

Respondent filed an ex parte application for emergency custody orders on December 11, 2023. Respondent requested the court order the minors to remain in therapy, the court terminate Petitioner's parenting time, Petitioner to undergo a psychological evaluation, and to reappoint Minors' Counsel.

On December 12, 2023, the court denied the request to terminate Petitioner's parenting time but granted the request for the minors to remain in therapy, and reappointed Minors' Counsel Sarah Kukuruza. The court denied all other requests and reaffirmed the prior CCRC and review hearing dates. Respondent filed an RFO on December 12, 2023, making the same requests as set forth in the ex parte application.

Upon review of the court file, there is no Proof of Service showing Petitioner was served with the ex parte orders or the RFO. There is also no indication Minors' Counsel was provided notice of the appointment by the court.

Both parties and the minors participated in the CCRC appointment on January 12, 2024. The parties were able to reach two agreements. A report with the parties' agreements and further recommendations was filed on January 19, 2024. Copies were mailed to the parties the same day.

Respondent filed a Declaration regarding the CCRC report, which the court deems to be a Reply Declaration, on February 22, 2024. Petitioner was served electronically on February 22, 2024. Respondent renews the requests as set forth in his December 12, 2023 RFO. Respondent asserts Petitioner's motivation for custody is to obtain child support. Respondent further asserts Petitioner has misled the court as well as DCSS and the CCRC counselor. Respondent objects to the recommendation that the parties participate in co-parenting counseling.

The parties appeared for hearing on the RFO on February 29, 2024, at which time Minor's Counsel requested a continuance. As of this writing, the court has not received a Statement of Issues and Contentions from Minors' Counsel.

The court orders parties to appear for the hearing.

**TENTATIVE RULING #1: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING ON RESPONDENT'S DECEMBER 12, 2023 FILED RFO.**

**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.**

## 2. CYNTHIA TOVERA V. HARRY TOVERA

PD2785

Petitioner filed a Request for Order (RFO) on October 18, 2023 seeking a variety of orders regarding Respondent's retirement as well as attorney's fees and costs. The RFO was personally served on November 4, 2023. It was originally set to be heard on January 25<sup>th</sup> but the parties stipulated to continue the matter to the present date.

On November 20<sup>th</sup> Respondent filed his Responsive Declaration to Request for Order, a Declaration of Roger G. Kosla, Esq. in Support of Attorney's Fees Under Family Code § 271 and Points and Authorities in Support of Sanctions Being Raised in Responsive Declaration. All of the aforementioned were mail served on November 16<sup>th</sup>.

Respondent filed a Supplemental Declaration of Harry Tovera on January 10, 2024. It was mail served on January 3<sup>rd</sup>. Petitioner filed an Updating and Reply Declaration and an Income and Expense Declaration on January 16<sup>th</sup>. Both were electronically served on January 15<sup>th</sup>.

Petitioner filed and served an additional Updating Declaration and her Income and Expense Declaration on April 3<sup>rd</sup>.

Petitioner filed her initial RFO requesting (1) A *Gillmore* election regarding Petitioner's community property interest in Respondent's pension pursuant to *In re Marriage of Gillmore*, 29 Cal. 3d 418 (1981), along with a request to set an evidentiary hearing as may be needed to make such an election; (2) An order directing Respondent to fully cooperate with Petitioner to provide all documents and information necessary or helpful for Petitioner to calculate her monthly *Gillmore* amount; (3) An order directing Respondent to notify Petitioner 30 days prior to the date Respondent retires for any reason; (4) Any other orders as just and appropriate related to Petitioner's request for a *Gillmore* election; and (5) Attorney's fees in an amount to be determined/pled at the conclusion of litigation on the RFO in accordance with paragraph 17 of the Stipulation and Order for Division of CSRS Pension Benefits filed with the court on February 9, 2001.

In Petitioner's April 3<sup>rd</sup> declaration she amended her requested orders and is now requesting the following: (1) Respondent to be ordered to provide Petitioner copies of all correspondence he receives from the Office of Personnel Management until the date they have begun paying Petitioner her one-half share; (2) The court to determine the interim *Gillmore* award for the period of time between the date of filing the RFO and the date benefits are received, to include both prospective orders and a confirmation of arrears and payment plan on arrears; (3) Respondent to be ordered to file an Income and Expense Declaration and to provide Petitioner's attorney with the information demanded pursuant to El Dorado County Local Rule 8.03.03(E); (4) In the event Respondent has not provided the requested information by the hearing date Petitioner requests sanctions pursuant to local rule 8.03.04 in an amount to be determined by the court but no less than \$200; (5) The court to reserve jurisdiction to impose prevailing party attorney's fees for amounts incurred as a result of litigation on this RFO; and (6) A return hearing in 4-5 months for receipt of the QDROs.

