

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

October 27, 2022

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

1. AMOR TORRES V. ROBERT TORRES

PFL20100332

Petitioner filed a Request for Order (RFO) requesting enforcement of the parties June 7, 2022 Stipulation, clarification of the December 21, 2021 orders, and attorney fees. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on September 2, 2022. Petitioner asserts Respondent has failed to comply with the provisions of the parties' Stipulation. Petitioner requests \$35,000 in Family Code section 2030 attorney fees as well as \$15,000 in Family Code section 271 attorney fees.

Respondent filed a Responsive Declaration and Income and Expense Declaration on October 17, 2022. Petitioner was served electronically on October 14, 2022. Respondent requests the court deny Petitioner's RFO, as he has been working in good faith to comply with the Stipulation. Respondent states he has been able to secure a Home Equity Line of Credit which will enable him to comply with the terms of the Stipulation. However, to complete the financing Respondent must submit the final Judgment decree or title showing the property is solely in his name. Respondent asserts his counsel has attempted to meet and confer with Petitioner's counsel to resolve these issues but has been unsuccessful. Respondent also asserts the issue of the December 21, 2021 clarification of orders could and should be resolved through a meet and confer and amended Findings and Orders After Hearing, as the parties are in agreement about the necessary changes. Respondent objects to the court ordering attorney fees as requested by Petitioner.

The Department of Child Support Services (DCSS) filed a Responsive Declaration on October 24, 2022. Parties were served by mail on October 21, 2022. DCSS requests the issues of child support be continued to the child support calendar to be heard by the child support Commissioner pursuant to Family Code section 4251.

The court needs additional information prior to ruling on the matter. Parties are ordered to appear and meet and confer on the issues.

TENTATIVE RULING #1: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING. PARTIES ARE DIRECTED TO MEET AND CONFER.

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2. EHREN THOMAS ELLENBURG V. KRISTIN ELLENBURG

PFL20150460

On July 19, 2022 Petitioner filed a Request for Order (RFO), requesting the court suspend Respondent's parenting time as well as change venue pending completion of an investigation by the El Dorado County Sheriff's Department. Petitioner filed an Order Shortening Time (OST) requesting the matter be heard on an expedited basis. On July 19, 2022, the court granted the OST, set a hearing for August 25, 2022, and directed Petitioner to serve Respondent on or before July 28, 2022.

Respondent was personally served with the RFO on August 4, 2022.

Respondent filed a Responsive Declaration as well as three additional Declarations on August 12, 2022. Petitioner was served electronically on August 12, 2022. Respondent objected to Petitioner's requested orders. Respondent requested the court order the minor be returned to Respondent's custody in California where Respondent has located treatment for the minor's mental health. Respondent also opposed the request to change venue to Wyoming.

The parties appeared for hearing on August 25th. At that time the court denied Petitioner's request for a change of venue. The parties were referred to Child Custody Recommending Counseling (CCRC) with the direction that CCRC was to obtain additional information regarding the investigation being conducted by the El Dorado County Sheriff's Department and any investigation by Child Protective Services. The court set a review hearing for October 27th. In the interim, the court allowed Respondent only therapeutically supervised phone contact with the minor 1 time per week for a period of no more than 15 minutes. Phone calls were ordered to be initiated by the therapist and only at the therapist's discretion.

The court finds good cause to refer the parties to Child Custody Recommending Counseling (CCRC). The court needs additional information about the pending investigation from the El Dorado County Sheriff's Department as well as any Child Protective Services investigation. Petitioner and the minor may participate via phone. The court continues the review hearing and reserves on Petitioner's requests. Pending the continued hearing date Respondent shall have supervised phone and/or video call contact with the minor a minimum of one time a week for 15 minutes.

As ordered, the parties attended CCRC on September 14, 2022. A report was issued on October 13th and sent to the parties the next day. Neither party has filed a declaration in response to the CCRC report. After a review of the filings of the parties and the CCRC report, the court has determined that the recommendations contained in the CCRC report are in the best interest of the child. Therefore, the recommendations of the CCRC report are adopted with the following modifications: Provision 2 of the Physical Custody section shall be amended to read - "Mother shall have no contact with the child until such time El Dorado County Sheriff's Office has completed its investigation." Provision 3 of the Physical Custody section shall be amended to read - "In addition, Mother is to have no contact with the child until it is deemed to be therapeutically indicated by the child's treatment plan. Father is to communicate with Mother quarterly to inform her on the status of the therapist's opinion regarding therapeutically supervised contact between Mother and the child. If the therapist deems therapeutically supervised contact to be within the best interest of the child prior to the next quarterly update, Father is to notify

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Mother as soon as the therapist's recommendation is made. If at any time the therapist no longer feels therapeutically supervised contact is in the best interest of the minor, the therapist may discontinue such contact."

TENTATIVE RULING #2: THE RECOMMENDATIONS OF THE CCRC REPORT ARE ADOPTED WITH THE FOLLOWING MODIFICATIONS: PROVISION 2 OF THE PHYSICAL CUSTODY SECTION SHALL BE AMENDED TO READ - "MOTHER SHALL HAVE NO CONTACT WITH THE CHILD UNTIL SUCH TIME EL DORADO COUNTY SHERIFF'S OFFICE HAS COMPLETED ITS INVESTIGATION." PROVISION 3 OF THE PHYSICAL CUSTODY SECTION SHALL BE AMENDED TO READ - "IN ADDITION, MOTHER IS TO HAVE NO CONTACT WITH THE CHILD UNTIL IT IS DEEMED TO BE THERAPEUTICALLY INDICATED BY THE CHILD'S TREATMENT PLAN. FATHER IS TO COMMUNICATE WITH MOTHER QUARTERLY TO INFORM HER ON THE STATUS OF THE THERAPIST'S OPINION REGARDING THERAPEUTICALLY SUPERVISED CONTACT BETWEEN MOTHER AND THE CHILD. IF THE THERAPIST DEEMS THERAPEUTICALLY SUPERVISED CONTACT TO BE WITHIN THE BEST INTEREST OF THE CHILD PRIOR TO THE NEXT QUARTERLY UPDATE, FATHER IS TO NOTIFY MOTHER AS SOON AS THE THERAPIST'S RECOMMENDATION IS MADE. IF AT ANY TIME THE THERAPIST NO LONGER FEELS THERAPEUTICALLY SUPERVISED CONTACT IS IN THE BEST INTEREST OF THE MINOR, THE THERAPIST MAY DISCONTINUE SUCH CONTACT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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3. HEATHER LINDERMAN V. ROCKY J. BATTEN

