

LAW & MOTION TENTATIVE RULINGS  
DEPARTMENT 5  
May 11, 2023  
8:30 a.m./1:30 p.m.

**11. DAMIAN BLOWERS V. NICOLLE ARCHER**

**22FL0922**

Petitioner filed a Request for Order (RFO) on March 7, 2023, requesting the court modify the current parenting plan orders to reduce Respondent's parenting time. Respondent was personally served on March 17, 2023. Petitioner asserts Respondent has been inconsistent in exercising her parenting time which has caused a regression in the minor's behaviors. Petitioner does not specify what Respondent's parenting time should be.

Respondent filed a Responsive Declaration on April 12, 2023. Petitioner was personally served on April 16, 2023. Respondent requests the current orders remain in place. Respondent also requests that Petitioner be responsible for transporting the minor to and from her parenting time, as she does not have reliable transportation, and that is what is causing the inconsistency. Respondent included the parties' messages as an exhibit as well as calendars showing the attempted calls and successful calls with the minor.

The court has read and considered the filings as set forth above. The court finds the parties were not referred to Child Custody Recommending Counseling (CCRC) when the RFO was filed, as they had attended within the prior six months. The court finds good cause to refer the parties to CCRC, as previously the parties were able to reach a full agreement and the court finds it requires the input from the CCRC counselor. The court on its own motion continues the matter and refers the parties to CCRC.

Pending the return from CCRC, all prior orders remain in full force and effect. Petitioner shall prepare and file the findings and orders after hearing.

**TENTATIVE RULING #11: ON ITS OWN MOTION, THE COURT CONTINUES THE MATTER AND REFERS THE PARTIES TO CCRC FOR AN APPOINTMENT ON 6/23/2023 AT 9:00 AM WITH BECKY NELSON AND SETS A FURTHER REVIEW HEARING FOR 8/10/2023 AT 1:30 PM IN DEPARTMENT 5. PENDING THE RETURN FROM CCRC, 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.**

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**12. JAMES VERANDES V. ALLISON VERANDES**

**PFL20170788**

On January 12, 2023, the court adopted its tentative ruling, and set a further review hearing for May 11, 2023 for an update on the parenting plan, co-parenting counseling, and individual counseling.

On May 1, 2023, Minors' Counsel filed a Statement of Issues and Contention (SIC). The parties were served by mail on May 1, 2023. Minor's Counsel spoke with both minors who have adjusted well to the new parenting plan and are adamant that want things to remain as they are now. Minors' Counsel also spoke with the parties' co-parenting counselor, who is discharging the parties due to their inability to engage in the co-parenting counseling and make progress, despite attending. Minors' Counsel also communicated with the parties via counsel. Respondent continues to raise concerns about Petitioner's parenting abilities, including his reliance on others to assist him and the minors' attendance at school. Petitioner believes the current parenting plan is working well and noted the minors have only been late for school a total of four times, twice during each parents' parenting time. Petitioner does acknowledge reliance on others help in areas where he believes he lacks the necessary skills to help the minors. Minors' Counsel is requesting the current orders remain in full force and effect.

Petitioner filed a Supplemental Declaration on May 2, 2023. Parties were served electronically on May 2, 2023. The court finds this is less than 10 days prior to the hearing and therefore, cannot consider this document.

The court has read and considered the SIC of Minors' Counsel and finds the current orders remain in the minors' best interests. All prior orders remain in full force and effect. Petitioner shall prepare and File the Findings and Orders After Hearing.

**TENTATIVE RULING #12: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.  
PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**13. JON GRGICH V. KIMBERLY GRGICH**

**PFL20190950**

Respondent filed a Request for Order (RFO) on March 10, 2023, requesting modification of child custody and parenting plan orders, as well as that the prior child custody counselor be excluded, and that the minor's school of origin be modified. Respondent is also requesting Family Code section 2030 attorney's fees and costs. Respondent concurrently filed an Income and Expense Declaration. This is a post judgement modification. Petitioner was served by mail with address verification on March 13, 2023.