Respondent opposed the requests made in the initial RFO and asked that the court award him attorney's fees in the amount of \$5,000 pursuant to Family Code § 271. According to Respondent, he has already retired and therefore the issue of a *Gillmore* election is entirely moot as he has already retired and *Gillmore* is only applicable where the plan participant works past the age of retirement. Respondent also requests prevailing party fees under the QDRO. Respondent has not filed a response to the new requests brought up in Petitioner's Updating Declaration.

Respondent is ordered to comply with his disclosure obligations pursuant to El Dorado County Local Rule 8.03.03(E). He is also ordered to provide Petitioner copies of all correspondence received from the Office of Personnel Management until Petitioner has begun receiving her share of the retirement. The court reserves jurisdiction on each party's requests for attorney's fees and sanctions and on the issue of a *Gillmore* election. A return hearing is set for 9/19/2024 at 8:30 am in Department 5 for receipt of the QDROs. Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #2: RESPONDENT IS ORDERED TO COMPLY WITH HIS DISCLOSURE OBLIGATIONS PURSUANT TO EL DORADO COUNTY LOCAL RULE 8.03.03(E). HE IS ALSO ORDERED TO PROVIDE PETITIONER COPIES OF ALL CORRESPONDENCE RECEIVED FROM THE OFFICE OF PERSONNEL MANAGEMENT UNTIL PETITIONER HAS BEGUN RECEIVING HER SHARE OF THE RETIREMENT. THE COURT RESERVES JURISDICTION ON EACH PARTY'S REQUESTS FOR ATTORNEY'S FEES AND SANCTIONS AND ON THE ISSUE OF A *GILLMORE* ELECTION. A RETURN HEARING IS SET FOR 9/19/2024 AT 8:30 AM IN DEPARTMENT 5 FOR RECEIPT OF THE QDROS. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**3. DALE ANDREWS V. NATALIE WOODS ANDREWS**

**SFL20180191**

On November 28, 2023, the parties filed a Stipulated Order After Settlement Conference wherein the parties agreed to maintain the then current spousal support orders and a review hearing was set for the present date on that issue only.

Respondent filed and served her Income and Expense Declaration on April 4, 2024. The court does not have any new filings from Petitioner.

The parties are ordered to appear for the hearing. Petitioner is ordered to bring his Income and Expense Declaration.

**TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.  
PETITIONER IS ORDERED TO BRING HIS INCOME AND EXPENSE DECLARATION.**

Petitioner filed a Request for Order on January 22, 2024, requesting post-judgment modification of spousal support. Petitioner concurrently filed an Income and Expense Declaration. Proof of Service shows service by mail on Respondent's counsel as well as by mail on Respondent on February 8, 2024. The court notes this is a request for post-judgment modification, and as such, Family Code section 215 applies which mandates personal service on the party, not counsel. Cal. Fam. Code § 215. Petitioner has not complied with the requirements of Family Code § 215.

Respondent filed a Responsive Declaration, as well as a Declaration in Support, and Income and Expense Declaration on April 5, 2024. Proof of Service shows Petitioner was served on April 5, 2024. The court finds these documents to be late filed pursuant to Civil Procedure section 1005(b) which states all opposition papers are to be filed at least nine court days before the hearing date. Section 12c states, "[w]here any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, *excluding the day of the hearing* as provided by Section 12." Cal. Civ. Pro. § 12c. Section 1005(b) in conjunction with Section 12c would have made April 4<sup>th</sup> the last day for filing. Therefore, the responsive declaration is late filed and has not been considered by the court.

The court drops the matter from calendar due to the lack of proper service.

**TENTATIVE RULING #4: THE MATTER IS DROPPED FROM CALENDAR DUE TO THE LACK OF PROPER SERVICE.**

**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.**

Respondent filed a Request for Order (RFO) on February 1, 2024, requesting the court make orders as to child custody, the parenting plan, and orders regarding ADHD medication for the minor Jaxon. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on March 8, 2024, and a review hearing on April 18, 2024. Proof of Service shows Petitioner was served on January 7, 2024, which the court notes pre-dates the filing of the RFO. The court further notes the Proof of Services was signed on February 7, 2024.

Both parties appeared for the CCRC appointment and reached extensive agreements. A report with the parties' agreements and further recommendations was filed with the court on March 12, 2024. Copies were mailed to the parties the same day.