PFL20110766

On August 23, 2022, Respondent filed a Request for Order (RFO) seeking permanent orders for sole legal and physical custody of the minor as well as a move away order which would allow him to move to South Dakota with the minor and an order allowing him to take the minor to Dallas, Texas from December 16, 2022 to December 23, 2022 to participate in the All-American Bowl. According to his moving papers, Respondent was given sole legal and sole physical custody on a temporary basis in October, and then again in November, of 2018. He states that over the course of the past four years Petitioner has failed to comply with the court orders regarding counseling and visitation with the minor. Moreover, he alleges she continues to involve him in custody matters which is mentally and emotionally detrimental and on at least one occasion she became physically abusive. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing was set for the present date. The RFO and all other required documents were personally served on August 28th.

Petitioner did not file a response to the RFO, nor did she participate in the CCRC appointment. Respondent and the minor did, however, attend the CCRC appointment on September 16, 2022. Because only one party appeared, CCRC was unable to make any recommendations but she did note that Respondent's requests seemed reasonable in light of the circumstances.

Travel to Dallas to Participate in the All-American Bowl

Finally, participation in the All-American Bowl appears to be a tremendous opportunity for the minor. He has indicated his desire to participate and potentially advance his goal of becoming a professional football player. As such, Respondent's request to allow the minor to participate in the All-American Bowl and travel to Texas with the minor from December 16, 2022 to December 23, 2022, is granted.

Custody and Move Away

Move away cases involve "the most serious decisions a family law court is required to make and should not be made in haste." (*In re Marriage of Seagondollar*, (2006) 139 Cal. App. 4th 1116.) Thus, a full adversarial hearing must precede such a decision. *Id.* In keeping with the procedural requirements, it is necessary to have a hearing on the issues of custody and move away prior to making the requested orders. The parties are ordered to appear to choose trial and MSC dates.

TENTATIVE RULING #3: RESPONDENT'S REQUEST TO ALLOW THE MINOR TO PARTICIPATE IN THE ALL-AMERICAN BOWL AND TRAVEL TO TEXAS WITH THE MINOR FROM DECEMBER 16, 2022 TO DECEMBER 23, 2022, IS GRANTED. PARTIES ARE ORDERED TO APPEAR TO CHOOSE TRIAL AND MSC DATES ON THE ISSUES OF CUSTODY AND MOVE-AWAY.

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4. JASON BRUBAKER STEVENS V. ANGELA MARIE STEVENS

21FL0076

On August 30, 2022, Respondent filed a Request for Order (RFO) seeking orders for custody, visitation, child support, spousal support, attorney's fees, and early distribution of community funds. Concurrently therewith she filed her Income and Expense Declaration and a Declaration of Lilka B. Martinez in Support of Respondent's Request for Attorney's Fees and Costs. All documents were served via U.S. mail the same day. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was set for October 27th.

Respondent is requesting early distribution of \$10,000 of the community property estate, subject to reallocation, which would allow her to move out of the family home where she currently resides with Petitioner and their children. Additionally, she requests Petitioner contribute \$7,500 to her attorney's fees and costs pursuant to Family Code Section 2030. With regard to a parenting plan, she proposes Petitioner to have the children every other Friday after school through Sunday evening, and one overnight a week from Wednesday after school to Thursday before school. She requests guideline child and spousal support back to the date of filing of the petition.

The parties attended CCRC on September 19th and a report was issued on September 21st. According to CCRC, the parties were able to reach full agreements regarding how to proceed when they have arranged separate households.

Petitioner filed his Responsive Declaration to Request for Order and his Income and Expense Declaration on October 18th. He consents to the custody and visitation agreements listed in the CCRC report and as stated in the agreement signed by the parties which is attached to his declaration. He further consents to guideline child support. He requests that each party pay their own legal fees and asks the court to consider the large tax debt the parties are carrying, on which he continues to make payments. Finally, he asks for an order terminating the current month-to-month lease between the parties as of December 1, 2022 or the date of divorce, whichever is sooner. He asks the court to order each party to arrange for their own living situation, and Petitioner and Respondent not to live at the same residential address. While he disputes Petitioner's request for a \$10,000 disbursement, he is agreeable to disbursing half of what is currently in savings (\$4,000), but no more than that.

Respondent has not filed a declaration in response to either the CCRC report or Petitioner's responsive declaration.

Custody and Visitation

The court finds the agreements contained in the CCRC report and the stipulation of the parties, (attached to Petitioner's response) are in the best interests of the minor children and hereby adopts them as the orders of the court.

