

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 13, 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. SFL090902 HAILE DISSOLUTION

Motion to Act Under CCP 128(8) CONTINUED to the law and motion calendar of November 22, 2024 in Department 22 at 9:30 a.m. because there is no proof of service showing notice of this hearing. Prior to the new hearing, the moving party must file timely proof of service in accord with California Rule of Court 3.1300, demonstrating service of all motion papers as well as notice of the hearing.

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. 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.

Respondent also filed a Motion to Quash Petitioner's 2nd Time Subpoena. After a hearing on July 26, 2024, this court denied that motion.

Motion

The matter has come on calendar for Respondent's Request for Order ("RFO") and Motion to Act Under CCP 128(8), to which he attaches a "Letter to Judges" (the "Letter"). The RFO form is blank and not filled out except for ¶8, which Respondent has marked to indicate that he seeks "other" relief, and ¶10, setting forth some facts claiming that this action is a "SLAPP" illegally filed against him. In the attached Letter, Respondent asks the court "to amend and control your process and orders so as to make them conform to law and justice." He recites a history of litigation involving him and claims that he suffered discrimination during those proceedings as well as in this action. He claims that the court is involved in a conspiracy to "disregard" the law, make illegal orders, and improperly deny his motions. He attaches some exhibits but otherwise provides no memorandum of point and authorities, and no analysis, law, or other explanation.

There is no opposition.

Service and Notice

The only proof of service for this motion was filed on August 6, 2024, at the time Respondent filed this motion, and it shows service having occurred on July 30, 2024. Accordingly, nothing demonstrates service of any notice that a motion was filed or notice of the hearing. It is also unclear if Respondent served Petitioner with anything but his Letter. The court therefore CONTINUES this matter. Prior to the new hearing, the moving party must file timely proof of

service in accord with California Rule of Court 3.1300, demonstrating service of all motion papers as well as notice of the hearing.

Applicable Authority

As noted above, Respondent brings this motion for the court “to Act Under CCP 128(8)” and he repeats the request in his Letter, in which he essentially quotes a portion of the language of Code of Civil Procedure (“CCP”) section 128(a)(8). Respondent provides no further explanation or discussion of the law and also does not clearly indicate what he wants the court to do or correct, instead simply reciting a narrative of events and apparent grievances. The court notes that there is no CCP section 128(8), but only section 128(b)(8), and it is apparently to this specific subdivision which Respondent refers given both the number and the language which he cites.

Code of Civil Procedure (“CCP”) section 128 gives the court the power to control the proceedings before it, preserve and enforce order, compel obedience to judgments, orders, etc.; and make orders and process “conform to law and justice.” This gives the court the power, among other things, to correct clerical errors, as distinct from judicial errors. *Bloniarz v. Roloson* (1969) 70 Cal.2d 143; *Boylan v. Marine* (App. 2 Dist. 1951) 104 Cal.App.2d 321. The trial court has the inherent power to exercise reasonable control over litigation before it, as well as the inherent and equitable power to achieve justice and prevent misuse of processes lawfully issued. *Blueberry Properties, LLC v. Chow* (App. 2 Dist. 2014) 230 Cal.App.4th 1017; *Venice Canals Resident Home Owners Ass'n v. Superior Court In and For Los Angeles County* (App. 2 Dist. 1977) 72 Cal.App.3d 675, 679.

Because of the vagueness of Respondent’s papers, the court finds it appropriate to set forth the entirety of CCP section 128(a), the relevant subdivision here. Section 128(a) states, in full,

(a) Every court shall have the power to do all of the following:

(1) To preserve and enforce order in its immediate presence.

(2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.

(3) To provide for the orderly conduct of proceedings before it, or its officers.

(4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

(5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.

(6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code.

(7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

(8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:

(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.

(B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

Despite this context, the court is not able to discern exactly what Respondent contends the court should correct, or why. Respondent indeed appears to mention only subdivision (a)(8) and no language he presents appears to implicate the other provisions set forth above. His discussion also consists solely of a narrative of claimed misconduct by the court, Petitioner, and others, but he does not specifically state what the court should do or what it should change, or why. Nothing indicates a mere clerical mistake or the like, and Respondent seems to allege, albeit unclearly, intentional misconduct or judicial errors for which this provision does not appear to provide a remedy.

Conclusion

The court CONTINUES this matter as explained above.

2. SFL093470

Appearance required.

END OF TENTATIVE RULINGS.