The parties attended a Mandatory Settlement Conference on April 8, 2024. Parties were able to reach a stipulation regarding the child custody and parenting plan issues. The parties agreed to Joint legal and physical custody on a 2-2-5 parenting plan as set forth in the March 12, 2024 CCRC report. The parties further agreed to adopt the recommendations in the CCRC report, except for the issue of the medication, which the parties agreed would be the only issue to be heard on April 18, 2024.

Petitioner has not filed a Responsive Declaration. Where a party fails to timely file opposition papers the court, in its discretion, may treat said failure "as an admission that the motion or other application is meritorious." El Dorado County, Local Rule 7.10.02(C). Here, it appears the RFO and the CCRC referral were both timely and properly served on Petitioner. Petitioner had notice of the pending request and the CCRC appointment and fully participated at CCRC, however, she chose not to file an opposition to the RFO. As such, the court finds good cause to treat the failure to do so as an admission that the claims made in the RFO are meritorious. Respondent's request as to ADHD medication for the minor Jaxon is granted. Both parents shall follow the doctor's recommendations as to the minor Jaxon's ADHD, including the administration of medication as prescribed.

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

**TENTATIVE RULING #5: RESPONDENT'S REQUEST AS TO ADHD MEDICATION FOR THE MINOR JAXON IS GRANTED. BOTH PARENTS SHALL FOLLOW THE DOCTOR'S RECOMMENDATIONS AS TO THE MINOR JAXON'S ADHD, INCLUDING THE ADMINISTRATION OF MEDICATION AS PRESCRIBED. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT. RESPONDENT 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.**

Respondent filed a Request for Order (RFO) on February 7, 2024, requesting child custody and parenting time, as well as child support, spousal support, and attorney's fees. Respondent concurrently filed an Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on March 7, 2024, and a review hearing on April 18, 2024. Upon review of the court file, there is no Proof of Service of the RFO, the necessary documents, or the referral to CCRC.

Both parties appeared at the CCRC appointment on March 7, 2023 and reached a full agreement. A report memorializing the parties' agreement was filed with the court on March 7, 2024. Copies were mailed to the parties the next day.

Petitioner filed a Responsive Declaration and an Income and Expense Declaration on April 5, 2023. Respondent was personally served on April 4, 2024 and mail served on April 8<sup>th</sup>. The court finds this to be late filed pursuant to Civil Procedure section 1005(b) which states all opposition papers are to be filed at least nine court days before the hearing date. Section 12c states, "[w]here any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, *excluding the day of the hearing* as provided by Section 12." Cal. Civ. Pro. § 12c. Section 1005(b) in conjunction with Section 12c would have made April 4<sup>th</sup> the last day for filing. Therefore, the responsive declaration is late filed and has not been considered by the court.

The court finds there are other deficiencies in the filings in this case. Specifically, there is no Proof of Service of the Summons. While Respondent filed a Response on January 8, 2024, it is unclear to the court if Respondent was properly served with the Petition and Summons. As such the parties are ordered to appear to address the Petition and Summons service issues.

**TENTATIVE RULING #6: THE PARTIES ARE ORDERED TO APPEAR TO ADDRESS THE PETITION AND SUMMONS SERVICE ISSUES.**

On October 17, 2023, Respondent filed a Request for Order (RFO) requesting reconsideration of the court's September 21, 2023 orders. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail on October 18, 2023. Respondent asserts the court should reconsider its prior orders for child and spousal support based on Code of Civil Procedure 473(b), specifically mistake. Respondent asserts he was unable to access email communication from his attorney and attorney's paralegal. Respondent does not give a timeframe for when he was not receiving the emails. Respondent states in his declaration that he believes the emails were being deleted by an unknown individual. Respondent further asserts that the orders were based on incorrect income.

Parties stipulated to continuing the hearing on this matter from January 25, 2024, to April 18, 2024.

Petitioner filed an Income and Expense Declaration on March 21, 2023. Upon review of the court file, there is no Proof of Service for this document.

The Department of Child Support Services (DCSS) filed a Responsive Declaration on March 7, 2024. Parties were served by mail on March 7, 2024. DCSS requests the issues for support be set on the child support calendar to be heard by the child support Commissioner pursuant to Family Code § 4251. As such, the court will not address the support issues in its tentative ruling.