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Support

The court has equitable power to deny enforcement of a support order when equity requires it. (*Jackson v. Jackson* (1975) 51 Cal. App. 3d 363.) In keeping with California's equitable approach to support orders, courts have found that in home support during a period of living together can constitute support sufficient to act as a credit against the amount owed in monetary terms. (*Helgestad v. Vargas* (2014) 231 Cal. App. 4th 719, 735.) Under this approach, the payor has the burden to show actual support has occurred. (*Id.*)

Here, Petitioner and Respondent have been living together since the filing of the petition in 2021. During that time, both parties admit that Petitioner has been the main wage earner supporting the family. At the time of filing the RFO, the living situation remained the same and, to the court's knowledge, it continues to remain the same as of this ruling. It is undisputable that while living together Petitioner has provided a home and support for the children and Respondent. In light of the support being given to Respondent and the children while residing with Petitioner, the court finds it equitable to issue the orders of support as springing orders which shall take effect 30 days after Respondent is no longer cohabitating with Petitioner and the custody arrangement agreed to has taken effect.

In accordance with the foregoing, and utilizing the figures as outlined in the attached DissoMaster report, the court finds that spousal support per the Alameda formula is \$1,090 per month. The court adopts the attached DissoMaster report and orders Petitioner to pay Respondent \$1,090 per month as and for spousal support, payable on the 1st of the month until further order of the court or legal termination. This order is to go into effect 30 days from the date the parties are no long cohabiting.

Also utilizing the attached DissoMaster report, the court orders Petitioner to pay Respondent \$1,943 per month as and for child support due and payable on the 1st of the month until further order of the court or until legal termination. This order is to go into effect 30 days from the date the parties are no longer cohabiting.

Property Disbursement and Property Control

While "[t]he responding party may request relief related to the orders requested in the moving papers...unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300)..." Cal. Rule Ct. § 5.92(g)(2). Petitioner's requests for a move out order and for each party to arrange for their own living situation at separate addresses are outside the scope of Respondent's original RFO. To seek the requested orders Petitioner will need to file an RFO on the matter.

Regarding Respondent's request for a distribution of \$10,000 of the community property, subject to reallocation, Petitioner has agreed to a distribution of half of the amount currently in savings. Without further information on the characterization of the remaining assets of the parties, the court cannot agree to distribute any more than that. As such, Respondent is awarded \$2,435 subject to redistribution pending trial on property distribution.

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Attorney's Fees

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." (*IRMO Keech* (1999) 75 Cal. App. 4th 860, 866.) 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* (2009) 172 Cal. App. 4th 238, 251.) 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. (*IRMO Falcone & Fyke* (2012) 203 Cal. App. 4th 964; 975.) The court must consider the impact of the fee award on the payor taking into account any orders for support. (*IRMO Keech, supra*, at 860.)

In reviewing each party's respective Income and Expense Declaration, it appears that Petitioner has little disposable income. The analysis under Family Code § 2030, is not only if that party has the funds to pay for his attorney, but if the party has funds to pay for both attorneys. Here, the court finds that ordering Petitioner to pay for Respondent's attorney's fees when he seemingly cannot afford an attorney of his own would be inequitable. As such, the court denies Respondent's request for attorney's fees.

TENTATIVE RULING #4: THE COURT ADOPTS THE AGREEMENTS CONTAINED IN THE CCRC REPORT AS THE ORDERS OF THE COURT. THE COURT ADOPTS THE ATTACHED DISSOMASTER REPORT AND ORDERS PETITIONER TO PAY RESPONDENT \$1,090 PER MONTH AS AND FOR SPOUSAL SUPPORT, PAYABLE ON THE 1ST OF THE MONTH UNTIL FURTHER ORDER OF THE COURT OR LEGAL TERMINATION. THIS ORDER IS TO GO INTO EFFECT 30 DAYS FROM THE DATE THE PARTIES ARE NO LONG COHABITING. THE COURT FURTHER ORDERS PETITIONER TO PAY RESPONDENT \$1,943 PER MONTH AS AND FOR CHILD SUPPORT DUE AND PAYABLE ON THE 1ST OF THE MONTH UNTIL FURTHER ORDER OF THE COURT OR UNTIL LEGAL TERMINATION. THIS ORDER IS TO GO INTO EFFECT 30 DAYS FROM THE DATE THE PARTIES ARE NO LONGER COHABITING. RESPONDENT IS AWARDED \$2,435 SUBJECT TO REDISTRIBUTION PENDING TRIAL ON PROPERTY DISTRIBUTION. RESPONDENT'S REQUEST FOR ATTORNEY'S FEES IS DENIED. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

ATTORNEY (NAME AND ADDRESS): EDC Court California ATTORNEY FOT:	TELEPHONE NO:	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
DISSOMASTER REPORT 2022, Monthly		CASE NUMBER: <div style="font-size: 1.2em; font-family: cursive;">21FL0076</div>

