therapist and then will speak directly with the minor. Given that the process is slowly moving forward, Minor's Counsel has requested a further review hearing set in 90-120 days with current orders to remain in place in the interim.

Petitioner also filed her declaration on December 21<sup>st</sup>. Petitioner is also requesting a continuance of the hearing for 90 days to allow Ms. Stilley the opportunity to speak with the minor. Petitioner would also like the court to address the issue of Ms. Stilley's fees at the next hearing date. Petitioner does not feel that she should be responsible for the fees as it is not her fault that reunification therapy is needed. Further, she is not in a position to pay the fees and she is often having to take time off work as she is solely responsible for taking the minor to his therapy and reunification therapy appointments. She also asks that the court address Respondent's request for sanctions at the continued hearing. She does not feel that sanctions are warranted as she has acted in good faith and abided by the court orders.

Respondent's Supplemental Declaration was filed on December 23<sup>rd</sup>, along with a supporting Declaration of Nicholas Musgrove. Respondent is requesting the following orders: (1) Joint legal custody; (2) Supervised visitation at Family Time in Cameron Park, and paternal grandparents may attend; (3) Supervised phone calls/video calls; (4) Respondent and paternal grandparents may attend the minor's public extracurricular activities; (5) Sanctions against Petitioner that are just and reasonable under the circumstances. Respondent maintains that despite the court order requiring the parties to share the costs of reunification with Ms. Stilley, Petitioner refused to pay her portion which caused the process to drag out until December when Respondent finally agreed to pay the remaining balance.

After reviewing the filings of the parties, the court finds it warranted to continue this matter for approximately 90 days until Ms. Stilley has had the opportunity to meet with the minor. Petitioner is admonished to ensure that she does not delay the reunification process or

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

hinder or delay Ms. Stilley's ability to meet with the minor and obtain the information she needs in any way. Ms. Stilley's requests for information or payment of fees are to be addressed promptly by both parties. Petitioner is ordered to pay Respondent \$875 no later than January 19<sup>th</sup> as reimbursement for his payment of her portion of Ms. Stilley's fees. The court was clear in its ruling on October 13<sup>th</sup> that the parties are to split Ms. Stilley's fees. The matter is set for review hearing on 4/6/2023, at 8:30 AM in Department 5. The parties are to file supplemental declarations and Minor's Counsel is to file a Statement of Issues and Contentions no later than 10 days prior to the hearing date. The court continues to reserve jurisdiction on Respondent's request for sanctions.

**TENTATIVE RULING #8: THE MATTER IS SET FOR REVIEW HEARING ON 4/5/2023 AT 8:30 AM IN DEPARTMENT 5. THE PARTIES ARE TO FILE SUPPLEMENTAL DECLARATIONS AND MINOR'S COUNSEL IS TO FILE A STATEMENT OF ISSUES AND CONTENTIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. THE COURT CONTINUES TO RESERVE JURISDICTION ON RESPONDENT'S REQUEST FOR SANCTIONS. PETITIONER IS ADMONISHED TO ENSURE THAT SHE DOES NOT DELAY THE REUNIFICATION PROCESS OR HINDER OR DELAY MS. STILLEY'S ABILITY TO MEET WITH THE MINOR AND OBTAIN THE INFORMATION SHE NEEDS IN ANY WAY. MS. STILLEY'S REQUESTS FOR INFORMATION OR PAYMENT OF FEES ARE TO BE ADDRESSED PROMPTLY BY BOTH PARTIES. PETITIONER IS ORDERED TO PAY RESPONDENT \$875 NO LATER THAN JANUARY 19<sup>TH</sup> AS REIMBURSEMENT FOR HIS PAYMENT OF HER PORTION OF MS. STILLEY'S FEES. THE COURT WAS CLEAR IN ITS RULING ON OCTOBER 13<sup>TH</sup> THAT THE PARTIES ARE TO SPLIT MS. STILLEY'S FEES.**

**NO HEARING ON THIS MATTER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**9. LAURA WOLCOTT V. OLIVER WOLCOTT**

**PFL20140730**

The matter is on calendar for a review of the parenting plan. On October 6, 2022, the court ordered Petitioner to have in person visitation with the minor supervised by Ms. Kent. If Petitioner did not wish to have Ms. Kent supervise, visits were suspended until the minors' therapist recommended in person visitation with another supervisor. The minors were to have telephone/video call contact with Petitioner as initiated by the minors and supervised by Respondent. Respondent was authorized to terminate the call if the call was emotionally abusive or detrimental to the minors. The court set a further review hearing for January 5, 2023.

