TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, June 21, 2024 9:30 a.m.
Courtroom 21 –Hon. Kinna Patel Crocker
3055 Cleveland Avenue, Santa Rosa

TO JOIN "ZOOM" ONLINE:
Meeting ID: 160-223-6856
Passcode: 876992
https://sonomacourt-org.zoomgov.com/j/1602236856

TO JOIN "ZOOM" BY PHONE:
By Phone (same meeting ID and password as listed above):
(669) 254-5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, it will be necessary for you to contact the department's Judicial Assistant by telephone at (707) 521 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. **24FL0043, Brumder Dissolution**
   APPEARANCES REQUIRED.

2. **SFL089552, Khammivong Dissolution**

Motion CONTINUED to the law and motion calendar of August 2, 2024, in Department 21 at 9:30 a.m. because there is no proof of service showing notice of this hearing upon Petitioner. Prior to the new hearing, the moving party must file timely proof of service in accordance with California Rule of Court 3.1300, demonstrating service of notice of the hearing and the moving papers. The moving party must also provide a copy of the proposed order as well as points and authorities citing the legal authority on which the moving party bases this motion, and evidence and an explanation supporting the motion, as further explained below.

Facts

Petitioner filed this action for dissolution of marriage with minor children on October 22, 2021. She filed a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") on October 22, 2021. She filed proof of service of the petition, summons, and blank response on November 1, 2021, showing personal service on Respondent on October 29, 2021. It did not state where Respondent was served. After that date, nothing occurred in this proceeding until Petitioner filed an amended proof of service on February 23, 2023. Dated February 2, 2023, this again showed personal service on October 29, 2021, but demonstrated that the service included not only the petition, summons, and blank response, but also the completed and blank UCCJEA Declaration and notice of case assignment. It also demonstrated that Respondent was served at an address in Santa Rosa, CA at 3:30 p.m.

On February 23, 2023, Petitioner filed a request to enter default. The court entered Respondent's default that day as requested. No judgment has been entered.

Respondent on May 31, 2024, filed a request for Domestic Violence Restraining Order ("DVRO") against Petitioner. The hearing on the request is set for June 25, 2024.

On June 11, 2024, Petitioner filed an amended request to enter default and the court entered it on that date.

Motion

Respondent moves the court to set aside the default because he wants to complete the divorce proceedings and has been unable to spend time on it due to his schedule of work and home.

Service and Notice

There is no proof of service showing service of the moving papers or notice of this hearing upon Petitioner. Prior to the new hearing, the moving party must file timely proof of service in accordance with California Rule of Court 3.1300, demonstrating service of notice of the moving papers and notice of the hearing.

Points and Authorities

According to California Rule of Court ("CRC") 3.1113, a party filing a motion must serve and file a memorandum of points and authorities, which "must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." The court "may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial…."

Respondent provides no such memorandum or, indeed, citation to any authority whatsoever for this motion or analysis explaining the basis for the motion. The court is therefore unable to discern the authority on which Respondent relies for the basis of the motion. As a practical matter, the lack of points, authorities, or analysis, makes it impossible for this court to determine how to proceed or the standards to apply. Respondent must therefore also provide points and authorities setting forth the authorities on which he bases the motion as well as an explanation.

Conclusion

The court CONTINUES the motion as set forth above.

3. SFL091725 – CONFIDENTIAL
APPEARANCES REQUIRED.

Facts and History

Petitioner filed this action on August 8, 2022, to obtain an order determining him to be the parent of a child born to Respondent. In his petition, he alleges that Respondent lives in this state and the minor child is in this county. He also seeks joint legal and physical custody of the minor child as well as visitation, and to change the name of the child to add Petitioner's surname.

Petitioner filed an application to serve Respondent by publication in The Press Democrat newspaper after Petitioner and the hired process server had been unable to locate her or serve her and found that she was no longer at the two Sonoma County residences which were the last-known addresses for her. The application noted that Petitioner's attorney was only able to speak to Respondent twice via telephone, with Respondent both times communicating from a phone number with a 707 area code.

The court on September 21, 2022, issued an order allowing service by publication in The Press Democrat. Petitioner subsequently filed proofs of service showing service by publication between September 27, 2022, and October 18, 2022. By November 28, 2022, Respondent had not appeared, so Petitioner obtained entry of default against her on that date. On April 23, 2023, Petitioner obtained an entry of judgment of parent-child relationship.