Input Data	Father	Mother	Guideline (2022)	Cash Flow Analysis	Father	Mother
Number of children	0	2	Nets (adjusted)	Guideline		
% time with Second Parent	50%	0%	Father	7,337 Payment (cost)/benefit	(3,033)	3,033
Filing status	MFJ->	<-MFJ	Mother	317 Net spendable income	4,304	3,350
# Federal exemptions	1*	3*	Total	7,654 % combined spendable	56.2%	43.8%
Wages + salary	5,265	0	Support (Nondeductible)	Total taxes	1,098	83
401(k) employee contrib	0	0	CS Payor	Father # WHA	1	0
Self-employment income	500	400	Presumed	1,943 Net wage paycheck/mo	4,273	0
Other taxable income	2,670	0	Basic CS	1,943 Comb. net spendable	7,654	
Short-term cap. gains	0	0	Add-ons	0 Proposed		
Long-term cap. gains	0	0	Presumed Per Kid	Payment (cost)/benefit	(3,033)	3,033
Other gains (and losses)	0	0	Child 1	742 Net spendable income	4,304	3,350
Ordinary dividends	0	0	Child 2	1,201 NSI change from gdl	0	0
Tax. interest received	0	0	SS Payor	Father % combined spendable	56.2%	43.8%
Social Security received	0	0	Alameda	1,090 % of saving over gdl	0%	0%
Unemployment compensation	0	0	Total	3,033 Total taxes	1,098	83
Operating losses	0	0	Proposed, tactic 9	# WHA	1	0
Ca. operating loss adj.	0	0	CS Payor	Father Net wage paycheck/mo	4,273	0
Roy, partnerships, S corp, trusts	0	0	Presumed	1,943 Comb. net spendable	7,654	
Rental income	2,670	0	Basic CS	1,943 Percent change	0.0%	
Misc ordinary tax. inc.	0	0	Add-ons	0 Default Case Settings		
Other nontaxable income	0	0	Presumed Per Kid			
New-spouse income	0	0	Child 1	742		
Adj. to income (ATI)	0	0	Child 2	1,201		
SS paid other marriage	0	0	SS Payor	Father		
Ptr Support Pd. other P'ships	0	0	Alameda	1,090		
CS paid other relationship	0	0	Total	3,033		
Health ins.	0	0	Savings	0		
Qual. Bus. Inc. Ded.	0	0	No releases			
Itemized deductions	0	0				
Other medical expenses	0	0				
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				



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5. JENNIFER COWELS V. BENJAMIN COWELS

PFL20180808

On August 11, 2022, Petitioner filed a Request for Order (RFO) requesting the court order sanctions against Respondent pursuant to Code of Civil Procedure section 128.7. The matter was set for a hearing on October 27, 2022.

Subsequently, on September 13, 2022, Petitioner refiled the same RFO with a request for an Order Shortening Time. The court granted the Order Shortening Time and set the RFO for a hearing on September 29, 2022.

Parties appeared for the hearing on September 29, 2022, where the court addressed the September 13, 2022 filed RFO. Therefore, the court finds the August 11, 2022 filed RFO to be moot.

TENTATIVE RULING #5: THE MATTER IS DROPPED FROM CALENDAR AS IT IS MOOT.

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6. JESSICA ETHLEEN ORMAN V. HARLAND WADE HARMON

PFL20180755

On August 25, 2022, Petitioner filed a Request for Order (RFO) seeking approval to move out of state with the parties' minor children. The RFO was served via U.S. mail on September 8th and personal service on October 10th. Respondent filed an untimely response on October 24th. Given its tardiness, the court has not read or considered it.

In August of 2019, Petitioner was granted a temporary move-away order allowing her and the minors to move to Texas. She and the children have lived in Texas since then. According to Petitioner, the children are enrolled in school, extracurricular activities and have established friendships in Texas. Respondent has not seen or had contact with the children since 2019 and there is a 10-year criminal protective order in place barring contact between him and the children. Petitioner is now requesting a permanent order to allow the minors to remain living in Texas with the minors.

"A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child." Fam. Code Section 7501(a). In assessing the rights and welfare of the child, each case must be evaluated on its own merits. (*In re Marriage of Burgess* (1999) 13 Cal. 4th 25, 37-40.). "Among the factors that the court ordinarily should consider when deciding whether to modify a custody order in light of the custodial parent's proposal to change the residence of the child are the following: the children's interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children's relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody." (*Marriage of LaMusga*, (2004) 32 Cal. 4th 1072, 1098-1101.)

In her moving papers, Petitioner has certainly established that the continuity of the present living and custody arrangement is in the best interest of the minor children. They have had no contact with Respondent for three years, during which, they moved to Texas and began building ties to their community in that state. For the foregoing reasons, the court grants Petitioner's request for an order allowing her to permanently move the children to Texas.

TENTATIVE RULING #6: PETITIONER'S REQUEST FOR AN ORDER ALLOWING HER TO PERMANENTLY MOVE THE CHILDREN TO TEXAS IS GRANTED. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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7. LINDA FULLERTON V. LARRY FULLERTON

PFL20210556

On August 24, 2022, Respondent filed a Request for Order (RFO) requesting orders for spousal support and attorney's fees. There is no Proof of Service on file for this document.

The matter is dropped from the court's calendar for lack of service.

TENTATIVE RULING #7: THE MATTER IS DROPPED FROM CALENDAR FOR LACK OF SERVICE.

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8. MOISA TELLEZ V. ALFREDO TELLEZ

PFL20190308

On June 28, 2022, Petitioner filed a Request for Order (RFO) seeking custody and visitation orders, as well as additional orders related to Respondent's alcohol consumption. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 28, 2022, and the matter was set for hearing on September 8, 2022. All required documents were electronically served on July 13, 2022.

As ordered, the parties attended CCRC on July 28th and a report was issued containing several recommendations made by the CCRC counselor.

In accordance with California Rule of Court, Rule 3.1308, and Local Rule 8.05.07, the court issued its tentative ruling on September 7th. Having received no request for hearing, the court adopted its tentative ruling on September 8th. At that time, the court ruled as follows: The court adopted the recommendations of the CCRC report as the order of the court with modifications. Respondent to have parenting time on the 1st, 3rd, and 4th weeks of every month from Friday evening (6:30 pm) through Monday morning (9:00 am), and on the 2nd week of every month from Sunday morning (9:00 am) through Monday morning (9:00 am). Petitioner to have parenting time at all other times; (2) Petitioner may request Respondent to submit to a 72-hr EtG test at the end of Respondent's parenting time. If Petitioner requests Respondent to test, the test shall be completed by the close of business on the Monday following Respondent's parenting time weekend. If the test results are negative, Petitioner shall be responsible for the cost of the test. If the test results are positive Respondent shall be responsible for the cost of the test. If Respondent has not had any positive tests for a consecutive 90-day period, then Petitioner may no longer request Respondent to test. A diluted test shall be deemed a positive result.