Petitioner filed a Responsive Declaration and Declaration in Support on April 2, 2023. Respondent was served electronically on April 2, 2024. Petitioner objects to the request to set aside the September 21, 2023 orders. Petitioner notes the hearing on Petitioner's request for child and spousal support was set to coincide with Respondent's RFO for child custody. In fact, Petitioner had requested and was granted a continuance of the hearing for child custody to have the matter set for the same date. Petitioner further asserts it is unrealistic that Respondent's counsel emailed him 40 times, with no response, and did not make further efforts to contact Respondent. Petitioner also states that neither Respondent nor his counsel requested oral argument for the September 21, 2023 hearing.

Respondent filed a Supplemental Declaration and Income and Expense Declaration on April 8, 2024. Petitioner was served on April 8, 2024. In his Supplemental Declaration, Respondent raises new grounds for the motion for reconsideration. Specifically, Respondent states he was unaware of his now former counsel's failure to file a Responsive Declaration and Income and Expense Declaration in response to Petitioner's RFO. Respondent also asserts he was unaware of the court's tentative ruling until the hearing had passed and the tentative ruling had been adopted. Respondent states he was also unaware of his counsel not appearing on his behalf at the hearing; Respondent asserts his former counsel was out of the country on the date of the hearing.

The court notes Respondent filed a Declaration on September 14, 2023, which includes an argument that Petitioner was underreporting her income. The court reasonably infers that Respondent was, therefore, aware of the requests for child and spousal support. The court further notes, Respondent and Counsel submitted a request to appear remotely for the September 21, 2023 hearing on August 25, 2023. On the request it states it is for the hearing to address child support. The court granted the remote appearance request on August 29, 2023.

Here, although the RFO has requested reconsideration, the arguments set for appear to request a set aside based on Code of Civil Procedure 473(b), rather than reconsideration which is governed by the terms of Civil Procedure § 1008. Therefore, the court addresses this matter as a request for set aside pursuant to Civil Procedure § 473(b).

Civil Procedure Section 473(b) governs the circumstances in which a party may be relieved of the terms of a judgment, dismissal, order or other proceeding in instances of mistake, inadvertence or excusable neglect. Cal. Civ. Pro. § 473(b). The statute addresses instances in which relief is mandatory as well as circumstances giving rise to discretionary relief. While the mandatory provisions only apply to defaults and default judgments, the discretionary portion of the statute has a much broader application. See Las Vegas Land & Development Co., LLC v. Wilkie Way, LLC, 219 Cal. App. 4<sup>th</sup> 1086 (2013) (Mandatory provisions of Section 473(b) apply only to defaults). Thus, the court turns to the discretionary relief requirements of 473(b).

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” Cal. Civ. Pro. § 473(b). To obtain relief under Section 473(b), the moving party must do so within a reasonable time and must provide a copy of the pleading proposed to be filed. *Id.*

Generally speaking, “...the discretionary relief provision of Section 473 only permits relief from attorney error ‘fairly imputable to the client, i.e., mistakes anyone could have made.’ [Citations]. ‘Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore, excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.’ [Citation].” Zamora v. Clayborn Contracting Group, Inc., 28 Cal. 4<sup>th</sup> 249 (2002) *citing* Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997). Numerous cases have found that an attorney’s conduct falling below the professional standard of care is not grounds to vacate a resulting judgment under Section 473(b). See Carroll v. Abbott Laboratories, Inc., 32 Cal. 3d 892 (1982) (conduct falling below the professional standard of care is generally considered inexcusable); See *also* Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997)[“[t]he Legislature did not intend to eliminate attorney malpractice claims by providing an opportunity to correct all the professional mistakes an attorney might make in the course of litigating a case”]. However, “[a]n exception to this rule allows relief where the attorney’s neglect, although inexcusable, was so extreme as to constitute misconduct effectively ending the attorney-client relationship. ‘Abandonment’ may afford a basis for relief,

at least where the client is relatively free of fault, but performance which is merely inadequate will not.” Garcia, *supra*, 58 Cal. App. 4<sup>th</sup> at 682-683. “For the exception to apply, the attorney’s misconduct must be sufficiently gross to effectively abrogate the attorney-client relationship, thereby leaving the client essentially unrepresented at a critical juncture in the litigation.” *Id.*

In order to determine if relief is warranted under Section 473(b), the court must decide if the conduct of Respondent’s prior attorney constituted total abandonment or simply ineffective representation. If Respondent were abandoned, then the order may be vacated. Whereas, if prior counsel did not abandon Respondent, but instead committed errors in representation amounting to more than what a reasonably prudent person under the same or similar circumstances would have made, then relief under Section 473(b) would not be proper and Respondent’s recourse would rest squarely with his previous attorney.