On July 27, 2023, Respondent made her first appearance by filing a Peremptory Challenge Pursuant to CCP section 170.6, which the court granted.

Respondent subsequently filed a Motion to Set Aside Default and Default Judgment. Respondent claimed that Petitioner returned to California from out-of-state at the end of her pregnancy with the minor child, along with other allegations, which Petitioner denied. The court, despite noting that Petitioner appeared to have acted diligently, and finding that Respondent had known of the action at least by the entry of the default judgment in April 2023, granted the motion in full on November 15, 2023, finding that Respondent had failed to respond due to her own mistake and inadvertence.

Respondent subsequently filed a Request for Order ("RFO") and Motion to Dismiss for Improper Venue and Transfer Venue to West Virginia ("Prior Transfer Motion"), which she stated she had filed in lieu of filing a response to the petition. In it, Respondent moved the court to dismiss the action and transfer "venue" to West Virginia, pursuant to Code of Civil Procedure sections 397(a) and 396b(a), and Family Code ("Fam.Code" or "FC") sections 3422 and 3427. She argued that Sonoma County is "an improper venue under FC 7620."

At the hearing on the Prior Transfer Motion on February 9, 2024, the court denied the motion. The court found that it had jurisdiction over the matter pursuant to Fam. Code section 7620 because the evidence showed that the parties were living in this state when the minor child was born, and that the minor child was born in this county. The court also found that, in addition, the Superior Court of California has personal jurisdiction if applying traditional, general standards for personal jurisdiction. The court noted that in her papers Respondent admitted that she had resided in California and gave birth to the minor child in California. The court also pointed out that Respondent herself admitted that she was still residing in California when Petitioner filed this action, when he first tried to serve Respondent, when he ultimately did serve Respondent pursuant

to court order, and when he obtained the default of Respondent. The court further found that Respondent waived the right to challenge jurisdiction in California because, in addition to filing a peremptory challenge to the judge, her earlier motion to set aside the default was not based on lack of jurisdiction and was not even claimed to be a special appearance. She merely filed that motion as a general appearance, and solely based on lack of knowledge of the action, lack of proper notice, and other substantive issues regarding the parties, along with simple mistake and inadvertence. The court concluded that the interests of justice and convenience supported keeping the case in Sonoma County.

At the hearing on March 20, 2024, the court noted that "There is no dispute as to [Petitioner's] parentage of [the minor child]." It added that it would not stay the proceedings at that time but that the parties could "drop this matter" if they simply stipulated that Petitioner is the father.

At a hearing on April 5, 2024, both parties were present through their attorneys. The attorneys informed the court that the parties stipulated to genetic testing with each party to pay half the cost. This court entered an order on April 22, 2024 that the parties are to cooperate with genetic testing and further hearing was set for June 24, 2024.

Motion

In her Request for Order ("RFO") and Motion to Transfer Jurisdiction to West Virginia, Respondent moves the court to decline to exercise jurisdiction and to transfer this action to West Virginia based on Fam. Code sections 3422(a) and 3427. She argues that she has now filed an action regarding adoption and termination of parental rights in West Virginia, seeking to have her current husband, Michael William Whitaker ("Mike") named as the minor child's adoptive father; Mike has signed a Declaration of Paternity; Petitioner has not been involved in the lives of Respondent or the minor child since the birth and the time when they separated; and, she believes that Petitioner himself has left California and now resides in Idaho.

There is no opposition filed.

Authority Governing Venue and Personal Jurisdiction

Respondent moves the court to decline to exercise jurisdiction and to transfer this action to West Virginia based on Fam. Code sections 3422(a) and 3427. She again admits that she was residing in not only California, but Sonoma County; when the minor child was born, she moved to Sacramento after the birth; and, she moved to West Virginia after Petitioner filed this parentage action. RFO Attachment 1:23-2:2. She also admits that jurisdiction was proper in California when Petitioner filed this parentage action. RFO Attachment 2:2-4.

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided.

There is no dispute that California courts have jurisdiction over this matter pursuant to both Fam. Code section 7620 and traditional standards of personal jurisdiction, and that jurisdiction was specifically proper in California when Petitioner filed this action. The reasons for this are explained in this court's ruling on the Prior Transfer Action, as set forth above, and as also noted above,

Respondent admits that jurisdiction was proper in this state. The issue of whether California is the proper jurisdiction has been decided by this Court.