The same day as the hearing on Petitioner's RFO, Respondent filed an RFO asking the court to vacate its September 8th. Respondent filed a Proof of Service on September 15, 2022 indicating that Petitioner was personally served on September 11, 2022. In his RFO Respondent asks the court to vacate its September 8th ruling and reinstitute the custody orders that were in place prior to that. However, later in the RFO he asks the court to adopt the recommendations contained in the CCRC report without the additional modifications. He states that he does not have an alcohol problem and argues that Petitioner's allegations are unfounded. He further indicates that he believes reducing his parenting time would be detrimental to the children as he is very close with them. Citing Petitioner's concerns about schooling, he states that he was having internet connectivity problems which affected their schoolwork but those problems have since been resolved.

On October 7, 2022 Respondent filed an additional declaration in support of his RFO. He states that he was unrepresented at the time of the September 8, 2022 hearing and did not know he was supposed to call for a hearing. He argues if the reason for his reduced parenting time is the school performance of the children, then his parenting time should not be reduced during periods when the children are not in school. He notes that Petitioner is often away for work for 24-28 hour shifts. He would like the opportunity to have parenting time when this occurs. Finally, he would like Petitioner to

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communicate with him directly via email, text, or the Talking Parents App instead of using the older child as a go-between. He states this request was made during CCRC but left out of the report.

Petitioner filed her Responsive Declaration to Request for Order and a Declaration of Lilka B. Martinez in Support of Petitioner's Responsive Declaration on October 18, 2022. Both were served electronically the same day. Petitioner objects to the court reaching the issue on the merits as she was not properly served. Even if the court does reach the merits of the motion, Petitioner argues that Respondent has failed to meet his burden of providing any new facts or new law that could not have been brought before the court prior to its September 8, 2022 ruling. Finally, Petitioner requests Family Code § 271 sanctions in the amount of \$1,275.

Petitioner asks the court not to reach the RFO on its merits due to improper service. Family Code § 215 does call for personal service, but only when the motion is for reconsideration of a permanent order. Here, the court's September 8th ruling does not explicitly state that it is a permanent order as to custody. Where the order fails to use the words final, permanent or judgment it is to be treated as a temporary order. (*Montenegro v. Diaz* (2001) 26 Cal. 4th 249.) Thus, the motion was subject to the service rules of a regular RFO.

Service of an RFO must be made pursuant to California Rules of Court Rule 1.21 which mandates "[w]henever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented." Here, Respondent is well aware of Petitioner's representation and in fact, her attorney agreed to accept service electronically. Respondent refused and insisted on serving Petitioner directly. His doing so constitutes improper service and as such, the RFO must be denied for lack of proper service.

Even if personal service were warranted in this case, delivery to a third person does not validly effectuate personal service. (*Rosenthal v. Garner* (1983) 142 Cal. App. 3d 891.) Service made at a party's residence is only effectuated if left with some person of 18 years or older. Cal. Civ. Pro. § 1011(b). Thus, regardless of who served the papers on Petitioner's minor daughter, personal service was defective.

Even if the court were to reach the merits of the motion, it would still be denied. When a party seeks an amendment or revocation of a court order, the party so requesting must show "...what new or different facts, circumstances, or law are claimed to be shown." Cal. Civ. Pro. § 1008. Respondent's RFO seeks an order revoking the court's prior order and thus falls within the purview of Section 1008. That said, Respondent has not provided any new or different facts or circumstances on which the court should rely to revoke its prior order. Respondent states that there were several issues he brought up in CCRC but were left out of the report. The CCRC report was mailed to Respondent on August 30th. Any alleged deficiencies in the CCRC report may have been addressed by way of filing a supplemental declaration or calling for oral argument. Respondent further argues that he was unaware of the tentative ruling procedure and the need to call for oral argument. The court does not find this statement to be credible. Respondent was served with the Notice of Tentative Ruling on July 19, 2022. Regardless of Respondent's status as pro per, he is held to the same standard as represented parties and subject to the same rules. (*Lombardi v. Citizens Nat. Trust etc. Bank* (1955) 137 Cal. App. 2d 206, 208-209.) Without any new or different information, the court sees no reason to revoke or amend its prior ruling.

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Family Code Section 271 vests the court with authority to sanction a party where the actions of that party frustrate the policy of the law to promote settlement of litigation and, where possible, reduce the cost of litigation by encouraging cooperation between the parties and attorneys, as well as deter the filing of meritless motions. Here, Respondent filed a motion without any basis in law or fact thereby requiring Petitioner to unnecessarily incur attorney's fees for having to respond to the RFO. However, the court finds it must also take into consideration the party's ability to pay when making an award of sanctions. Respondent has not filed an Income and Expense Declaration. Consequently, the court does not have the requisite information necessary to grant Petitioner's request for sanctions. Therefore, the court reserves on the request for Family Code section 271 sanctions and continues the request for Family Code section 271 sanctions to January 19, 2023 at 8:30 in Department 5. Respondent is ordered to file and serve an Income and Expense Declaration at least 10 days prior to the next hearing. Any Supplemental Declarations are due at least 10 days prior to the next hearing date.