Respondent raised numerous concerns in her RFO, namely that there has been a finding that Petitioner perpetrated domestic violence against Respondent in the last five years and therefore, Family Code section 3044 applies. As such, various presumptions apply. At the time of the prior Child Custody Recommending Counseling (CCRC) appointment, certain protocols, per Respondent, were not followed. As such, Respondent is requesting a referral to CCRC with a new counselor and for that counselor to take into consideration all the Family Code section 3044 presumptions and protocols. Further, Respondent asserts Petitioner has substance abuse issues which impact his ability to care for the minors. Respondent asserts in her declaration that Petitioner drinks to the point of passing out during his parenting time despite their being orders for neither parent to consume alcohol in the presence of the children. Respondent is also requesting to change the minor's school from Sutter's Mill Elementary to Rising Sun Montessori. Last, Respondent requests the court grant her \$2,500 in Family Code section 2030 attorney fees.

Petitioner filed a Responsive Declaration on April 20, 2023. Respondent was served by mail the same day. Petitioner requests the parties be referred to CCRC. Petitioner objects to the requested modifications to custody and parenting time. Petitioner objects to any change in the minor's school. Petitioner objects to the request for attorney's fees and makes a reciprocal request in the amount of \$2,000.

Petitioner failed to file and updated Income and Expense Declaration.

Respondent filed a Reply Declaration on April 27, 2023. Petitioner was served by mail on April 27, 2023. Respondent refutes various statements in Petitioner's Declaration as hearsay and falsehoods. Respondent requests the court deny Petitioner's request for attorney's fees as improper as he did not file a noticed motion and failed to file an Income and Expense Declaration nor a declaration addressing the factors required. Respondent had included 51 pages of exhibits in her Reply.

The court has reviewed its Judgement and Order after trial from the November 11, 2020 trial. The court found Respondent had met her burden to establish Family Code section 3044 presumptions applied as to three specific incidents. Two of the incidents occurred in 2017 and

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as such, are beyond the five-year limitation for Family Code 3044 presumptions. The latest incident occurred on June 10, 2019 which is within the last five years. Therefore, the court finds the presumptions of Family Code section 3044 remain applicable.

The court notes, as it did in November 2020, the parties have stipulated to joint legal custody and, eventually, joint physical custody, despite the Family Code section 3044 presumption. The parties have stipulated to this arrangement from November 2020 through their stipulated judgement in December 2022.<sup>1</sup>

The court finds good cause to refer the parties to CCRC with a different counselor. Parties are to attend CCRC separately per Family Code section 3181. The counselor is to take into consideration the Family Code section 3044 presumptions, and what, if any, steps Petitioner has taken to overcome the presumptions. School choice will be included as an issue in CCRC.

Parties are ordered to appear on the request for Family Code section 2030 attorney's fees.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #13: PARTIES ARE ORDERED TO APPEAR ON THE REQUEST FOR FAMILY CODE SECTION 2030 ATTORNEY'S FEES.**

**THE COURT REFERS THE PARTIES TO CCRC FOR AN APPOINTMENT ON 6/15/23 AT 9:00 AM WITH ADY LANGER AND A FURTHER REVIEW HEARING ON 8/3/2023 AT 1:30 PM IN DEPARTMENT 5. PARTIES ARE TO ATTEND CCRC SEPARATELY PER FAMILY CODE SECTION 3181. THE COUNSELOR IS TO TAKE INTO CONSIDERATION THE FAMILY CODE SECTION 3044 PRESUMPTIONS, AND WHAT IF ANY STEPS PETITIONER HAS TAKEN TO OVERCOME THE PRESUMPTIONS. SCHOOL CHOICE WILL BE INCLUDED AS AN ISSUE IN CCRC.**

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<sup>1</sup> The court notes Respondent refers to the judgment as have been entered in December of 2023 in her moving papers. Given that is a future date, the court notes this to be a typographical error.

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**14. RICHARD TAYLOR V. EMMA TAYLOR**

**23FL0276**

Petitioner filed a Request for Order (RFO) on April 10, 2023, along with an Order Shortening Time (OST) requesting the matter be set on an expedited basis, as Respondent has been non-responsive and was evading service. The court granted the OST and set the RFO for a hearing on May 11, 2023 and shortened service to April 28, 2023. The court allowed Respondent until May 5, 2023 to file a Responsive Declaration.