Inconvenient Forum

Family Code 3427 governs the authority of the courts of California to decline to exercise jurisdiction based on a finding that California is an inconvenient forum. Section 3427(a) states that a California court may do so on a motion of the court or a party "at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." Subdivision (b) mandates that "before" making such a determination, the court first "shall consider whether it is appropriate for a court of another state to exercise jurisdiction," and "shall allow the parties to submit information and shall consider all relevant factors…" It lists factors which the court is to consider, including, among others:

> (1) Whether domestic violence has occurred and is likely to continue… and which state could best protect the parties and the child.
>
> (2) The length of time the child has resided outside California.
>
> (3) The distance between the court in California and the court in the state that would assume jurisdiction.
>
> (4) The degree of financial hardship to the parties in litigating in one forum over the other.
>
> (5) Any agreement of the parties as to which state should assume jurisdiction.
>
> (6) The nature and location of the evidence required.
>
> (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
>
> (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

Subdivision (c) adds that if the court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

Respondent addresses the first factor by admitting domestic violence is not an issue here. She addresses the other factors as follows: 2) the minor child has lived in West Virginia for 18 months, more than half his life, and has no real connection to California other than Petitioner; 3) the distance between the two states is very far since they are at opposite ends of the country; and, although she admits that travel for either party will be difficult, she notes that it will be more difficult for her and the minor child because they are together and she has four other children, while Petitioner has no children and she claims he works remotely; 4) the financial hardship is worse for Respondent because she makes much less and has 5 children to care for; 5) there is no agreement of the parties as to jurisdiction; 6) the evidence is mostly in West Virginia because all of the people who know the minor child best reside there; 7) the local court in West Virginia has a smaller population and calendar so can handle the matters more expeditiously; and, 8) she admits that both courts have some familiarity with the issues.

Although she does not mention it specifically in discussing the factors, she also states that she has learned that Petitioner has purchased real property in Idaho, and it is her understanding that he has moved there. This fact would reduce the connection to California for either party and further supports Respondent's position regarding the factors discussed above. As noted above, Respondent in her declaration in the RFO attachment also details Petitioner's lack of involvement in the lives of her and the minor child up to this point.

Fam. Code section 3422 governs continuing jurisdiction of the courts of this state. Respondent relies on subdivision (a) which states, in full,

> (a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 has exclusive, continuing jurisdiction over the determination until either of the following occurs:
>
> (1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.
>
> (2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

The court notes that this court does not yet appear not have exclusive, continuing jurisdiction pursuant to Fam. Code section 3422(a) because it has not yet made any such child custody determination. Respondent fails to address this or explain the application of this provision at this time.

The court finds that the matter lacks clarity and full analysis of the facts. The parties stipulated to a genetic test in these proceedings. This appears to demonstrate that Respondent has agreed to the jurisdiction of this court to resolve this issue. Further, there is no opposition from Petitioner to the RFO. This could be taken to imply that Petitioner is no longer challenging this request, but the court cannot make those assumptions. The court also notes that on June 11, 2024, Petitioner filed an affidavit for an Order to Show Case ("OSC") re: contempt, asking the court to find Respondent in contempt for failing to make herself or the minor child available for DNA testing as ordered. If such allegation is true, the Court is concerned that Respondent seeks relief with unclean hands. Further, the contempt action demonstrates that Petitioner is still moving forward with these proceedings and that the failure to oppose this motion is not due to a decision not to contest it. The Court may not consider and apply the statutory factors in Fam. Code section 3427 unless it has provided the parties with an opportunity to present evidence on the issue of inconvenient forum. *Brewer v. Carter* (2013) 218 CA4th 1312, 1319. The Court must provide this opportunity to address the Court's questions before it reaches a conclusion on such an important matter.

Accordingly, **the court REQUIRES APPEARANCES** for this hearing in order to seek further clarification on the facts and the parties' positions. Should any party fail to appear, the court may either continue the matter for further proceedings or may instead render a decision at that time.

Conclusion

The court REQUIRES APPEARANCES.

4. SFL093043, Anderson Tate Dissolution

Motion for Change of Venue GRANTED as set forth herein. All requests regarding equal contribution by the parties for the fees, costs, or expenses of transfer are denied.

Facts

Petitioner filed this action for dissolution of marriage without minor children on February 24, 2023. The petition states that both parties, at the time of the petition, had been residents of this county ("Sonoma County") for at least three months immediately preceding the filing of the petition.

Motion

Respondent moves the court to transfer venue to the Superior Court of California in the County of Napa ("Napa") pursuant to Code of Civil Procedure ("CCP") section 397.5.