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 #8: RESPONDENT'S MOTION IS DENIED FOR LACK OF PROPER SERVICE. EVEN IF THE COURT WERE TO REACH THE MERITS OF RESPONDENT'S MOTION, IT WOULD BE DENIED FOR FAILURE TO SHOW NEW OR DIFFERENT FACTS OR CIRCUMSTANCES THAT WOULD WARRANT A CHANGE OR REVOCATION OF THE COURT'S SEPTEMBER 8TH RULING, THE COURT RESERVES ON THE REQUEST FOR FAMILY CODE SECTION 271 SANCTIONS AND CONTINUES THE REQUEST FOR FAMILY CODE SECTION 271 SANCTIONS TO JANUARY 19, 2023 AT 8:30 IN DEPARTMENT 5. RESPONDENT IS ORDERED TO FILE AND SERVE AN INCOME AND EXPENSE DECLARATION AT LEAST 10 DAYS PRIOR TO THE NEXT HEARING. ANY SUPPLEMENTAL DECLARATIONS ARE DUE AT LEAST 10 DAYS PRIOR TO THE NEXT HEARING DATE. 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.

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DEPARTMENT 5

October 27, 2022

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

9. ROSA MALLORY V. MICHAEL MALLORY

PFL20110553

On February 14, 2022, Respondent filed a Request for Order (RFO) requesting a change to custody and parenting time. Petitioner was served with the RFO by mail on February 16, 2022.

Respondent requested the court modify custody and parenting time to allow him to be involved in the minors lives and decisions. Respondent requested to begin the visitation process again to be reunified with the minors. Respondent asserted he had been cleared through his mental health evaluation. Respondent included four exhibits with his declaration, including a letter from Keith Rivera, a Licensed Clinical Social Worker, who conducted a Mental Health Status Exam for Respondent.

On April 14, 2022, the court adopted its tentative ruling, findings good cause to continue the matter for the parties to attend CCRC. The court set a review hearing for July 7, 2022 to review the CCRC report.

On May 11, 2022, Petitioner filed a Responsive Declaration requesting the court deny Respondent's requested orders. Respondent was served by mail on May 6, 2022. According to Petitioner Respondent had failed to comply with the prior order to participate in a 730 evaluation, had not visited or had contact with the minors since approximately 2018, and failed to comply with the court order to use the talkingparents.com application for all communication regarding the minors. Petitioner requested the court affirm its prior order for a 730 Evaluation, with additional provisions to be assessed. Petitioner further requested the court suspend the then current order for professionally supervised visitation pending a return on the 730 Evaluation, as the minors had not had contact with Respondent in over three years. If and when contact is resumed, Petitioner requested it take place in a therapeutic setting under the guidance of a reunification counselor.

The court issued a tentative ruling on the RFO, which it adopted at the July 7th hearing. At that time the court adopted the recommendations of the CCRC report with the following modifications: The court adopted the recommendation for the minors to participate in individual therapy as its order. The court temporarily suspended the order for professionally supervised visitation. The court further modified the order for Respondent to complete a 730 Evaluation to include in the issues to be addressed whether it would be in the best interests of the minors to have renewed contact with Respondent, given his lengthy absence. All other prior orders as to custody and communication between the parties not in conflict remained in full force and effect. The court sets a review hearing for return of the 730 Evaluation on October 27th.

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The court is not in receipt of the 730 Evaluation and neither party has filed a declaration addressing the status thereof. Parties are ordered to appear to provide the court an update on the status of the 730 Evaluation and, if it has not taken place, whether a continued review hearing is necessary.

TENTATIVE RULING #9: PARTIES ARE ORDERED TO APPEAR TO PROVIDE THE COURT AN UPDATE ON THE STATUS OF THE 730 EVALUATION AND, IF IT HAS NOT TAKEN PLACE, WHETHER A CONTINUED REVIEW HEARING IS NECESSARY.

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

10. RYAN WISE V. ALLISON WHITE

PFL20200713

On September 1, 2022, counsel for Respondent filed a Notice of Motion and Motion to be Relieved as Counsel. The motion was served via U.S. Mail the same day. Respondent has not opposed the motion.

Proper service of the request has been demonstrated. Respondent's Attorney has shown sufficient reasons why the motion should be granted and why the motion was brought under CCP section 284(2). The motion is granted, and the court will sign a proposed order once submitted. Respondent's Attorney is relieved upon filing of the proof of service for the signed order.

TENTATIVE RULING #10: THE MOTION TO BE RELIEVED AS COUNSEL IS GRANTED, AND THE COURT WILL SIGN A PROPOSED ORDER ONCE SUBMITTED. RESPONDENT'S ATTORNEY IS RELIEVED UPON FILING OF THE PROOF OF SERVICE FOR THE SIGNED ORDER.

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

11. SANDRA GRANADE V. TIMOTHY GRANADE

PFL20190133

Respondent filed two Requests for Orders (RFO) on August 15, 2022. The first RFO requests the court not enter Judgement as proposed by Sandra Granade on or about August 12, 2022. Respondent requests the court enter his proposed Judgment which is attached as Exhibit A. Respondent requests sanctions in the amount of \$2,500 pursuant to Family Code section 271. Respondent also requests the remaining issues of the case be set for trial, including the date of marriage, date of separation, length of marriage, division of community property assets and debts, offsets, and reimbursements, as well as attorney fees and sanctions. The second RFO requests the court modify the current child support and spousal support orders.

Upon review of the court file, the court has been unable to locate of Proof of Service for either RFO.

On September 20, 2022, the Department of Child Support Services (DCSS) filed a notification regarding Payment of Support Substituted Payee. Parties were served by mail on September 20, 2022.

On October 7, 2022, DCSS filed a Responsive Declaration to the RFO to modify child and spousal support. DCSS requests all support issues be set on the DCSS calendar to be heard by the child support Commissioner pursuant to Family Code section 4251.

