

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli, Co-chair
Hon. Susan D. Huguenor, Co-chair
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DATE: October 25, 2004

SUBJECT: Family Law: Temporary Custody and Visitation Orders Prior to Venue Change (Code Civ. Proc., § 396b(c) (Action Required))

Issue Statement

Under current law, a court that has determined that a change of venue is appropriate in a dissolution of marriage or legal separation proceeding can make temporary orders pertaining to child and spousal support and attorney fees to be in effect during the transition period. However, this authority is not available in a proceeding under the Uniform Parentage Act, and it does not extend to custody and visitation orders.

Recommendation

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council sponsor legislation to expand the court's authority under Code of Civil Procedure section 396b(c) to make temporary orders in Uniform Parentage Act proceedings, and orders for custody and visitation of children.

The text of the proposed legislation is attached at pages 3–4.

Rationale for Recommendation

This proposal would ensure that the court has the authority it needs to make temporary orders in family law proceedings to address the needs of the parties and their children during any transition period after a change of venue motion has been granted, but before the new venue has an opportunity to hear the case. While current law provides limited

authority in these cases, that jurisdiction needs to be expanded to reach (1) proceedings involving unmarried parties under the Uniform Parentage Act and (2) orders for custody and visitation. Without the authority to make custody and visitation orders, families can be left in untenable positions while they await a hearing in the new court. One example provided by a committee member involved a family in which the children needed to be registered for school, yet the parents were in dispute on this issue. In such a case, where the school year will begin before the new court can make an order in the case, it is vital that the court transferring venue be authorized to make a temporary order to clarify the rights and obligations of the parties.

Alternative Actions Considered

N/A

Comments From Interested Parties

N/A

Implementation Requirements and Costs

This proposal will allow courts to make orders when they are necessary but does not mandate any additional orders. The proposal should provide for smoother transitions in matters where venue is changed.

Attachment

Code of Civil Procedure section 396b(c) would be amended to read:

1 **§ 396b**

2
3 (a) Except as otherwise provided in Section 396a, if an action or proceeding is
4 commenced in a court having jurisdiction of the subject matter thereof, other than
5 the court designated as the proper court for the trial thereof, under this title, the
6 action may, notwithstanding, be tried in the court where commenced, unless the
7 defendant, at the time he or she answers, demurs, or moves to strike, or, at his or
8 her option, without answering, demurring, or moving to strike and within the time
9 otherwise allowed to respond to the complaint, files with the clerk, a notice of
10 motion for an order transferring the action or proceeding to the proper court,
11 together with proof of service, upon the adverse party, of a copy of those papers.
12 Upon the hearing of the motion the court shall, if it appears that the action or
13 proceeding was not commenced in the proper court, order the action or proceeding
14 transferred to the proper court.

15
16 (b) In its discretion, the court may order the payment to the prevailing party of
17 reasonable expenses and attorney's fees incurred in making or resisting the motion
18 to transfer whether or not that party is otherwise entitled to recover his or her costs
19 of action. In determining whether that order for expenses and fees shall be made,
20 the court shall take into consideration (1) whether an offer to stipulate to change of
21 venue was reasonably made and rejected, and (2) whether the motion or selection
22 of venue was made in good faith given the facts and law the party making the
23 motion or selecting the venue knew or should have known. As between the party
24 and his or her attorney, those expenses and fees shall be the personal liability of
25 the attorney not chargeable to the party. Sanctions shall not be imposed pursuant
26 to this subdivision except on notice contained in a party's papers, or on the court's
27 own noticed motion, and after opportunity to be heard.

28
29 (c) The court in a proceeding for dissolution of marriage or legal separation or under
30 the Uniform Parentage Act may, prior to the determination of the motion to
31 transfer, consider and determine motions for allowance of temporary spousal
32 support, support of children, custody and visitation of children, and counsel fees
33 and costs, and may make all necessary and proper orders in connection therewith.

34
35 (d) In any case, if an answer is filed, the court may consider opposition to the motion
36 to transfer, if any, and may retain the action in the county where commenced if it
37 appears that the convenience of the witnesses or the ends of justice will thereby be
38 promoted.

1 (e) If the motion to transfer is denied, the court shall allow the defendant time to move
2 to strike, demur, or otherwise plead if the defendant has not previously filed a
3 response.