Petitioner opposes the motion, arguing that CCP section 397.5 only applies to post-judgment proceedings, such as enforcement or modification and this is not applicable here. She also contends that the transfer will not promote justice or convenience because it would be more inconvenient for her as well as the neutral forensic, Darlene Elmore ("Elmore"), whom the parties have engaged.

Respondent replies. He argues that CCP section 397.5 no longer applies only to post judgment proceedings and the court fundamentally must consider the convenience of the parties, not attorneys or witnesses, under CCP section 397.5. He adds that Petitioner herself, in her failed challenge to the sitting judicial officer, claimed that Petitioner could not have an impartial proceeding, a fact which he contends threatens to taint the proceedings if they remain in Sonoma County, further supporting a transfer. He adds that, due to Petitioner's challenge to the sitting judicial officer in this matter, filed the same day he filed this motion, the court also has a valid basis to transfer under CCP section 397.

Discussion

According to the Family Law Rules of the California Rules of Court, at CRC 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"), and specifically the Civil Discovery Act set forth at CCP section 2016.010, et seq. See also, *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022.

CCP sections 395 and 396 thus generally apply to actions under the Family Code, specifically actions for marital dissolution, nullity or marriage, legal separation, and support obligations. CCP section 395(a). For marital-dissolution actions, venue is proper in any "county where either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding…." CCP section 395(a). In a proceeding for nullity of marriage or legal separation venue is proper in the county where either the petitioner or the respondent resides at the commencement of the proceeding. Ibid.

According to CCP section 397.5, "In any proceeding for dissolution or nullity of marriage or legal separation of the parties under the Family Code, where it appears that both petitioner and respondent have moved from the county rendering the order, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party."

Respondent asserts that although the parties were both living in Sonoma County at the time Petitioner filed the petition, they sold their home during these proceedings in 2023 and then both moved out of Sonoma County. He states that Petitioner has moved to Florida and cites her declaration filed on October 26, 2023, in connection with a request for order ("RFO") on attorney's fees and possession of the family dog. He also notes that she stated that she is seeking to become a credentialed teacher in Florida and owns real property in that state. In her declaration filed with the RFO, Petitioner indeed states that she resides in Florida, had purchased a condo in Florida, intends to reside in Florida, and is seeking her Florida teaching credential. As for himself, Respondent states also that he has lived in Napa since June 2023 and purchased a home there. He adds that he has no current connections to Sonoma County.

Respondent also explains that he is a medical doctor with a practice in Napa and Vacaville, working about 60 hours a week. This makes it difficult for him to travel to Santa Rosa, and he adds that his current attorney is also based in Napa. In his reply to Petitioner's arguments, he further elaborates on the details of his practice and the demands on him and his time outside of this county, demonstrating that he often works 8-12 hours a day, 5 days a week in cancer centers, in addition to spending another 5-10 hours per week as administrator of his practice, plus his commute times. His only weekday off is Friday, and Petitioner's attorney has stated she has no availability for 2024 on any Friday, requiring him to take time off of work for court matters. Requiring him to go to Sonoma County puts additional serious strain on him because it increases the travel distance from 2 miles to 41.6 miles, meaning that he must take off an entire day of work.

Petitioner in part opposes the motion on the basis that CCP section 397.5 only applies to post-judgment proceedings, such as enforcement or modification and thus not applicable here. Petitioner's argument is unpersuasive. She relies on the statement in section 397.5, with emphasis added, that where "both petitioner and respondent have moved *from the county rendering the order*, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party." She contends that this necessarily means from a county rendering a judgment or similar order. She provides no authority supporting this interpretation and the interpretation conflicts with general standards for transferring venue. The interpretation fails to take into account that nothing about the language, "rendering the order," appears to mean a previously entered order of dissolution, judgment, or the like. Rather, on its face, it may merely mean the order to transfer venue, as implied by the end of the sentence quoted immediately above, which states that the court may "order that the proceedings be transferred."

Petitioner relies on the practice guide, as cited in her papers, "Hogoboom and King, California Practice Guide Family Law (The Rutter Group) [4:138]; [17:361]; [18:17]" ("Hogoboom and King"), *Marriage of Straeck* (1984) 156 Cal. App. 3d 617, and *Hamilton v. Superior Court* (1974) 37 Cal. App. 3d 418. These do not support her argument.

