

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, July 26, 2024 9:30 a.m.  
Courtroom 22 –Hon. James G. Bertoli  
3055 Cleveland Avenue, Santa Rosa**

**TO JOIN “ZOOM” ONLINE:**

**Meeting ID: 161-312-0396**

**Passcode: 219644**

<https://sonomacourt-org.zoomgov.com/j/1613120396>

**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. **SFL38476 FOX DISSO**

Appearance Required

2. **SFL084471 Hernandez vs Montano**

Motion to Be Relieved as Counsel is granted. Petitioner’s attorneys of record, Laura M. Dunst and Destinee Tartuffe, are hereby relieved as counsel.

3. **SFL088376 Briggs vs Bean**

Appearance required.

4. **SFL090902 Haile Dissolution**

As Respondent has not specified any legal and/or factual basis for his request to stay these proceedings nor specified any legal basis that might give rise to an automatic statutory stay, the Request for Stay is denied.

5. **SFL090902 Haile Dissolution**  
**Motion to Quash Petitioner's 2nd Time Subpoena DENIED.**

**Facts and History**

Petitioner filed this action for dissolution of marriage on April 21, 2022. Respondent had filed a related action for domestic violence and temporary restraining order against Petitioner on April 8, 2022, and the two actions were consolidated under this matter. Respondent's representation has changed several times. He is currently self represented.

Respondent appealed different court orders, apparently including orders on discovery motions and an award of attorney's fees in favor of Petitioner. Some appeals were dismissed but ultimately the court of appeal heard the appeal from several orders and rejected Respondent's arguments, affirming the court's orders in a decision of October 2023, with a remittitur filed in this case on December 29, 2023. The court awarded costs to Petitioner, noting that this was "if any, as she did not file a respondent's brief."

Petitioner obtained a writ of execution for enforcement of money judgment, in the amount of \$8,987.50 and filed the writ on January 22, 2024. It states that it is in regard to judgments entered on "8/4/22," "12/6/22," and "3/30/23."

Respondent asserted a claim of exemption regarding Petitioner's efforts to collect money owed, including her writ of execution. Petitioner filed an opposition to the Exemption and motion for hearing on it. The claim of exemption was filed with the court on February 9, 2024. At the initial hearing on the claim of exemption, on February 16, 2024, this court continued the matter to March 15, 2024 for further briefing. At the hearing on March 15, 2024, the court continued the matter again, to June 21, 2024, for an evidentiary hearing and to put Respondent under oath regarding his financial situation. It ordered Respondent to be personally present.

Upon the retirement of the judge who had been hearing these proceedings and assignment to a new judge, Respondent filed a peremptory challenge pursuant to Code of Civil Procedure ("CCP") section 170.6. This was accepted and the matter assigned to another judge and department. At that time, the pending hearings were rescheduled to the calendars in the new department.

**Motion**

Respondent moves the court to quash a subpoena which Petitioner served on Redwood Credit Union ("RCU") for all bank statements of, and other documents showing any account activity by, Respondent from April 30, 2023 on. He argues that the subpoena lacks an affidavit supporting issuance of the subpoena as required under CCP sections

1985.3(b) and 1987.5, and there is no good cause because the information is not material to the dispute over enforcement of the sanctions orders against him. Respondent argues that a bank levy cannot reach funds not held at the time of the levy or social security benefits. He also makes vague and unclear allegations that Petitioner lacks standing, as well as of prejudice, fraud, and collusion with the court.

Petitioner opposes the motion, arguing that she “is entitled to engage in meaningful discovery that is reasonably calculated to lead to the discovery of admissible evidence” and that the subpoenaed documents are reasonably discoverable.

Respondent has filed a reply declaration. He asserts that Petitioner issued the subpoena on March 14, 2024 after he had filed his request for a stay of the proceedings on March 1, 2024, and that Petitioner has taken contradictory positions as to when the matter should proceed to trial.

### **Discussion**

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. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure (“CCP”), and specifically proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022.

A party seeking to compel deposition testimony or production of items and things, including records or other documents, from a non-party may serve that non-party with a subpoena to compel the non-party’s attendance, testimony, or production of documents. CCP sections 2020.010(b), 2020.220, 2020.410, 2025.280(b); *Terry v. SLICO* (2009) 175 Cal.App. 4th 352, 357.

A party, witness, consumer, or employee may bring a motion to quash, condition, modify, or compel compliance with, a subpoena requiring attendance or production of items before a court, at trial, or a deposition. CCP section 1987.1. The order compelling compliance shall be pursuant to the terms and conditions which the court declares. CCP section 1987.1(a). The court itself may bring such a motion on its own. CCP section 1987.1. The court may also on such a motion make an order “as appropriate to protect the person from unreasonable or oppressive demands....” Ibid. See also CCP sections 1985.3(g), 1985.6(f).