Petitioner filed a Responsive Declaration to the RFO requesting the court not enter the Judgement, on October 7, 2022. Petitioner also filed a Responsive Declaration addressing Respondent's request to modify support on October 7, 2022. Respondent and DCSS were served by mail on October 7, 2022. Petitioner requests attorney fees for having to respond to the RFO. Petitioner asserts Respondent did not follow the proper procedure for objecting to the Judgment, per California Rule of Court 3.1590 (j). Petitioner requests the court not adopt Respondent's proposed Judgment as it does not meet the criteria of including language from Family Code sections 3048, 4065, and 4320. Petitioner objects to Respondent's request for sanctions. Petitioner also requests the court deny Respondent's request to modify either child or spousal support. Petitioner also requests attorney fees for having to respond to this RFO as well.

The court finds the issues raised in each RFO relate to the trial and ruling Commission Shepherd presided over in November last year. Commissioner Shepherd will need to hear argument on the issues raised. Parties are ordered to appear at 10:00 am in Department 5.

TENTATIVE RULING #11: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING AT 10:00 IN DEPARTMENT 5.

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October 27, 2022

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

12. SARAH CRAID V. RYAN CRAIG

PFL20170099

Order to Show Cause

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on September 27, 2022. The parties are ordered to appear for arraignment.

On October 20, 2022, parties appeared for arraignment of Respondent's August 22, 2022 filed Order to Show Cause and Affidavit for Contempt (OSC). This is a re-filing of his May 16, 2022 which he argues was dropped from calendar due to "a result of mistaken dates and a lapse of due process." There is a Proof of Service on file (filed September 30th) indicating that an "OSC re contempt" was served via personal service on September 28th. Petitioner acknowledged she had been personally served with the OSC.

Lack of Due Process

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on May 16, 2022. The OSC was dropped due to a lack of service. On August 23, 2022 Respondent filed an RFO arguing that the OSC was improperly dropped from calendar due to "a result of mistaken dates and a lapse of due process." He requests the court set aside its May 16, 2022 order and put the OSC back on calendar on a shortened timeline. He further requests the court sanction Mr. Dosh and Petitioner \$1,000 for their failure to call for a hearing when they received the July 13, 2022 tentative ruling. Respondent re-filed the OSC on August 22, 2022 and the parties were ordered to appear on October 20th. Given the re-filing of the OSC, the court declines to rule on the issue as it is now moot. Respondent's request for sanctions is denied. A party has no obligation to call for a hearing if that party does not oppose the tentative ruling.

Custody and Visitation

On June 22, 2022, Respondent filed a Request for Order (RFO) requesting orders to amend the current custody and visitation schedule, attorney's fees in the amount of \$2,000, an order shortening time, an order to modify the order for 730 evaluation, and confirmation of the trial date. Concurrently therewith, Respondent filed an Application for Order Shortening Time and Order. His application was denied and the matter was set for the regular law and motion calendar. It does not appear that this RFO was ever served.

On July 11, 2022, Respondent filed an Amended Request for Order which looks to be identical to the June 22nd RFO. This RFO was served via U.S. Mail on July 12, 2022. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 21, 2022, and a hearing on the RFO was set for September 8, 2022.

Respondent requested the following parenting time schedule: Sundays from 7pm through Wednesdays at 8pm; an additional 7-day block of time during summer with 7 days-notice given to Petitioner, which may be used in conjunction with the existing 7-day block of vacation time but total time with Respondent is not to exceed 14 consecutive days; and an additional 7 days for consecutive or non-consecutive use that may be scheduled 14 days in advance, as a makeup for Petitioner's failure to

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agree to an expansion of Respondent's parenting time. Respondent requested the court affirm the trial date set for August 2, 2022. He sought \$2,000 in attorney's fees and costs as a result of Petitioner's delaying the case and refusing to expand the parenting time schedule. Finally, he requested to have the RFO heard on a shortened basis with a hearing scheduled for June 23, 2022.

The day after the filing of the amended RFO, the parties filed a stipulation to continue the trial to November and continue the Mandatory Settlement Conference to October. The parties further stipulated that if the 730 Evaluation has not begun by October 1, 2022, or the evaluator will not have the report completed at least 10 days prior to trial, then the trial and MSC dates will once again be continued.

On August 18, 2022, Petitioner filed a Responsive Declaration to Request for Order. It was served the same day. Petitioner requested the following orders: (1) Respondent's request for summer visitation to be denied as the issue is moot. Summer is over and the children start school prior to the scheduled hearing date; (2) Custody and visitation schedule to remain the same pending trial, which is already set; (3) Respondent's request to confirm the trial date be denied as moot given that Respondent stipulated to continued trial and mandatory settlement conference dates; and (4) the request to modify the order for a 730 evaluation to also be denied as moot pursuant to the stipulation filed by the parties. Petitioner requested Respondent pay his own attorney's fees, and asked that the court issue sanctions in the amount of \$2,500 pursuant to Family Code section 271.

The parties attended CCRC as scheduled. A report was issued and mailed to the parties on August 29, 2022. The parties were unable to reach an agreement at CCRC. However, the CCRC counselor did recommend that Respondent be given an additional week of parenting/vacation time during the summer break; he also recommended that a Court Appointed Special Advocate (CASA) be appointed to address and monitor the educational needs of the children.

On August 31, 2022, Respondent filed Respondent's Reply Declaration to Petitioner's Responsive Declaration/Reply to CCRC Report. This was served electronically on September 2, 2022. Respondent feels the CCRC report is "effectively worthless" and does not provide an accurate picture of the situation.

On August 6, 2022, Petitioner filed a Reply Declaration to CCRC Report and Request to Continue Hearing. Therein, she asked the court to continue the September 8, 2022 hearing due to the parties' late receipt of the CCRC report.

At the hearing on September 8, 2022, the court ruled on all matters addressed in the RFO but continued the issues of custody and visitation to join with other matters already set for the present date.