The two cases on which Petitioner relies offer her no support and in fact demonstrate that her interpretation is incorrect because based on the express language of the prior version of CCP

section 397.5, *Marriage of Straeck* (1984) 156 Cal. App. 3d 617 actually makes no statement limiting section 397.5 to post judgment proceedings. That decision happened to address transfer of venue in the context of post judgment proceedings, but nothing more. The court merely stated, "obligor here could move pursuant to section 397.5 to have the original proceedings transferred to the county where the modification of the registered order is sought and seek consolidation of the actions," then quoted the statutory language and added, "since both appellant and respondent have moved from the County of Ventura, the ends of justice and the convenience of witnesses would be served by a transfer of the family law proceedings to San Luis Obispo." *Marriage of Straeck* , 625. Much clearer and enlightening is the decision in *Hamilton v. Superior Court* (1974) 37 Cal. App. 3d 418, which does include language indicating that section 397.5 applies only to post judgment proceedings. However, that decision, at 425, footnote 5, expressly states that it is based on then-current version of section 397.5 which it quotes, and which has since been changed. Critically, that prior version stated, with emphasis added,

> *In any enforcement or modification proceedings after a final judgment* under the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, when it appears that both petitioner and respondent have moved from the county rendering the decree, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party.

Section 397.5 in its *current* form, as amended after *Hamilton*, does not include the italicized language. Instead of applying "In any enforcement or modification proceedings after a final judgment," it now states, "In any proceeding for dissolution or nullity of marriage or legal separation of the parties under the Family Code…." The clear implication is that it therefore now applies in any such proceeding under the Family Code, not just in post judgment proceedings. The court finds that section 397.5 applies not only to post judgment proceedings and is applicable here.

The Rutter practice guide of Hogoboom and King provides nothing persuasively supporting Petitioner's argument. This does state at 4:138, with original emphasis,

> Cross-refer—venue transfer of post judgment proceedings: Another statute, applicable exclusively in dissolution, legal separation and nullity proceedings, permits a venue change to either party's county of residence in *post judgment* (modification or enforcement) proceedings when it appears that both petitioner and respondent *have moved* from the county rendering the judgment and "the ends of justice and the convenience of the parties would be promoted by the change." [CCP § 397.5; see ¶ 17:361, 18:17 ff.]

At section 17:361, addressing modification of orders and judgments, the practice guide adds,

> Venue transfer of post judgment marital proceedings—change in residences: In a marital action, where both parties (petitioner and respondent) have moved from the county that rendered the underlying judgment (or order), the court may transfer the modification proceeding to either party's new county of residence if "the ends of justice and the convenience of the parties would be promoted by the change." [CCP § 397.5; see ¶ 4:138 ff.]

At section 18:17, which likewise addresses issues of enforcement of judgments and orders, the practice guide states,

> New residences as ground: If both petitioner and respondent have moved from the county rendering the judgment, the court has discretion to order post judgment enforcement proceedings transferred to either party's new county of residence when "the ends of justice and the convenience of the parties would be promoted by the change." [CCP § 397.5; see ¶ 4:138 ff. & 4:144]

These statements do generally tend to support Petitioner's view, but they lack any authority supporting a conclusion that section 397.5 *only* applies to post judgment proceedings. Moreover, Hogoboom and King also states, at 3:188 with emphasis added,

> Compare—"convenience" transfer: On timely motion, various statutes authorize a discretionary transfer from the county of proper venue to another county. Broadly, the ground for a discretionary transfer is the "convenience of witnesses" and the "ends of justice." [CCP § 397(c)] However, *marriage dissolution and post judgment* family law actions are subject to special discretionary transfer rules. [CCP §§ 397(e), 397.5; see ¶ 3:192; and further discussion at ¶ 4:134 ff.]

This indicates that it applies to two separate things, one being marital dissolution and another being post judgment family law actions generally. Any statement in the practice guide which may be taken to mean that section 397.5 applies only to post judgment proceedings therefore lacks authority, and conflicts directly with the current language in that provision as changed from the prior language. The court interprets the practice guide however, as perhaps imperfectly stating that the provision applies to post judgment proceedings, which it does, but is not actually asserting that it *only* applies to post judgment proceedings.

In any case, Petitioner also contends that the transfer will not promote justice or convenience because it would be more inconvenient for her as well as the neutral forensic, Elmore, whom the parties have engaged. Respondent cites to some bases for finding that transfer to Napa promotes justice and convenience, as noted above.