In the RFO, Petitioner is requesting property control of the former marital residence. Respondent has voluntarily moved out of the residence; therefore, Petitioner is requesting temporary exclusive use and possession of the former marital residence. Petitioner is agreeable to allowing Respondent to enter the home to gather the rest of her personal items and any agreeable community property items that she may want to take, with at least 48 hours' notice, a civil standby, and for Respondent to only bring one other person. Petitioner is also requesting the court order Respondent to remove the home located at 3850 Archwood Road out of Respondent's separate trust and transfer title to Husband and Wife with both having 50% interest until the court can determine the characterization of the property to ensure both parties' interest in the Archwood home is secured in the event either party passes prior the conclusion of these proceedings.

Petitioner asserts Respondent breached her fiduciary duty by emptying the parties joint Bank of America account, which had contained \$30,000, emptying the joint Ally account of \$51,420.68, withdrawing \$113,272.20 from the parties joint Money Metal Depository account, and taking silver coins valued at approximately \$10,000. Petitioner requests the court order Respondent to transfer the entire \$204,692.88 to Petitioner's attorney's trust account until an accounting and characterization of the funds can be completed. Petitioner is also requesting an accounting of any expenditure of the funds and the remaining balance be turned over to Petitioner's counsel. Petitioner requests the court order Respondent complete a list of all accounts in her name or to which she has access, including identifying which accounts the funds were deposited into, along with account statements for each account from January 1, 2023 to current. Petitioner is requesting sanctions of \$5,000 for Respondent's actions in this matter under Family Code 271 as well as sanctions under Family Code section 1101 for breach of fiduciary duty.

Respondent filed a Responsive Declaration on May 8, 2023. Petitioner was served electronically the same day. The court notes this is late, as the court had authorized Respondent to file a Responsive Declaration until May 5, 2023. Therefore, the court has not considered this filing.

The court grants Petitioner's requests for exclusive use and control of the former marital residence. Respondent may enter the home to gather the remainder of her personal property

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items and any agreeable community property items with at least 48 hours' notice. Respondent may only bring one other individual to assist. Parties may request a civil standby.

The court grants Petitioner's request to remove the Archwood home, located at 3850 Archwood Road from Respondent's separate trust, and transfer title to Husband and Wife jointly pending final property division.

The court grants Petitioner's request for Respondent to return the entire amount transferred from the parties' joint accounts, \$204,692.88, to Petitioner's attorney's trust account until an accounting and characterization of the finds can be completed. Respondent shall provide an accounting of any expenditure of the funds and turn over the remaining balance if funds have been spent. Respondent is ordered to provide Petitioner a complete list of all accounts in her name or which she has access to, including identifying which account the finds were deposited into, along with account statements for each account from January 1, 2023 to current.

The court finds the issue of breach of fiduciary duty will require testimony and reserves that issue until the time of trial. The court also reserves on the request for Family Code section 271 and 1101 sanctions until the time of trial.

Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #14: THE COURT GRANTS PETITIONER'S REQUESTS FOR EXCLUSIVE USE AND CONTROL OF THE FORMER MARTIAL RESIDENCE. RESPONDENT MAY ENTER THE HOME TO GATHER THE REMAINDER OF HER PERSONAL PROPERTY ITEMS AND ANY AGREEABLE COMMUNITY PROPERTY ITEMS WITH AT LEAST 48 HOURS' NOTICE. RESPONDENT MAY ONLY BRING ONE OTHER INDIVIDUAL TO ASSIST. PARTIES MAY REQUEST A CIVIL STANDBY. THE COURT GRANTS PETITIONER'S REQUEST TO REMOVE THE ARCHWOOD HOME, LOCATED AT 3850 ARCHWOOD ROAD FROM RESPONDENT'S SEPARATE TRUST, AND TRANSFER TITLE TO HUSBAND AND WIFE JOINTLY PENDING FINAL PROPERTY DIVISION. THE COURT GRANTS PETITIONER'S REQUEST FOR RESPONDENT TO RETURN THE ENTIRE AMOUNT TRANSFERRED FROM THE PARTIES' JOINT ACCOUNTS, \$204,692.88, TO PETITIONER'S ATTORNEY'S TRUST ACCOUNT UNTIL AN ACCOUNTING AND CHARACTERIZATION OF THE FINDS CAN BE COMPLETED. RESPONDENT SHALL PROVIDE AN ACCOUNTING OF ANY EXPENDITURE OF THE FUNDS AND TURN OVER THE REMAINING BALANCE IF FUNDS HAVE BEEN SPENT. RESPONDENT IS ORDERED TO PROVIDE PETITIONER A COMPLETE LIST OF ALL ACCOUNTS IN HER NAME OR WHICH SHE HAS ACCESS TO, INCLUDING IDENTIFYING WHICH ACCOUNT THE FUNDS WERE DEPOSITED INTO, ALONG WITH ACCOUNT STATEMENTS FOR EACH ACCOUNT FROM JANUARY 1, 2023 TO CURRENT. THE COURT FINDS THE ISSUE OF BREACH OF FIDUCIARY DUTY WILL REQUIRE TESTIMONY AND RESERVES THAT ISSUE UNTIL THE TIME OF TRIAL. THE COURT ALSO RESERVES ON THE REQUEST FOR FAMILY CODE SECTION 271 AND**

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**1101 SANCTIONS UNTIL THE TIME OF TRIAL. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**15. SAMANTHA ALVEREZ V. ZACHEUS FASS (INTERESTED PARTY: DONNA ALVAREZ)**

**PFL20170702**

Interested Party filed a Request for Order (RFO) on February 24, 2023, requesting grandparent visitation. Respondent was personally served on April 25, 2023 with only an FL-300. Interested Party filed a Proof of Service, which does not state who was served. It also states the person was only served with an FL-300.

The court finds this service was deficient under Code of Civil Procedure section 1005. Therefore, the court drops this matter from calendar.

Neither Petitioner nor Respondent have filed a Responsive Declaration.

**TENTATIVE RULING #15: THE COURT FINDS SERVICE WAS DEFICIENT UNDER CODE OF CIVIL PROCEDURE SECTION 1005 AND DROPS THE MATTER FROM CALENDAR.**

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**16. SARAH COOPER V. JESSE COOPER**

**PFL20200753**

Respondent filed a Request for Order (RFO) requesting to modify permanent spousal support on March 7, 2023. This is a post judgment request for modification. Petitioner was personally served on March 13, 2023. Respondent asserts he is unable to continue paying permanent spousal support as previously ordered. Respondent filed an Income and Expense Declaration on February 22, 2023. It was personally served on Petitioner on March 17, 2023.

Petitioner filed a Responsive Declaration and Income and Expense Declaration on May 4, 2023. There is no Proof of Service for these documents, and therefore, the court cannot consider them. Additionally, these documents are late filed, and even if there had been a Proof of Service, the court could not consider them.

The court finds as this is a request to modify permanent spousal support, the court must take evidence on the Family Code section 4320 factors. The parties are ordered to appear to select Mandatory Settlement Conference and Trial dates.

**TENTATIVE RULING #16: THE PARTIES ARE ORDERED TO APPEAR TO SELECT MANDATORY SETTLEMENT CONFERENCE AND TRIAL DATES.**

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**17. TAVIA STEPHEN V. WILLIAM FAGUNDES, III**

**22FL1075**

On December 23, 2022, Petitioner appeared for the hearing on her request for a Domestic Violence Restraining Order. The court granted her request and issued a Domestic Violence Restraining Order as well as made temporary custody orders granting Petitioner sole legal and physical custody and allowing Respondent supervised parenting time. The court referred the parties to Child Custody Recommending Counseling (CCRC) for an appointment on January 9, 2023 and a review hearing on March 9, 2023. The court ordered parties to file and serve Income and Expense Declarations at least 10 days prior to the March 9, 2023 hearing date.

Respondent was served with the referral to CCRC both electronically on December 28, 2022, and by mail on December 23, 2022.