Seemingly on point here is the matter of Buckert v. Briggs, 15 Cal. App. 3d 296 (1971) wherein plaintiffs and their attorney failed to appear at trial and judgment was rendered against them. Counsel in that matter stated he was of the belief that the plaintiffs had abandoned their case, however, plaintiffs had not given their attorney any basis for that belief. It took the Buckert plaintiffs more than five months to save up the money to retain a new attorney and bring their motion under Section 473(b). The court found that under those circumstances, it was proper to vacate the judgment against plaintiffs under the discretionary provisions of Section 473(b) because the plaintiffs had been wholly abandoned by their attorney. Further, because the defendants could not show any prejudice resulting from the delay in bringing the motion, and there was no showing of lack of diligence on the part of plaintiffs, the timeliness of the motion, or lack thereof, was not grounds for its denial.

Here, the court is unable to determine based on the pleadings if Respondent’s former counsel abandoned him, or if there was an error in representation. The court, therefore, orders parties to appear for the hearing.

**TENTATIVE RULING #7: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**

Respondent filed an ex parte request for emergency child custody orders on January 23, 2024. Petitioner filed a Responsive Declaration to the ex parte request on January 23, 2024. There is no Proof of Service for this document. On January 24, 2024, the court denied the request on an ex parte basis and referred the parties to Child Custody Recommending Counseling (CCRC) with an appointment on February 29, 2024 and a review hearing on April 18, 2024. Respondent filed a Request for Order (RFO) on January 24, 2024, requesting the same orders as set forth in the ex parte request. Upon review of the court file, there is no Proof of Service showing Petitioner was properly served with the RFO and referral to CCRC.

Nevertheless, both parties appeared for the CCRC appointment on February 29, 2024. The parties were unable to reach any agreements. A report with recommendations was filed with the court on March 20, 2024. Copies were mailed to the parties the same day.

Respondent filed a Declaration on February 23, 2024. There is no Proof of Service for this document, and therefore, the court cannot consider it.

The court finds good cause to proceed and reach the matter on the merits, despite the lack of proper service, as Petitioner filed a Responsive Declaration and both parties appeared for the CCRC appointment. It is clear to the court that Petitioner is fully aware of the requested orders. The court has read and considered the filings as set forth above. The court finds the recommendations as set forth in the March 20, 2024 CCRC report to be in the best interest of the minor. The court adopts the recommendations as its orders. Additionally, the minor is to continue individual therapy with his current therapist and both parties shall equally split any costs not covered by insurance. Neither party shall participate in, or sit-in on, the minor's counseling unless the therapist recommends it.

Both requests for a psychological/§ 730 evaluation are denied as there has not been a sufficient showing of necessity to justify doing so at this time.

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: THE COURT FINDS GOOD CAUSE TO PROCEED AND REACH THE MATTER ON THE MERITS, DESPITE THE LACK OF PROPER SERVICE, AS PETITIONER FILED A RESPONSIVE DECLARATION AND BOTH PARTIES APPEARED FOR THE CCRC APPOINTMENT. IT IS CLEAR TO THE COURT PETITIONER IS FULLY AWARE OF THE REQUESTED ORDERS. THE COURT HAS READ AND CONSIDERED THE FILINGS AS SET FORTH ABOVE. THE COURT FINDS THE RECOMMENDATIONS AS SET FORTH IN THE MARCH 20, 2024 CCRC REPORT TO BE IN THE BEST INTEREST OF THE MINOR. THE COURT ADOPTS THE RECOMMENDATIONS AS ITS ORDERS. ADDITIONALLY, THE MINOR IS TO CONTINUE INDIVIDUAL THERAPY WITH HIS CURRENT THERAPIST AND BOTH PARTIES SHALL EQUALLY SPLIT ANY COSTS NOT COVERED BY**

**INSURANCE. NEITHER PARTY SHALL PARTICIPATE IN, OR SIT-IN ON, THE MINOR'S COUNSELING UNLESS THE THERAPIST RECOMMENDS IT.**

**BOTH REQUESTS FOR A PSYCHOLOGICAL/§ 730 EVALUATION ARE DENIED AS THERE HAS NOT BEEN A SUFFICIENT SHOWING OF NECESSITY TO JUSTIFY DOING SO AT THIS TIME. 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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Petitioner filed a Request for Order (RFO) on June 8, 2023, requesting temporary guideline spousal support as well as for Respondent to be responsible for the mortgage payments. Petitioner concurrently filed an Income and Expense Declaration. Proof of Service shows Respondent was served on June 14, 2023.