Petitioner provides some basis for the contrary. She explains that she has to travel all the way to California for any appearance, and she has a place to stay in Sonoma County but not Napa. The presence of Elmore in this county does not support Petitioner's argument because Elmore has been involved in Napa cases and is known in both counties.

Respondent also explains, as the court record generally indicates, that this court has not yet been heavily involved in these proceedings and that Petitioner herself has claimed that she cannot have an impartial hearing before the current judicial officer assigned to this matter. Her challenge was denied, leaving the matter before a judicial officer to whom Petitioner herself objects and this does raise issues which could, as Respondent states, "taint" these proceedings and lead to further problems or be a catalyst for additional litigation which might be avoided.

In his reply, Respondent adds that, due to Petitioner's challenge to the sitting judicial officer in this matter, filed the same day he filed this motion, the court also has a valid basis to transfer under CCP section 397. It is appropriate for Respondent to raise this in his reply since, due to the timing of the filings, this had not taken place at the time he prepared and filed this motion. CCP section 397 sets forth grounds for changing venue, which include, (b) When there is reason to believe that an impartial trial cannot be had therein, and (c) When the convenience of witnesses and the ends of justice would be promoted by the change. Respondent argues the section applies here and transfer of venue could be appropriate under either potentially. However, there is no need for

the court to determine this motion under those grounds as the court is granting the request to transfer venue under CCP section 397.5.

The court finds sufficient basis to transfer venue to Napa and insufficient basis to require these proceedings to remain in this county. The court GRANTS the motion.

Fees and Costs of Transfer

Respondent asks that the parties cooperate in the procedure for the transfer per CCP section 399 and also asks that the parties equally split the costs of the transfer. This provision governs the procedures for transferring the case upon the court's order, including the payment of the fees and costs related thereto. It states, at subdivision (a), "[i]f an order is made transferring an action or proceeding under any provision of this title, the clerk shall… upon payment of the costs and fees, transmit the pleadings and papers of the action or proceeding… to the clerk of the court to which the action or proceeding is transferred." It specifies who is to pay the fees depending on the basis for the transfer in subdivision (a), stating, with emphasis added,

> If the transfer is sought on any ground specified in subdivision (b), (c), (d), or (e) of Section 397, the costs and fees of the transfer, and of filing the papers in the court to which the transfer is ordered, *shall be paid at the time the notice of motion is filed by the party making the motion*. If the transfer is sought solely, or is ordered, because the action or proceeding was commenced *in a court other than that designated as proper* by this title, those costs and fees, including any expenses and attorney's fees awarded to the defendant pursuant to Section 396b, shall be paid by the plaintiff before the transfer is made.

It does not provide any statement regarding which party is liable for the fees and costs and does not state that under other circumstances the fees and costs are to be split.

Respondent appears to be liable for the fees and costs and this court finds no basis for splitting them. This motion is not brought on the basis that this court was not proper when Petitioner filed the action and both the record and Respondent make it clear that this court was proper at that time. Of section 397 subdivisions (b), (c), (d), and (e), all except for subdivision (c) are clearly inapplicable on their face. However, subdivision (c) covers transfer "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change." This motion is based on a different provision, section 397.5, but that provision governs simply specific circumstances in a family law proceeding which qualify as transfer based on "the ends of justice and the convenience of the parties." This essentially falls under the transfer basis in section 397(c). As noted, section 399 only discusses the payment of fees and costs under *either* the basis that the action was brought in an improper court *or* on the bases in section 397 (b)-(e), giving no indication that there are any other circumstances for which a different standard applies. Although the court recognizes that these provisions are less than clear on this point, the court finds that the liability for fees and costs where transfer is based on CCP section 397.5 falls under the situations for which section 399 imposes the liability on the moving party.

Accordingly, Respondent, the moving party, must pay the full amount of the fees and costs for this transfer.

Petitioner also seeks fees and costs pursuant to Fam. Code section 271 and CCP section 396b. CCP section 396b is inapplicable here because this motion was not made on that basis and, moreover, the court finds there to be sufficient good cause for the motion. The court is not

persuaded that an award is proper under Fam. Code section 271 because nothing indicates that Respondent was acting improperly in a way that frustrates settlement or improperly increases the expenses of litigation.

The court DENIES all requests regarding fees, costs, or expenses of transfer. The court orders the parties to cooperate with the procedure for the transfer.

Conclusion

The court GRANTS the motion as set forth above. Respondent shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.