After reviewing the filings of the parties and the CCRC report, the court denies Respondent's request to amend the current custody and visitation schedule. Given the present filings, the court sees no change in circumstances that would warrant a change in the custody and visitation schedule at this time. Further, the issue is set for trial in November. Respondent's request for a change in custody and visitation is denied. All prior orders not in conflict with this order are to remain in full force and effect.

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

Vexatious Litigant

On September 6, 2022, Petitioner filed an RFO seeking to have Respondent deemed a vexatious litigant pursuant to California Code of Civil Procedure Sections 391.1-391.8. Such a finding would preclude Respondent from filing any new litigation in court without first obtaining leave of the presiding judge, and disobedience of the order would be punishable as contempt. From October 14, 2021 through August 22, 2022, Respondent filed twelve RFOs/OSCs, ten of which were filed in the four-month period leading up to Petitioner's RFO. On October 14, 2022 Petitioner filed Petitioner's Supplemental Declaration Regarding Request to Find Respondent a Vexatious Litigant, wherein she recounts an additional four RFOs, and an OSC all filed in the month and a half since she filed her initial RFO. The RFO was served on September 7, 2022 and the supplemental declaration (both filed and unfiled copies) was served on October 14, 2022.

Respondent filed his Responsive Declaration to Request for Order on October 14, 2022. It was served the same day. Respondent argues that he has filed only substantive and relevant motions and pleadings and requested documentation relevant to the case. He claims that the present motion was filed with the intent to harass him. He requests \$3,000 in sanctions against Petitioner.

A vexatious litigant is one who has repeatedly, in pro per, relitigated final determinations against him or her or who has repeatedly, in pro per, filed unmeritorious motions, pleadings, or other papers, or engaged in frivolous tactics solely intended to harass or cause delay. (Cal. Civ. Pro. §391(b); *See also PBA, LLC v. KPOD, Ltd* (2003)112 Cal. App. 4th 965.) Where a party is deemed a vexatious litigant, the court may enter an order "...which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice, or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court." Cal. Civ. Pro. § 391.7(a). "For purposes of this section, 'litigation' includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code...for any order." (Cal. Civ. Pro. § 391.7(d).) Historically, as few as three motions on the same issue, all of which seek the same relief that has already been denied, may be sufficient to have a party deemed a vexatious litigant. (*See Goodrich v. Sierra Vista Reg'l Med. Ctr.* (2016) 246 Cal. App. 4th 12600.)

In the matter at hand, Respondent has filed 18 RFOs/OSCs in total (the court notes an additional one filed on October 14, 2022). 16 have been filed in the past five months. Respondent has repeatedly sought to litigate the issue of the 730 Evaluation. Respondent stipulated to the evaluation, then filed a request to have the stipulation and order modified, which was denied, then he stipulated to an evaluation for a second time, then for a second time he filed a request to have the stipulation again modified which was again denied. Respondent filed an OSC on May 16, 2022, which was dropped from calendar. He then re-filed the OSC on August 22, 2022 but then the next day, filed an RFO requesting the court set aside the May 16, 2022 ruling since refiled the OSC would be "unduly and unnecessarily burdensome to him and this court..." This argument was made though he was aware that he had already refiled the OSC. And, when the re-filed OSC was set to be heard prior to the RFO asking the court to re-set the OSC on shortened time, he didn't withdraw the RFO. Instead, the re-filed OSC was heard and

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then a week later, at the expense of time and resources of Petitioner and the court, the court ruled on the moot RFO. Likewise, Respondent has filed requests to have the court's September 8, 2022 and September 12, 2022 rulings set aside, yet again seeking to have issues already ruled upon reconsidered. According to the court's file Respondent has filed eight Orders to Show Cause (more than the six cited by Petitioner). Given the sheer number of filings, numerous denials, and repeated requests to relitigate the same issues, it is inarguable that Respondent's actions have risen to the level of harassment and caused Petitioner to unnecessarily incur a large amount of attorney's fees. Therefore, the court finds it proper to rule Respondent a vexatious litigant.

Respondent is prohibited from making any in propria persona filing of any new litigation, petition, application, or motion in the State of California without first obtaining leave of the presiding justice or presiding judge where the litigation is proposed to be filed. Disobedience of this order may be punishable as contempt of court. The court stresses that this order applies to any filings made in propria persona and does not apply to filings made by counsel should Respondent become represented by a licensed attorney.

Respondent's request for sanctions is denied.

TENTATIVE RULING #12: THE PARTIES ARE ORDERED TO APPEAR FOR ARRAIGNMENT ON THE OSC. RESPONDENT'S REQUEST FOR A CHANGE IN CUSTODY AND VISITATION IS DENIED. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. THE COURT FINDS IT PROPER TO RULE RESPONDENT A VEXATIOUS LITIGANT. RESPONDENT IS PROHIBITED FROM MAKING ANY IN PROPRIA PERSONA FILING OF ANY NEW LITIGATION, PETITION, APPLICATION OR MOTION IN THE STATE OF CALIFORNIA WITHOUT FIRST OBTAINING LEAVE OF THE PRESIDING JUSTICE OR PRESIDING JUDGE WHERE THE LITIGATION IS PROPOSED TO BE FILED. DISOBEDIENCE OF THIS ORDER MAY BE PUNISHABLE AS CONTEMPT OF COURT. THE COURT STRESSES THAT THIS ORDER APPLIES TO ANY FILINGS MADE IN PROPRIA PERSONA AND DOES NOT APPLY TO FILINGS MADE BY COUNSEL SHOULD RESPONDENT BECOME REPRESENTED BY A LICENSED ATTORNEY. RESPONDENT'S REQUEST FOR SANCTIONS IS DENIED. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.