Respondent filed a Responsive Declaration and an Income and Expense Declaration on August 7, 2023. Petitioner was served by mail on August 4, 2023. Respondent does not object to temporary guideline spousal support, but requests Petitioner be imputed with full time income. Respondent further requests that Petitioner be provided a *Gavron* warning. Respondent also requests the court offset any mortgage or utility payments from his support obligation. Last, Respondent requests he be reimbursed for any *Epstein* credits for payments he has made as well as *Watts* charges for Petitioner's exclusive possession of the former family residence.

Respondent states in his declaration "[o]nce I vacate the house I am requesting that Petitioner be 100 percent responsible for all the expenses and/or that I be reimbursed for any contributions I make on her behalf." Based on this statement, the court finds it is unclear whether Petitioner and Respondent continue to reside together in the home.

Parties were ordered to appear for the August 24, 2023 hearing. At the hearing the parties stipulated to continue the matter to October 19, 2023.

On October 19, 2023, parties appeared for the hearing and reached an agreement to continue the matter to January 11, 2024. The court reserved on all issues.

The parties submitted a Stipulation and Order to Continue, which the court signed on December 21, 2023. Parties were continuing to participate in mediation with Neil Forrester and needed additional time. The matter was continued to April 18, 2024 at 1:30 PM.

Neither party has submitted a supplemental declaration.

The court finds itself in a similar position as it has been for all the prior hearings. The court needs to take testimony on this issue prior to ruling on the request for temporary spousal support. As such, the parties are ordered to appear for the hearing.

**TENTATIVE RULING #9: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**

**10. ARLEEN GUNSKI V. KEVIN CAREY**

**23FL0135**

Petitioner filed a Petition for Nullity of Marriage on February 14, 2023. Proof of Service shows the Summons was personally served on Respondent on December 5, 2023. Respondent filed an Acknowledgement of Receipt on December 7, 2023; however, his signature is dated March 1, 2020.

Default was entered on February 9, 2024.

On February 13, 2024, Petitioner filed a request to set an uncontested hearing for the court to take the jurisdictional facts on the nullity. Proof of Service shows Respondent was served by mail on February 14, 2024.

The court orders parties to appear for the hearing.

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

Petitioner filed a Request for Order (RFO) seeking a change in venue from El Dorado County to Sacramento County, on January 31, 2024. Proof of Service shows Matthew Trudeau, not Respondent, was personally served on February 20, 2024. Petitioner asserts both parties have resided in Sacramento County since approximately 2016. Further the Proof of Service does not show that the necessary documents were served.

Respondent has not filed a Responsive Declaration.

The court drops the matter from calendar due to the lack of proper service.

**TENTATIVE RULING #11: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.**

**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.**

Respondent filed a Request for Order (RFO) on December 5, 2023, requesting the court modify child support orders and modify the exchange location. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail with an address verification on December 18, 2023.

Respondent requests guideline child support be updated as Petitioner is now gainfully employed. Respondent requests the court modify the exchange location for the parties, as Petitioner has relocated from Lone to Folsom. Respondent proposes that the receiving parent picks up from the other parent.

On January 30, 2024, the Department of Child Support Services (DCSS) in Sacramento County filed a Notice Regarding Payment of Support. Sacramento County DCSS is now providing services for child support, support arrears, and medical support. Parties were served with the notice by mail on January 23, 2024.

Respondent filed a Declaration on February 27, 2024. Petitioner was served on February 23, 2024.

Petitioner has not filed a Responsive Declaration, nor has Petitioner filed an Income and Expense Declaration.

On March 7, 2024, the court adopted its tentative ruling. The court modified the exchange location to each party's home, with the receiving party to pick up. The court went on to find that Sacramento County DCSS is now a party to the matter and as such, should be provided notice and continued the request for modification of support to join with the matters that are currently set for April 18, 2024 at 1:30 PM in Department 5. Respondent was directed to serve Sacramento County DCSS with a copy of the RFO and other necessary documents along with a copy of the tentative ruling and minutes from this hearing. The court reserved jurisdiction to retroactively modify child support to the date of the filing of the RFO.

On February 1, 2024, Respondent filed an RFO and a Request for an Order Shortening Time (OST). The court granted the OST in part and set all remaining issues, including the request to modify parenting time, for a hearing on April 18, 2024. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on March 1, 2024. Proof of Service shows Petitioner was served with the FL-300 on February 2, 2024. There is no Proof of Service for the CCRC referral or the other necessary documents.

