

Courtroom Clerking

21st Annual AB 1058 Child Support
Training Conference
September 12-15, 2017

Kathryn Whitney

**Court Clerk III
Calaveras Superior Court**

**kwhitney@Calaveras.courts.ca.gov
(209) 754-5967**

Please feel free to contact me.

Advisements & Objections

Family Code §4251 Advisement

Family Code 4251(b) (excerpts)

The commissioner shall act as a temporary judge unless an objection is made by the local child support agency or any other party...

The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge...

How do your courts handle FC 4251 announcement?

- ❖ Are parties given a pre-printed document to sign prior to hearing?
- ❖ Is there an oral announcement in court with verbal response from all parties?
- ❖ What can happen if announcement not made or made and not indicated on the record (minutes)?

In re the Marriage of Kelli & Marc Djulus

- ❖ Fourth Appellate District Division One Case No. D06957
- ❖ San Diego Superior Court No. ED92245
- ❖ Judgment & orders determined **VOID** by Court of Appeals

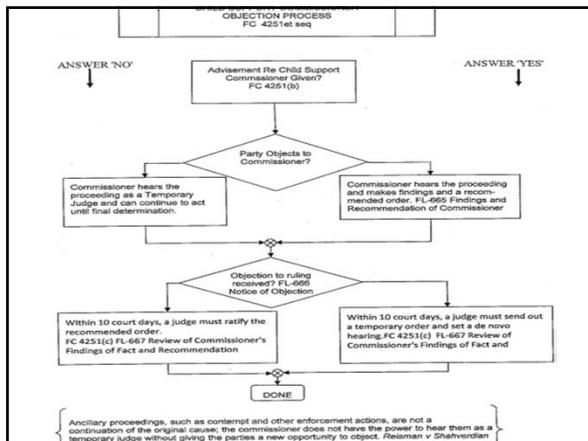
- ❖ California Constitution provides parties may stipulate matter heard and decided by a temporary judge (Cal. Const. , art. VI, §21)
- ❖ Supreme Court has interpreted this to mean stipulation is required for commissioner to hear matter; without stipulation, any ruling or judgment is VOID
- ❖ Stipulation need not be in writing or result of express oral statement, but may be implied as a result of the conduct of a party (*Horton, supra*, 54 Cal.3d; *Frye, supra*, 150 Cal.App.3d)

- ❖ To be implied, there must be evidence in the record to show a party and/or his/her counsel were aware the judicial officer was a commissioner rather than a judge
- ❖ Consent for commissioner must be given prior to commissioner making any substantive rulings
- ❖ **Whether a form is used in your courtroom or not, make sure any advisement is noted on the Minutes.**

Discussion Questions

- ❖ How might the rules for a temporary judge differ from that of a Child Support Commissioner since Child Support Commissioners can continue to hear a case and make recommended findings and orders even if there is an objection?
- ❖ What does this mean for the courtroom clerk?

Objection to Commissioner



Process for Objection

- ❖ Commissioner makes announcement per FC4251
- ❖ If any objections, Commissioner still hears the matter and makes Findings & Recommendation (FL-665)
- ❖ If objecting party files a written objection (FL-666) within 10 court days, the Judicial Officer has 10 court days to make temporary order and set matter for Trial De Novo
- ❖ If objecting party does not file a written objection (FL-666) within 10 court days, the Judicial Officer has 10 court days to ratify Commissioner's order and set matter for Trial De Novo

**NOTE: IN EITHER CASE, THE JUDGE SETS
THE MATTER FOR TRIAL DE NOVO**

Findings & Recommendation of Commissioner

FL-665
(Alternative Mandatory Use)

Family Code 4251(c)

- ❖ If any party objects to the commissioner acting as a temporary judge, the commissioner *may* hear the matter and make findings of fact and a recommended order. Within ten (10) court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error.

**Family Code §4251(d) – (f) states
Commissioner shall, where appropriate, do any of
the following...**

- ❖ Review & determine ex parte applications for orders & writs
- ❖ Take testimony
- ❖ Establish a record, evaluate evidence, make recommendations or decisions
- ❖ Enter judgments/orders based upon voluntary acknowledgments of support liability, parentage & stipulated agreements as to child support
- ❖ Enter default orders/judgments
- ❖ In paternity actions, order parties to submit to genetic testing
- ❖ If requested, join issues re custody, visitation and protective orders in action filed by LCSA
 - ❖ Refer parties for mediation
 - ❖ Accept stipulates re custody, visitation, and protective orders
 - ❖ Refer contested issues of custody, visitation, and protective orders to judge or another commissioner
 - ❖ Or hear the matter if costs related to Title IV-D are segregated
- ❖ The LSA shall be served notice by moving party of any proceeding...or any order shall be voidable upon motion of the LCSA

Claims of Exemption

- ❖ CCP 703.550, 703.570
- ❖ Notice of Opposition and Notice of Motion on Claim of Exemption (FL-677)
- ❖ Order Determining Claim of Exemption (FL678)

CCP 703.550

Within 10 days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and shall file with the levying officer a copy of the notice of opposition and a copy of the notice of motion. Upon the filing of the copies of the notice of opposition and notice of motion, the levying officer shall promptly file the claim of exemption with the court. If copies of the notice of opposition and notice of motion are not filed with the levying officer within the time allowed, the levying officer shall immediately release the property to the extent it is claimed to be exempt.

**Civil Code of Procedure
§703.580**

- ❖ (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings...
- ❖ (b) ...the exemption claimant has the burden of proof.
- ❖ (c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

**Civil Code of Procedure
§703.580**

- ❖ (d) ...the court shall determine by order whether or not the property is exempt in whole or in part... No findings are required in a proceeding under this section.
- ❖ (e) ***The court clerk shall promptly transmit a certified copy of the order to the levying officer.*** Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.
- ❖ (f) Unless otherwise ordered by the court, if an exemption is not determined within the time provided by Section 703.570, the property claimed to be exempt shall be released.