Only Petitioner appeared for CCRC on January 9, 2023. As such a single parent report was filed on January 10, 2023. A copy of the report was mailed to the parties on January 10, 2023.

Petitioner's former counsel filed a Declaration in Support of Petitioner's Request for Attorney's Fees on March 1, 2023. Respondent was served by mail on February 28, 2023.

Both parties appeared for the March 9, 2023 hearing. The court granted the parties request to continue the matter and stayed its tentative ruling pending the continued hearing date. The parties were rereferred to CCRC, for an appointment on March 24, 2023 and a review hearing on May 11, 2023. Counsel for Petitioner offered to provide both parties with Income and Expense Declaration forms. The court reserved jurisdiction on the requests for child and spousal support as well as attorney's fees.

Counsel for Petitioner filed Proof of Service showing both Petitioner and Respondent were served with the FL-150, Income and Expense Declarations. Respondent was served electronically on March 16, 2023. Petitioner was served by mail on March 16, 2023.

Neither party appeared for CCRC on March 24, 2023.

Neither party has filed an Income and Expense Declaration.

Family Code section 6344(b) allows "[i]n any action in which the petitioner is the prevailing party and cannot afford to pay for the attorney's fees and costs, the court shall, if appropriate based on the parties' respective abilities to pay, order that the respondent pay petitioner's attorney's fees and costs for commencing and maintaining the proceeding. Whether the respondent shall be ordered to pay attorney's fees and costs for the prevailing petitioner, and what amount shall be paid, shall be determined based upon (1) the respective

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incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay."

The court denies Petitioner's request for child and spousal support as Petitioner has failed to file an Income and Expense Declaration.

The court also denies Petitioner's request for attorney's fees pursuant to Family Code section 6344 (b). Both parties have failed to file Income and Expense Declarations, and therefore, the court is unable to ascertain the "respective incomes and needs of the parties and any factors affecting the parties' respective abilities to pay." The court notes the parties have failed to file their respective Income and Expense Declarations despite being ordered to do so on March 9, 2023, and Petitioner's counsel providing them the blank FL-150 forms on March 16, 2023. The court has previously continued this matter to allow the parties an opportunity to file the necessary forms. The request for attorney's fees remains denied.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #17: THE COURT DENIES PETITIONER'S REQUEST FOR CHILD AND SPOUSAL SUPPORT AS PETITIONER HAS FAILED TO FILE AN INCOME AND EXPENSE DECLARATION. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY'S FEES PURSUANT TO FAMILY CODE SECTION 6344 (B). BOTH PARTIES HAVE FAILED TO FILE INCOME AND EXPENSE DECLARATIONS, AND THEREFORE, THE COURT IS UNABLE TO ASCERTAIN THE "RESPECTIVE INCOMES AND NEEDS OF THE PARTIES AND ANY FACTORS AFFECTING THE PARTIES' RESPECTIVE ABILITIES TO PAY." ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER 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.**

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**18. TIFFANY WHITAKER V. VANESSA SUMNER (OTHER PARENT: ZACHARY PLOGHOFT)**

**22FL0802**

Petitioner filed a Request for Order (RFO) on March 7, 2023, the third RFO filed by Petitioner seeking grandparent visitation. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on April 5, 2023 and a review hearing on May 11, 2023. Proof of Service filed on March 24, 2023, shows Respondent was served with a Summons and the other requisite documents on March 15, 2023. The court is unaware of what Summons was issued in this matter. Further, the Proof of Service filed on March 24, 2023, shows Other Parent was personally served on March 21, 2023.

Only Petitioner appeared at CCRC on April 5, 2023. As such a single party report was filed on April 13, 2023. A copy was mailed to the parties on April 13, 2023.

Respondent filed a Responsive Declaration on May 8, 2023. There is no Proof of Service for this document, and therefore, the court cannot consider it. Moreover, it is not timely filed pursuant to Code of Civil Procedure section 1005, and therefore, even if there was a Proof of Service, the court could not consider it.

The court finds it needs to take evidence prior to being able to reach a decision on the merits. The parties are ordered to appear for the hearing.

**TENTATIVE RULING #18: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**