Petitioner filed a Declaration and an Income and Expense Declaration on March 1, 2024. Proof of Service shows Respondent was served on March 1, 2024. Petitioner asserts there are deficiencies in Respondent's Income and Expense Declaration.

Both parties attended CCRC and reached a full agreement. A report memorializing the parties' agreement was filed with the court on March 4, 2024. Copies were mailed to the parties the same day.

There have been no new filings in this matter since March 7, 2024.

The court finds good cause to proceed with the February 1, 2024 filed RFO, despite the necessary documents not being served. Both parties appeared for CCRC and reached a full agreement. The court has read and considered the filings as set forth above. The court finds the agreements to be in the best interest of the minor. The court adopts the agreements as set forth in the March 4, 2024 CCRC report its order.

As to the request to modify the current child support orders, there is no Proof of Service showing Sacramento County DCSS was properly served. Therefore, the court denies the request to modify child support. Respondent may file in Sacramento County to modify the current orders.

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 #12: THE COURT FINDS GOOD CAUSE TO PROCEED WITH THE FEBRUARY 1, 2024 FILED RFO, DESPITE THE NECESSARY DOCUMENTS NOT BEING SERVED. THE COURT FINDS THE AGREEMENTS TO BE IN THE BEST INTEREST OF THE MINOR. THE COURT ADOPTS THE AGREEMENTS AS SET FORTH IN THE MARCH 4, 2024 CCRC REPORT ITS ORDER. AS TO THE REQUEST TO MODIFY THE CURRENT CHILD SUPPORT ORDERS, THERE IS NO PROOF OF SERVICE SHOWING SACRAMENTO COUNTY DCSS WAS PROPERLY SERVED. THEREFORE, THE COURT DENIES THE REQUEST TO MODIFY CHILD SUPPORT. RESPONDENT MAY FILE IN SACRAMENTO COUNTY TO MODIFY THE CURRENT ORDERS. 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.**

**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.**

Other Parent filed an ex parte request for emergency orders on August 7, 2023. On August 8, 2023, the court partially granted the order and partially denied the order, ordering the minor shall not be removed from the state of California. All other requests were denied on an ex parte basis. On August 9, 2023, Other Parent filed a Request for Order (RFO) making the same requests as set forth in her ex parte request. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on October 23, 2023 and a review hearing on December 14, 2023. Upon review of the court file, there is no Proof of Service showing Respondent was served with the ex parte orders, RFO, or referral to CCRC.

Nevertheless, both parties appeared for the CCRC appointment on October 23, 2023. The parties were unable to reach any agreements. A report with recommendations was filed with the court on December 4, 2023. Copies were mailed to the parties the same day.

Respondent has not filed a Responsive Declaration.

On December 14, 2023, both parties appeared for the hearing. The tentative Ruling was adopted with modifications. Other Parent was ordered to have phone calls with the minor on Tuesday, Friday, and Saturday at 7:00 PM. Father was to drop the minor off with Mother for parenting time on Christmas from 12:00-2:00 PM. Other Parent was authorized to pursue therapeutic services in Sacramento County. The court set a review hearing for April 18, 2024 at 1:30 PM and directed parties to file and served Supplemental Declarations at least 10 days prior to the hearing.

Neither party has filed a Supplemental Declaration. Therefore, the court finds that the current orders remain in the minor's best interest and drops this matter from calendar.

All prior orders remain in full force and effect.

**TENTATIVE RULING #13: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO THE PARTIES' FAILURE TO FILE SUPPLEMENTAL DECLARATIONS. ALL PRIOR ORDERS 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.**

Respondent filed a Request for Order (RFO) on February 2, 2024, requesting a modification of child custody orders. The parties were not referred to Child Custody Recommending Counseling (CCRC) as there was a prior referral within the last six months. Upon review of the court file, there is no Proof of Service showing Other Parent was properly served with the RFO.

The court notes, Respondent filed an RFO on October 10, 2023, requesting a modification of child custody orders. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on December 4, 2023 and a review hearing on January 25, 2024. Respondent failed to serve Other Parent with the RFO and referral to CCRC. Only Respondent appeared for the CCRC appointment. As such, a single parent report with no agreements or recommendations was filed on December 4, 2023. Copies were mailed to the parties the same day. On January 25, 2024, the court adopted its tentative ruling, dropping the matter from calendar, due to Respondent's failure to properly serve Other Parent.