Minors' Counsel filed a Statement of Issues and Contentions on December 21, 2022, recommending the current visitation orders remain in place and that Respondent be granted sole legal custody or final decision making if joint custody remains in place. The parties were served by mail and electronically on December 20, 2022.

Respondent filed a Responsive Declaration on December 23, 2022. Parties were served electronically on December 23, 2022. Respondent agrees with the recommendations of Minors' Counsel.

Petitioner filed a Reply to Minors' Counsel's Statement of Issues and Contentions on December 28, 2022. Parties were served by overnight delivery on December 28, 2022. Petitioner requests the matter be continued for 30-45 days as she has just reinitiated in person visits with the minors. Petitioner also requests there be a set schedule for telephone/video calls with the minors. Petitioner objects to any changes in the legal custody orders.

The court has read and considered the filings as outlined above. The court finds good cause to grant Petitioner's request to continue the review hearing, as the in person visits just recently resumed. The court grants Petitioner's request to set a schedule for telephone/video calls between the minors and Petitioner. The calls shall take place Tuesday, Thursday, and Saturday at 7:00 pm. The minors shall initiate the calls. The calls are to be monitored by Respondent. Respondent is authorized to terminate the calls if he has a good faith belief Petitioner is being emotionally abusive or the call is detrimental to the minors. The current order for joint legal custody remains in full force and effect.

All prior orders not in conflict with this order remain in full force and effect. Any Supplemental Declarations or updated Statement of Issues and Contentions are due at least 10 days prior to the next hearing. Petitioner shall prepare and file the findings and orders after hearing.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**TENTATIVE RULING #9: THE COURT FINDS GOOD CAUSE TO GRANT PETITIONER'S REQUEST TO CONTINUE THE REVIEW HEARING TO MARCH 16, 2023 AT 8:30 AM IN DEPARTMENT 5. THE COURT GRANTS PETITIONER'S REQUEST TO SET A SCHEDULE FOR TELEPHONE/VIDEO CALLS BETWEEN THE MINORS AND PETITIONER. THE CALLS SHALL TAKE PLACE TUESDAY, THURSDAY, AND SATURDAY AT 7:00 PM. THE MINORS SHALL INITIATE THE CALLS. THE CALLS ARE TO BE MONITORED BY RESPONDENT. RESPONDENT IS AUTHORIZED TO TERMINATE THE CALLS IF HE HAS A GOOD FAITH BELIEF PETITIONER IS BEING EMOTIONALLY ABUSIVE OR THE CALL IS DETRIMENTAL TO THE MINORS. THE CURRENT ORDER FOR JOINT LEGAL CUSTODY REMAINS IN FULL FORCE AND EFFECT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. ANY SUPPLEMENTAL DECLARATIONS OR UPDATED STATEMENT OF ISSUES AND CONTENTIONS ARE DUE AT LEAST 10 DAYS PRIOR TO THE NEXT HEARING. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**10. SHARLENE WHITING V. BRADLEY WHITING**

**PFL20180913**

Petitioner filed a Request for Order (RFO) on October 5, 2023. Respondent was served by mail on October 12, 2022. Petitioner requests the court set aside the September 15, 2022 orders modifying child support. Petitioner asserts in her declaration the court did not post its tentative rulings timely on September 14, 2022 and therefore, she was unable to request oral argument before 5:00 pm. Petitioner asserts the information the court relied on in calculating the child support order was incomplete and inaccurate.

Respondent filed a Responsive Declaration on December 19, 2022. Petitioner was served by mail on December 16, 2022. Respondent requests the court deny Petitioner's request to set aside the September 15, 2022 orders. Respondent asserts Petitioner has failed to provide any evidence to support her claim regarding the timeshare of the minors, in that Petitioner has attached blank calendars. Respondent asserts that not only has Petitioner failed to provide any supporting evidence for her request, but Petitioner has not identified any legal basis to set aside the orders. Respondent asserts Petitioner was aware of the tentative ruling procedures and did not timely request oral argument. Respondent asserts Petitioner has failed to present any new or different evidence or law that was not available to her at the time the court made its ruling. Respondent asserts if the court were to reconsider its orders, it would result in a lower support payment, rather than an increase in support.