CCP section 1985(b), 1985.3, and 1987.5 require an affidavit showing good cause for a subpoena. Section 1985(b), the basic provision defining a subpoena, states that the affidavit must be served with the subpoena. Section 1985.3(b) requires the affidavit to be served on the consumer. Section 1987.5 requires the affidavit to be served in general with the subpoena. CCP section 1987.5, however, also states, “This section does not apply to deposition subpoenas commanding only the production of business records for copying under Article 4 (commencing with Section 2020.410) of Chapter 6 of Title 4.”

Despite the requirement for such an affidavit in the general provisions governing subpoenas, CCP section 2020.410(c) and 2020.510(b), specific provisions controlling subpoenas, expressly state that no such affidavit is required. According to CCP section 2020.410(c), a deposition subpoena which commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. Similarly, CCP section 2020.510(b) makes it clear that a records and testimony subpoena “need not be accompanied by an affidavit or declaration showing good cause for the production.” According to *Terry v. SLICO* (2009) 175 Cal.App. 4th 352, at 358-359, the specific provisions stating that no such affidavit is required control and supersede the contrary provisions in CCP sections 1985(b) and 1987.5, which require affidavits showing good cause for production. As the *Terry* court explained, ‘section 2020.030 provides that the general subpoena provisions that include sections 1985 and 1987.5 apply to a deposition subpoena “[e]xcept as modified in this chapter.’” The *Terry* court was specifically addressing a subpoena pursuant to CCP section 2020.510, but the reasoning and explanation apply equally to subpoenas under CCP section 2020.410.

### **Lack of Affidavit**

Respondent contends that the subpoena is defective due to lack of an affidavit based on the language in CCP sections 1985.3(b) and 1987.5. However, as set forth above, the specific, controlling provisions expressly state that no affidavit for good cause is required. The subpoena is accordingly not defective on this basis.

### **Good Cause for the Discovery**

Respondent also argues that there is no good cause because the information is not material to the dispute over enforcement of the sanctions orders against him. However, as Petitioner asserts in her opposition, the financial information which she seeks is overall directly relevant to the enforcement efforts and Respondent’s claim of exemption. Respondent argues that a bank levy cannot reach funds not held at the time of the levy or social security benefits but this does not render his financial information irrelevant. If funds

in the accounts are exempt from levy or other collection efforts, they will remain so, but Petitioner has the right to explore Respondent's financial information in order to address his claim of exemption and what assets he has which may be subject to levy, despite his claim that he has no assets subject to levy. He also makes allegations that Petitioner lacks standing, as well as of prejudice, fraud, and collusion with the court. These assertions are not only vague and unclear, but wholly unsupported and of no evident relevance to this determination.

### **Stay**

Respondent also asserts that the subpoena is improper because Petitioner issued it after Respondent had filed his request for a stay of the proceedings. He primarily stresses this issue in his reply and, although his moving papers do refer to the request for a stay, it is not clear in the moving papers that he is actually basing the motion on the request for a stay. Given the lack of clarity and the fact that Respondent does discuss the stay with respect to the subpoena in his moving papers, the court is considering this issue as a basis for the motion.

Although assuming that Respondent does actually and properly base this motion on the fact that he had requested a stay, the court nonetheless finds the argument unpersuasive. He merely filed an RFO for a stay but did not request, much less obtain, a temporary order for a stay pending the hearing on the RFO. The hearing on the RFO was set for April 19, 2024 and then continued to this hearing of July 26, 2024 as part of the rescheduling which the peremptory challenge necessitated. The court notes that the RFO for the stay fails to specify the legal or factual grounds for the stay. Some proceedings or events do automatically stay other proceedings. See, e.g., *Daly v. San Bernardino County Board of Supervisors* (2021) 11 Cal.5<sup>th</sup> 1030, at 1035 (appeals of mandatory injunctions automatically stay such injunctions); *U.S. v. Dos Cabezas Corp.* (9<sup>th</sup> Cir.1993) 995 F.2d 1486, at 1491 (automatic stay of proceedings upon filing of a bankruptcy action). However, stays are otherwise not automatic and do not take effect until a court issues a stay. See, e.g., *Daly, supra* (appeal of decision does not automatically stay enforcement of prohibitory injunctions); *IBM Corp. v. Brown* (C.D.Cal.1994) 857 F.Supp.1384, at 1387 (courts may, in their discretion, stay civil proceedings involving a party to pending related criminal proceedings, but such a stay is not required); *Avant! Corp. v. Sup.Ct.* (2000) 79 Cal.App.4<sup>th</sup> 876, at 882-883 (the same); *Smith v. Jones* (1900) 128 Cal.14 (it is permissible but not mandatory to stay ejectment proceedings pending appeal of a judgment quieting title to the property).

The mere filing of the RFO seeking a stay under these circumstances was not sufficient to stay the proceedings in of itself and did not prohibit Petitioner for issuing the

subpoena. Respondent fails to provide any authority or explanation supporting his apparent position to the contrary.

### **Conclusion**

The court DENIES the motion to quash. The prevailing party 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.

**END OF TENTATIVE RULINGS**