Other Parent filed a Responsive Declaration to the February 2, 2024 RFO on April 5, 2024. Proof of Service shows Respondent was served by mail on April 5, 2024. The court notes this is untimely, as nine court days prior to the hearing, excluding the day of the hearing, was April 4, 2024. (See Code of Civil Procedure 1005(b).) Further, there is no Proof of Service showing Petitioner was properly served. Therefore, the court cannot consider this document.

The court drops the matter from calendar due to Respondent's failure to properly serve the parties.

All prior orders remain in full force and effect.

**TENTATIVE RULING #14: THE MATTER IS DROPPED FROM CALENDAR DUE TO THE LACK OF PROPER SERVICE. ALL PRIOR ORDERS 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.**

Petitioner filed a Request for Order (RFO) on January 23, 2024, requesting an order to compel Respondent to serve his Preliminary Declarations of Disclosure (PDD). Respondent was mail served on January 23, 2024.

Petitioner asserts Respondent filed her response on November 1, 2023, but has failed to serve her PDD as required.

Petitioner has provided a Declaration of Disclosure showing her PDD was served on September 18, 2023. Upon review of the court file, there is no Proof of Service showing Respondent served Petitioner with his PDD.

Parties to divorce proceedings are under the obligation to produce initial declarations of disclosure. Fam. Code § 2104. Where a party fails to comply with Section 2104, the complying party may, among other things, file a motion to compel and seek sanctions against the noncomplying party. Fam. Code § 2107(b)(1). Petitioner has established that she has complied with the requirements of Section 2104 and therefore, Respondent is required to do the same. As such, Respondent is ordered to produce his full and complete preliminary declarations of disclosure no later than May 2, 2024.

Pursuant to Family Code section 2107(c) the court shall impose sanctions for failure to comply with disclosure requirements. The amount of the money sanctions should be sufficient to deter him or her from repeating the conduct or comparable conduct. The awarded amount is also to include reasonable attorney's fees, costs incurred, or both, unless the court finds that the non-complying party acted within substantial justification or that other circumstances make the imposition of the sanction unjust.

Here Petitioner has not requested sanctions. Further, in the present matter the court does not have an Income and Expense Declaration from Respondent. Therefore, the court is unaware of his financial circumstances. As such, the court is imposing monetary sanctions of \$60 for the filing fee, which Petitioner incurred for filing this motion. Respondent shall pay Petitioner \$60 on or before May 2, 2024. However, should Respondent continue to fail to make his disclosure requirements the court will impose additional monetary or evidentiary sanctions in the future.

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 #15: RESPONDENT IS ORDERED TO PRODUCE HIS FULL AND COMPLETE PRELIMINARY DECLARATIONS OF DISCLOSURE NO LATER THAN MAY 2, 2024. RESPONDENT SHALL PAY PETITIONER \$60 ON OR BEFORE MAY 2, 2024. 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.**

**16. KAYLA STABILE V. SEAN STABILE**

**PFL20180042**

Petitioner filed a Request for Order (RFO) requesting a modification of the current child custody and parenting plan orders on February 1, 2024. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on February 26, 2024 and a review hearing on April 18, 2024. Proof of Service shows Respondent was only served with the FL-300, and not with the referral to CCRC or the other necessary documents.

Only Petitioner appeared at CCRC on February 26<sup>th</sup>. As such, a single parent report was filed with the court on March 25, 2024. Copies were mailed to the parties on March 26, 2024.

Respondent has not filed a Responsive Declaration.

The court finds service to Respondent was not proper. Not only did the service fail to include the referral to CCRC, but it also failed to include other required documents. As such, the court drops the matter from calendar.

**TENTATIVE RULING #16: THE MATTER IS DROPPED FROM CALENDAR DUE TO THE LACK OF PROPER SERVICE.**

**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.**

Petitioner filed a Request for Order (RFO) on February 21, 2024, requesting the court compel Respondent to sign a quitclaim deed for the property awarded to Petitioner in the Judgment. Proof of Service shows Respondent was served by mail on March 8, 2024.

The court finds the service to be deficient. First, the Proof of Service was signed by Petitioner, which is not permissible. Service must be done by a person, who is over 18 and not a party to the action. Second, this is a post-judgment request for order, and as such Family Code section 215 applies. Family code section 215 requires personal service for a post-judgment request for modification, with limited exceptions. This matter does not fall within the limited exceptions. Finally, the service did not include a blank FL-320, which is required.

The court drops the matter from calendar due to the lack of proper service.

**TENTATIVE RULING #17: THE MATTER IS DROPPED FROM CALENDAR DUE TO THE LACK OF PROPER SERVICE.**

**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.**