The court finds Petitioner's request to set aside the September 15, 2022 order to be akin to a motion for reconsideration. The court find Petitioner has failed to plead any new or different facts or law that were not available to her at the time the court made the September 15, 2022 orders. The RFO heard on that date was a properly noticed motion. Petitioner filed a Responsive Declaration on July 26, 2022. Petitioner was aware of the tentative ruling procedure. The court does not find it credible that the tentative rulings posted on September 14, 2022 were not posted until after 2:15 pm as asserted by Petitioner. Petitioner has also stated no reason why she was unable to request oral argument prior to 5:00 pm on September 14, 2022. Therefore, the court denies the request to set aside the September 15, 2022 orders.

All prior orders remain in full force and effect. Petitioner shall prepare and file the Finding and Orders After Hearing.

**TENTATIVE RULING #10: THE COURT DENIES THE REQUEST TO SET ASIDE THE SEPTEMBER 15, 2022 ORDERS FOR THE REASONS SET FORTH ABOVE. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDING AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**11. TINA STRICKLAND V. MATTHEW STRICKLAND**

**PFL20190792**

Respondent filed a Request for Order (RFO) on October 7, 2022 requesting the court change child custody, child and spousal support orders, and set aside the request to enter default. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on November 3, 2022 and a review hearing on January 5, 2023. Respondent also filed a Response to the Dissolution Petition and Income and Expense Declaration the same day. Petitioner was served by mail on October 11, 2022. There is no Proof of Service showing the Department of Child Support Services, who is a party to the case, was served with the RFO.

Respondent is currently incarcerated at Mule Creek State Prison. Respondent requests that he have joint legal and physical custody of the minor. Respondent requests the court set child support to zero as of the date of his incarceration, October 1, 2021. Respondent also requests the court vacate the current child support arrears. Respondent makes the same request as to spousal support. Respondent requests the court set aside the request to enter default judgment filed on September 9, 2022. The default was entered on September 9, 2022. Respondent states the default should be vacated due to his incarceration.

Neither party appeared for the CCRC appointment on November 3, 2022. Respondent filed the appropriate orders to participate remotely, however, it appears Mule Creek State Prison did not receive the removal order. Therefore, Respondent was unable to participate. A non-appearance report was filed with the court and mailed to the parties on November 3, 2022.

Petitioner filed a Declaration in support of default on November 21, 2022. Respondent was served by mail on December 2, 2022. Petitioner asserts the Petition for Dissolution was filed and served on Respondent on November 1, 2019, nearly two years prior to his incarceration.

Respondent filed a Responsive Declaration on December 16, 2022. It was served by mail on December 15, 2022. It appears the Responsive Declaration addresses the request to enter default.

Petitioner filed a Responsive Declaration on December 20, 2022. Respondent was served by mail on December 19, 2022. Petitioner requests the court deny Respondent's request to set aside the default as well as Respondent's requests as to custody, child and spousal support. Petitioner asserts Respondent has failed to meet his burden under Code of Civil Procedure section 473(b), in that Respondent has failed to demonstrate the judgement was taken against him through his mistake, inadvertence, surprise, or excusable neglect. Petitioner asserts that even if Respondent had properly plead the request to set aside, the facts do not support setting aside the default. Respondent was properly served on November 1,

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

2019. He failed to file a Response. Respondent was not incarcerated until October 1, 2021. Additionally, he did file some responsive pleadings in the case, showing he was aware of the proceedings. Petitioner asserts the request to modify custody should be denied as Respondent remains incarcerated and has not overcome the Family Code section 3044 presumptions. Petitioner objection to any retroactive modification of child or spousal support.

The court has read and considered the filings as set forth above and makes the following findings and orders:

The court denies Respondent's request to set aside the default. Respondent has failed to meet his burden under Code of Civil Procedure 473(b). Although Respondent filed his motion in a timely fashion, Respondent has failed to show the default was entered against him through his mistake, inadvertence, surprise, or excusable neglect. Respondent was properly served November 1, 2019. Respondent failed to file a Response in the nearly two years prior to his incarceration. Respondent has not plead that this was through mistake, inadvertence, surprise, or excusable neglect, but rather merely because he is currently incarcerated. The request to set aside the default is denied. Petitioner may proceed with the default Judgment.

The court denies the request to modify the current child custody orders. The court finds Respondent's request to be premature. Respondent asserts he will be released from incarceration in July 2023. The court finds the current orders remain in the minor's best interest. Due to Respondent's incarceration, he is not available to take physical custody of the minor. Due to Respondent's incarceration, he is not readily available to make legal custody decisions for the minor. The court finds it would be unduly burdensome on Petitioner to navigate the Mule Creek State Prison system every time a legal custody decision needed to be made to contact Respondent and receive a response. Additionally, the Family Code section 3044 presumption may apply.

As to the requests to modify child and spousal support, the court finds the Department of Child Support Services (DCSS) is a party to those matters. There is no Proof of Service showing DCSS was properly served. Therefore, the court drops those requests from calendar due to lack of proper service.

All prior orders remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #11: THE COURT DENIES RESPONDENT'S REQUEST TO SET ASIDE THE DEFAULT. RESPONDENT HAS FAILED TO MEET HIS BURDEN UNDER CODE OF CIVIL PROCEDURE 473(B). PETITIONER MAY PROCEED WITH THE DEFAULT JUDGMENT. THE COURT DENIES THE REQUEST TO MODIFY THE CURRENT CHILD CUSTODY ORDERS. THE COURT DROPS THE REQUESTS TO MODIFY CHILD AND SPOUSAL SUPPORT DUE TO LACK OF PROPER**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**SERVICE. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**12. TODD FUJIWARA V. KRIS FUJIWARA**

**FPL20150424**

On October 13, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC), alleging Respondent has repeatedly violated the court orders which were issued on March 15, 2022.

Upon review of the file, the court finds that there is no proof of service indicating personal service of the contempt complaint on the Respondent. "Service of an order to show cause to bring a party into contempt is insufficient if made by mail on the party's attorney of record." Koehler v. Superior Court, 181 Cal.App.4th 1153, 1169 (2010). The court dismisses the OSC without prejudice for lack of service.

**TENTATIVE RULING #11 THE COURT DISMISSES THE ORDER TO SHOW CAUSE WITHOUT PREJUDICE FOR LACK OF PROPER SERVICE.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

January 5, 2023

8:30 a.m./1:30 p.m.

**12A. BASIL AREVALO V. ELISABETH AREVALO**

**22FL0061**

Respondent filed a Request for Order (RFO) on October 7, 2022 requesting temporary spousal support as well as attorney fees. Respondent filed an Income and Expense Declaration on September 29, 2022. Petitioner was personally served with the RFO on October 19, 2022. It does not appear Petitioner was served with Respondent's Income and Expense Declaration. Therefore, the court is unable to consider this document.

Respondent is requesting the court grant temporary spousal support in the amount of \$1,800 per month, though Respondent does not provide any basis for this amount. Respondent also requests the court award her attorney's fees, however, she does not request a specified amount nor include the FL-319 or FL-158.

Petitioner filed an Income and Expense Declaration on December 12, 2022. There is no Proof of Service for this document, therefore the court cannot consider it.

Respondent filed an updated Income and Expense Declaration on December 21, 2022. It was served electronically on Petitioner on December 21, 2022.

Parties appeared for the hearing on December 22, 2022. Respondent requested the court go forward with a temporary spousal support order and was willing to waive any defect in notice for Petitioner's Income and Expense Declaration. Respondent also made an oral request for attorney fees pursuant to Family Code 2031. Petitioner was not willing to waive the short notice of Respondent's Income and Expense Declaration and further asserted Respondent's Declaration was incomplete and inaccurate as she had failed to disclose additional income she receives. The court found there were too many discrepancies in both parties' Income and Expense Declarations to proceed and continued the request for spousal support and attorney fees to January 5, 2023. The court ordered parties to file and serve updated, accurate Income and Expense Declarations forthwith.

Petitioner filed an Income and Expense Declaration and Declaration on December 29, 2022. Respondent was personally served on December 29, 2022. Petitioner in his declaration asserts Respondent's December 21, 2022 filed Income and Expense Declaration fails to accurately disclose all of her income.

Respondent has not filed an updated Income and Expense Declaration since the December 22, 2022 hearing.

Parties are ordered to appear for the hearing.

**TENTATIVE RULING #12A: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**